

MINUTES

Civilian Review Board
Bascom Room—Eugene Public Library—100 West Tenth Avenue
Eugene, Oregon

March 8, 2016
5:30 p.m.

PRESENT: Bernadette Conover, Chair; Eric Von Houten, Vice Chair; Maurice Denner, Lindsey Foltz, Heather Marek, Steven McIntire, Chris Wig, Civilian Review Board members; Vicki Cox, Mark Gissiner, Leia Pitcher Police Auditor's Office; Lt. Carolyn Mason, Sgt. Ryan Nelson, Asst. Chief Karl Durr, Eugene Police Department; Bonnie Souza, Human Rights Commission liaison; Majeska Seese-Green, guest.

ABSENT: None.

Chair Conover convened the Civilian Review Board (CRB) at 5:30 p.m.

I. AGENDA AND MATERIALS REVIEW

Ms. Conover revised the order of the agenda, and moved Public Comment ahead of Minutes Approval. Noting no objections, Ms. Conover deemed the agenda approved.

III. PUBLIC COMMENT

Ms. Conover called for public comment.

Majeska Seese-Green stated she was recording tonight's CRB meeting on behalf of A Community Together.

II. MINUTES APPROVAL—February 9, 2016

Mr. McIntire offered the following correction:

Page 2, paragraph 7, should read: Mr. McIntire reported the Police Commission was reviewing several issues, including officers' muted ~~mikes~~ **microphones**, and was looking at policies related to searches and storage of prisoners' property. He thanked Mr. Jones for his comments this evening. He noted the CRB had asked the City Council to reach out to minority groups when recruiting for ~~police officers~~ **Commissions and Boards**.

Ms. Conover offered the following correction:

Page 8, paragraphs 5 and 6, should read: In response to Ms. Conover, Mr. Van Houten agreed to withdraw the motion, Ms. Marek agreed to withdraw the friendly amendment and Ms. Foltz agreed to withdraw the second to the ~~motion~~ **friendly amendment. She restated the motion as follows:**

Mr. Van Houten, seconded by Mr. Denner, moved that CRB meetings be audio recorded in their entirety. Ms. Marek offered an amendment that CRB meetings would have detailed minutes in addition to audio recordings. Mr. Van Houten and Mr. Denner accepted the amendment to the motion. Ms. Foltz, Ms. Marek and Mr. Wig voted in favor of the motion, Ms. Conover, Mr. Denner and Mr. McIntire voted against the motion, and Mr. Van Houten abstained from voting. Ms. Conover stated the motion failed on the vote of 3:3:1.

Mr. Denner offered the following correction:

Page 3, paragraph 3, sentence 3 should read: He asked that the article be forwarded to **CRB Police Commission** members.

Ms. Marek said several things were either missing or unclear in the February 9, 2016 minutes. She had listened to Ms. Seese-Green's recording of the meeting which she used to create proposed corrections to the minutes. She distributed the following to CRB members:

- Pages 6, 7, and 8 from the February 9, 2016 minutes with notations.
- A document entitled *Amendments to 2/9/2016 CRB Minutes—Re: Discussion About Audio And/Or Video Recording of Meetings* which contained corrections to 21 items on pages 6, 7 and 8.

Ms. Foltz suggested the CRB could have a subcommittee to review Ms. Marek's corrections.

Ms. Conover did not support having a subcommittee to review Ms. Marek's corrections. She proposed deferring correcting and adopting the minutes to the next meeting.

Mr. McIntire said the typical CRB minutes were not verbatim but abbreviated transcriptions.

Ms. Marek said her corrections were not verbatim, but she picked things out that changed the intent of the meeting.

Ms. Conover said in the past, CRB members corrected comments they made during the meeting, but did not correct comments made by other CRB members. It was the burden of the person making comments to ensure they were recorded accurately.

In response to Mr. Van Houten, Ms. Marek was concerned that CRB minutes were adopted without enough time to amend them.

Ms. Conover noted consensus to defer adopting the February 9, 2016 CRB minutes until the next meeting.

IV. COMMENTS FROM BOARD MEMBERS, HUMAN RIGHTS COMMISSION LIAISON AND POLICE COMMISSION LIAISON

Ms. Marek said the Human Rights Commission (HRC) had discussed the CRB's decision about audio recordings of meetings. The HRC continued to have conversations about Housing First and

decriminalizing homelessness. The HRC adopted a resolution changing Columbus Day to Indigenous Peoples' Day. She was impressed with the HRC's ability to operate collaboratively and encouraged the CRB to follow the HRC example. Ms. Marek said the CRB had been tasked per city code with looking at patterns in EPD employees' behavior. Ms. Marek said the CRB Case Review for the February 9, 2016 meeting was an allegation related to temporary storage of evidence. A person had been taken to jail and his bike was missing when he was released. It was not clear when the bike went missing. The City of Eugene had a responsibility for securing the property of people who were jailed.

Mr. Denner had no comments.

Mr. Van Houten had no comments.

Mr. Wig had no comments.

Mr. McIntire offered a brief report on the most recent Police Commission meeting. He said the CRB had experienced problems in the past and he did not want to see the CRB regress into old behavior patterns. He encouraged the CRB to focus on the work before it and focus on the issues before it for the good of the community. He did not want the CRB to be used to engage in political issues.

Ms. Conover concurred with Mr. McIntire's comments. It was important for the CRB to listen to relevant policy actions and respond in line with community standards. She had observed over time how EPD policies related to dogs, pursuit, Taser use, and the Blue Team had changed. It was best when the CRB acted as a tool for the education of the community and EPD.

Mr. Gissiner said if Ms. Foltz had a concern about a case, she should bring it to the attention of himself or Ms. Pitcher, and to the CRB if she felt the CRB should look at the case.

Ms. Marek appreciated that Mr. Gissiner and Ms. Pitcher were responsive when she asked about cases. She hoped her earlier comments were not interpreted as accusatory.

Referring to the February 2016 Case Review, Mr. Gissiner said it was challenging, when homeless people were housed at the Lane County jail, to provide security for personal property, because the jail did not have sufficient storage space and only minimum security. LCSO staff did not always have time to review the security recordings.

In response to Mr. Wig, Mr. McIntire said he had met with Mr. Gissiner and Ms. Pitcher regarding the Police Commission review of the Brian Babb case, and the recommendation Mr. Gissiner had made to EPD Chief Pete Kerns and the City Manager.

V. TRAINING TOPIC: BLUE TEAM/USE OF FORCE REPORTING

Mr. Gissiner introduced EPD Asst. Chief Karl Durr. Mr. Gissiner said Asst. Chief Durr had accepted a position with the Murfreesboro, Tennessee Police Department.

Asst. Chief Durr offered a report on the Blue Team/Use of Force Reporting and the software that was used by the Blue Team. The process was used by supervisors to report on use of force, vehicle accidents, and pursuits. He said either officers prepared use of force reports in the field or

supervisors documented use of force activities. The best practice was for supervisors to conduct field interviews. The Blue Team procedures went through some growing pains when first implemented in 2014-15, but two and one-half years into the process, the department was in a good position when compared with departments in other parts of the country.

Asst. Chief Durr reported that the Blue Team had worked with the Police Auditor's office to develop early intervention procedures that were not disciplinary for use of force cases. Officers involved in use of force cases were counseled in the early stages which put officers in the position of accepting responsibility of helping their colleagues. EPD had received a grant for body cameras which had resulted in a reduced number of use of force complaints. He invited CRB members to the EPD training facility, where vendors would be showing their latest body and in-car video cameras, on April 8, 2016.

Lt. Carolyn Mason explained the process supervisors used for submitting use of force complaints, noting the submission, which included interviews with officers and witnesses, and photographs, was now electronic. It was important to get supervisors at the scene so they could begin coaching and providing early intervention.

Asst. Chief Durr reviewed the Blue Team process for fire arm deployment and fire arm discharge. The EPEA was notified when the Blue Team investigated fire arm discharge or use of force complaints.

Mr. Gissiner noted use of force allegations had decreased since the Blue Team was implemented.

Ms. Conover thanked Asst. Chief Durr for providing information to the CRB on the Blue Team and his service to the community. The City of Eugene would miss him when he goes to Tennessee.

VI. BREAK

The CRB took a short break.

VII. CASE REVIEW: ALLEGATION FILED BY EUGENE POLICE EMPLOYEES' ASSOCIATION THAT SUPERVISOR FAILED TO PROPERTY RESPOND TO EMPLOYEE'S REQUEST FOR COVER.

Ms. Pitcher offered a PowerPoint presentation entitled *Case Summary—Civilian Review Board—March 8, 2016* and facilitated a discussion on the case before the CRB.

Summary of Facts

- Officer G was assigned to perform jail arraignments. When the officer arrived, the officer was notified that the officer was supervising thirteen inmates with varying degrees of mental health issues and violent histories. The officer requested a cover officer to assist.
- Dispatch confirmed the Officer G was the only employee at arraignments and stated they would "work on gettin(g)...another unit."
- Four seconds after that statement from dispatch, Supervisor A denied the request, stating, "They're going to have to make do with one." Supervisor A did not check the status of units before denying the request, nor did he allow dispatch to attempt to find a cover unit.

- Jail staff were concerned for Officer G’s safety and considered cancelling arraignments. Officer G was alone at one point with 11 inmates and had to physically restrain one who was becoming disorderly. A deputy ultimately called Supervisor A to reiterate the request for a cover officer.
- Following the call from the deputy, Supervisor A allowed the request for cover. A cover officer was dispatched to the jail approximately 33 minutes after the request from Officer G.
- The Eugene Police Employees’ Association (EPEA) filed a “safety complaint” against Supervisor A.
- Supervisor A stated in his interview that he denied the request for cover based on a lack of available resources.
- Supervisor A also described in detail the circumstances he was in when he denied the request for cover, stating that he was involved in a difficult and distracting interview with a subject in custody when he made the decision.
- The investigation showed that, in fact, Supervisor A was driving to that call when he denied the request.
- Supervisor A acknowledged during a second interview that he was not on scene interviewing the suspect when he denied the request.
- No employee interviewed had heard of a supervisor denying a request for cover. Supervisor A also stated that he had never before denied a request for cover.

Allegations

1. **Employee Safety**—that Supervisor A failed to provide adequate safeguards to Officer G when the officer was assigned jail arraignments and after she requested additional assistance.
2. **Unsatisfactory Performance**—that Supervisor A failed to adequately assess the safety risk to Officer G when the officer requested assistance based on the number of inmates and their behavior.
3. **Integrity**—that Supervisor A failed to scrupulously avoid conduct which compromised his integrity, and that of the department, when he gave inaccurate statements in his IA interview regarding the circumstances surrounding his refusal of the request for cover.

Recommended Adjudication

- **Employee Safety**
 - EPD chain of command: Sustained
 - Auditor’s Office: Sustained
 - Chief’s Adjudication: Sustained
- **Unsatisfactory Performance**
 - EPD chain of command: Sustained
 - Auditor’s Office: Sustained
 - Chief’s Adjudication: Sustained
- **Integrity**
 - EPD chain of command: Insufficient Evidence
 - Auditor’s Office: Insufficient Evidence
 - Chief’s Adjudication: Insufficient Evidence

Issues for CRB Discussion

- Complaint Intake and Classification

- Filed by EPEA
- Classification: Allegation of Misconduct
 - Mr. Wig observed that the incident in question occurred in February 2015, and that it was adjudicated in June 2015. He asked why it had taken so long for the complaint to be brought to the CRB. Ms. Pitcher responded that the case had not been closed by Internal Affairs (IA) until November 2015.
- Complaint Investigation and Monitoring
 - Ms. Conover commended Sgt. Nelson for his top notch investigation of the complaint.
 - Mr. Denner asked if the cover officer who assisted Officer G engaged in a hands on encounter with the inmate. Sgt. Nelson said a reportable use of force had not occurred, but there had been the potential for a bad outcome with the inmate.
 - In response to Ms. Conover, Sgt. Nelson said court was not in session when the incident occurred.
- Relevant Department Policies and Practices
 - APM 15.4 (City policy): Employee Safety
 - 1101.1.B.9 Unsatisfactory Performance
 - 1101.1.B.16 Unsatisfactory
 - In response to Mr. Van Houten, Sgt. Nelson said he did not know how long the policy had been in place.
 - Mr. Van Houten asked what impact delaying the arraignment would have been. Sgt. Nelson said there would have been no impact for EPD, but it would have been significant for the judges.
 - Mr. McIntire noted the EPD chain of command, the Auditor's Office and the Chief determined there was insufficient evidence to support the integrity allegation. He questioned Supervisor A's assertion that he "misremembered" where he was when Officer G requested cover. He felt Supervisor A got a pass on the integrity adjudication.
 - Ms. Pitcher said the integrity policy required intentional actions, and the issue did not rise to that level. She added the untruthfulness policy was vague and difficult to enforce. The Police Auditor's office chose to address Supervisor A's integrity because it was not necessary for his actions to be intentional to satisfy the policy standards. He should not have gotten a pass, but there was not enough evidence to sustain the allegation.
 - Mr. McIntire said policy guidance was insufficient for the integrity allegation.
 - In response to Ms. Conover, Sgt. Nelson said EPD employees were aware that they had to follow both department polices and City of Eugene polices. She questioned whether officers clearly understood the difference between must/shall/should, opining in this case, an officer must assist Officer G, while shall/should may be easier to accept. Sgt. Nelson added EPD policies used must/shall whenever possible.
 - Mr. Denner asked if the watch commander had the authority to override decisions made by the scheduling sergeant. Sgt. Nelson confirmed the watch commander had control over scheduling and had the authority to change officers' assignments as events that occurred during a shift required.

- As he had listened to the recording, Mr. Denner noted if there were only a few inmates, it was common for one officer to be assigned to arraignment, but officers were usually assigned in pairs when there were more inmates or if an inmate was disruptive. He suggested officers should always be sent in pairs until it was determined that one officer could manage the situation. It was better for the officer and the people at the jail to avoid high risk situations.
 - Policy and/or Training Considerations
 - Ms. Foltz asked if it was standard practice to send a single officer to the jail for arraignments, or if it depended on the number of inmates being arraigned. Sgt. Nelson said EPD now had one person who served as the primary officer for jail assignments. Every watch commander should be aware of the number of inmates and determine if a second officer should be assigned.
 - Mr. Wig acknowledged the EPD was challenged daily with juggling resources, and back up officers were assigned based upon the activity EPD officers were engaged in at any particular day/time. Sgt. Nelson said officer assignments for backup rotated between the downtown team, the motorcycle team and patrol.
 - Ms. Pitcher noted one issue of concern was that dispatch was not allowed to find an officer who could provide cover for Officer G at arraignments.
 - Mr. Gissiner stated there were 10 to 12 inmates present for arraignment that day. Officers attending arraignment were unarmed, and he felt resource allocation was inconsistent for arraignments. Officer G was placed in a dangerous situation.
 - Mr. Van Houten inquired about what usually happened when officers called for backup. He asked if dispatch usually handled those requests, and if watch commanders were involved. Sgt. Nelson the standard practice was for dispatch to identify an officer who could serve as a backup. If no one was available for backup, dispatch contacted the supervisor or watch commander who would always clear another officer to go to the jail to assist during arraignments.
 - Lt. Mason agreed with Sgt. Nelson that dispatch should be allowed to do their jobs and find a backup as requested.
 - Ms. Marek asked if because dispatch was contacted, Officer G assumed no one was available. EPD should provide training to help EPD staff determine where resources should be assigned. This sounded like a dangerous situation. Supervisor A should have requested sufficient information to enable him to make a sound decision.
 - Ms. Conover asked if Supervisor A should have asked for justification to assign a cover officer to arraignments. Sgt. Nelson said if a request was made for a cover officer, Supervisor A should not question the need. He had never heard of a request for backup being denied. Lt. Mason had never heard of a request for backup being denied, noting the judgement of the officer making the request for backup should be trusted.
 - Ms. Marek asked if there had been other times when there were more requests for backup than could be fulfilled. Sgt. Nelson responded that never happened.

- Lt. Mason said there were usually many of resources available during day shifts. While there were fewer resources available during night shifts, supervisors were always able to find officers to provide backup.
- Ms. Foltz asked if it was considered insubordination for Officer G to follow up with Supervisor A regarding her backup request. Sgt. Nelson said Officer G did not feel comfortable questioning Supervisor A's decision. Other officers would question supervisor's decision.
- Mr. Denner said if EPD wanted officers to do their jobs, officers should be provided with sufficient information, and a second officer with more experience should be assigned. Mr. Denner understood officers serving in an acting-in-capacity (AIC) supervisory role used that role as a road to promotion. However, Supervisor A was a supervisor who did not understand the applicable policies. He asked if EPD was providing adequate training.
- Lt. Mason said officers regularly served in AIC roles, but there were no direct appointments to supervisory positions from AIC assignments. EPD attempted to provide training on policies, but policies changed frequently and it was sometimes challenging to provide timely training. In the past, it was mandatory for officers to read new policies as they were adopted and acknowledge that they had read them, but that had not occurred for about a year. EPD was currently having a problem providing adequate training in a timely manner.
- In response to Mr. Denner, Sgt. Nelson said backup officers would be sent to arraignment even if there were only 6 or 7 inmates if the circumstances warranted it.
- Ms. Foltz said the integrity issue needed to be reviewed.
- Ms. Pitcher said a revised draft Code of Conduct should address this issue.
- Mr. Denner stated state standards also addressed the integrity issue.
- Adjudication Recommendations
 - Mr. McIntire would sustain the integrity allegation. He was concerned that too many details were misremembered by Supervisor A.
 - Ms. Conover understood how things could be misremembered when policies were poorly written. This was this was the first time the CRB had to refer to City of Eugene policies.
 - Sgt. Nelson and Ms. Pitcher acknowledged it was not unusual to go to City of Eugene policies, and it had happened in the past.
 - Ms. Foltz said it could be difficult to prove intent. Ms. Pitcher said it was not lost on anyone that intent was difficult to prove, and it would be career ending if it had been sustained.
 - Mr. Wig disagreed with the integrity adjudication. If a private citizen had behaved as Supervisor A had, s/he would be in trouble. He was concerned that a police officer was held to lower standards than the general population.
 - Mr. Van Houten said the integrity allegation should have been sustained and should be career ending. Supervisor A was lying and he knew he was lying.
- Additional Comments/Concerns
 - Mr. Denner said in the social service sector of the State of Oregon, if allegations were brought against employees in the mental health and child

care areas but there was insufficient evidence to support the allegations, those allegations became part of an employee's permanent record. He was comfortable with the integrity allegation not being sustained.

- Ms. Foltz said such an allegation could bring into question any testimony an officer ever made.
- Ms. Marek this was a serious situation with the supervisor's career and a potential compromise of the safety of officers and prisoners compromised. It was important for supervisors and officers to appreciate their public safety function.
- Mr. Van Houten stated sustaining the integrity allegation could damage Supervisor A's reputation and credibility.
- Ms. Conover noted a jail employee had to make the call to Supervisor A to get help for Officer G.
- Mr. Wig said this case was well documented by Sgt. Nelson, and he was impressed with the officers who stood up for the values of the community.

VIII. AUDITOR REPORT

Mr. Gissiner expressed appreciation for the work Ms. Pitcher did on this case. He had been working with a person at the State of Oregon on the profiling reporting process, and he still had issues with the process. He and Ms. Pitcher continue to have discussions with the EPEA and EPD senior leadership on the IA process. Some police departments nationally used matrixes to clarify corrective action. Here, allegations made against officers would remain on their records forever, and there was not a process for forgiveness or expungement. There should be thresholds for different actions.

In response to Mr. Wig, Mr. Gissiner said he hoped to include a use of force report in the Police Auditor annual report.

Ms. Pitcher said she and Mark were working with Latino groups in the community. Ms. Conover thanked Sgt. Nelson for his work when he served in IA.

Mr. Gissiner suggested people could look at service complaints that had been filed on the Police Auditor's website.

IX. ADJOURN

The meeting adjourned at 7:35 p.m.

(Recorded by Linda Henry)