

MINUTES

Civilian Review Board
Harris Hall, Lane County Public Service Building
125 East 8th Avenue

January 9, 2018
5:30 p.m.

PRESENT: Chris Wig, Chair; Rick Roseta, Steve McIntire, Carolyn Williams, Civilian Review Board members; Mark Gissiner, Leia Pitcher, Beatrice Hernandez, Police Auditor's Office.

ABSENT: Maurice Denner, Jim Hargreaves, Heather Marek (Civilian Review Board members).

Mr. Wig convened the Civilian Review Board (CRB) at 5:32 p.m.

1. AGENDA AND MATERIALS REVIEW

Mr. Wig moved the introduction of Agenda Item Number 5, "Introduction of Interim Director of Public Safety: David James" to Agenda Item Number 2.

Mr. Wig deemed the agenda approved by acclamation, as amended.

2. INTRODUCTION OF INTERIM DIRECTOR OF PUBLIC SAFETY: DAVID JAMES

Mr. James introduced himself as Interim Executive Director of Public Safety for Eugene Police Department (EPD). He was honored to serve the City of Eugene for the next 90 days. Mr. James explained he had been with EPD for 30 days already. His purpose was to help direct operations of the Department as they hire a new police chief. He was a subcontractor for the firm conducting the search for police chief. Mr. James was a chief for 15 years at one point and then had a consulting firm.

Mr. James told CRB it was his first time in Oregon. His role here was to serve CRB and the community. As he directed operations to help make the transition, he would be looking at its department and operations; he would report back to the City Manager of things of importance. Mr. James would look at applications for chief of police and would help in the hiring process. He acknowledged the importance of CRB and thanked the board.

3. PUBLIC COMMENT

Mr. Wig declared there was no public comment.

4. MINUTES APPROVAL — November 2017

There were no changes to the November 2017 minutes. Mr. Wig deemed the minutes approved by acclamation.

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

Mr. McIntire reported he would have to miss the Police Commission meeting on Thursday, January 11, 2018. He said another CRB member could attend in his place if they wanted.

Mr. McIntire shared an article from the Register Guard ran on December 24, 2017 about homeless man. In the situation, the man's shopping cart was on fire and the authorities of Springfield were called. The man ran from authorities, jumped in the river and swam, and they waited for him on the other side. Mr. McIntire said the man's life was in that shopping cart; he thought a few changes could have made the story end to be a heartwarming one. Instead of being given a warm shelter, the man was taken to the hospital where he was arrested after his body temperature raised to safe levels.

Neither Mr. Roseta nor Ms. Williams had statements.

Mr. Wig said he felt good about the 2017 Police Executive Research Forum (PERF) report, because many issues discussed at CRB and the Police Commission were also observed by an outside party of the community.

6. CASE REVIEW: ALLEGATION OF AN UNTRUTHFULNESS DURING AN ADMINISTRATIVE INVESTIGATION

Mr. Roseta declined to participate in the case review. He was concerned about CRB reviewing the case; he thought it was not a matter for CRB.

Mr. Denner emailed a statement to Mr. Wig reading, "I know several employees in this matter. Some better than others. I have a 'conflict of interest' under Oregon Administrative Rules. However, that does not prevent me from making comments and participating in discussion."

1. Summary of Facts

- Our office met with Retired Supervisor B in late February 2017. The retired supervisor believed he had additional information related to the case that was reviewed by this board in November 2017.
- The retired supervisor was concerned that Supervisor A had been untruthful during the related investigation. The retired supervisor stated in his intake interview that he had met with Supervisor A socially in the fall of 2016. Supervisor A had discussed the circumstances surrounding the earlier investigation – specifically, how upset his spouse had been about a picture he had taken.
- The retired employee later met socially with the person who had complained about that picture and understood that Supervisor A's explanation during the prior investigation was different than the one he had told the retired employee.
- The complaint was classified as an Allegation of Misconduct (specifically, an allegation of untruthfulness) and forwarded to an independent investigator for follow up.
- The outside investigator interviewed Retired Supervisor B and Supervisor A, as well as witnesses. The investigation was submitted to the City in May 2017. The investigator submitted follow up information in June 2017.
- Our office reviewed the investigation and found it to be unbiased and complete. Our recommendation to Chief Kerns, submitted later in June 2017, was that the allegation be sustained.
- Chief Kerns issued his adjudication in July 2017, which sustained the allegation.

- Supervisor A followed the prescribed grievance procedure, and the City Manager issued a final adjudication in November 2017. The City Manager found insufficient evidence to support the allegation of untruthfulness.

2. Allegations

1. Truthfulness: That Supervisor A was not truthful during the administrative investigation of a complaint that he had violated the City's Respectful Work Environment policy.

3. Recommended Adjudications

1. Truthfulness

- a. Auditor's Office: Sustained
- b. Chief: Sustained
- c. City Manager: Insufficient Evidence

4. Issues for CRB Discussion

- Complaint Intake and Classification
 - Intake interview with Retired Supervisor B
 - Classification: Allegation of Misconduct

Ms. Williams appreciated they used the same outside investigator – that added continuity. Mr. Wig agreed that doing so was thoughtful.

- Complaint Investigation and Monitoring
 - Outside investigator

Ms. Williams said during the investigation retired supervisor B appeared reliable. It made her question Supervisor A's credibility. Mr. Gissiner said there was follow up with retired Supervisor B personally, initiated with the investigator, however, Mr. Gissiner was not present for the interviews conducted.

Mr. Wig thought the follow up interview with Retired Supervisor B was very important and well done. He noted it enhanced credibility of information that the Auditor's Office and the Chief used to make their recommendations.

- Relevant Department Policies and Practices
 - 1101.1.B.29 Truthfulness

Mr. Wig clarified City and Police Auditor policies. He said based on the adjudication, a person could deduce that taking inappropriate pictures at work was not against City Policy

Mr. McIntire thought case was reopened based on untruthfulness. He was not sure that the respectful workplace expectations were understood by Supervisor A. Mr. McIntire found it weird that the policy deemed violated was the credibility clause. He reiterated the picture taken was considered inappropriate, and he did not understand how that was confused with following a respectful workplace environment. He found it troubling that multiple investigations had occurred. Mr. McIntire said the matter should have never been brought this far. He noted it was acknowledged that a picture had been taken, and that picture was a violation of City policy – there seemed to be an issue with department policies and practices.

Ms. Williams found the idea of truthfulness in the case to be important. She noted the Chief sustained allegation of dishonesty; but the City Manager did not. Ms. Williams thought the policy needed reworking, because it is phrased so expansively to be rendered almost meaningless.

Mr. Gissiner explained how the incident was reported; the employee reported the incident to her supervisor, and then it was eventually reported to the Chief. He was unsure of what caused the delay to Human Resources (HR). The Director of HR interviewed all parties once and submitted the investigative report to the Chief. The Police Auditor was still not involved. Mr. Gissiner said several months later, he received an anonymous email that detailed complaint and said the employee had never heard the result of case other than “it was taken care of.” After that anonymous email, Ms. Pitcher interviewed the employee. Mr. Gissiner said the Equal Employment Opportunity Commission (EEOC) requires the complainant be communicated with, and that did not occur. He added the employee had a right to file a complaint about misconduct, and he thought the circumstances were aligned with serious misconduct. Mr. Gissiner believed if the issue were handled well at entry, it could have remained in HR; but because of how it was handled and how the employee approached the Police Auditor, Mr. Gissiner felt the Police Auditor’s Office had an obligation to investigate.

- Policy and/or Training Considerations

Ms. Williams said she did not have any training recommendations; she thought honesty was important, but it was hard to train people to be honest. Mr. McIntire thought training on a respectful workplace and the policy was needed. He agreed truthfulness important. Mr. Wig agreed with training suggestions, and thought the policy was a very baseline thing.

Ms. Pitcher said the invitation for an IA interview had a truthfulness admonishment; participants should be very clear on the requirement to be truthful.

- Adjudication Recommendations

- Grievance procedure for non-represented employees

Mr. McIntire did not agree with the appeal on truthfulness. He understood the Chief weighed all facts, and his finding was not wrong, it was reasonable. Mr. McIntire did not think the City Manager should have substituted his own opinion for the Chief’s. Ms. Williams agreed, and thought the Auditor and Chief were spot on in their recommendations. She considered the conclusion of the Chief to be accurate, so the final adjudication by the City Manager was confusing to her. Ms. Williams thought it was unusual that the whole process could be overruled by the City Manager. She asked that could happen, and how common the occurrence was.

Mr. Gissiner said the City Manager was head of the executive branch, which included disciplinary authority over employees. That authority was usually delegated to a department director, but it was within his authority to be the final decision maker. For non-represented employees, a sustained finding could be appealed to the Chief and to the City Manager. Mr. Gissiner said it had occurred in the past when a supervisor at EPD appealed to City Manager; Mr. Gissiner did not know the outcome, as there was never a memo indicating a decision was overturned. Ms. Pitcher said the Police Auditor would not be informed if the discipline decision was changed, as the Auditor’s office is removed from the disciplinary phase of the process.

Mr. Roseta said CRB did not have the right to comment on what the City Administrator could do. He thought the Chief was involved because he was administrating a City policy, not an EPD policy. Mr. Roseta did not think the City ordinance on CRB, or the board's own policies, allowed involvement. Mr. Gissiner said the ordinance allowed CRB to comment on adjudication. Mr. Roseta read the ordinance out loud; he reiterated it was not CRB's right to discuss whether a City policy was violated. He noted there was not a complaint about police conduct by a citizen, and CRB was only to review those complaints made by citizens.

Mr. Denner "did not follow the City Manager's decision to sustain the allegation regarding a 'respectful workplace,' and then subsequent decision to find insufficient evidence regarding 'truthfulness.' If a person (the Manager) finds in the first complaint grounds to sustain the complaint, then it follows that there is sufficient (credible) evidence. The Chief's adjudication memo points out that the accused did not delete the photo, because his wife saw it. However, the accused is a long-time employee and may have served a consequence regarding respectful work environment. Additional sanctions may not have been required."

Mr. Wig was baffled by the reversal of the initial adjudication. He did not feel anything in CRB members' packets would support that action. He explained to the public what was included in CRB members' packets. He said EPD's IA was excellent at crafting narrative, while supervisors and the Auditor provided logical interpretation of the narrative. Mr. Wig said the case built up a lot of logical pieces, but then with no additional information as to why the decision was overturned. Based off the City Manager's adjudication, Mr. Wig thought someone looking at the adjudication could deduce it was okay by City policy to be untruthful.

Mr. Hargreaves wrote he had "not been able to rationally reconcile the findings by the City Manager that the incident did indeed happen and violate policy, but the accused didn't lie about it. Seems like pure and simple political decision by the City Manager." Mr. Wig said lying and sexual harassment were not acceptable in any place of employment, especially within the City.

Mr. McIntire returned to Mr. Roseta's earlier comment and said that although the complaint was made by an EPD employee, the individual was also a City of Eugene citizen. He said it still made sense for CRB to conduct a review of the case. Ms. Williams added that the integrity of officers affected the entire community, and agreed that it made sense for CRB to review the case.

Mr. Denner was "concerned with the lack of timeliness in this process and the revelation to the press that allowed the outcomes to be discussed publicly. These two factors add to the embarrassment of the person whose photo was the subject of the inquiry."

Mr. Wig said someone was hurt by these actions, and the policy was violated – someone was subjected to an unsafe work environment.

7. BREAK

CRB took a break from 6:05 p.m. until 6:19 p.m.

8. TRAINING TOPIC: DISCUSSION OF POLICE EXECUTIVE RESEARCH FORUM REPORT ON EPD

Mr. Wig introduced the training topic, a discussion of the Police Executive Research Forum (PERF) Report. Mr. Gissiner said the original training topic was to discuss the public safety forum that was held on December 6, 2018. Ms. Hernandez said one officer fluent in Spanish had the best relationship with the audience. She said there were about 60 to 100 people present. Mr. Gissiner said the forum was entirely in Spanish, which was remarkable for any city event. He thought the forum went well. Mr. Gissiner was going to ask the officer to come and discuss takeaways from event, but he was unable to come. Hopefully, the officer could attend a future meeting.

Mr. Gissiner said the report from PERF was discussed at the CRB meeting in November 2017. He emailed copies of the report to CRB members. Mr. Gissiner explained that over the years, several different reports were done. Most recently, there were reports released in 2002 and 2005. Prior to the PERF report, Chief Kerns asked PERF to do a review with several goals, but one specifically was diversity within the department, both gender and racial or ethnic makeup. One thing prevalent in 2005 was oversight function. Mr. Gissiner spoke with people involved in the report, and in 2017 there was a bigger oversight process so that was not discussed greatly in the 2017 PERF report. He thought there were many good recommendations, and noted strengths, weaknesses and opportunities were included.

Mr. Roseta wondered if the PERF report was made available to potential police chief candidates. Ms. Pitcher thought it was linked in the position advertisement. Mr. Wig said if he were applying for the position, he would plan to be very familiar with the material. Mr. Gissiner pointed out most things were from a police perspective.

Mr. Gissiner said an interesting point in the PERF report, was regarding performance evaluations and using them for basis of promotions. Evaluation of day to day performance was not considered enough; however; Mr. Gissiner thought an employee's history should be valued as more important than a 1 or 2-hour interview. He noted that point was highlighted in the report as well.

Mr. Roseta asked how long the PERF team had been in Eugene. Mr. Gissiner was unsure, but he did receive a few calls from the team to clarify some issues. Mr. Gissiner said there were 2 people, and the pair had done 30 to 60 interviews. Ms. Williams said performance evaluations were a concern to her as well. In addition, Ms. Williams thought it was interesting that 14 sworn women left the force, and the number of women in leadership positions were low. She thought the fact that numbers of women overall in the force was low was something to consider.

Mr. McIntire said the Police Commission asked to have a presentation on performance evaluations. He explained EPD was not conducting performance evaluations. Mr. McIntire thought it was important for people leading the organization to know policy and what they were expecting from subordinates. If officers and supervisors were not receiving regular feedback, they were flying blind. He said they were planning on improving the process, and it was outlined in the strategic plan. He noted less than 52% of participation rate in PERF – he thought more input would help. Lack of transparency was an issue regarding internal communications, and there was an unfair and inconsistent process for promotions and discipline. He wondered how getting demoted would factor in to performance evaluations. Mr. McIntire agreed that because someone tested well, it did not mean they were a good leader. He thought it was

important to find ways to observe leadership skills, other than testing, to see how functional an officer would be in a leadership role. Mr. McIntire said people who responded were consistent among themselves and he felt the issues presented were valid and that the PERF provided a lot of information. Mr. McIntire said there were things that needed to be worked on in EPD, but all in all, the report was very favorable. He thought it was comprehensive and reflected well on EPD.

Mr. Gissiner had been told by a few people that officers felt the oversight process was picking on them. He noted organizational climate was important within EPD. Mr. Gissiner added the previous case reviewed was indicative that people do come to the Police Auditor to file complaints. The only mention of accountability in PERF was “lack of trust in leadership to hold people accountable”; however, he thought there was an appreciation of Police Auditor and CRB. The statement was not overt in document, but it was implied the bodies were important to the community. Mr. Gissiner said the oversight cases sometimes drag on for years; one thing very important to him was timeliness. He thought timeliness was owed to employees.

Mr. Wig found the PERF report valuable. It was an external validator of certain issues that CRB, the Police Auditor, and the Police Commission had discussed and had concerns about. He said diversity was one of those issues. Mr. Wig added that the promotion process problem was very well fleshed out. In addition, he thought the organizational climate survey was particularly poignant, as men provided more favorable responses than women, regarding placement of special assignments. He thought ways to open the culture within the department would be helpful, and agreed with the PERF report’s suggestion of the Chief of Police exploring email updates to foster communication among staff. Mr. Wig noted on page 11 of the report, it said the department should ensure policies, accountability measures, and should ensure that sexual harassment is not permitted. Mr. Wig said the report explained that the oversight process needed to be tailored to the community – he felt good that Eugene did cater well to its community. Mr. Wig concluded he was hopeful that in ten years, EPD and CRB would see improvements in the report and continue to address other issues.

9. AUDITOR REPORT

Mr. Gissiner reported EPD had one less sergeant in internal affairs, leading to a larger workload for the sergeant on duty. He reviewed three complaint reports that day, all where the subject was in severe mental health crisis, or significant intoxication where any reasoning was absent. He thought people suffering mental health crises seemed to be primary contacts for officers. Mr. Gissiner noted these crises were happening communitywide. Mr. Gissiner explained in some police interactions with a mentally unstable person, decades of experience and training could not help the situation; however, CAHOOTS was often there to help. Mr. Gissiner concluded there needed more investment from the county, state, and federal governments.

10. ADJORN

Mr. Wig adjourned the CRB meeting at 6:48 p.m.

(Recorded by Marina Brassfield, LCOG)