

City of Albany
Citizens' Police Review Board
Albany Law School
Board Room – UHA 300
July 28, 2003
6 p.m.–8 p.m.

Present: Manual Alguero, Kenneth Cox, Barbara Gaige, Marilyn Hammond, Judith Mazza, Herman Thomas, Eleanor Thompson, and Michael Whiteman.

Absent: Paul Weafer

I. **Call to Order**

Chairman Kenneth Cox called the meeting to order at 6:04 p.m.

II. **Public Comment – Council 82 Presentation**

Officer James Teller, President of Council 82 was recognized. Officer Teller stated that as president of the police officers' union, he has been able to attend numerous Board meetings. The union, according to Officer Teller, has a few concerns that it wished to share with Board. Officer Teller commented that he understands that the Board wants a better relationship with the union and in order to achieve this relationship, when either party has concerns, they should get together and discuss their concerns.

Officer Teller expressed the following concerns of the police officer's union:

1. **Public Comment.** According to Officer Teller, the Board's Bylaws provide that the public shall not be encouraged or discouraged from giving public comment. However, when the floor is open for public comment, Officer Teller believes the guidelines set a time limit of about five (5) minutes for individual public comment. Five (5) minutes is a sufficient time, according to Officer Teller, for the individual to express their concerns and the Board to learn of their concerns when review is in place. Conversations that last longer than this tend to be redundant. If the individual expresses their concerns within the time period, then others have an opportunity to speak during the comment period. Officer Teller noted for the Board that he was "cut off" two months ago at a meeting because one complainant spoke for forty-seven (47) minutes. Officer Teller feels that the board should tell those wishing to speak that there is a time limit.
2. **Body Language.** When the floor is open and the Board sits and listens to comments, Officer Teller has noticed that members of the Board will often nod their heads. According to Officer Teller, this type of body language gives the perception that the members are in agreement or disagreement with what the individual is saying. Officer Teller added that perception is often times more important than reality. When

the Board starts nodding in agreement, the Board leads complainants to believe that the Board agrees with them.

3. Attendance and Roll Call. Officer Teller commented that when Chairman Cox calls the Board meeting to order, the Bylaws require that the Chairman note for the record any member who is “missing” and the reasons for the member’s absence. If a member has begun to fail to do his or her duty by not attending and that member may be missing three or more consecutive meetings, the union or the Board will have a record as evidence in support of a possible removal from the Board or a remedy of the problem.
4. Mediation. With respect to the issues concerning mediation, Officer Teller commented that he wanted to bring to the Board’s attention the fact that the union has a contract with the City of Albany. Officer Teller added that there is nothing in the contract that requires police officers to participate in mediation. Officer Teller noted that he is not saying that the union will or will not send its members to mediation.

Officer Teller reported that he has had two (2) meetings with Karleen Karlson, Esq., the Board’s Mediation Program Coordinator. The second meeting, according to Officer Teller, was more productive than the first. Officer Teller reported that he has extended an invitation to Ms. Karlson to speak to the membership about what mediation is so that the membership may have an opportunity to express its concerns. Officer Teller stated that if the Board is able to eliminate some of the fear associated with mediation, then it may be a more open and productive process.

Officer Teller commented that, as the president, he will not violate the contract. However, he added that if there is another way to make this situation and process more productive and more positive, he is willing sit down and listen. Officer Teller noted he will open up the executive board to her for a meeting, in addition to the meeting with the membership.

Officer Teller concluded by saying that these are some of the concerns of the union. He noted that everyone is looking for credibility in the process and that change is never received well among police officers. However, he added that the police officers are beginning to understand the purpose of the Board, but need more explanation from Karleen as to why the Board sends complaints to mediation versus review.

Todd Burnham, Assistant Corporation Counsel was recognized. Mr. Burnham asked Officer Teller if he saw any ways to “tweak” the legislation so mediation is more favorable to the union. Officer Teller responded by saying that he believes mediation is the lowest level of correction. He added that if the Board is going to recommend that an officer go to mediation, then the Board needs to understand that anything said in mediation, anything that occurs or is resolved in mediation is confidential and may not be communicated to anyone. Once resolved, whether or not the Board finds something else down the road, it is resolved and there should be no further

investigation. The Board, therefore, should no longer ask OPS to continue to investigate if the complaint has been mediated. Officer Teller stated that this is a concern of the officers. In addition, if the Board is going to recommend mediation, there has to be a reasonable time period for the mediation to occur.

Barbara Gaige commented that most of the cases the Board has sent to mediation have already gone through the Office of Professional Standard. She questioned whether Officer Teller meant that the case should go to mediation before the OPS investigation. Officer Teller responded in the affirmative. He added that when the OPS receives a complaint and the Board reviews it and thereafter recommends mediation, it is too late because the OPS has already started an investigation.

Todd Burnham commented that if the complaint were to go to mediation instead of undergoing a full investigation, the Board would have to look at the face value of the complaint itself to determine whether the complaint would be appropriate for mediation. Mr. Burnham added that a complaint stating a single allegation, such as rudeness, could likely go to mediation directly. It was noted, however, that the final determination as to whether to pursue mediation for a resolution of the dispute prior to, and/or in lieu of, a full investigation would be in the discretion of the OPS.

GLC Staff Attorney Justina Cintrón commented that the Board's Mediation Program Coordinator has explored this idea with the OPS and that there was some indication that it may be possible, under the legislation, to refer a complaint to mediation to in an attempt to resolve the complaint prior to conducting a full OPS investigation. However, it was reported that this would be limited to less egregious misconduct cases and would not apply to complaints alleging more serious incidents of misconduct, such as use of excessive force or a violation of civil rights.

Mr. Burnham inquired as to the appropriateness of mediation in those cases where the OPS conducts its investigation and does not render a finding. He offered the following example: the OPS receives a complaint and starts its investigation, but the officer is offered mediation and the cases is mediated before a finding is made. Therefore, the OPS is unable to render a finding.

Officer Teller responded by saying that once the OPS begins an investigation, information relating to that investigation goes into the officer's file and stays in the file. Officer Teller added that in such cases, the union would prefer that the only information to be placed in the file would be a letter stating that mediation was completed on a certain date.

Dr. Manuel Alguero noted that under Section 42-343(A) of the legislation creating the Board, the OPS is required to "investigate every complaint filed." Todd Burnham commented that there are aspects of the legislation that may require amendments to encourage officers to work with the Board. He noted that there are presenting no incentives to do so.

Judith Mazza commented that by the time the Board gets a complaint, most of the complaints were resolved in the officer's favor. Ms. Mazza recalled a complaint where the police were making a drug raid and the complainant had no understanding of what happened. Instead of just accepting the decision, if the parties went to mediation, the person would have a better understanding. Ms. Mazza commented that the process of mediation is not necessarily going to change the other decision, but it would help complainants to better understand the role of the police.

Officer Teller replied that if, Ms. Mazza's scenario, the OPS has conducted an investigation and the officer has been exonerated or the complaint was unfounded, then he does not believe that it is the officer's responsibility to put himself or herself "under the microscope again." According to Officer Teller, the responsibility falls on the City, not the individual police officer, to explain why things occurred in a particular way. Officer Teller added that he does not think it's necessary for the officer to explain something the he or she "was just cleared of"; this would be a situation of double jeopardy.

Dr. Alguero commented that the Board and the City have to decide what is going to occur first, mediation or review. Dr. Alguero noted the language in Section 42-342(B) of the legislation, which reads, in pertinent part, "[u]pon receiving a complaint, the CPRB shall notify the complainant of the City's mediation program," and added that the language does not appear to indicate that mediation precedes complaint review.

Officer Teller agreed with Dr. Alguero. He asked Todd Burnham if there was something that needed to be done in the legislation to change the guidelines. Mr. Burnham responded that the legislation would have to be changed. He added, however, that if mediation did not resolve the complaint, then it would undergo the full complaint review process, which would include the OPS investigation. Officer Teller responded that if the Board has a good mediator, the mediation is successful.

Officer Teller then inquired as to who receives the complaints when they are filed. Dr. Alguero responded that complaints are filed at the law school and the police department. Officer Teller replied that if the Board has a central location where the forms are filed, thereby taking OPS out of the picture, and if the complaint is, for example, a rudeness complaint, then the Board and the officer could go directly to mediation.

Todd Burnham commented that it might be better to have the Board receive the complaint initially and then have a copy go to the OPS. Under such a system, the union would have an incentive to participate in mediation.

Barbara Gaige noted that under the current system, when a complaint is received, the Board is called to make a determination as to whether or a monitor should be appointed. She added that the same system could be used whereby three Board members are called to determine if a complaint is mediation appropriate.

Michael Whiteman commented that before a solution is fashioned, he wanted to have a more complete understanding of the union's concerns. He noted that the term "double jeopardy" was used by Todd Burnham and adopted by Officer Teller. He offered the following comments. After receiving the OPS's preliminary report of its findings, the Board often determines from that report that there is a need for some kind of communication because either the complainant or the police officer, or both, lack a full understanding of the event giving rise to the complaint and something was not properly communicated. However, mediation cannot go forward unless the police officer, Chief or Commissioner and complainant enter into a three-way agreement. Mr. Whiteman inquired as to what is meant by "double jeopardy."

Officer Teller offered the following in response. If the OPS begins its investigation, that paperwork goes into the officer's file, and if there is a way to get to mediation first, the only paperwork in the file would be a letter saying that the complaint was successfully or unsuccessfully mediated. Under those circumstances, the officer would be more likely to agree to mediation.

Mr. Whiteman stated that if he understood correctly, the concern was that there is factual paperwork relating to the investigation of a complaint that is placed in the officer's file. However, if the complaint were to be mediated successfully, then factual paperwork could be removed and destroyed.

Officer Teller commented that there would then be concerns with respect to who is going to remove the information; who is going to assure the union that it has been removed; and whose responsibility it would be to remove the information.

Matthew Ryan, Counsel to the union, was recognized. Mr. Ryan stated that double jeopardy, to a police officer, is still present. According to Mr. Ryan, there is no requirement that the officers go to mediation and under the terms of the contract, when a notice of discipline is filed against an officer, there are a number of choices the officer can pursue: arbitration; a statement of not guilty; a statement of guilt, etc. What an officer understands is that if the Board recommends mediation, there is no obligation to go to mediation and no incentive to do so. He added that once mediation is completed, there is still the question of whether or not the complaint is still out there and whether or not the OPS would continue to pursue the complaint.

Mr. Ryan suggested that the Board look at those cases that are less severe and not abuses of rights (i.e., rudeness) where the OPS might not investigate as cases that would be appropriate for mediation. He added that once you start saying complaint and investigation, it takes a certain calming down of the officer by the union.

Officer Teller added that cases alleging rudeness, lack of professionalism, etc. would likely be appropriate for mediation. He commented that he did check with Rochester Police Department and last year they had 9 mediation cases, all with successful outcomes. Mediation, according to Officer Teller, cuts down on investigative hours and frees up the Board's time and the OPS's time where it may better be utilized on

other more serious complaints. Officer Teller stated that the union does want to explore mediation and hopes for a positive relationship with the Board. He stated that the union is looking to tell an officer to go to mediation and assure them that there will be no investigation. However, he noted that something likely will have to be done with the legislation to accomplish officer participation.

Todd Burnham inquired as to whether the number of the investigations has a direct correlation to promotion. Officer Teller responded by offering the following. An officer working the streets who is out there aggressively doing his or her job, that officer is likely going to get a lot of minor complaints. If the officer is up for promotion and he has 45 complaints against him, whether they are found to be exonerated or not, that is going to have an impact on promotion. An officer who is a "desk" officer that may have only had only had 2 complaints may be considered the better officer even though he sits at a desk and may not have been working as hard as the officer on the street.

Michael Whiteman commented that Officer Teller would like mediation, if it comes at all, to come earlier in the process and where it is completed successfully, there would be no further proceedings and nothing included in the file except a letter stating that the mediation was successful. Officer Teller responded that this scenario is what the union would want should it choose to participate in mediation.

Michael Whiteman noted that the mediation process requires the Chief's/Commissioner's approval. Officer Teller commented that he does believe that the Chief/Commissioner should be involved in the decision of whether or not an officer should participate in mediation. Officer Teller added that if this language is included in the legislation, he would argue to have it removed. Mr. Whiteman responded that, irrespective of the Chief's/Commissioner's, he thinks the Board could agree that if there is a successful mediation, then there should be no investigative record included in the officer's file. He further explained that if there is a serious commitment to use mediation to resolve complaints and if more officers could be encouraged to participate in mediation, this would be of great benefit to the community and is worth exploring.

Officer Teller asked Todd Burnham whether or not the changes to mediation would have to come through the legislation. Mr. Burnham responded by saying that if the union was not in agreement that mediation and an OPS investigation could both occur, then a legislative change would be required.

Manuel Alguero commented that if the Board, union and police department choose to go that route, then they would have to differentiate between the various complaints and assign different weights to complaints for purposes of mediation. Dr. Alguero added that he agreed with Mr. Whiteman. He noted that it is quite possible that one complaint of rudeness may not be serious, but several complaints of rudeness indicate something. He added that if they expunge the records of police officers, then they would be depriving themselves and the department of valuable information regarding

relationships of supervision. He noted that Section 42-346(c) of the legislation does state that mediation may proceed by approval of the officer, the department and the complainant, and not solely the Chief.

Todd Burnham stated that he understood the understood the legislation to mean that whomever represents the department can agree to mediation and not just the Commissioner, and added that if the Board and union are starting to form an agreement, there are some tweaks to the legislation that would benefit both parties. He commented that the union is against mediation for certain reasons, but that all parties agree that having an open forum for discussion is important.

Chairman Cox commented that this is an important time to move forward; he doesn't want to lose the momentum, and added that the union and members of the Board should talk with the Mayor and Common Council about changes to the legislation.

Officer Teller added that he would like to sit down with Karleen Karlson, the Board and OPS prior to the union's executive board meeting in August to discuss these issues again with all interested/affect parties present.

Justina Cintrón agreed to communicate Officer Teller's request to Ms. Karlson and OPS, and to coordinate another date for a joint meeting.

Manuel Alguero inquired as to whether the union considered placing mediation in the officers' contract. Officer Teller responded that mediation was not included in the contract and there was no proposal by the City to include it in the contract. Therefore, at this time, mediation is not contractual and all parties will have to "walk lightly." Officer Teller noted that the union recently signed a four-year contract.

Judith Mazza commented that she wants to work towards mediation and added that she thinks that there are other places in the legislation that need to be changed. However, she expressed concerns about the way mediation has been used. Personally, Ms. Mazza thinks that it would be in the officer's best interest to sit down and talk with the community and reaffirm that he or she did what needed to be done and was professional. This will help to clarify things to those individuals who have brought complaints. Ms. Mazza added that mediation would bring that officer to the community, which would be to the officer's advantage. Ms. Mazza stated that there are many complaints where there were miscommunications with the community and mediation could have helped to resolve some of those issues.

Officer Teller clarified that mediation was problematic and presented the issue of double jeopardy only when the officer already went through the OPS investigation. Officer Teller added that if an OPS investigation has already been conducted, than it is OPS's responsibility to explain the circumstances of what happened, not the police officer. Officer Teller offered an example where an outreach officer was called to an incident to explain the situation to members of the community. Officer Teller commented that mediation could work to help police/community relations. He added,

however, that many officers feel as though their job is tough enough and it is difficult to ask them to do more than they are when they often go from call-to-call without down time.

Officer Teller added that he is not making excuses, but it's a tough job to do and the union realizes that the Board also has a tough job. He concluded the meeting by stating that the union wanted to try to take a positive step together with the Board towards resolving its issues and concerns. Officer Teller then thanked the Board members for their time and for listening.

Chairman Cox opened the floor for additional public comment. No comment was offered.

III. **Adjournment**

Chairman Cox moved to adjourn the meeting at 7:08 p.m.

Respectfully Submitted,

Michael Whiteman
Secretary