



The League of Women Voters of Portland

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MEMORANDUM

DATE: January 31, 2014

TO: Honorable District Judge Michael Simon

FROM: League of Women Voters of Portland
Margaret Noel, Co-president
Debbie Aiona, Action Chair

Proposed Settlement Agreement and Fairness Hearing: United States of America v. City of Portland, Case No. 3:12-cv-02265-SI

Introduction

The League of Women Voters of Portland's involvement in police issues goes back more than 30 years to the early 1980s. Community and member concerns over police budgeting decisions that were inconsistent with public priorities and high profile cases of racially discriminatory policing against African Americans provided the motivation for a two-year League study of the Portland Police. Through a process of member agreement, we adopted a position statement from that study that guides our advocacy to this day. That position statement says, in part:

Just and effective enforcement of the law demands good police/community relations. We support the specialized education and training of police personnel in human relations, including the use of specialists from outside the Bureau. ... We support citizen involvement in the functioning of the Portland Police Bureau including, but not limited to, budget advisory committees, precinct advisory councils, and citizen advisory groups.

The League's involvement has focused primarily on the police oversight system and began when one of our past presidents served on the Storrs Commission that led to the creation in 1982 of Portland's first oversight agency, the Police Internal Investigations Auditing Committee (PIIAC). There were some on the committee, including the League, who wanted a much stronger system, but the audit model was the compromise result. League members monitored PIIAC over the years when it was in existence.

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In 2000, former Mayor Vera Katz appointed a work group assigned to review PIIAC and recommend improvements. The same League member who had served on the Storrs Commission represented the League on the work group. The majority, including the League, recommended reforming PIIAC by giving it powers to conduct independent investigations, compel civilian and officer testimony, recommend policy changes, and review completed investigations of police shootings, among others.

City Council requested that the City Auditor consider the work group's recommendations, research other systems and return with a proposal. The Council adopted the Auditor's recommended Independent Police Review Division (IPR) and its Citizen Review Committee (CRC) in 2001. Although the IPR was given the limited authority to conduct independent investigations, it failed to do so until last year. In spite of the community's desire for a truly independent system, IPR has limited itself to monitoring and cooperating in the Police Bureau's internal affairs investigations. Many in the community do not trust the Bureau to investigate police officers involved in misconduct cases. Furthermore, the Department of Justice (DOJ) Settlement Agreement calls on the city to enable meaningful independent investigations by IPR. (paragraph 128)

A League representative regularly observes the full CRC meetings and many of its workgroups. We have testified before City Council numerous times providing our recommendations for improvements. In 2010, we served on the Police Oversight Stakeholder Committee that among other things urged IPR to conduct independent investigations in serious cases.

An effective oversight system can increase public understanding of police policies and procedures, discourage misconduct through retraining and discipline, provide individuals who feel they have been harmed by the police an avenue for addressing their complaints, and improve police practices by recommending policy changes. Advocates, including the League, have worked for years to improve Portland's oversight system to ensure meaningful public participation and the public's right to know the public's business. Our comments on the Settlement Agreement focus primarily on issues related to the oversight system, public involvement and transparency.

The League appreciates the work the DOJ and City of Portland devoted to the Agreement. A number of serious issues were uncovered during the investigation and appropriate remedies are included in the Agreement. We believe, however, that there are some provisions that are not fair, adequate or reasonable and urge the Court to facilitate modifications to the Agreement that would address community concerns.

The CRC performs an extremely important function by hearing appeals of misconduct cases and serving as a window into the workings of the Police Bureau through its reviews and audits of closed cases. Since the CRC's creation, the community has recommended that its role be strengthened. Instead, the Agreement fails to address the most troublesome issues and adds unreasonable expectations to this hard-working volunteer committee's duties.

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Timeline for Appeals of Community Complaints of Police Misconduct

Community members and officers have the option to appeal their cases before the CRC if they disagree with the commander's findings. The process is complex and, given CRC's monthly meeting schedule, can require several separate meetings for complicated cases. Even when the outcome does not go the appellant's way, the careful consideration CRC devotes to each case gives appellants a sense of satisfaction, because they know that they were heard and that a review committee evaluated their arguments thoroughly.

The Agreement calls for these appeals to take place within an unreasonable time frame of 21 days. At the point the complainant files the appeal, the CRC is notified that the case file is ready for review. The file must be read in city offices, generally during work hours, and these files are sometimes hundreds of pages long.

According to the current protocols, developed over the years to improve the experience for people appealing the outcome of their complaints, a retired CRC member is assigned to serve as an Appeals Process Advisor (APA) for the appellant. The APA and appellant usually meet more than once. The APA explains the process and assists the appellant in developing a presentation of the case for the hearing.

Then the ordinance requires that a case file review be scheduled at which the CRC discusses with Internal Affairs (IA) and IPR any concerns it may have with the quality of the investigation. If CRC identifies shortcomings, the Agreement requires IA or IPR to undertake an additional investigation. The case file review was developed as an improvement to the system, to replace "pre-hearings," which previously had allowed CRC to reject appeals. Once the investigation is complete, IPR schedules the appeal hearing.

The appeal hearing ends the process if CRC agrees with Bureau findings, but if the CRC votes to challenge the findings and, after consultation with the Chief, the Bureau disagrees, a conference hearing is scheduled. At that hearing the CRC and Bureau attempt to reach agreement on the findings. If that fails, City Council hears the case after reviewing the case file, and makes a final decision.

The number of steps needed to reach the end of the process makes it virtually impossible to complete within 21 days. More importantly, rushing through an appeal will be detrimental to the appellant's experience, especially if the individual has a mental illness. Currently, the APA has sufficient time to schedule meetings with appellants and give them whatever assistance they need. IPR has suggested that the case file review may need to be eliminated in order to meet the 21-day timeline. This part of the process has been in place for the last several years and has reduced the need to suspend appeal hearings when the investigation was incomplete. Appellants find it distressing to prepare for an appeal hearing and then have it suspended.

In recent months, the CRC scheduled additional meetings in order to process appeals more quickly. During that time, two of the newer CRC members resigned citing the unreasonable workload and other CRC members are showing the strain. Public participation in government is essential to our democracy. We need to have reasonable

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expectations of community volunteers.

We believe it is possible for CRC to process an appeal in a manner that respects the desire of appellants to have their cases thoroughly examined and get the support they need within a two to three month timeframe.

Appeals of Police Shootings to Citizen Review Committee

Police shootings fall along the continuum of the potential outcomes of police/community member interactions. They can start with a minor incident that goes terribly wrong. Investigations into shootings cases are more involved and comprehensive, but result in disciplinary findings, just as in other misconduct cases.

The Agreement includes a provision that affirms the City's current practice of denying survivors or family members involved in police shootings the right to a CRC appeal. These individuals often pursue their cases in the court system, but City settlement payments do not hold the involved officers accountable through the disciplinary system. These cases should be subject to the same administrative review, including a CRC appeal, as other types of cases.

Citizen Review Committee Standard of Review

The CRC operates under the "reasonable person" standard of review in its appeal hearings. In her extensive examination of the system, Professor Eileen Luna-Firebaugh recommended changing this deferential standard to something less confusing and more appropriate. The 2010 Police Oversight Stakeholder Committee, CRC and community organizations have echoed that recommendation. At a minimum, this provision should be removed from the Agreement so the CRC, City and community can continue to explore other options.

Police Review Board Hearings

The DOJ Letter of Findings points (page 33) to the "curious" nature of the Police Review Board (PRB) hearings at which a whole host of participants attend, including the involved officer if he/she so chooses, but the person whose case is being discussed is excluded. At a recent City Council hearing, the mother of a young man suffering from mental illness testified about the worry and distress caused by not knowing what is happening with the complaint he filed. With the exception of the CRC appeal, everything else takes place behind closed doors. Opening the PRB hearings to the involved community member would make the process fairer and more humane.

Public Comment on Police Policy Revisions

The Agreement calls for the Chief to post on the Bureau's website proposed policy revisions for public comment. The CRC should be consulted between the time the public comment period ends and the policies are finalized. Through its appeals of community complaints of police misconduct and audits of closed cases, the CRC is in a unique position to evaluate policy revisions. Adding this step to the public comment process would help insure that the lessons the CRC learns through its work will be applied to police policies.

Independent Investigations

The public and outside experts have called repeatedly on IPR to conduct independent investigations of misconduct complaints and the DOJ agrees. Recently, City Council adopted a code change that gives IPR the authority to directly ask questions once a Bureau representative has instructed the involved officer that he/she must cooperate. The community wants IPR to conduct investigations without the need for Bureau involvement; this arrangement does not address that desire.

Furthermore, given IPR's history of conducting an independent investigation only once since its creation, a reasonable approach would be to add some teeth to the Agreement by being specific about what types of cases IPR should investigate independently. The 2010 Police Oversight Stakeholder Committee recommended IPR investigations of shootings, deaths in custody, physical injury requiring hospitalization, racial profiling, illegal searches and conflicts of interest. If the decision is left to IPR discretion, as the Agreement states (paragraph 128), we fear that independent investigations of community complaints will be few and far between.

Conclusion

Some of the provisions in the Agreement pertaining to the oversight system are likely to make the process less fair and reasonable for people appealing disciplinary findings in misconduct cases. The unrealistically short 21-day timeline for appeal hearings, lack of access to a CRC appeal in police shootings and exclusion of involved citizens from Police Review Board hearings will create real hardships for appellants, particularly those with mental illness.

Portland values public participation and transparency. Our community volunteers should be treated with respect and the demands placed on them should not exclude participation by those with outside employment or families. The abbreviated appeals process timeline could very well do that. Furthermore, the deferential "reasonable person" standard of review that unnecessarily limits the CRC from using its best judgment in appeal cases frustrates the review body and creates confusion. In the interest of thoroughness and transparency, the CRC should be given the opportunity to comment on Police Bureau policy revisions before they are finalized.

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Finally, a recurring theme among community activists over the years has been the desire for independent investigations of police misconduct. The DOJ and City have moved us closer to that ideal, but for this Agreement to be fair, adequate and reasonable, the City needs to find a way to enable IPR to conduct investigations without Police Bureau assistance.

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