

Lee, Katherine

From: Office of the Director of Police Accountability
Sent: Friday, September 17, 2021 12:08 PM
To: Lee, Katherine
Subject: FW: Public Comments

-----Original Message-----

From: Cordell Hindler <cordellhindler@ymail.com>
Sent: Friday, September 17, 2021 10:46 AM
To: Office of the Director of Police Accountability <DPA@cityofberkeley.info>
Subject: Public Comments

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hello Katherine, the only comments that I have is that I have been in similar meetings that tend to go on a little longer, so I am suggesting that the board limit the discussions

Sincerely
Cordell

Lee, Katherine

From: Steve Martinot <martinot4@gmail.com>
Sent: Sunday, September 19, 2021 8:46 AM
To: Office of the Director of Police Accountability
Subject: some thoughts on meet-and-confer

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Some notes on the issue of “meet-and-confer” (M&C) as it has been raised already in PAB with respect to the Berkeley Patrol Assoc. (BPA)

Steve Martinot

A- Some general considerations about Meet-and-Confer (M&C)

What I think needs to be one’s focus about M&C is that it is an appeals process. Though the process involves employer notifications of changes in employee conditions, the direction of movement is from the employed in response to actions by the employer. It is a way of appealing proposed employment conditions before they are implemented. It is also a means of challenging the designation of confidentiality by another if one thinks that designation is improper.

According to the MMBA (Meyers-Miliias-Brown Act, a labor relations act passed in Cal in 1968), if one party in a relation decides to hold certain information confidential, the other party has the right to challenge that, and demand a M&C process.

This was made relevant in the PAB meeting by Harvey, who explained that he was holding certain info confidential in response to a question by a board member. And he claimed attorney-client privilege. The general question that was raised (by Kttt Saginor) was that if PAB goes into M&C with BPA, who represents PAB, since it is independent of the City Manager’s office, and as responsible to City Council, also independent of the city attorney’s office?

If, in his relation to the PAB, Harvey designates certain information confidential, then the PAB can challenge that status, and go into M&C with Harvey on why he gave the info that status. He has to explain why he did it, and the PAB would have to explain why it thought such a designation of confidentiality was improper or unreasonable.

This raised the question, who was he representing? It was assumed he was representing the PAB, since he was assigned to it by the city attorney. On what basis would he withhold info from his own client? And if the client (the PAB) decided the info was not to be designated, then it would not be. For Harvey to continue to withhold info on that basis would mean ne was working for the other side (the appeal side of M&C) If he was holding info confidential because it was personal info about the cops, the he would have to say something about his conflict of interest.

If he had no conflict of interest, then what does that mean about the relation that the city is attempting to construct between the police and the PAB through its attorneys. The city attorney is not responsible to the City Manager. But if a deputy attorney acts in a conflictual way between the PAB and BPA, then the City Council has a problem.

And if the city is attempting to construct a relation that is other than independence between the PAB and the police, then it is violating the very motivation for a Police Accountability Board altogether.

B- the actions committed by staff in refusing to send PAB decisions to City Council before sending them to the BPA

We might want to bring up the violations of the MMBA committed by city staff in moving the proposed regulations passed by the PAB to BPA for M&C (contested by Leftwich and Calavita). First of all, whether those regulations involve changes of employment conditions or not, that is a decision that the City Council has to make first, to which the BPA can then complain or appeal, and call for M&C. Only if the city decides that the regulations do constitute a change in conditions does the city become responsible for notifying the BPA (in writing) about those changes, in response to which the BPA can then call for M&C.

In other words, it has to be the City Council, as the agency of the city, that proposes the employment changes in order for them to be challenged through a M&C. That is, what the staff did was preempt the role of the City Council, which is the leadership body of the city, without public hearing, and thus in violation of the other "Brown Act."

In addition, what the BPA could complain about, and call for M&C, would have to be part of a city proposal, and the BPA would have to specify exactly what it was challenging. It could not offer a blanket challenge to an entire text of regulations on the basis that some of them constituted changes of employment conditions, though others did not. Those areas of the proposal that are not changes of conditions could then be passed by council, even in the absence of what the BPA is challenging.

What the staff did was thus in violation of the MMBA on a number of counts.

Ultimately, I would say that the issue of M&C before amendment passage and M&C with respect to current actions by the board is a non-issue. According to MMBA, these conflicts can emerge at any time. What needs to be emphasized is that the PAB is responsible to the City Council, and thus, it is the City Council that makes a decision on whether anything the PAB does will be a change of employee conditions or not – after which the BPA can challenge.

Summary, from berrywilkinson.com (1977 & 1978) leaflet

MMBA defines M&C as required between gov agencies and employee organizations whenever policy would change the conditions of employment.

The M&C would be brought by the employee org against a proposed change in policy of a gov agency, which means that the gov agency is the one making the proposal. It has to be a proposal that the agency has agreed to in order for it to be subject to conferral. The leaflet states that it is critical that a city provide notice (in writing) to orgs of opportunity to M&C about any proposed changes. Thus, the issue of M&C has to be a proposal that the agency is making, and not a board or committee, and that the specifics of it are known to the challenging org. this occurs prior to the agency making a firm decision on the changes.

-- so what this means is that the City Council gets a chance to look at what the PAB decides with respect to its regulation and rules of operation first, whether they constitute a change in employment policy, and that the BPA would then have to challenge that if the city didn't think that it did. But since PAB is responsible to the City Council, any changes that the PAB decides for itself have to go through council, and thus are available for M&C, if the BPA thinks so.

Lee, Katherine

From: Masha Albrecht <Mashaa@mindspring.com>
Sent: Sunday, September 19, 2021 11:27 AM
To: Office of the Director of Police Accountability; Berkeley Mayor's Office; Kesarwani, Rashi; Taplin, Terry; Bartlett, Ben; Harrison, Kate; Hahn, Sophie; Wengraf, Susan; Robinson, Rigel; Droste, Lori
Subject: Letter regarding police accountability and the complaint process

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear elected representatives of Berkeley,

It has been brought to my attention by a neighbor that the city of Berkeley is reviewing the policy regarding police complaints. I understand that a police complaint must be filed by a victim and not by a witness. This policy is unfair and needs to change.

I relate here a true story that happened almost exactly two years ago at my home, that is pertinent to this issue.

I will summarize the story in this letter. I can provide a longer, more detailed summary that I sent directly to the police and the police review board. All of this information has been further documented by video taken by my son, and body cameras worn by the officers involved. There are also testimonies from other family members and witnesses, though I am the primary witness.

On September 11, 2019 my son met a child at the Malcolm X playground across the street from our home, who had been separated from her family. It seems relevant that the child is African-American. Upon my invitation, she entered our home as it became dark, so that she could stay safe. I had called the police to help unite her with her father, who was on his way to get her.

Before the father arrived, police officers entered my home. Within minutes, one of them shoved the child against the wall of our front room, and threatened to handcuff her. After the child escaped out the door (where other officers were waiting) she was flung onto the sidewalk and handcuffed. She was then put in one of the waiting police cars and charged with assault on a police officer.

By now, neighbors had gathered, and we followed the car to the Berkeley Police station where we met the father. He was confused and terrified. Finally the child was released from custody, but now with a felony accusation.

I (with others) filed a thorough complainant with the police review board. I learned later through a letter in the mail from the review board, that a complaint could only be made by the victim, or in the case of a minor, the victim's family. The victim and her family were unable and unwilling to file a complaint for reasons that are obvious: they were traumatized by the event, had no legal counsel, and the child was facing a felony conviction.

In the end, with the support of other neighbors on our block, we found a very experienced lawyer who represented the child in an internal investigation by the BPD, and we were able to get the felony charges dropped. Although it was possible for the family to pursue further charges against the offending officer, they chose not to do this because it would create further trauma for the child, and also involve expenses that they could not sustain. The father is a single parent of 5 children.

So, the offending police officer sustained not even a reprimand, and no doubt has continued to do what she did on that day.

It is worth mentioning that I am a senior teacher at Berkeley High School, where we safely educate

thousands of teenagers every day. We have occasional confrontations among students who are angry and sometimes large (not small, frightened and alone like the child in this narrative) and we resolve these confrontations successfully rarely by touching our students and never by hurting them.

Please feel free to contact me if I can be of any further help in holding our police department accountable for their misuse of power. I can provide the closer documentation I mentioned, but obviously need to maintain anonymity and privacy of the child involved.

Sincerely,

A handwritten signature in black ink that reads "Masha Albrecht". The signature is written in a cursive style with a long horizontal stroke at the end of the last name.

Masha Albrecht

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Senior Math Teacher, Berkeley High School