



Police Review Commission

POLICE REVIEW COMMISSION REGULAR MEETING MINUTES

Wednesday, February 11, 2009
7:00 P.M.

South Berkeley Senior Center
2939 Ellis Street, Berkeley

1. CALL TO ORDER BY CHAIRPERSON SHERRY SMITH AT 7:00 p.m.

ROLL CALL AND ATTENDANCE

Present: Chairperson Sherry Smith
Vice Chair George Perezvelez
Commissioner Russell Bloom
Commissioner Kamau Edwards
Commissioner Vonnie Gurgin
Commissioner Jonathan Huang
Commissioner Sharon Kidd
Commissioner Michael Sherman
Commissioner William White

Absent: None

PRC Staff: Victoria Urbi, PRC Officer
Vanessa Dougherty, PRC Intern

BPD Staff: Chief Hambleton
Lieutenant Rolleri
Sergeant J. Wilson
Officer Wellington

2. ORDER OF AGENDA

There were no changes to the order of agenda.

3. PUBLIC COMMENT:

Linda Smith stated that she is interested in the BART officer-involved shooting. She is on several committees and offered to help PRC. Chairperson Smith invited her to stay for the duration of the meeting.



4. APPROVAL OF MINUTES

A. Regular Meeting: January 28, 2009

Motion to approve minutes. M/S/C (Gurgin/Bloom) Motion carried.

Ayes: Bloom, Edwards, Gurgin, Huang, Kidd, Perezvelez, Sherman, Smith and White.

Noes: None. Abstain: None. Absent: None.

Chairperson Smith noted that the letter sent to the City Manager (Communication #1) incorrectly stated that PRC unanimously voted to ask the City Manager to recommend to Chief Hambleton that he recuse himself from the Anita Gay hearing. Commissioners' Sherman and Smith voted against the action and Commissioner Perezvelez abstained.

5. OLD BUSINESS

A. Discuss BART officer-involved shooting and determine whether Commission should recommend to City Council that a letter be sent to BART Board of Directors offering the Commission's assistance in creating a civilian police oversight agency.

a. Update from Commissioner Sherman on whether legislation has been introduced that BART form a civilian police oversight agency.

Commissioner Sherman stated that Assemblyman Ammiano and State Senator Yee were introducing the legislation, which has not been introduced. The draft is awaiting feedback from attorneys with a deadline set for introducing the legislation on February 27th. Commissioner Bloom asked if the bill will mandate or recommend civilian oversight of BART Police. Commissioner Sherman responded that he had only inquired into the status of the bill.

Commissioner White mentioned that he heard that BART was in the process of contracting out independent oversight consultant. Commissioner Gurgin stated that BART planned to contract the investigation out to a legal firm civilians.

b. Next Steps.

Commissioner Sherman suggested that PRC carry this onto the next Commission meeting to follow-up. Commissioner Bloom stated that he did not want to delay it any further and suggested it would be inspirational to the Oakland City Council if they knew Berkeley was paying attention.

Motion to recommend to the City Council that a letter should be sent to the BART Board of Directors offering the PRC's assistance in the creation of a civilian oversight agency for the BART Police Department.

M/S/C (Bloom/Perezvelez) Motion carried.

Ayes: Bloom, Edwards, Gurgin, Huang, Kidd, Perezvelez, Sherman, Smith and White. Noes: None. Abstain: None. Absent: None.

Chairperson Smith asked PRC Officer Urbi to explain why there was a photographer present. Ms. Urbi explained that the City Clerk is doing a Commissioner Training and wanted to photograph the Commission for their training.

B. Discuss officer-involved shooting hearing scheduled on February 18th

a. Determine the two Commissioners, who will question the subject officer.

Chairperson Smith and Commissioner Bloom will be the two commissioners to question the officer. Chairperson Smith stated that if the officer did not waive that right to having only two Commissioners question, they would have to

write their question down and then have it asked on their behalf. Chief Hambleton explained that this was in the law to prevent abusive interrogation techniques.

PRC Officer Urbi handed out copies of letters sent by the subject officer's attorney, who is arguing that the hearing should be canceled, because there is a criminal investigation pending with the District Attorney's office. PRC staff sent a letter to District Attorney Thomas Orloff requesting the status of this criminal investigation and is waiting for a response. If PRC does not receive an answer, the hearing may have to be postponed. Under the Regulations it states, "The PRC shall take no investigation until the criminal matter has been adjudicated or the authorities have rendered a final decision not to commence any such proceedings," which would prevent the Commission from moving forward with the hearing.

Commissioner Sherman inquired as to how long the District Attorney's office has to decide whether they want to prosecute the case. Chief Hambleton responded that there is no statute of limitations. Commissioner Bloom asked if the Officer Bill of Rights addresses the limitation of whether the DA can delay decisions regarding criminal charges against an officer. Officer Wellington did not believe so.

Chairperson Smith stated that if the DA remains mute, the Commission could be prevented from doing anything due to the unlimited statute of limitations on this type of case. She stated that since the Commission has not been told what the DA is doing, the Commission should go ahead with the hearing. Commissioner Sherman pointed out that the letter dated Feb. 9th from Mr. Buffington demanded that the Commission stop the proceeding, that the Commission did not have the authority to do so and that if they chose to continue, his client would not participate.

Commissioner Bloom inquired whether it is the DA's routine to write that charges are not to be filed after investigations have been conducted. It is reasonable to assume that in the absence of charges, a decision has thus been made. Vice Chair Perezvelez stated that it would be a big gamble to assume that charges would not be placed. Chairperson Smith stated that PRC needs to know if there is a precedent for the Commission having to wait for notification from the DA on each and every case they have ever had where an officer might be subject to criminal charges. If PRC has gotten notification from the DA each time, PRC should wait for notification from the DA. If PRC has not received that notification, then she suggests they go ahead. If the counsel to the subject officer believes he does not need to show up, we may consider going ahead with an empty chair.

Commissioner Gurgin pointed out on Page 7 of the Regulation under Criminal Proceedings that the statement "known to be commenced" is the key phrase. Commissioner Bloom stated that everything that follows that phrase is dependent on affirmative knowledge of a commencement of criminal proceedings. Commissioner White mentioned that if we cannot move forward, the Commission should consider reviewing the policy of the general orders for shootings. He stated that there was nothing preventing the Commission from

recommending policy decisions even if they could not go through with a Board of Inquiry. The Commission decided to proceed with the hearing on the 18th.

Chief Hambleton explained that from what he understood, this case was not high on the DA's agenda and perhaps the letter from PRC Officer Urbi will prompt him. Commissioner Sherman inquired what the Commission should do if they receive a letter with an indefinite time frame. Ms. Urbi informed the Commission that there is no deadline regarding when the Board of Inquiry can be held. Chairperson Smith stated that if the attorney is demanding to vacate the hearing date, the Commission's response should be that there is no criminal investigation and thus there are no grounds to say he cannot come to the Board of Inquiry. Commissioner Bloom pointed out that Mr. Buffington says that even if the Commission's authority exists, the client will still only "most likely" appear.

- b. Staff to remind Commission on Section III-6 of the Regulations, page 11, regarding "Commissioner Comment" and that Commission members shall not make any public comment on any complaints.

PRC Officer Urbi cited the Regulations stating that no Commission member should discuss the complaint prior to its hearing. The subject officer's attorney in the Anita Gay case, Mr. Buffington, had requested a digital recording of the January 28, 2009 meeting and soon after demanded that Commissioner Kidd be removed from the Board of Inquiry.

- c. Discussion and possible action.

Chairperson Smith stated that Commissioner Kidd did not agree that the challenge was for good cause, and now the Commission should vote to determine whether Commissioner Kidd should remain on the board of inquiry. She asked if Commissioner Kidd stood by the letter she wrote to Mr. Buffington.

Chairperson Smith suggested the vote be by secret ballot. Vice Chair Perezvelez disagreed, stating that the commission should be open and honest with each other. Commissioner Huang inquired if there was any perception of bias heard in any Caloca hearings. Ms. Urbi responded that she was unaware of this being an issue in the past, however she could see it being an issue in this case. Commissioner Sherman stated also that there should be an open vote, and had never heard of a decision being overturned on allegations of bias. He then stated that Caloca has overturned 90-92% of sustained allegations anyways, and the Commissioners should stand by Commissioner Kidd and believed her letter was self-explanatory enough.

Commissioner Huang stated he believed that Commissioner Kidd was biased, and that the Regulations state "or the appearance thereof." Vice Chair Perezvelez stated that any of the Commission members could be targeted for having the appearance of bias. Commissioner Edwards agreed that we all have personal biases, and that does not prove or disprove whether she or anyone would then make a biased decision.

Commissioner Bloom stated that the Board of Inquiry is not a court of law. Ms. Urbi stated that the Commission needs to remain credible among the community and BPD, which means remaining objective and neutral. Vice Chair

Perezvelez stated that there was a letter of correction that is also included in the public record that negates the original mistake. Ms. Urbi emphasized that the Commission maintains its credibility by and following their Regulations. Commissioner Kidd said she had been referring to Chairperson Smith's characterization of what was important to the City Manager.

Motion to override the Chair's determination that the vote should be made by secret ballot. M/S/C (Edwards/Perezvelez). Motion carried.

Ayes: Edwards, Perezvelez, Kidd, White, Gurgin, Sherman, Bloom
Noes: Huang. Abstain: None. Absent: None.

Motion to determine whether Commissioner Kidd should remain on the board of inquiry. Motion Carried.

Ayes: Kidd, Bloom, Edwards, Perezvelez, Sherman.
Noes: Huang, Smith. Abstain: White, Gurgin. Absent: None.

Chairperson Smith explained her vote to be based on her fear that after a year of waiting, a technical reason, under the rules of evidence with spontaneous utterance, would allow the hearing to be overturned. Officer Wellington wanted an explanation for why the content of the substantive discussion is not retained in the minutes. Chairperson Smith explained that there was not any discussion of it at the time and that the statement had just happened. Commissioner Kidd stated that it was said in response to what Chairperson Smith said about the City Manager. She had corrected her terminology a few minutes later.

Commissioner Sherman suggested the Commission send a letter to the attorney to explain why they voted the way they did. Commissioner Bloom and Commissioner Edwards both suggested that sending another letter was not to their advantage and the fewer letters the better. Commissioner Kidd added that this has been a learning experience and she feels her letter explains her actions and will hopefully suffice in everything pertaining to the case.

6. PRC OFFICER'S REPORT (For Discussion or Action)

B. Status of complaints

There are 30 open complaints, one new complaint. There will be a hearing on March 17th with Commissioners' White, Sherman and Perezvelez. She advised newer Commissioners to observe the board of inquiry.

Ms. Urbi introduced PRC Intern Vanessa Dougherty, from the UC Berkeley Cal in Government intern program.

C. Comments:

Commissioner Kidd asked if the date was known for the next NACOLE conference, to which Ms. Urbi responded it will be in October in Austin, Texas.

7. BERKELEY POLICE DEPARTMENT CHIEF'S REPORT

Chief Hambleton reported that the upcoming budget cuts for 2009 and 2010 would be 4% on 20% of their budget for each fiscal year. He stated that the BPD, as well as the City of Berkeley, is in relatively good shape compared to other cities and departments in the state. Chief Hambleton explained that since Captain Miller retired, the BPD has decided to eliminate a Sergeant and Captain position while creating one more Lieutenant position. They

are planning to cut one community service officer position and some half-time clerical records positions. He projected that these cuts would exceed their budget cut goal for 2009 and that they would have minimal service cuts.

Chief Hambleton further explained that the BPD would be implementing a new computer system that would eliminate paper-handling positions. It would allow police officers to enter their police reports directly into the BPD's database system. This could eliminate data entry positions and eliminate 3 ½ clerical positions. He mentioned that their entire planned budget cuts for 2010 are contingent on the new computer system.

Chief Hambleton stated his disappointment regarding the last Commission Meeting on January 28, 2009. He felt that the Commission had urged him to leave after he had given his report, and was dismayed to find out that some Commission members had suggested, after his departure, that it would be a conflict of interest if he served as Duty Command Officer on the closed hearing of the Anita Gay case. He stated that he had been the longest serving member to attend PRC meetings and felt that he had been the most responsive Chief within the BPD to PRC. Chief Hambleton felt that he was the most qualified member to serve as Duty Command Officer on this case.

He stated that perhaps not all the Commissioners understood what the role of the DCO is and explained that primarily it was to be present at the hearing and to answer policy questions by the Commission. He then questioned why anyone had suspected there would be a conflict of interest if he served in this position. Chief Hambleton then went on to explain that he perceived this upcoming hearing to be one of the most important Board of Inquiry's in the Commission's history. He explained that he was disappointed in the Commission's actions and felt that he had been maneuvered out of the room so the Commission could then start talking behind his back. He felt very disrespected and stated that he was resentful over this situation.

Chairperson Smith responded, saying that she did not anticipate the topic to come up and that none of it was intentional. She stated that Commissioner White brought the topic up. PRC Officer Victoria Urbi informed the Commission that she had received a response from the City Manager's Office, which stated that for this hearing the City Manager believed Chief Hambleton should remain in the DCO position. Commissioner White stated that Chief Hambleton had decided to leave, saying something along the lines of him having had a long day for the past two nights. Chief Hambleton responded, saying that he had said that after he was told that he was no longer needed at the meeting.

Commissioner White inquired about the diversity of personnel within the BPD, stating that he was concerned about that being compromised given the implementation of the upcoming budget cuts. Chief Hambleton replied that they are supportive of diversity, but some recent retirements have impacted the diversity of their department.

Commissioner Bloom inquired if a comprehensive list of police codes could be provided to the PRC. Chief Hambleton responded that there was an upcoming presentation that had been postponed, but was planned to occur soon.

Chairperson Smith inquired if PRC Officer Victoria Urbi could give the Commission some talking points regarding what makes the Commission vulnerable to a 4% budget cut.

8. COMMITTEE REPORTS (For Discussion or Action)

D. Regulations Review Policy Subcommittee (Bloom, Kidd, Perezvelez, Sherman)

a. Next meeting: March 16, 6:00p.m. at South Berkeley Senior Center.

E. Search of Homes Policy Subcommittee (White, Huang, Edwards, Gurgin)

a. Staff recommendation to begin meeting in March after Officer-Involved Shooting board of inquiry. Commissioner Sherman inquired about a crowd control status and Commissioner Huang responded that there is a draft in progress.

9. COMMUNICATIONS

F. Attached.

10. ADJOURNMENT

Meeting was adjourned at 9:16 p.m.