

# MEMORANDUM

**To:** Ms. Hinton, Chair, and Members

**CC:** Mr. Thieman

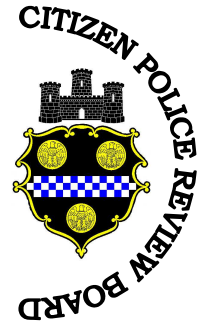
**From:** Elizabeth C. Pittinger

**Date:** 3/9/00

**Re:** Briefing for Public Hearing, 3/15/00, 6:00 p.m., Council Chambers

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The focus of the hearing is the form and content of your recommendations to the Chief and Mayor upon your finding of misconduct following a public hearing.

## **Background:**

The Charter established the Board for “the purpose of receiving, investigating and recommending appropriate action on complaints regarding police misconduct and for the purpose of improving the relationship between the police and the community.” *(Section 228, attached)*

Among the powers extended to the Board at Section 229 of the Charter is the power “to provide advice and recommendations to the Mayor and Chief of Police on policies and actions of the Police Bureau, including recommendations on police training, hiring and disciplinary policies and specific recommendations of discipline for individual officers; provided, however, the Mayor and the Chief of Police shall retain full and ultimate authority to set disciplinary policies or take other actions deemed appropriate relative to the Police Bureau.” *(Section 229 (c), attached)*

The City Code, Chapters 661 and 662 set forth your legislative mandates. Sections 661.03, 662.05 (a), (c), (d) and 662.08 reiterate the Charter and specifically reference your authority to make disciplinary recommendations, preserving the ultimate act of discipline to the Mayor and Chief.

Neither authority compels you to construct your recommendations in accordance to existing administrative guidelines of discipline issued by the executive branch which is responsible for managing employees of the City, including police.

The current Discipline Policy Manual for the City of Pittsburgh (issued 9/93) espouses a progressive system of discipline consisting of five levels of action:

1. Oral Warning
2. Written Warning
3. One (1) day suspension
4. Three (3) day suspension
5. Five (5) day suspension, pending discharge

There are various methods of appeal and the Manual disclaims its force as a contractual pact with City employees. The professed intended use is as guidance for Supervisory staff; in practice, it is the rule. There are references within the Manual that suggest harsher actions may be imposed, but such actions are not permissible in practice. *(A copy of the Manual is attached for your reference.)*

### **Primary Issue:**

The Board has recommended discipline for eleven (11) officers; those recommendations have been made independently and without correlated reference to the Discipline Policy Manual for the City of Pittsburgh. The Chief has implemented four (4) of those disciplinary recommendations with modification to comply with the City policy. Officers have the right to appeal disciplinary actions up through arbitration. *(A summary of Board actions, recommendations and responses is attached for your reference. Recommendations for training are not considered disciplinary actions.)*

Disciplinary decisions remain with the Chief and the Mayor. The Chief can only implement that which the Mayor has condoned as administrative policy (the Discipline Policy Manual). When the Chief receives a recommendation that is beyond the scope of the Discipline Policy Manual, he cannot implement the recommendation without modifying it to conform. Therefore, even if the Chief agrees with the Board's decision, the Board's recommendations made independently and without reference to the Discipline Policy Manual will be implemented only when there is coincidental conformity to the Discipline Policy Manual.

Upon receiving public guidance, the Board may consider alternatives such as:

- Continue recommending discipline as you determine appropriate but add a reference to (and consequence from) the Discipline Policy Manual. That would set up a reasonable expectation that the Chief is able to accept and implement your recommendation as you have modified it to conform to the Discipline Policy Manual.
- Recommend only actions permitted by the Discipline Policy Manual and refrain from making any recommendation that does not conform to it.
- Consider recommending that a separate code of discipline be designed and implemented by the Pittsburgh Bureau of Police. The policies of the past have not been effective in changing the negative behavior, so perhaps it is time to change how such behavior is reinforced.

### **Secondary Issues:**

The procedure for internal investigations of complaints limits the scope to violations of PBP rules. The implementation of an internal investigation and subsequent implementation of discipline is prescribed by the contract. The procedure and conclusion of arbitration is confidential and unless an action goes beyond arbitration, the results cannot be released without the officer's written consent. (That is why we do not know the outcome of arbitration). *(Copies of the Internal Investigation Procedures and Police Discipline Procedure from the Working Agreement between the FOP and City are attached.)*

The FOP contract outlines the grievance procedure available to officers. The process may continue through arbitration, and the method of selecting the arbitration method is described within the contract. The contract does not articulate specific disciplinary measures for misconduct. It is implied that the Chief is bound to follow established City policies on discipline (the Discipline Policy Manual). If the Chief does not, he presumably violates the contract, which would be an unlawful act on his part. *(A copy of the Grievance Procedure from the Working Agreement between the FOP and City is attached.)*

The arbitration process allows officers to appeal proposed disciplinary actions to a single arbitrator or to a panel of three arbitrators. Under PA Labor Relations Act, the Public Employee Relations Act and Act 111, the substantive decision of the arbitrator is final. Challenges to the procedure followed may be taken to Court but the decision itself may not. *(A copy of Act 111 is attached).*

**Points:**

- The arbitration process removes final authority on disciplinary matters from the Chief who is appointed by the Mayor who is elected by the people.
- Arbitration is guaranteed and controlled by Pennsylvania law for those police and firefighters represented by a recognized collective bargaining unit. It is not a locally controlled matter.
- The FOP contract with the City expires on 12/31/00. Negotiations are, or soon will be, underway.
- You may want to consider recommending that a separate disciplinary process be developed between the City & FOP and made a part of a new contract.
- You may want to consider recommending to the City that recognition of the CPRB and officer participation be included as terms of a new contract. The current agreement recognizes the Office of Municipal Investigation (OMI) as the internal investigative unit.

*The goal is to meet public expectation that your recommendations to the Chief and Mayor will effect a positive change in police behavior which will serve to improve the relationship between the community and the Pittsburgh Bureau of Police.*

*You should anticipate a broad range of comment from the public. I suggest reasonable tolerance in permitting extraneous comment due to the tension existing in the City. Some people need this opportunity to express frustration and solicit your attention to perceived patterns of misconduct such as racial profiling, use of excessive force, etc.*

**ATTACHMENTS:**

1. Sections 228 and 229 of the Home Rule Charter.
2. Discipline Manual for the City of Pittsburgh. *(You were provided previously with a copy of this manual; it has not changed but is included here as a convenience.)*
3. Summary sheets of Board hearings, findings, recommendations and responses.
4. Excerpts from the Working Agreement between the City of Pittsburgh and the FOP, Fort Pitt Lodge No. 1 (effective 1/1/98 through 12/31/00): *(You were provided previously with a copy of the entire agreement; these excerpts are included here as a convenience.)*
  - (a) Internal Investigation Procedures
  - (b) Police Discipline Procedure
  - (c) Grievance Procedure
5. Act 111

*(Attachments not provided with electronic copies)*