

Police Accountability and Transparency Task Force
Logistics Subcommittee
Police Union Contracts

Recommendation

It is recommended a legislative task force be established to assess the process of state and municipal police union collective bargaining in the contractual development of police internal investigation and disciplinary procedures to ensure accountability, fairness, equity, and transparency. The task force shall, if necessary, make recommendations to amend state labor laws to increase transparency and accountability in the departmental investigation and discipline of alleged misconduct or criminal actions by police officers. The review shall include, but not be limited to:

- State labor laws and civil service regulations and explore removing police disciplinary procedures from the list of appropriate subjects for collective bargaining;
- Existing due process, procedural safeguards, and contractual limits on internal investigations and disciplinary actions established through collective bargaining;
- Internal and external investigation and disciplinary policies and procedures for non-union sworn officers;
- Role of civilian review boards and police commissions in the disciplinary process;
- Disproportionate impact of the internal investigation and disciplinary processes, if any, on police officers identified as members of protected classes;
- Departmental appeal and grievance process and outcomes and the use and outcomes of arbitration after departmental discipline is imposed;
- Costs associated with internal investigations, disciplinary actions, arbitration, and civil suits and settlements; and
- Options to allow for public input such public hearings or notice-and-comment before agreeing to a package of disciplinary procedures via closed collective bargaining negotiations; and
- Alternatives discipline processes such as discipline matrix, education-based discipline, early intervention, mediation, peer review, and other non-punitive processes.

The working group shall be comprised of the key stakeholders that represent the various communities across the state in the collective bargaining process including, but not limited to:

- POSTC member;
- municipal elected officials;
- municipal police administrators,
- commanding officer of the Connecticut State Police;
- state and municipal police union representatives;
- negotiators for police unions and the state and municipalities;
- municipal and police union attorneys;
- academics and experts in labor law and collective bargaining;

- attorneys experienced in the representation of police officers in departmental disciplinary proceedings, arbitration, and civil or criminal cases;
- state legislators;
- community representatives specifically from minority groups most at risk of experiencing police misconduct;
- certified police officers; and
- representatives from fraternal police organizations representing officers of protected classes (e.g., The Guardians, Hispanic Officers Association, Connecticut Association Women Police, and associations representing LGBTQ officers, etc.)

The task force co-chairpersons shall be appointed by the speaker of the House of Representatives and the president pro tempore of the Senate.

POSTC shall contract with a state institute of higher education to staff and assist the working group. The working group shall issue its report to the committees having cognizance over labor, public safety, and legal issues by December 2023.

Rationale

Collective bargaining refers to the negotiation process between an employer and a union comprised of workers to create an agreement that will govern the terms and conditions of the workers' employment. Collective bargaining is governed by federal and state statutory laws, administrative agency regulations, and judicial decisions. Police unions and municipalities and the state use collective bargaining to and to negotiate on any matter pertaining to wages, hours, fringe benefits, health insurance, life insurance, retirement benefits, sick leave, vacation time, any indirect form of compensation, and other conditions of employment. Conditions of employment is a catch all phrase that generally includes the internal policies and practices of police departments including internal investigations and discipline policies.

A parallel source of employment regulations in police departments is state civil service law. Civil service law regulates the appointment and discharge of state and municipal employees, including police officers. Civil service protections cover a wide range of employment actions including demotions and transfers, layoffs and recalls, discharges, training, salary administration, attendance control, safety, grievances, pay and benefit determination, and classification of positions. These laws are often used by police officers and unions to challenge internal managerial action to demote, transfer, or fire an officer on substantive and procedural grounds in a formal adversarial process, which can lead to costly legal cases.

In general, civil service laws establish a floor for police officer employment protections that police unions can raise through collective bargaining. Police union contracts and civil service laws provide police officers with an array of legal protections in cases of internal disciplinary investigations. This arguably makes union contacts and civil service laws efficient disincentives to police reform, at least on the level of insulating officers from accountability by disciplining or terminating problematic officers.

Arbitration is a method of dispute resolution used as an alternative to litigation. It is commonly designated in collective agreements between employers and employees as the way to resolve disputes. The parties

select a neutral third party (an arbiter) to hold a formal or informal hearing on the disagreement and the arbiter then issues a decision binding on both parties.

Connecticut, like most states, permits police officers to bargain collectively on policy matters directly affecting wages, hours and terms and conditions of employment. Courts have interpreted phrases such as “terms and conditions of employment” to permit or require the negotiation of internal police procedures to investigate or punish officers suspected of misconduct. Collecting bargaining agreements provide police officers with lists, often times extensive lists, of procedural protections during internal investigations. Some common protections include limiting officer interrogations after alleged wrongdoing, provide access to evidence before interview, limit consideration of disciplinary history, establish statute of limitations for investigation, prevent anonymous civilian complaints, expungement of officer disciplinary records, bar public disclosure of disciplinary actions, limit civilian oversight of police officers, indemnify officers in civil suits, and permit or require arbitration in cases of disciplinary actions.

The vast majority of police officers perform a difficult job with respect for their communities and department and in compliance with the law. There are, however, incidents in which this is not the case. With intolerable regularity, across the country there have been reports of police officers engaged in egregious uses of excessive force particularly against Black citizens and committing other incidents of wrongdoing. On another level are the numerous citizen complaints of misconduct and disrespect against police officers that happen every day in police departments across the state. There are also complaints and allegations filed by police officers against fellow officers and supervisors.

Police officers need reasonable procedural safeguards during disciplinary investigations and proceedings. At the same time, these procedural protections should not go so far as to shield officers found culpable of misconduct if accountability. The balance should not tip too heavily in favor of protecting police officers while restraining internal investigations.

Criticisms of the current police disciplinary system are: it is predominately punishment orientated, it takes an excessive amount of time, it is costly, most police officers view it as unfair and discriminatory, and many decisions are overturned through arbitration. There is a general consensus that it is often a frustrating experience that does not meet its intended purpose of holding officers accountable for their actions and encouraging behavior that meets departmental policies and values. Finally, except for highly publicized cases, there is little accountability and transparency on the process and outcomes. Even citizens alleging misconduct against police officers are not regularly kept apprised of the investigative process or notified of the outcomes.

Police disciplinary procedures have long been a quagmire of policies, limitations, and restrictions and a source of frustration for the parties involved in the process and those interested in the outcomes. Elected officials and police administrators are often frustrated by the months, or years, it can take from an allegation of police misconduct through the investigation and disposition and the cost involved in the process. Their frustration is compounded when their disciplinary decisions are reversed or modified by arbitrators, civil service boards and grievance panels. Police officers and unions generally believe discipline is subjective and fails to meet the fundamental requirements of consistency and fairness. There is often mistrust in the process and a sense that police administrators play favorites in that some officers, particularly minority and female officers, are punished more harshly while other officers who were alleged

to have committed the same or similar misconduct may not even be investigated or receive lesser penalties. The process is undermined further when arbitration reverses the department-imposed punishment against an officer, particularly when there is general agreement within the department that the punishment was fair and appropriate.

Police union collective bargaining negotiations typically happen outside of the public view and with minimal input from community stakeholders most at risk of experiencing police misconduct. Police unions are powerful political constituencies and, therefore, state and municipal officials may be incentivized to offer concessions on disciplinary procedures in exchange for lower officer salaries or other monetary provisions since expenditures often dominate the process. The typical victim of police misconduct is often a member of a disenfranchised and politically disadvantaged minority group of voters.

All of this is problematic in a time when police accountability has dominated media headlines and public opinion. The nexus between union contracts and police accountability is an issue of serious concern that demands examination. Because of the power wielded by frontline police officers and the high social cost of officer misconduct, there is growing support that the public should have greater input in the development of police disciplinary policies and procedures. Any reform should, to the extent possible, resist swinging the pendulum in the opposite direction; resulting in virtually no procedural protections for officers facing disciplinary investigations.

There is research that suggests states should amend labor laws to increase accountability and transparency and community participation in the development of police disciplinary procedures. Municipalities should provide police officers with adequate due process protections during internal investigations. Frontline police officers should have a voice in the development of internal policies and procedures to reduce the probability of organizational resistance. However, internal disciplinary procedures should not be so burdensome as to prevent legitimate efforts to investigate and punish officers engaged in misconduct or criminal behavior.