

Excessive Discipline Protection Database

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INITIAL UNION SUMMARY REPORT

PBA Local #

Base Year 2003

Personnel File Content

The personnel files were obtained in May 2004 and found to be 30 – 50% deficient in pertinent information. Many files contained only the Basic Police Training Course certificate and no other training certificates or information. Those that did contain additional training information, usually contained only necessary training certifications and recerts, i.e. Breathalyzer, sensitivity training and PR-24 classes. Amazingly, there were no firearm training qualification dates and/or scores in the files.

These same files contained all disciplinary actions, including those that were to be removed from the files and those that were no more than a “memo to file” containing the opinion of the supervisor that submitted the memo. Upon contacting the officers that received the “memo” they had no idea that their file contained such information, nor were they ever notified of the placement in their files. It also appears that no investigations were ever conducted into the contents of the “memo”. These instances should be immediately removed from all the files.

There is also reference to these memos when determining lateral transfers and imposing discipline. The administration apparently has been using these memos to justify lateral moves within the Department and to impose excessive discipline. Officers that are disciplined for the same infraction receive different penalties which appear to be related to the memos.

All the officers were contacted and supplied training certificates that they had retained. The files were replenished with the certificates and, when the certificates could not be located, the officers signed Affidavits listing the schools that they have attended.

Letters of Commendation were another area that the files were severely lacking. Again, the officers were contacted and supplied copies of letters that they had retained.

When the files were received they contained less than 25% of positive information and the remaining 75% was disciplinary action. Once the files were supplemented with the officer's information, the files were approximately 65% positive information and 35% discipline. A list was sent out to each officer requesting items to include in their file. Two computer files were generated for each officer. The first is a

duplicate of the file received from the Department, the second is the corrected file. It is suggested that the Union consider having the corrected file submitted to the Department. Of course, there are pros and cons to this. Please inform us as to your decision.

Schools

This proved to be a difficult area to evaluate as the files did not contain much information in this area. Once the officers supplied the information with the approximate dates of their attendance at the schools, a pattern began to emerge. It appears that the officers in the special units receive the most schools. Patrol officers receive the minimal amount of schools and nearly all of them are only mandatory ones. We can make a request for public records under the OPRA act which should contain information about the budgeted amount for schools each year. This would be helpful in determining how many schools each officer receives a year.

Many Departments have "School Request Forms" which are to be filled out each year for requests. Some Unions have placed language into their contracts which affords each officer a minimum of three schools per year. This has been found to be a fair way of assuring that each officer receives an equal amount of schools. It is also beneficial to have a "training officer" whose responsibility is to keep track of the schools.

Please address this with the Union and inform us as to how you wish to proceed.

Discipline

This is one area where the Department is very efficient. 90% of the discipline that the Department imposes is under 5 days. Of that discipline only 18% is disputed. This means that the Department is supplementing files with discipline which they later use to justify denying lateral transfers or promotions. They also are laying the foundation for "progressive discipline" in that they have a "habitual offender". While they rarely impose large discipline (over five days), which would be examined by the Department of Personnel, they have set up the majority of the Department members so that when and if they want to go after a member, they will have more than sufficient "probable cause".

In 2003, 42% of your members have been disciplined on at least one occasion, receiving a suspension, under five days, which they accepted without dispute. We are aware that the reasons officers accept discipline as opposed to fighting it is because they do not feel it is worth the aggravation that it causes them, their families, and their coworkers. Unfortunately, the Administrative Law Judges do not view this acceptance of discipline in the same way. In the eyes of the Administrative Law Judge, the only reason an officer accepts discipline is that he is guilty. As you can see this is an accident waiting to happen and we suggest immediate steps to rectify this.

The dates of the discipline have been tracked and compared to the dates of lateral transfers and promotional tests. The disciplining trends in your Department rose 20% immediately preceding a lateral transfer and immediately after. The later

discipline imposed was against those that did not receive the transfer that they requested and who undoubtedly voiced their opinion about same. Similarly, discipline was 28% higher just prior to a promotional test being taken and 23% higher just prior to a promotion being made.

Internal Affairs Investigation procedures appear to be inconsistent. The Attorney General's office has guidelines which are to be followed while conducting an investigation. These are not being followed in your Department, specifically the officer is not being placed on written notice that an investigation is being conducted into his activities and the conclusions and recommendations of the IA Unit are rarely followed. Specifically when the IA Unit recommends that the incident in "unfounded" charges are still brought? This needs to be investigated and I would suggest the formation of an Anti-Corruption Unit or Internal Affairs Review Board, which is to report to the Union and the Chief. It is no surprise that the members of the Internal Affairs Unit are not disciplined and receive the majority of schools. I have included the AG's guidelines for your review as well as policy for forming the unit.

Charges

For convenience, discipline has been broken down into six categories:

Standards of Conduct
Untruthfulness
Insubordination
Equipment Violations
Communications
Abuse of Sick Time

Most of the charges levied by the Department against its members fell into one of the six categories mentioned above. There was no instance when an officer was charged with a single violations, most officers were charged with two to four violations from two to three of the above categories.

Performance of Duty/Standards of Conduct, Chapter Four of your Rules & Regulations was the most frequent charge showing up in 87% of disciplinary action. Alarming, Untruthfulness was the second most frequent charge at 51%. In the year 2003 alone, your Department has deemed 27% of its officers to be untruthful. At this alarming rate it will take less than four years for the Department to completely destroy the credibility of its non-ranking members. This coupled with the fact that most of your members have accepted minor discipline can have devastating impact on the ability of your members to fight future discipline and obtain lateral transfers/promotions.

32% of the charges brought were for Insubordination. Curiously, 81% of those charged were on a promotional list.

Communication violations comprised 24% of the discipline and were usually coupled with the Standards of Conduct and Insubordination charge. These charges are difficult to defend as there are usually tape recordings as evidence.

Equipment violations were the most diverse ranging from a Letter of Reprimand for forgetting a flashlight to a five day suspension for a minor motor vehicle accident. There was no distinguishable rhyme or reason to the disciplinary action in this category and, as such, it gave insight into identifying those targeted for petty discipline.

The "Sick Time Abusers" list is posted every September with charges beginning shortly thereafter. This is standard practice with many Departments. It is suggested however, that an investigation be undertaken to determine the criteria used to determine who gets on this list. In order to be an "abuser" the officer would need to have more than a specified number (usually 20) of unexcused absences. Many times Departments just list everyone who has used more than (20) sick days in a year instead of using the correct formula of counting only the "unexcused" days.

The most disciplined squad is Squad C, with the most complaints being initiated by a supervisor on that squad. It is suggested that the supervisor be moved to another squad to see if the same pattern emerges.

Ethnic Orientation

Your Department is comprised of 135 members. Of this, 36 officers are African American and 19 are of Latino descent. You have 9 females, 2 of which are African American and 1 Latino. Although the Department appears on the surface to be diverse in ethnicity, the majority of the minority remain in the patrol division. Of the 29 Supervisors, only two are African American, two Latino and 1 an African American female, none hold rank above Sergeant. This also should be investigated further and a comparison will be forthcoming that will track the discipline and promotions as they pertain to race. This will require that the expired lists be obtained. We also would like to get the original lists that the Department hires from as it will be beneficial to see who is being passed over. This information can be obtained through OPRA and upon your permission we will make the request for that information. Please advise.

Nepotism

There is clearly the perception of impropriety within your Department wherein the Chief of Police and his two sons are members, and two other family members are rumored to be on the next hiring list. Even more alarming, is the fact that the oldest son has been promoted to Sergeant and assigned to the Detective Division and the youngest son has just been transferred to the Detective Bureau. I enclose the statistics gathered from all the officers that submitted Letters of Interest for the opening in the Detective Bureau. The Chief's son, with the least amount of training and seniority, was given the position. I believe that this is a grievable issue under the grounds of discrimination, as Nepotism is a form of discrimination. You Union Attorney can advise you further in this area.

Overtime

We have reviewed the policy for assigning overtime and it appears to be fair. We cannot determine at this time how much overtime is being received by whom

until we obtain the OPRA records. I think you will be surprised to learn how much overtime the Chief receives.

Promotions

Your Department is civil service and therefore the officers test for promotions. There is some discrepancy between the written test scores and the outcome of the scores after the interviews.

Within the Rule of Three the Department will have the opportunity to pass over many candidates on grounds of their discipline record before they arrive at three they want certified. This is especially true in light of the fact that there is little to nothing in the officers personnel file to dispute the Department's assertion that a candidate should be disqualified on the basis of his her discipline history.

The Department appears to prepare in advance of the test which is indicated by a 28% rise in discipline just prior to the test, followed by an additional 23% increase just prior to the promotion.

The promotions are disproportionately awarded with regards to race and gender. This is a grievable issue, however, given the discipline content of the personnel files, it is difficult to predict a favorable outcome.

Conclusion

It is recommended that every effort be taken to clean out unjustified discipline from the current files. We have supplemented the files with training certificates, awards and commendations which help to offset the discipline. We recommend that the "memos" be challenged by the Union and removed. We also urge you to explore avenues with the Union Attorney for the removal of the "untruthfulness" charges from the officers files.

We recommend implementing a policy within the Union whereby all disciplinary actions are challenged, no matter how small. If the discipline is going to be accepted we recommend that an Affidavit stating the reason for the acceptance accompany the charge into the officers file and that he not admit guilt.

We attach all supporting statistics, with the officers names omitted. We await further direction on the remaining OPRA issues, and will send out quarterly updates to the officers.