“Recruitment and retention standards need to be evaluated and revised to prevent the infiltration of those with extremist/hateful/violent views”

The Bethlehem Gadfly George Floyd killing, Ochs, Holona, Police August 10, 2020

Latest in a series of posts responding to the George Floyd killing

Recruitment and retention standards need to be evaluated and revised to prevent the infiltration of those with extremist/hateful/violent views.

The culture of policing is often cast as “us against them” rather than dealing with the various communities as civic minded peace officers. This is also evident in the LV (LU Core Team). Officers in our study regularly describe their approach in adversarial terms rather than seeing themselves as a part of the communities they serve. This is not universally true. Many officers enjoy engaging with the public and are quite good at it. They should be rewarded and encouraged.

Council should demand a registry of officers fired for misconduct to prevent those who are not well-suited for policing from being re-hired by other departments.

Collective bargaining agreements often protect problematic officers. This should not be the case. Collective bargaining agreements should protect officers without endangering the public.

Prof Holona Ochs

Gadfly found the following article quite . . . illuminating.

What do we know about our police collective bargaining agreement and our disciplinary and misconduct procedures?

From Stephen Rushin, “Police Union Contracts.” Duke Law Journal, March 2017.

Police departments’ internal disciplinary procedures, often established through the

collective bargaining process, can serve as barriers to officer accountability.

Most states permit police officers to bargain collectively over the terms of their employment, including the content of internal disciplinary procedures. This means that police union contracts—largely negotiated outside of public view—shape the
content of disciplinary procedures used by American police departments.

A substantial number of these agreements limit officer interrogations after alleged misconduct, mandate the destruction of disciplinary records, ban civilian oversight, prevent anonymous civilian complaints, indemnify officers in the event of civil suits, and limit the length of internal investigations.

This lack of corrective action in cases of systemic officer misconduct is, in part, a consequence of public-employee labor law.

Chicago's Independent Police Review Authority does not consider an officer's history of complaints when examining a new complaint against the same officer. The Chicago union contract also delays interrogations of officers involved in alleged wrongdoing and prevents the investigation of most anonymous complaints. Perhaps it is no coincidence that less than 2 percent of all civilian complaints against Chicago police officers result in any sort of disciplinary action. Chicago is hardly alone.

The U.S. Department of Justice (DOJ) found it challenging to investigate the Cleveland Police Department in part because its collective bargaining contract mandated the removal of disciplinary records from department databases after two years.

These examples bolster the hypothesis that some union contract provisions may impede effective investigations of police misconduct and shield problematic officers from discipline.

This analysis reveals that a substantial number of these contracts unreasonably interfere with or otherwise limit the effectiveness of mechanisms designed to hold police officers accountable for their actions. For example, many of these contracts limit officer interrogations after alleged wrongdoing, mandate the destruction of officer disciplinary

records, ban civilian oversight of police misconduct, prevent anonymous civilian complaints, indemnify officers in civil suits, or require arbitration in cases of disciplinary action.

But across many of the nation's largest cities, supervisors cannot easily respond to external legal pressure by punishing problematic officers or implementing rigorous disciplinary procedures. Instead, many courts have held that internal-investigation and disciplinary procedures are appropriate subjects for collective bargaining under public-employee labor laws. This collective bargaining process happens largely outside of the public view and with minimal input from community stakeholders most at risk of experiencing police misconduct.

Municipalities ought to provide police officers with adequate due process protections during internal investigations. It is also important for front line police officers to have a voice in the development of internal policies and procedures to reduce the probability of organizational resistance. However, these internal disciplinary protections should not be so burdensome as to thwart legitimate efforts to investigate or punish officers engaged in wrongdoing.

States could require municipalities and police unions to negotiate disciplinary procedures in public hearings rather than behind closed doors. Alternatively, states could require municipalities to establish notice-and-comment procedures, similar to those employed by administrative agencies, before agreeing to a package of disciplinary procedures via the collective bargaining process. Perhaps most radically, states could amend labor laws to remove police disciplinary procedures from the list of appropriate subjects for collective bargaining.

However, it appears that expansive readings of state labor laws by employee-relations boards and courts have opened the door for police unions to negotiate the inclusion of a range of questionable procedures that may "protect incompetent or abusive employees." Excessively delaying interrogations of officers after alleged misconduct allows officers to coordinate stories in a way that deflects responsibility for wrongful behavior. The destruction of disciplinary records makes it more difficult for supervisors to identify officers engaged in a pattern of misconduct. The disqualification of entire classes of civilian complaints

prevents supervisors from even investigating potentially abusive behavior. Limitations on civilian oversight and arbitration clauses rob the public of the opportunity to monitor police behavior.

In the past, participants in this conversation have not fully recognized the ways that police labor and employment law may contribute to questionable internal disciplinary measures. Even when faced with the sting of evidentiary exclusion or the heavy financial burden of civil suits, police union contracts can make it challenging for police chiefs to hold officers accountable for wrongdoing.

Police officers need reasonable procedural safeguards during disciplinary investigations. At the same time, these procedural protections should not go so far as to shield offending officers from accountability. Unfortunately, in many of the nation's largest cities, it appears that the balance may have tipped too heavily in favor of protecting police officers while handcuffing internal investigations. In many localities across the country, police officers receive more procedural protections than other government employees during disciplinary investigations.

Communities could elect civilians to a commission tasked with the creation of police disciplinary procedures, with recommendations from police management and union leaders. Communities could establish notice-and-comment procedures, similar to those employed by many administrative agencies, to promulgate disciplinary policies. Conversely, states could require communities to establish police disciplinary procedures in the same manner that they establish municipal ordinances—presumably through a public hearing and vote by local elected officials.

Scholars have documented that police unions are a powerful political constituency. Police union support can be pivotal in local and state elections.280 Thus, there is legitimate concern that the collective bargaining process in police departments "amount[s] to a division of spoils" rather than a thoughtful compromise. By opening up the negotiation process to the public, relevant stakeholders should, theoretically, be able to monitor the actions of municipal officials during the negotiation of police union contracts and

prevent the kind of troubling disciplinary trade-offs that have happened in major cities like Chicago.

Some misconduct is an unavoidable part of having a police force.

There is a compelling public policy need for the public to have greater input in
the development of police disciplinary procedures.

Across America's largest cities, many police officers receive excessive procedural protections during internal disciplinary investigations, effectively immunizing them from the consequences of misconduct.

The public should have more say in the development of police accountability mechanisms. For too long, the law has excluded the public from the development of these procedures. It is time to remove this process from the shadows and make the police more accountable to the communities they serve.