



STEVEN M. FULOP
MAYOR OF JERSEY CITY

CITY OF JERSEY CITY
DEPARTMENT OF LAW

CITY HALL • 280 GROVE STREET • JERSEY CITY, NJ 07302
PHONE (201) 547-5229 • FAX (201) 547-5230



PETER J. BAKER
CORPORATION COUNSEL

FROM: Peter J. Baker, Corporation Counsel

DATE: March 18, 2021

SUBJECT: Civilian Complaint Review Board – Ordinance
Issues Addressed in March 1, 2021 Letter from the Jersey City Police Superior Officers Association and Jersey City Police Officers Benevolent Association

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On March 1, 2021 the Law Department received a letter from James Carroll, Esq. of Locke, Correia & Bukosky, LLC on behalf of the Jersey City Police Superior Officers Association and the Jersey City Police Officers Benevolent Association (collectively, the “Police Unions”). This letter outlines the Police Unions’ issues and objections to the Jersey City’s previously proposed ordinance establishing a Civilian Complaint Review Board (the “CCRB Ordinance”). After review of the issues presented by the Police Unions, this office is of the opinion that the City’s CCRB Ordinance should not move forward until two conditions are met: (1) the State passes Assembly Bill No. 4656, or other necessary legislation, allowing for municipalities to form the type of CCRB outlined in the City’s proposed CCRB Ordinance; and (2) the City and the Police Unions negotiate any regulations set forth in the CCRB Ordinance that effect the terms of employment for members of the Jersey City Police Department (JCPD).

The Supreme Court of New Jersey in Fraternal Order of Police Lodge No. 12 v. City of Newark, 244 N.J. 75 (August 19, 2020) held that state law permits the creation, by ordinance, of a municipal civilian complaint review board (CCRB) with limited oversight purposes. In response to the Court’s restrictions on the powers and responsibilities of the CCRB, Assemblywoman McKnight has introduced Assembly Bill No. 4656¹, which provides that a municipality may, by ordinance, establish a municipal civilian review board and further expands upon the powers and responsibilities of the CCRB. It is important to note that the current law, and the proposed law, provide a municipality with the option to create a CCRB, but do not mandate the creation of a

¹ On March 17, 2021, the New Jersey Assembly’s Community Development and Affairs Committee approved presentation of A4656 to the full legislative body.

municipal CCRB. Therefore, if a municipality chooses to utilize that option and create a CCRB, the creation of the CCRB must be done in accordance with the current state regulations, including state laws on collective bargaining agreements and the current terms contained in such agreement.

Notably, A4656 addresses the duties and powers of the CCRBs and their obligations to remain consistent with pre-existing contractual agreements, which would include collective bargaining agreements:

3. It shall be the duty of a civilian review board established pursuant to section 1 or section 2 ... (pending before the Legislature as this bill) to:

(4) recommend the imposition of discipline of such officer consistent with any tenure or civil service laws and contractual agreements.

See A4656, p. 5, Lines 1-4, 13-15, attached.

State law, as well as the current collective bargaining agreements in effect between the City and the Police Unions, requires prior negotiation when making changes to working conditions, such as changes in the JCPD disciplinary procedures. Pursuant to N.J.S.A. 34:13A-5.3:

A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interest of all such employees without discrimination and without regard to employee organization membership. *Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established.* In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances, disciplinary disputes, and other terms and conditions of employment. Nothing herein shall be construed as permitting negotiation of the standards or criteria for employee performance.

Furthermore, Article 2, Section 3 of the current Jersey City Police Superior Officers Association contracts provides, in relevant part:

Proposed new rules or modification of existing rules governing working conditions which are discussed in this Agreement or which are referred to in this Agreement as being Department-wide (universal) in nature shall be negotiated with the duly authorized representative of the Association before they are established.

The Jersey City Police Officers Benevolent Association contracts contain similar language. As such, the City is required to negotiate with the appropriate representatives of the Police Unions before enacting any law that establishes new rules or modifies existing rules governing working conditions of the JCPD.

The proposed CCRB Ordinance regulates working conditions of the JCPD in a few ways, but most notably, the CCRB Ordinance addresses disciplinary procedures for the JCPD and requires JCPD to testify if subpoenaed by the CCRB. The Police Unions raised the issue that, although these aspects touch on the working conditions of the JCPD, the City cannot enact these changes prior to negotiating with the Unions. After careful review of the Police Unions' arguments in support of this issue, the Law Department is of the opinion that prior negotiations should take place and the proposed CCRB Ordinance would be in violation of state law (N.J.S.A. 34:13A-5.3) and the City's current collective bargaining agreements.

While the City can still negotiate the terms of the proposed CCRB Ordinance with the Police Unions, this cannot be done until the state passes legislation allowing for a CCRB with the powers and responsibilities set forth in the City's proposed CCRB Ordinance. In other words, the parties cannot negotiate abstract terms that, as of now, neither side has the legal authority to enact or enforce.

In conclusion, the City's proposed CCRB ordinance cannot proceed until the state law is amended to grant the powers and responsibilities to the CCRB as outlined in the proposed CCRB Ordinance. Given the legislature's action today to introduce A4656 to the full Assembly, it is my strong recommendation that the Council defer to the Legislature as a matter of efficiency and consistency to see what the scope and parameters of the State law will be. If and when the state law is amended, then the City must negotiate any rules governing the JCPD working conditions in the CCRB ordinance prior to adoption of the ordinance.