

Special Legislative Task Force to Review the
Rhode Island Law Enforcement Officers' Bill of Rights



Meeting Minutes – Fifth Meeting
October 28, 2020

Senator Metts convened the meeting at 3:00 pm on Wednesday, October 28, 2020. There were 13 members present, including one designee from the Rhode Island State Police.

Senator Metts began the meeting by discussing Senator Coyne's attempted comments at the previous meeting. She was unable to comment because of audio issues with her computer and those meeting's minutes reflect her sentiments on traffic stop data collection and ongoing professional development for officers.

Senator Coyne moved that the minutes be approved. Reverend Jenkins seconded her motion. The minutes were unanimously approved.

Senator Metts mentioned that Mr. Vincent would not be able to present recommendations today because he is out of town at a conference. He also mentioned that Direct Action for Rights and Equality would like to be heard at a future meeting. He also extended thanks to the police chiefs across Rhode Island for responding to the survey issued by the Task Force.

Presentation by Vincent Ragosta

Senator Metts introduced Vincent Ragosta. Mr. Ragosta is an attorney that frequently represents law enforcement agencies during Law Enforcement Officers' Bill of Rights (LEOBOR) proceedings. Mr. Ragosta has practiced in this field for more than three decades, and he started his presentation with an overview of several officer misconduct cases. These cases ranged from criminal conduct to violations of administrative procedures.

Mr. Ragosta used House Bill 8036 (Williams) as a guiding document for his presentation. That legislation can be found here:

<http://webserver.rilin.state.ri.us/BillText/BillText20/HouseText20/H8036.pdf>.

According to Mr. Ragosta, LEOBOR was enacted in 1976 and has not been comprehensively amended since 1995. The advent of LEOBOR stemmed from protecting police officers' rights during the investigation process. Since then, the statutory scheme has evolved to include due process rights that are far more expansive than those afforded to other public employees. In his view, LEOBOR has "supersized" due process well beyond protections afforded by the United States Supreme Court. Mr. Ragosta would like the commission to consider why employees of law enforcement agencies receive higher protections than other public employees. According to Mr. Ragosta, Rhode Island's LEOBOR statutory scheme is one of the most comprehensive in the country.

Mr. Ragosta's comments on the composition of the hearing panel

In referring to HB 8036, Mr. Ragosta first discussed the composition of the hearing panel. The panel by definition is made up of two partial representatives – one appointed by the accused officer and one appointed by the chief of the charging agency. In his view, these individuals act as wingmen serving the respective interests of the appointing party. The third individual, in theory, is the neutral adjudicator appointed from one of two lists. These two lists are comprised of individuals recommended by the Rhode Island Police Chiefs' Association or the FOP/IBPO. This presents a scenario where there is a "50%" chance of having a better result depending on the list used. Mr. Ragosta said the process is "fraught with conflicts" because sometimes the attorney representing the officer also represents collective bargaining units. Consequently, Mr. Ragosta believes the composition of the hearing panel must be changed. He believes that adding three additional civilian members will enhance the neutrality of the board.

Mr. Ragosta's comments on LEOBOR impeding punishment

Mr. Ragosta believes the commission should look at allowing for the immediate disposition of discipline and then allowing LEOBOR to serve as an appeals process. He believes this still affords the police officer due process.

Mr. Ragosta's comments on the authority of the hearing panel

Under HB 8036, the hearing panel would be limited in its review authority. The hearing panel would not be able to overturn the discipline issued by the chief. Instead, it utilizes the doctrine of deference, which is commonly used in labor law. At its core, this doctrine holds that if evidence is established to prove that discipline is warranted than the arbitrator should defer to the judgment of the employer. The discipline should not be overturned unless it is completely arbitrary or capricious.

Questions from members directed to Mr. Ragosta

- Mr. Capezza raised the point that court martials are the adjudicating authority for military personnel in reference to Mr. Ragosta's comments concerning police being paramilitary organizations. Mr. Capezza and Mr. Ragosta also discussed the civilian (non-lawyer) component to the Board of Bar Discipline. In summation, Mr. Capezza believes police officers are better positioned to understand and evaluate the officer's actions and Mr. Ragosta believes non-officers would bring an important perspective. Mr. Ragosta believes a broad array of perspectives is necessary to bring about police officer accountability.

General Neronha asked if Garrity applied in the LEOBOR context

- Editor's note: In Garrity v. New Jersey, the United States Supreme Court held that police officers cannot be compelled to testify in a **criminal matter** through threats to their employment status. In Garrity, a New Jersey police officer was questioned about an alleged "ticket fixing" scandal. When apprised that he could invoke his Fifth Amendment right against self-incrimination, he was also told that doing so could result in his removal from employment. The Court held that this was unconstitutional and constituted coercion.
- Mr. Ragosta stated that *Garrity* does apply in the interrogation phase of LEOBOR proceedings. He said this presents chiefs with difficult decisions if they suspect

criminality. Instead of “Garritizing” a police officer and questioning them, Mr. Ragosta’s standard practice is to advise police chiefs that their best course of action is to work with the Attorney General if they believe criminal behavior exists.

- General Neronha presented a hypothetical whereby criminal charges were not brought against an officer and inquired as to whether compelled statements could be used in a LEOBOR disciplinary proceedings. Mr. Ragosta responded that an officer can be ordered to answer questions and that their failure to do so may result in additional administrative charges. In summation, orders to compel can be used.

Senator Metts proceeded to call on Michael Colucci of Olin & Penza to discuss his perspective as a labor law attorney.

Presentation by Michael Colucci

Mr. Colucci began by stating that he worked alongside the 1995 Task Force on reforms to LEOBOR. That commission found that 94% of disciplinary cases were resolved before a LEOBOR hearing, and he believes that number has increased.

Mr. Colucci underscored that LEOBOR is the sole and exclusive remedy for dealing with police officer misconduct. It provides a framework for disciplinary procedure, specifically it is a procedure for conducting an investigation and a hearing. This means less court room costs and less time to achieve resolution. To eliminate LEOBOR or drastically change its protections would lead to increased lawsuits and legal fees. He believes that current concerns involving LEOBOR are misguided because they do not address police officer training.

Mr. Colucci’s comments on increasing the summary punishment rule

Mr. Colucci feels this an expensive proposition for police officers. A punishment of 5-10 days would mean the loss of thousands of dollars in pay. That is a significant penalty without the opportunity to have a hearing. As a result, police officers may be more likely to proceed to a LEOBOR hearing or invoke a department’s grievance procedure that could lead to arbitration. According to Mr. Colucci, officers are willing to accept a 2-day punishment and “move on.” He only recalls one officer filing a grievance over a 2-day suspension.

Mr. Colucci’s comments on the composition of the hearing panel

Mr. Colucci believes that changing the composition of the hearing panel will lead to an increase in the number of meetings a hearing panel must have to reach a conclusion. This is because current panel members, as police officers, understand the standards and training techniques used by law enforcement. If civilians were on the board, experts would need to be brought in to advise the hearing panel. Second, Mr. Colucci believes that police officers serving on the panel increases accountability, because police officers are best suited to root out an officer’s failure to appropriately police and then rule on corrective discipline or terminate.

Senator Metts asked Mr. Ragosta and Mr. Colucci for comments on two questions:

- 1) Statewide hearing panel

- a. Mr. Ragosta stated that he believed a statewide hearing panel would bolster the professionalism of the panel. He referenced that the House Bill retains the two “partial” appointees who are law enforcement while increasing civilian participation. He believes civilians could quickly become educated about the appropriate police procedure because many cases involve chiefs and officers offering testimony about the standard to be use.
- 2) Prohibition on public statements
- a. Mr. Ragosta noted that there is a Rhode Island Supreme Court ruling calling in to question the constitutionality of the “prohibition on public statements rule.” He believes that this rule infringes on an individual’s First Amendment right. Mr. Ragosta cited House Bill 8036’s revised prohibition on public statements rule. Under the proposal, the chief’s ability to comment is dependent on the punishment sought. If the chief seeks suspension or anything less than termination, then no public statement may be made. If a chief seeks termination, then an agency may make a limited public statement. Mr. Ragosta concluded by saying that he believes the Rhode Island Supreme Court has highlighted the importance of granting chiefs some flexibility when discussing officers under investigation in order to redress public unrest.
 - b. Mr. Colucci discussed an instance in the 1990s where a community organization filed superfluous complaints against an officer as an example in which increased public comment may lead to an undesirable result. His concern is that publishing names on unfounded complaints before there is an investigation could tarnish reputations and impede law enforcement.

Mr. Batista thanked the presenters, but he asked panel members to remain mindful that there is another side to this equation, which is the civilian. He asked that we remain cognizant of their Constitutional rights. He then asked Mr. Ragosta and Mr. Colucci to comment on the investigatory process delineated in LEOBOR, and, whether they agreed with his view that the process makes it difficult to arrive at the truth. Specifically, he mentioned the statute barring outside investigators and its requirement that the officer be provided with a copy of the complaint ahead of time.

1. Mr. Colucci responded by underscoring the high-resolution rate under the current LEOBOR statute. He attributes this high rate of resolution to the fact that officers are compelled to give testimony, as opposed to a civilian who retains the right to not incriminate themselves. Mr. Colucci said that this compelled testimony is “balanced off” by the reasonable place, time, and manner facets of the statute.
 - a. Mr. Batista responded by citing the high rate of plea or dismissal in criminal cases, so he does not see the 94% statistic as indicative of the process working well. Second, by way of anecdote, he spoke to the inherent benefit provided to the investigator when the officer under investigation does not know what the charging agency knows.

2. Mr. Ragosta said that he tends to agree with Mr. Colucci that the investigatory stage works well. He referred to this section as the “rules of engagement.” In his experience, this section provides an important structure for the investigatory process. He believes it is much more important to expand the summary discipline period, because chiefs perform a cost benefit analysis when disciplining an officer.

Senator Gordon Rogers commented on the composition of the hearing panel. He asked how civilians serving on a hearing panel would differ from a jury where one of the members was a police officer. Senator Rogers also spoke from his own experience about the cost benefit analysis that a chief undertakes when assessing discipline, especially in small towns.

1. Mr. Colucci responded by saying that it essentially becomes a “jury of one” because the civilians follow the direction of the officer.

Presentation by Reverend Jenkins’ on behalf of the Ministers’ Alliance

Reverend Jenkins presented recommendations on behalf of the Ministers’ Alliance. He acknowledged that society is at a critical crossroads in determining the role of law enforcement and race policing in America. Reverend Jenkins referenced articles and a recent study that examined the discrepancies between a respondent’s race/ethnicity and their perception of law enforcement and justice. The Pew Research study can be found here: <https://www.pewresearch.org/fact-tank/2020/06/03/10-things-we-know-about-race-and-policing-in-the-u-s/>. Moreover, he believes these perceptions are grounded in the inequities within our criminal justice system and reflective of systemic racism. He stated that all racial groups must be treated fairly and equally.

Mr. Jenkins stated that we are here today not only because the time has come to study LEOBOR, but also because of George Floyd, the Black Lives Matter Movement and others who have said enough is enough. He stated that “all police officers are not bad,” but rather a few scattered within the ranks of our police departments give policing a bad reputation. We are faced with a culture that has routinely recognized its wrongs, still the culture has persisted. These abuses have become undeniably in the age of the cell phone, and such technologies have thwarted misguided attempts to justify abuse.

Rev. Jenkins stated that there is a perception that this task force only has intentions of a “soft reform of LEOBOR and not a comprehensive overhaul.” Currently, LEOBOR prevents civilian oversight. Instead, law enforcement officers are judged by their peers. True overhaul begins by including the community. Reverend Jenkins repeated his refrain from prior meetings that policing is a difficult job. And, while it has been said Rhode Island does not face the same issues as other states, the reality is Rhode Island’s LEOBOR must be addressed.

Rev. Jenkins continued that he has often asked what is considered “bad or acceptable behavior” from a law enforcement officer. It is not about shaming police, rather this question aims to identify the specific culture within law enforcement that allows poor judgment and police offenses to persist. Bad people, mistakes, and poor judgment exist in every population. Still, there seems to be an unwillingness to accept reality. He referenced a recent Target 12 investigation the “use of force” in arrests from 2017-2019. (That story can be found here:

<https://www.wpri.com/target-12/target-12-probe-reveals-police-use-of-force-almost-always-deemed-justified-in-ri/>). Reverend Jenkins said the near universal acceptance that the “use of force” was justified juxtaposed to recent demonstrations about police misconduct was indicative of the need for change.

Rev. Jenkins concluded by stating that by the time LEOBOR goes into effect (when an officer is investigated for misconduct), it is too late. The reality has historically been that it is the police officer’s word over the citizen’s version of the story. Rev. Jenkins asked if there should be an independent agency to examine police behavior and provide a safe platform for individuals to speak about system injustice. He also asked the Task Force to look at increased training for police officers as well as the use of shift rotations to better shape behavior and alleviate stress. He concluded by agreeing with Mr. Ragosta’s recommendation to include civilians on LEOBOR hearing panels.

Presentation by Professor Marcel Beausoleil on behalf of the RI Fraternal Order of Police

Professor Beausoleil previously served as commander of the Woonsocket Police and he now teaches at Fitchburg State University in Fitchburg, Massachusetts. He has also taught LEOBOR seminars at Roger Williams University in their criminal justice program.

Professor Beausoleil started by saying many of his points were raised by Mr. Colucci. He believes three interests come in to play during any LEOBOR proceeding: 1) rights of police officers to fair and appropriate treatment 2) rights of police administrators to manage their departments and 3) accountability to the public. In his experience, the bill of rights works. This does not mean it’s perfect or does not need improving, but the cases that often go to court for review are appealed on technical grounds.

Professor Beausoleil continued by underscoring the need for fair procedures that protect an officer’s due process. Organizational justice is a new field of research that examines unfair treatment within a department and the result it has on job performance in law enforcement agencies. He mentioned work slowdowns and misconduct by way of example. Research has pointed out that unfair procedures within departments has perpetuated the “code of silence” and impeded transparency, fairness, and accountability. Dignity, fair treatment, and ability to be heard (on the officer’s part) are critical to organizational justice.

Professor Beausoleil then referenced “The President’s Task Force on 21st Century Policing,” which was established by President Obama. The report was issued in 2013, and many see it as a blueprint for reforming policing. It can be found here: https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf. Professor Beausoleil highlighted Recommendation 1.4 in the report, which states “Law enforcement agencies should promote legitimacy internally within the organization by applying the principles of procedural justice.” He believes law enforcement agencies can promote procedural justice by clearly articulating core values and the transparent application of policies, protocols, and decision-making policies. Moreover, when police officers are involved in forming these policies, they are more likely to buy in.

Professor Beausoleil continued by discussing the differences in police officer misconduct, namely the difference between “honest mistakes” and “malicious conduct.” He said that many departments fail to distinguish between the two, and they often discipline officers who commit these offenses in a similar fashion. He returned to a theme presented in earlier meetings that police officers are assets, and, if an officer is deemed worthy of rehabilitation they should be rehabilitated through training and a behavioral focus on discipline.

Mr. Beausoleil ended by making several recommendations on increasing organization justice:

- Training should look more at competence and context.
- Department policies should also be widely disseminated and updated frequently.
- Early intervention systems should be incorporated so departments can intervene before it becomes a problem.

Trooper John Brown then presented on behalf of the RI Troopers Association

Trooper Brown started by echoing the sentiments of Mr. Colucci and Professor Beausoleil. He proceeded to discuss the last four years of “use of force” instances on the Rhode Island State Police. The RISP had over 400,000 contacts over the last four years. Officers used “force” in 144 instances, and all of those were deemed justified. Force can mean anything from physical force, such as an arm bar, to discharging a firearm. Trooper Brown believes the RISP low use of force numbers are due to several variables, namely training and the culture of the RISP.

Trooper Brown then discussed the summary discipline period. He believes the state police are unique in their response to a recommended change because they have a different schedule. The RISP work a 3 on/3 off schedule. Consequently, a ten-day suspension carries greater economic ramifications for state police officer. He believes two days provides a reasonable layer that ensures due process. On the hearing panel composition, Trooper Brown agrees that the current composition is sufficient. He believes the current statistics indicate that there have been few issues.

Senator Metts then discussed holding two further meetings. One on November 18th and another on December 9th.

Jim Vincent then made a motion to adjourn. The motion was seconded by Tony Capezza, and unanimously moved by the commission.