

City of Derby

Charter Revision Commission 2020

Members

Ralph Cappiello
Christopher Laroque
Gina McKay

Robert Hyder, Chairman
Aniello D. Malerba, III
Sam Pollastro, Jr.
Charles M. Stankye, III

Camille Grande Kurtyka
Carl McCluster
James Smey

MINUTES POLICE DEPARTMENT SUBCOMMITTEE MEETING OF JULY 6, 2020

Call to Order

Mr. McCuster called the meeting of the Charter Revision Commission's Police Department Subcommittee to order at 6:30 p.m. Monday, July 6, 2020. All those present pledged allegiance to the Flag of the United States of America.

Roll Call

Members Present: Mr. McCluster, Mr. Larocque, Mr. Malerba
Others Present: Police Chief Narowski, Corporation Counsel Vincent Marino, Aldermanic President Charles Sampson

Proposed Revisions to Sections of the City Charter regarding Derby Police Department Discussion and Possible Recommendation to the Full Charter Revision Commission

Mr. McCluster noted that the primary function of this conversation was to deal with the non-union employees (administrative), the Chief and the Lieutenants/Detective Sergeants.

Chief Narowski explained that in 2005, the current Charter refers to the Chief of Police and the Lieutenant. A lieutenant is a middle manager position in law enforcement. The second-in-command of the organization was being ostracized by the law enforcement community because we didn't meet the minimum standards to attend things. For example, my third-in-command attended the FBI National Academy in Quantico, VA. The Academy didn't admit anyone below the rank of lieutenant - a lieutenant was there only on a conditional period and that person held the rank of Detective Sergeant. We have titles, and we have ranks. We couldn't change the Charter, because that's done at your level. We had to fix titles in the organization.

He reviewed the Derby Police Department's Organizational Chart with the Subcommittee, stating, the Chief of Police is at the top. That is clearly indicated in the Charter and in collective bargaining. The Deputy Chief is a title that's referred to within the organization, within the collective bargaining agreement, and it refers to the Chartered position of Lieutenant, which has never been changed. I have two middle managers, they are called by the rank of Lieutenant within the organization and in the law enforcement community, but by Charter, they hold the rank of Detective Sergeant, which is really something that is not common in most organizations.

Anticipating the questions on minimum standards for either hire or promotion, or promotion to Chief, I know we were talking about a bachelor's degree for Chief of Police. Realistically the industry standard is much higher than that – it's going to be at least a master's, or double master's or PhD. The positions in gold on the Organizational Chart indicate people who hold master's degrees. I have four degrees – two master's degrees related to law enforcement, the Deputy Chief holds a master's degree, our Operations Commander is actually an attorney who holds a J.D., we have a few more master's degrees throughout the organization. The other people here in the lighter orange all hold bachelor's degrees in some type of a field. I haven't hired a police officer that hasn't had a degree in 15 years. The officers in yellow have some form of college credits, whether it be a few dozen or a class or two away from graduating with a bachelor's degree. The majority of the organization has some type of a college degree.

Chief Narowski then displayed a section from the Police Union contract. He explained, the Charter and the collective bargaining agreement are intertwined. The majority of things in the Charter are actually covered in the collective bargaining agreement. What happens in the contract is the rank of Deputy Chief throughout the agreement responds to the corresponding Charter position of Lieutenant. The rank of Lieutenant corresponds to Detective Sergeant. That is clarified here for how we do business. If we mess with the titles, it has tentacles that spread out into other agreements, into our Operations and Procedures Manual, into collective bargaining, etc. Our recognition clause talks about these titles.

He continued, how we fill positions with the Lieutenant or Deputy Chief is done via the collective bargaining agreement. Controlling the Chief of Police position is done by Charter. Controlling the Deputy Chief position or the appointment of that person is done by collective bargaining. You're moving from a union position to a non-union. The only two non-union members required by law is the officer in charge of the organization and the second in charge. They have to be out of the collective bargaining agreement.

When we talk about this, the promotion exams, it's a very rigorous procedure. You have a very comprehensive test, from within the entire organization. Thousands of pages of reading, about five months of preparation for this to take a very comprehensive, written exam. You have to pass the written exam with a minimum of 70 percent. The exam is administered by professionals, not written by us and has nothing to do with our organization. It's administered by South Central Regional Criminal Justice Administration; they monitor the entire region. It's proctored by a Ph.D. who does this for a living. The second part of this is an oral examination that is either situational, general knowledge, specific police knowledge questions from peers. They are generally Chiefs of Police, at a minimum a Deputy Chief of Police, from organizations that are distant from us – not contiguous, nobody knows anybody – we may have people come

in from Torrington to sit on a panel with us. It's very objective and not subjective at all. The numbers are normed, again, a Ph.D. proctors this. It's been a very valid testing process and it happens over the course of a great period of time. Recently, they added that there are service points added for years of service into this entire promotional process. The other thing is, we changed the written and the oral board in this last collective bargaining agreement because we wanted to make sure that this was equitable. We're trying to encourage more minorities to apply. We've added service points for speaking Spanish and fluency, and also prior military service. We wanted to make sure that once we start getting more and more minorities into the organization, that we leveled the playing field, so we changed the weights based on some information provided to us by these resources. We lowered the percentage on the written and we raised the percentage on the oral board, because it's very important to be able to think quick on your feet at command presence, and be street smart in addition to being book smart.

The other thing I've added having to do with the collective bargaining agreement is how we hire police officers. I saw comments in the Charter Revision Commission minutes talking about a minimum bachelor's degree to be hired as a patrolman. I don't necessarily think that's a good idea because with the limited pool of candidates we have right now it may actually have the opposite effect or unintended consequences of actually excluding some minorities and not leveling the playing field.

There was a comment in there somewhere about having to take a polygraph – that's the law. POSTC – Police Officers Standards and Training Council – is our certifying agency. Candidates have to meet all of their qualifications, then they have to pass a physical agility test, the entry examinations are written and an oral board, a very extensive background investigation, polygraph, psychological, medical, drug test, etc. There are credit checks and a bunch of other things that come into play.

You talked about the ability to do lateral transfers. I don't know if you need to address it in the Charter because it's in the collective bargaining agreement. Nothing here limits the City to hiring currently certified officers - lateral transfers – this allows us to go in and pay them commensurate with their pay grade. If they come into the organization with four years' experience, we can start them at what a fourth-year patrolman starts in Derby. The only thing missing is vacation time. If I get somebody that wants to leave Waterbury and they want to come to Derby because it's too crazy working there, they'll come, and if they have 10 years on the job, the top pay grade for patrolman is pay grade 5 but they're not going to get the vacation time that they may be losing there. That may be a little bit of a deterrent.

The Chief explained the way hiring had been done in the past, with Supernumerary officers, and much less stringent rules on hiring. The Department obtains applicants from Policeapp.com, and then they are tested and screened by SCCJA. We don't see the names of the applicants until we receive a list from the testing agency. The same thing happens with the promotional exams.

He discussed the history of the promotional process to Chief. Today you need an associate's degree and five years of supervisory experience. That automatically excludes every patrolman, because they don't have supervisory experience. When you promote from within, you've

vetted the people; you know what you're getting. When you have appointed chiefs, they can become a political puppet. The deputy chief tests for the position from the union and they sit in that seat for a year, and they have the five years' supervisory experience that they would have earned at the sergeant level or the lieutenant level, they should be promoted up and when you take that position, I believe you have a property right in that job. You take the job with a certain set of circumstances. It is highly unlikely in this environment with these industry standards that you wouldn't have a qualified deputy chief to move into the position, but if that were to occur, I have no qualms about going to the outside. I don't believe you should promote a detective or a patrolman into that position.

Mr. Sampson noted that he had made the request to require a minimum of a bachelor's degree for the position of Chief, and to limit the succession to Chief to those that have attained a minimum number of years in a supervisory role as well as the required schooling. He believes that the succession from Deputy Chief to Chief is actually a better choice than a nationwide search for a Chief, for all of the reasons Chief Narowski explained and also based upon his own career as a police officer. He also requested that language relative to the Supernumerary pool be removed from the Charter as a whole as it no longer applies. This Committee could recommend that you either just remove the language on the hiring and simply state that hiring of regular officers will be based upon the contractual language as set forth in the collective bargaining agreement. This also includes lateral transfers, which is also included in the collective bargaining agreement. In regard to the staffing structure of the department, he asked that some language be put into the Charter in regard to the staffing structure which was changed several years ago and approved by the City boards at that time. The Chief of Police needs room to restructure the department as they see fit in changing times. The language could state that the Organizational Structure of the Police Department should adhere to the Department's Policies and Procedures Manual, where typically the staffing or organizational structure is defined, and any changes to that must be approved by the appropriate boards. Increases in staffing has to be approved by the Board of Aldermen/Alderwomen and the funding has to be approved by BOAT. There is a procedure in place for that.

Mr. McCluster feels, regarding the idea of intimacy that comes from having people within engaged, rather than having someone from the outside, with that lack of intimacy comes an increase in transparency. Intimacy is in the dark, familiar places where we often see challenges that come with the application of objective and transparent policing. With many eyes the more transparency there is the better potential for a quality outcome.

In response to a question about property rights of a deputy chief's expectation to become chief, Corporation Counsel Marino explained, in the public sector, most positions, but specifically the police chief and the deputy chief positions, create constitutionally-protected property rights in those positions. That's why it is very difficult to remove a chief or deputy chief; there are actually Statutes that have to be followed and it's a very difficult process to remove them if there was a desire to remove them. The real distinction between the public sector and the private sector is that in the public sector this concept has evolved over the century that positions carry with them protected property rights. So, the exempted deputy chief now is part of a contract or a process where there's a succession plan that is generally speaking a condition of his employment. To change that could create a couple of issues. One is, if it's part of the

collective bargaining agreement it could be a prohibited practice. Two, it's infringing upon his rights, his property interests, in the position, so it could put a claim adverse to the City in favor of those who have that interest. You have to be very careful; it's not as easy as it sounds when you have a system like this. Not every community has a system like this. It's not easy to change.

Mr. McCluster asked, is it a legal opinion that property rights will survive in this scenario? Corporation Counsel Marino replied, absolutely. It doesn't mean you can't change it, but you very well may be creating a cause of action in favor of any positions that have that interest. There certainly could be a challenge, no guarantee that the individual would be successful. You do have the right to change it but with the change runs the consequence of liability. There are plenty of cases that stand for that proposition about the property interests in these conditions. There are Connecticut General Statutes that relate to the removal of the Chief of Police. When a Statute is in conflict with a local rule there's a concept of home rule, meaning that the people at the local level have the right to make decisions on certain subjects that may be different, for example, between Shelton and Derby. When the Legislature keeps it to itself, it will say in the Statute, "notwithstanding any local ordinance, charter provision or special act." When it comes to the police chief's removal statute, that is a matter of State precedence. You would be obliged to follow that Statutory process. It would not be subject to home rule.

Mr. Larocque thought that changing the makeup of the Police Commission would be a way to bring more outside voices in, in terms of accountability and the appearance of insularity.

Mr. Malerba asked, if we want to change the process moving forward, will we have to grandfather in the existing people? Corporation Counsel responded in the affirmative, and if this is part of a collective bargaining agreement you have to negotiate with the union to change that. The union would be asking for some major concessions to give something like that up because it protects their union members.

Chief Narowski explained that the next two people in line far exceed the qualifications, even if you set it at bachelor's or master's degree. They have dozens of years of supervisory experience. If we change a title in the Charter, it impacts all the ordinances, collective bargaining agreement, and other documents. One of the ordinances says, "you shall be 5'7" or taller to be a police officer," "you must be a male." That's illegal. According to the Charter, "there must be one female police officer." That's illegal. You can't mandate a minimum of a person like that. He stated that he is not in favor of changing the way the Chief of Police is selected and going outside of the department. Not many departments do that - Woodbridge, Orange, Seymour, Ansonia, all hire and promote from within - it is not the norm. It's the norm in bigger cities, and it's dangerous politically.

The group discussed ways to clean up the Charter sections with regard to language and title congruency. Attorney Marino explained that it's challenging depending upon what needs to get changed and the processes that they'd have to go through. Every change will be subject to voter approval, and regardless of what the voters say, if something is illegal, it's not enforceable. Changing ordinances is easier and is done at the Aldermanic level. If the Charter Revision Commission cannot reach consensus on one or two of these items, Corporation Counsel advised tabling the subject completely until the next cycle where it can continue its

work. Mr. McCluster would refer the appropriate sections back to the City Clerk or the Board of Aldermen for action to clean up whatever they can without a Charter change.

Mr. McCluster discussed law enforcement in the U.S. today. He expressed concern that there is a higher level of subjectivity that comes when the oral interviews occur. He explained that he would like to take a hard look at the written, because those things that are skewed against a certain population because of the statistical number of African-Americans and Latino/Hispanics that interface with police end up with some sort of mark on their record would lead us to absolutely tighten the pool more than you would in the Anglo population. Chief Narowski noted that in his night job as a college professor at UNH in the Forensic Science Department, he gets a mix of criminal justice and forensic science students, both graduate and undergraduate level. He informally polled them and tried to recruit and push policing on them. Over the last 3-4 years, absolutely zero. Nobody wants to be a police officer anymore. Across the board, not race or sex specific. He added, again, that Derby doesn't do any testing in-house. He restated how the written test is formulated and how the oral interviews are run. He noted that there have never been any lawsuits or discrimination complaints against the process. In Derby, every position is testable and the promotions are done by the Police Commission. The group discussed the makeup of oral board interviewers.

Chief Narowski then discussed the Police Commission and is in favor of increasing the number of Commission members but noted that it is difficult to get people to run for political office. Police commissioners that work really well are business managers, or people that understand business and can deal with the unions. The commission provides public oversight over the Chief. The Chief answers directly to them. They hire, fire, and discipline. He stated, in addition, being a Chartered Chief, I will always do the right thing; I always answer to the people and have not made one decision that I regrets in the time since I have been deputy chief and Chief. It's about transparency; the organization that I joined does not exist here anymore.

When asked about his opinion about appointed versus elected police commissions, Chief Narowski explained that he really doesn't have a preference for one or the other – it's an issue with finding people who would want to run. There are positions the City has trouble filling today on the Board of Aldermen, on BOAT – any of the elected positions are going to be difficult. In addition, someone who doesn't understand the union environment can be problematic. The group discussed diversity (or the lack thereof) in elections and in appointments.

The group discussed the collective bargaining agreement. The current Police Union contract expires in 2024.

Mr. McCluster discussed the term, "no complaints," and his definition being, no complaints doesn't mean no problems, it means, to complain is a bigger problem than the problem you have that you were going to complain about. The cultural diversity that is occurring means that 60-75 percent of the young couples are diverse couples, whether nationally diverse or ethnically diverse. We need to set the framework for 10, 15, or 20 years from now when there will be a different set of people populating the City of Derby. He feels it should govern how we look at the Charter.

Chief Narowski explained that he has a forum coming up with police, fire, EMS, the Board of Education and local government dealing with diversity – a listening session. He will invite the Commissioners to that forum.

Mr. McCluster, while he is pro-union, would like to argue for prudence and sensibility, fairness and equity going forward.

The Commissioners and Mr. Sampson each thanked Chief Narowski for attending. The group ended the meeting by reciting the Pledge of Allegiance.

Adjournment

Mr. McCluster MOVED to adjourn; SECONDED by Mr. Malerba. Motion carried unanimously. The meeting adjourned at approximately 8:10 p.m.

Respectfully submitted,

Trish Bruder

Patricia M. Bruder
Recording Secretary