

December 5, 2013

A Regular Meeting of the Board of Fire and Police Commissioners was held on the above date, commencing at 5:40 P.M.

PRESENT: Commissioners: Sarah W. Morgan, Chair
Kathryn A. Hein
Paoi X. Lor
Michael M. O'Hear
Marisabel Cabrera
Steven M. DeVougas

ABSENT: Commissioner: Ann Wilson (Excused)

ALSO PRESENT: Mark Rohlffing, Chief, Milwaukee Fire Department and
Kurt Leibold, Assistant Chief, representing the Milwaukee Police Department

The Chair reconvened the Board in Regular Session, having previously met in Executive Session from 4:42 p.m. to 5:35 p.m. pursuant to Section 19.85 (1)(c) Wis. Stats. to consider employment, promotion, compensation or performance evaluation data of any public employee over whom the Board has jurisdiction or exercises responsibility, to wit: Performance evaluation of the Fire Chief.

The Director presented for adoption minutes of the Regular Meeting of November 21, 2013. Commissioner O'Hear moved approval of the minutes as presented, seconded by Commissioner Hein. The motion carried unanimously.

1. UNFINISHED BUSINESS:

a) The Director introduced Sarah Trotter, Human Resources Representative of the Department of Employee Relations (DER). Ms. Trotter spoke regarding the reclassification of the Office Assistant II position in the Fire Department, Support Services Bureau Decision Unit, Administration Division, to Office Assistant III and the restructuring of the pay range for this position. She recommends that one position of Office Assistant II, in pay range 6EN, be deleted and one position of Office Assistant III, in pay range 6FN, be added. She informed the Board that the report had been revised earlier in the day to correct the minimum rate to \$34,373. Commissioner O'Hear moved to approve the reclassification proposal, seconded by Commissioner Hein. The motion carried unanimously.

2. NEW BUSINESS:

a) The Director presented correspondence dated November 25, 2013, from staff, regarding Police Aide Jacob Howell wherein he requests a temporary residency exemption to reside in Oak Creek.

Commissioner Cabrera informed Police Aide Howell that going to school is not a sufficient reason to request an extension and if he comes back in six months for another extension, she will probably not approve it. She stated there are plenty of people in the City of Milwaukee, who make minimum wage, are going to school and are able to cover their basic living expenses at that rate.

Commission Lor added that she would like to know what his plan is to become a resident of the City of Milwaukee if granted this extension. She requests he think about it and if and when he comes back in six months to be able to inform the Board of his plan.

Commissioner Hein informed him that he knew when he accepted the position that he had to become a resident of the City of Milwaukee within six months. Commissioner O'Hear moved to approve the temporary residency exemption for six (6) months, seconded by Commissioner Hein. The motion carried unanimously.

b) The Director presented correspondence dated November 25, 2013, from staff, regarding Police Aide Taylor Schmitz wherein she requests a temporary residency exemption to reside in Oconomowoc.

Commissioner Lor stated that the comments made for Police Aide Howell are for all three of the residency exemption requests. Commissioner Lor moved to approve the temporary residency exemption for six (6) months, seconded by Commissioner DeVougas. The motion carried unanimously.

c) The Director presented correspondence dated November 25, 2013, from staff, regarding Police Aide Andrew Stewart wherein he requests a temporary residency exemption to reside in Cudahy. Commissioner Hein moved to approve the temporary residency exemption for six (6) months with the same comments as made to the previous two Police Aides, seconded by Commissioner O'Hear. The motion carried unanimously.

d) The Director introduced Professor Steven Brandl of UWM who presented the 2013 Mid-Year Use of Force report. The report provides the number and nature of use of force incidents in the Milwaukee Police Department (MPD) from January 1 through June 30, 2013. The data are based on the use of force reports contained in MPD's AIM database. The report has been changed to include incidents of bodily force only complaints, without injury, or claim of injury. Because of this change, the bodily force only incidents reported would be increased. The number of arrests that involved use of force was 481, or 2.98%. The majority of the type of force used was bodily force only. The analyses since 2009 to 2013 have increased significantly, but the increase for 2013 is in the reported number of the bodily force only incidents, not the number of incidents. Use of force incidents with a firearm included six individuals, three were fatal and three were non-fatal. Of the six individuals, all were armed at the time of the incident. Twelve incidents involved a dog. Of those incidents, six were fatal, three were non-fatal and three were shot at, but not hit. Most of those complaints involved a loose dog report and most were pit bulls. Thirty-one percent, or 158 incidents occurred in District 7, 17.5 percent, or 89 incidents occurred in District 3, and 16.7 percent, or 85 incidents occurred in District 5.

Commissioner Morgan asked if the numbers were broken down in relation to the number of arrests. Professor Brandl informed her that he does that in the end of the year report.

Commissioner O'Hear asked whether the end of year report reflected use of force incidents in District 7 that were disproportionate even taking into account the number of arrests. Professor Brandl stated he is correct and through additional research, he is unable to isolate the reason. He is working with and reporting to MPD's Use of Force Committee and they are working diligently to figure out the issue. He has also met with the District 7 Captain on the issue. Commissioner O'Hear asked Professor Brandl to keep the Board apprised of his investigation and assumes it will be included in the end of year report. Commissioner O'Hear asked Professor Brandl if he has looked into the District 5 data like he has with District 7 data. Professor Brandl stated he has not with these data but he may explore it in the end of year report. Commissioner O'Hear stated the arrest per use of force breakdown was very useful and asked whether Professor Brandl was aware of any national benchmarks for it. Professor Brandl stated he was not aware and was surprised that there was not more uniformity in policies regarding use of force and the recording of use of force incidents. Police departments are all over the place in what is required of their officers in recording use of force incidents. Commissioner O'Hear asked if he was able to detect any difficulties with the new definition of use of force. Professor Brandl stated he did not see that with the data, but Joe Lawler of the Fire and Police Commission may have with the compiling of the data.

Director Tobin pointed out that the increase is showing that MPD is reporting the use of force, unlike other departments. A lot of departments do not have any reporting requirements. MPD has one of the more expansive definitions now of urban police departments of what must be reported. Some recognition belongs to MPD because it shows that the officers are reporting their use of force. If a complaint comes up later on, we now have the report, the supervisor has investigated it, the allegations can be confirmed or denied of what occurred at the scene. Studies like this can be very helpful. The community knows that MPD engages in use of force as a part of their job, it is required and it occurs. Now we are capturing every time it occurs in a detailed report that includes the specifics about it. We cannot get any more transparent than we are right now with the reporting. We are trying to get as much information out to the public as possible to inform them of what the police department does and MPD is doing the same thing. It is all about community trust. This is a big part of trying to increase the community trust by letting everyone know what is going on. MPD is being very cooperative with Professor Brandl in allowing easy access to all of the data, easy access to the use of force committee meetings and district captains. You have complete, unfettered access to all of the information you need. It speaks a lot for MPD and what they are doing and their efforts in increasing the trust of the community. He thanked Professor Brandl for doing an excellent job on this mid-year report; it is a thorough analysis of what is going on. Professor Brandl agreed regarding the transparency with the use of force. With most police departments, this source of data is most difficult for anyone to have access to; this has been an open book with MPD since 2009.

3. FIRE DEPARTMENT:

a) The Director presented correspondence dated November 22, 2013 from Chief Rohlfing, wherein he notifies the Board that the contingency appointment to Fire Cadet of #47 – Bryant L. Adams approved on September 5, 2013, was utilized effective November 11, 2013.

b) The Director presented correspondence dated November 26, 2013 from Chief Rohlfing, wherein he requests approval of the 2014 Furlough Guidelines for all Milwaukee Fire Department members. Chief Rohlfing informed the Board that it will be the same as it has been in the past. All of the Milwaukee Fire Department employees, with the exception of Local 215 members and dispatch personnel will take the mandatory three furloughs. It includes all of the office staff, chief officers, all mechanics and IT individuals. Commissioner O'Hear moved approval of the furlough guidelines, seconded by Commissioner Hein. The motion carried unanimously.

4. POLICE DEPARTMENT:

a) The Director presented correspondence dated November 19, 2013, from Chief Flynn, wherein he notifies the Board that Police Sergeant Alex Lopez, Jr. has been discharged for violation of Department Core Value 3.00 – Integrity, referencing Guiding Principle 3.05 effective November 19, 2013. We have received an appeal from him, so a hearing will be scheduled.

b) The Director presented correspondence dated November 15, 2013, from Chief Flynn, wherein he notifies the Board that Dwayne Nash requests to be reappointed as an Electronic Technician. Mr. Nash was present. Director Tobin informed Mr. Nash that Chief Flynn does not recommend him for reappointment. Since it was not noticed for closed session, it will be held over for Executive Session at the next meeting. There was some question as to whether Mr. Nash was going to be present or not. Commissioner Morgan stated it will be held over for closed session at the next meeting where personnel issues can be discussed.

c) The Director presented correspondence dated November 13, 2013, from Chief Flynn, wherein he requests approval of the 2014 Furlough Guidelines for all Milwaukee Police Department members. Assistant Chief Leibold informed the Board that the furlough guidelines are the same as last year. All MPD members are required to take three furlough days unless operationally necessary not to. Commissioner O'Hear moved approval of the furlough guidelines, seconded by Commissioner Hein. The motion carried unanimously.

d) The Director presented correspondence dated November 27, 2013, from Chief Flynn, wherein he notifies the Board of Standard Operating Procedure 735 – Automated License Plate Readers (ALPR). Inspector Mary Hoerig oversees the Office of Management, Analysis and Planning (OMAP) and will answer any questions on the policy. Commissioner Morgan stated the policy will not be voted on at this meeting; it will be held over until the next meeting and voted on then. Going forward the Board will hold over any policies so there is time for public comment and for the Board to review and ask questions.

Commissioner O’Hear stated it is a very detailed policy and a great amount of effort and thought has gone into it. It is great that we are going to have a policy and public discussion about it. We applaud MPD for their transparency. Commissioner O’Hear asked what the period of time will be that the data is held. The policy states it will be held for a “reasonable period of time so as to minimize potential for misuse or accidental disclosure.” He asked Inspector Hoerig to explain the term. Inspector Hoerig stated when the policy was put together, it was devoid of any articulation about purging of data due to several reasons, including the City’s default retention schedule, which is seven years. MPD does not want to hold the data for seven years. MPD has to petition the City to change the retention schedule and may be going to the state as well with the change. Also, there is pending legislation being debated regarding the length of time for storage. In lieu of both of those, we cannot have a policy that is counter to the City’s policy and we have not had an opportunity to petition for keeping the data that we would like to have. When we have made a decision, we will petition the City for a one year period of retention; that is when the new legislation will be out there. Commissioner O’Hear asked if the policy would be amended to reflect the storage retention to reflect one year. Inspector Hoerig agreed and stated unless the legislation dictates how long it needs to be kept. Commissioner O’Hear asked about the rules of who has access to the data and the consequences of violating the rules. The policy states that a violation includes criminal, civil and administrative sanctions. He questioned if the administrative sanctions are those governed by the Internal Affairs Division of MPD. Inspector Hoerig stated yes. Commissioner O’Hear asked what the criminal and civil sanctions are. Inspector Hoerig informed him that releasing personal information is governed by state statute. If the information is used to harm someone or an agency, it is violation of municipal code. This data will be monitored very closely. Inspector Hoerig recommended the Board come and look at the auditing and stop-gaps measures in place to protect the data. This is a tool we have and do not want to lose by being forced into some type of litigation for improper use. There are strict controls as to who can get into the database. It can be audited to see when they looked at it, who looked at it, how they looked at it and what they used it for. If a member violates this rule, they can face discipline, including discharge. Commissioner O’Hear asked who the program administrator is. Inspector Hoerig informed him Lieutenant Steven Kelly is currently in charge. Commissioner O’Hear asked if it will be kept to the level of lieutenant. Inspector Hoerig stated it may be raised to the level of captain because it is a complicated system with administrator rights. If an officer wants to send an alert, it has to be documented and approved by a supervisor. MPD cannot make any changes as to who will be in charge until someone who understands the system as well as Lieutenant Kelly does. Commissioner O’Hear asked whether the internal audit will be completed at least once per year and whether the results will be public. Inspector Hoerig stated that MPD would like to report information about it annually. Commissioner O’Hear asked about the sharing of information with other law enforcement agencies and the requirement that any other agency abide by MPD’s limitations on dissemination of data. Inspector Hoerig stated that is correct. Commissioner O’Hear asked how that is going to be verified. Inspector Hoerig stated in Wisconsin there is an association of automated license plate reader technology. The association came up with templates for memorandums of understanding that MPD would have in place with other agencies before data is shared. To assure they are only using the data they were given access to, there would be some type of auditing process at the state level, and the legislation is looking to do this too. Commissioner O’Hear asked if the sharing of data with other law enforcement agencies will be encompassed with the annual audit in the absence of a rigorous state level auditing process. Inspector Hoerig informed him that it will be.

Commissioner Cabrera stated she is concerned with the massive amounts of information obtained of people not accused of any wrongdoing. A year is a long time to retain the information of the whereabouts of people based on where their vehicle has been. It has a high risk of a chilling effect on people’s privacy rights or constitutional rights to associate, protest and express themselves. If they feel they are constantly under

surveillance, they will probably change their behavior even if they are doing everything within the law. Inspector Hoerig informed her they too are concerned with privacy because law enforcement is made up of the general population and they are also concerned with the same privacy concerns. The program is non-discriminatory; it looks at all plates. From looking at other agencies, the retention goes from 48 hours to indefinite holds on information. With agencies that have cities our size, they have indefinite holds. When MPD is conducting an investigation that could take six to eight months and part of the license plate is known, that amount of time does not seem unreasonable. Cities our size retain their information for six to eight months. Commissioner Cabrera stated it made sense to retain the information if someone was on the “be on the lookout (BOLO)” list, but those who are not involved and happen to have their vehicle parked in the area of a crime, they should not be on the database for a year. If someone is visiting a mosque or an abortion clinic, they do not want people to know that is what they did. There is no reason to store their information. Inspector Hoerig stated they are very valid points and these are points that are part of the national conversation. Many people feel the same way. Part of the discussion has to be about education and how the data is accessed. Information cannot be accessed by querying a mosque or an abortion clinic. If someone wants to query the database, they have to articulate a legitimate law enforcement purpose that relates to the ten restrictions in the policy, e.g., looking for a missing person. Inspector Hoerig recommends the Board to come in and view the data and see how they are using it, how it is stored and how it is accessed.

Commissioner DeVougas asked if there is a way to partition the data. Inspector Hoerig stated their officers do not know from just looking at a plate whether the people inside the vehicle have committed a crime, are about to commit a crime, or were involved in a crime. They have no way to say which plate is a good plate and which one is not. By retaining the data for six months to a year, they can go back and research the plate. If six months later MPD gets a tip on a vehicle with a partial license plate number, they can put that information into their system and find that vehicle. MPD questions when the information is so stale that it cannot be useful and helpful. Law enforcement is stating six months to a year. They have no way of knowing which plate was involved in a crime. MPD has solved many crimes where through the retention of a plate, it later assisted them in resolving a homicide or a string of armed robberies.

Commissioner Cabrera asked how long MPD has been using the automated license plate readers. Inspector Hoerig informed her that MPD has been using it since August 2010. Commissioner Cabrera asked if they have information which reflects successful use of the data. Inspector Hoerig informed her that they do, along with success stories of how it has been used to solve crimes.

5. PUBLIC COMMENT:

Chris Ahmuty, Executive Director of the American Civil Liberties Union of Wisconsin (ACLU), was glad to hear Inspector Hoerig considered the ACLU’s report on the automated license plate readers and used some of their recommendations. A copy of the report was handed to the Board. The policy is not ready yet and needs more work to protect the rights of innocent citizens of the City of Milwaukee. Mr. Ahmuty stated he has concerns with section 735.30 the content and approval of the BOLO list, sample six, states “[V]ehicles that are registered to or are reasonably believed to be operated by persons who do not have a valid operator’s license or who are on the revoked or suspended list.” There are racial disparities among people who have valid driver’s licenses in Milwaukee. For a variety of reasons, African-Americans or Hispanics do not have valid driver’s licenses, or they are suspended. If all of these people are included in the BOLO list, racial disparity will be perpetuated. There is also some vagueness in the report. He is glad the Board will take some time to look into the policy before approving it.

Dr. Sarah Patch stated she appreciated the questions asked by the Board. She spoke regarding the Use of Force report. She was surprised with the gender involved in the use of force, not the disparity of the racial breakdown. The department is made up of 83 percent male and the first officer involved was a male 94 percent of the time. Dr. Brandl stated he did not have any data on the second responding officer and she would be interested to know whether there were any disparities there.

6. ADJOURNMENT:

Commissioner O’Hear moved to adjourn the meeting, seconded by Commissioner Lor. The motion carried unanimously.

The meeting concluded at 6:41 P.M.

Respectfully submitted,

Michael G. Tobin
Executive Director

MGT:cj

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