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PERSPECTIVE

LA police chief's authority to terminate bad officers is a step in the right direction



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By K. Chike Odiwe

In the Los Angeles Police Department firing an officer is not a straightforward proposition. It has become clear that what may seem like clear-cut cases of serious misconduct usually do not lead to the officers' termination. The often-criticized disciplinary system has led to outcomes where the officers involved not only keep their jobs but continue to collect paychecks.

Even officers who are no longer allowed to patrol or interact with the public maintain the privilege of being relegated to administrative duties. The Los Angeles Police Department estimates that there are nearly 70 officers who maintained their employment after being moved to an administrative role.

Most police officers are represented by unions and are covered by collective bargaining agreements. See Seth W. Stoughton, "The Incidental Regulation of Policing," 98 Minn. L. Rev. 2179, 2206 (2014) (dis-

cussing the emergence and practice of police unionization). Many police unions do not use the word "union" to describe themselves as an entity, opting instead for terms like "association" or "order." *Id.*

In 2013, the majority were covered by a collective bargaining agreement or were operating under a collective bargaining agreement that had technically expired. Brian A. Reaves, "US. Dep't of Justice, Bureau of Justice Statistics, Local Police Departments, 2013: Personnel, Policies, and Practices,"

at 15 (app. tbl.3) (May 2015), <https://www.bjs.gov/content/pub/pdf/lpd13ppp.pdf>. The likelihood of police officers being covered by a collective bargaining agreement increases with the size of the city in which the department is located. In 2013, 92% of police officers serving a population of one million people or more had collective bargaining agreements, compared to slightly less than 60% of officers serving populations of fewer than 2,500 people.

Under city rule, The Los Angeles Police Department chief must send

any officer facing termination to a three-member Board of Rights panel. These proceedings must be kept secret by state law. They often function as a mini-trial with evidence and witnesses. It is customary for the accused officer to be represented by an attorney provided by the police union, and the police department has an advocate argue their case.

The proceedings are kept secret under state law and function like a mini-trial with evidence and witnesses. The accused officers are represented by an attorney supplied by the police union, and the department sends an advocate to argue its case. An adverse issue is the fact that Los Angeles Police Department advocates are less trained than their counterparts who have law degrees and legal training.

Further, the officers can choose judgment from a panel of three civilians or two police officials and one civilian.

It should be noted that in every case over the last two years, officers facing termination or long suspensions have opted for an all-civilian panel. All-civilian panels tend to deliver more lenient decisions for the officers.

Departmental discharge decisions overturned because of inadequate investigation can lead to a perception that police officers are impossible to fire. For example, a 2013 decision overturned an officer's discharge for "alcohol abuse" and

"drinking while on-duty." *See, e.g., Labor Arbitration Decision*, No. 148286-AAA, 2013 BNA LA Supp. 148286 (Apr. 24, 2013) (De Treux, Arb.) One can see how, without context, returning an alcoholic police officer to the force would cause public outrage. However, the arbitrator overturned the discharge because the officer accepted one free beer while at a bar and "it [did] not appear that City officials made any effort to ascertain the extent, if any, of the Grievant's alcohol problem." *Id.* This case illustrates how the department's failure to investigate the circumstances behind a discharged decision can change one's impression of the reason for the result. In many instances, an inadequate investigation can lead to an unfair discharge.

An important mitigating factor consistently argued by police union advocates is that the discharged officer was treated differently than other officers who committed similar misconduct. *See, e.g., City of Youngstown*, 2011 BNA LA Supp. 119807 (Mar. 10, 2011) (Paolucci, Arb.) (citing disparate treatment in overturning officer discharge); *Labor Arbitration Decision*, No. 149300-AAA, 2011 BNA LA Supp. 149300 (Feb. 25, 2011) (Humphries, Arb.) (same). Arbitrators consider whether other officers received lesser discipline under similar circumstances. In one 2015 case, a police officer was fired after being

charged with DUI. 2015 AAA LEXIS 155 (Mar. 27, 2015) (Lowe, Arb.). The union argued that his termination was unfair because other officers who had been charged with DUI were not terminated. *Id.* at 17. The arbitrator overturned the discharge, saying "other officers within [the] County had been charged with DUI over the years and ... typically officers were not discharged for a first offense DUI." *Id.* at 32 (Alteration in middle.) Although disparate treatment is frequently argued and considered by arbitrators, it rarely succeeds in getting a discharge overturned. Discharges are likely to result from serious misconduct that has not previously occurred or that was previously disciplined by discharge. *See, e.g., Labor Arbitration Decision*, No. 148019-AAA, Grievance No. 15-2012, 2013 BNA LA Supp. 148019 (Jan. 3, 2013) (Alutto, Arb.) (discussing the potential impact of other similar cases for a disparate impact argument). It was cited as a factor in only five of the 43 decisions (11.6%) analyzed for this Note that overturned discharge. "It is possible that disparate impact is more significant in disciplinary settings that occur more frequently, but this question is beyond the scope of this Note." For an analysis of the impact of "inconsistent or discriminatory meeting out of discipline" arbitrators' decision-making, *see Cooper et. al., supra note 23, at 268-79.*

The most promising news on just officer terminations is the fact that the Los Angeles City Council voted on March 21 to allow the chief of police to terminate Los Angeles Police Department officers in the most egregious cases, in what council members hope will be a major step in the modern effort to improve the Los Angeles Police Department's discipline practices. In fact, the Council members voted 14-0 to request that the city attorney prepare an ordinance that would repeal provisions under the City Charter's Section 1070 that outlines procedures to discipline a sworn officer. This latest development will be of keen interest to Civil Rights practitioners as well as to all advocates of justice.

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