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OAKLAND

AGENDA REPORT

2014 MAY 29 AM 11:46

TO: FRED GLOVER-BLACKWELL
CITY ADMINISTRATOR

FROM: Sean Whent
Chief of Police

SUBJECT: Achieving Compliance with the
Negotiated Settlement Agreement

DATE: May 28, 2014

City Administrator
Approval

Date 5-29-14

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Staff recommends that the City Council accept this informational progress report on the Police Department's Compliance with the Negotiated Settlement Agreement (NSA) in the case of Delphine Allen v. City of Oakland, *et al*, USDC Case No. C-00-4599 TEH, including staff's response and recommendations for achieving full compliance.

BACKGROUND/LEGISLATIVE HISTORY

In 2000, plaintiffs filed Delphine Allen et al. v. City of Oakland (United States District Court Case No. C-00-4599 TEH), which commonly is referred to as the Riders case, alleging Oakland police officers violated their civil rights by planting evidence, committing perjury and using excessive force. In 2003, the City Council approved the Negotiated Settlement Agreement (NSA) to resolve the Riders case and the Court issued an order approving the NSA and retained jurisdiction to oversee compliance. The NSA required that the City institute a number of institutional reforms to improve OPD's operations and delivery of services and to assure compliance with constitutional policing standards. The Court required that the City work on compliance under the oversight of a court-appointed monitor. The parties subsequently executed a Memorandum of Understanding ("MOU") and an Amended Memorandum of Understanding ("AMOU") that superseded the NSA and reduced the number of compliance tasks required for achieving full compliance with the NSA and court orders.

In 2009, the City of Oakland selected Robert S. Warshaw/Police Performance Solutions, Inc., to serve as independent monitor for a two year period in accord with the City's contract procedures and laws and the Council approved the professional services agreement for two years in the amount of \$1,500,000. In June 2010, the Council approved an increase to the Contract with Robert S. Warshaw/Police Performance Solutions, Inc., in the amount of \$100,320 for the provision of additional technical assistance to OPD.

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In June 2011, the City Council waived advertising and competitive processes and approved a two year extension of the monitor's contract for \$1,684,000, and the Council subsequently approved a one year extension of the monitor's contract, for the period of January 21, 2014 to January 20, 2015 for \$910,000, for monitoring services related to compliance with the NSA/AMOU.

On December 12, 2012, the Court issued an Order providing for the appointment of a Compliance Director "to bring Defendants [City] into sustainable compliance with the NSA and AMOU" and further providing that the Compliance Director would report directly to the Court and serve as the Court's agent; and on March 4, 2013 the Court appointed Thomas C. Frazier as the Compliance Director (Order Appointing compliance Director, March 4, 2013, ECF No. 911; see also Order Re Compliance Director, December 12, 2012, ECF No. 885).

On February 12, 2014, the Court terminated the appointment of Thomas C. Frazier as Compliance Director and transferred all authority previously vested in Mr. Frazier to the Court-appointed Monitor, Robert S. Warsaw, until otherwise ordered (Order Modifying Compliance Oversight Model, Feb 12, 2014, ECF No. 973). The Court's February 12, 2014 Order further ordered the Monitor to discuss with the City necessary modifications to his contract as a result of the expansion of his powers and duties, including whether he needs to have a greater on-site presence and the amount of additional compensation that would be appropriate, and declared that the "Court expects the additional compensation, including travel expenses and costs associated with any assistants, not to exceed \$150,000 annually and provided that any disputes regarding the contact modifications will be resolved by the Court (Order Modifying Compliance Oversight Model Feb 12, 2014, ECF No. 973). On April 1, 2014, Council approved a contract with Warshaw & Associates, Inc. for an amount not to exceed \$165,000 - \$150,000 for compliance director services and \$15,000 to cover the cost of insurance and business license taxes.

ANALYSIS

Since January 22, 2003, the City of Oakland and the Oakland Police Department have been implementing the reforms outlined in the Negotiated Settlement Agreement with the goal of transforming the Department into a model agency with superior police practices. The Department has striven to implement such practices in the areas of supervision, accountability, police intervention programs, use of force, and administrative investigations.

The original Agreement reform provisions were separated into 52 tasks for implementation, delegation, and tracking purposes (only 51 were assessed for actual practice compliance – the 52nd task dealt with contractual housekeeping provisions). By the end of the seven-year tenure of the previous monitor, the Department was in full compliance with 32 of the 51 required Tasks, and in partial compliance with 16 additional Tasks. As a result, the Parties agreed to reduce the number of Tasks under "active" monitoring to the current list of 22. A Memorandum of Understanding (MOU) succeeded the Agreement, requiring continued, but more narrowly

focused, oversight. The MOU focuses on the 22 tasks that were not yet in full compliance and/or were considered to be the most critical tasks when the Agreement expired.

The Monitor is charged with conducting audits of NSA tasks and assessing the Department's compliance levels. In order to achieve full compliance, two phases of compliance must be satisfied: (1) policy, and (2) actual practice ("implementation"). Compliance with policy requirements is known as Phase 1 compliance, and the Department achieves it when it has promulgated appropriate policies and trained relevant Department members or employees in their content. Implementation-level compliance is reported as Phase 2 compliance. In general, to achieve full compliance, the Department must achieve both Phase 1 and Phase 2 compliance; that is, an appropriate policy must be adopted, trained to, and operationally implemented. The Monitor's conclusions with regard to Phase 1 or Phase 2 compliance fall into the following categories:

- **In compliance:** This is reported when policy requirements are met (Phase 1) or effective implementation of a requirement has been achieved (Phase 2).
- **Partial compliance:** This is reported when at least one, but not all, requirements of a Task have achieved compliance, showing progress toward full compliance. Tasks will remain in partial compliance as long as the Monitor determines there is continued progress toward reaching substantial, or full, compliance.
- **Not in compliance:** This is reserved for instances where partial compliance has not been achieved and no progress has been made.

As of the last reporting period (Seventeenth Quarterly Report of the Independent Monitor for the Oakland Police Department), the Monitor once again found the Department in Phase 1 compliance with all 22 of the remaining active Tasks. The Department is in Phase 2 compliance with 16 of the 22 active Tasks and in partial compliance with six (6) Tasks (**Attachment A - 17th Quarterly Report of the Independent Monitor Compliance Chart**). This report shows an increase in compliance levels by two (2) Tasks from the sixteenth reporting period, and represents the Department's *highest level of compliance* since the implementation of the NSA. The following section summarizes the Department's efforts to achieve full compliance with the remaining six (6) partially compliant Tasks.

Task 20 – Span of Control for Supervisions

The Department is in compliance with all subtasks of Task 20 with the exception of Task 20.2, Task 20.3, and Task 20.4.

Task 20.2 requires that relevant squads – Patrol squads, Problem-Solving Officer units, Crime Reduction Teams, Gang/Guns Investigation Task Force, and Foot Patrol – are supervised by their primary or relief sergeant for at least 85% of their working shifts.

The Monitor considers supervision by both primary sergeants and relief sergeants as in compliance for this subtask. The Monitor does not consider OPD's "certified acting sergeants" to be legitimate supervisors for this purpose. The Monitor's methodology in this case requires that every Task 20.2-applicable squad must be supervised by a legitimate primary or relief sergeant at least 85% of its working shifts in order for the Department to be in compliance with this subtask. During the last reporting period, the Monitor found 25 of 42 applicable squads in compliance with this subtask. Therefore, the Department was not in compliance with Task 20.2.

The Department promoted 23 sergeants in January, and continues to promote officers as openings arise in the sergeant's ranks. There are currently three sergeants assigned for every two relevant squads. Although the Department is not yet in compliance, the increase in sergeants assigned to field units in January appears to be improving compliance.

Additionally, the Department no longer uses certified acting sergeants to supervise the relevant squads with exceptions made for rare, exigent circumstances. This practice is reflected in revised Department General Order (DGO) D-13.1, "*Assignment to Acting Sergeant of Police.*" The revised policy was finalized and approved on May 20, 2014. The Department is also in discussions with the Monitor regarding a change in the methodology used to determine compliance for this subtask.

Task 20.3 requires that a supervisor's span of control for the Department's relevant squads – Patrol squads, Problem-Solving Officer units, Crime Reduction Teams, Gang/Guns Investigation Task Force, and Foot Patrol – does not exceed a 1:8 ratio on a day-to-day basis (compliance standard: 90%).

The Monitor's methodology for determining compliance for this subtask is similar to the methodology used for subtask 20.2. All applicable squads must be supervised by a primary or relief sergeant, and they must not exceed the ratio of one sergeant to eight officers 90% of the time. During the last reporting period, the Monitor found 16 of 42 applicable squads in compliance with this subtask. Therefore, the Department was not in compliance with Task 20.3.

Task 20.2 and Task 20.3 are closely related for a finding of compliance. The Department's response is listed in the section for Task 20.2.

Task 20.4 requires that the Department's Area Commanders make backfill decisions and that these decisions be consistent with policy and operational needs (compliance standard: 90%). Due to the Department's new supervisory structure, the Monitor believes that this subtask may no longer be applicable. For now, the Monitor has deferred a compliance determination with Task 20.4.

The Department's response is deferred, pending Monitor's compliance determination.

Tasks 26 & 30 – Force Review Board (FRB) & Executive Force Review Board (EFRB)

The Department is in compliance with all subtasks of Task 26 with the exception of Task 26.2 and Task 26.3.

Task 26.2 requires that for every Level 2 use of force investigation, the FRB make a recommendation as to whether the use of force was in or out of policy (compliance standard: 95%).

In the Seventeenth Quarterly Report, the Monitor expressed concerns regarding two FRBs. One of the FRBs involved a premature finding of compliance. Despite a determination that additional investigation was necessary to complete the review process, the FRB found the use of force to be in compliance. For the second FRB noted in the Monitor's report, the investigator provided an explanation for an officer's lack of providing commands to a suspect before using his Taser. However, the Board did not address this issue with the investigator during the formal process or in the FRB report. The Monitor believes that boards should more aggressively address the issue of investigators including justification for the involved officers' actions as part of their presentations.

Task 26.2, Task 26.3, and Task 30.3 are closely related for a finding of compliance. The Department's response is listed in the section for Task 30.3.

Task 26.3 requires that all FRB determinations where a use of force is out of compliance with OPD policy be forwarded to the Internal Affairs Division for disposition (compliance standard: 95%). The Monitor found that of the eight incidents that were heard by the board during the seventeenth reporting period, two events were found out of compliance when the Chief disagreed with the FRB's finding, thereby requiring a referral to IAD that was not appropriately documented in the FRB reports provided. OPD is not in compliance with this subtask.

Task 26.2, Task 26.3, and Task 30.3 are closely related for a finding of compliance. The Department's response is listed in the section for Task 30.3. The Department is in compliance with all subtasks of Task 30 with the exception of Task 30.3.

Task 30.3 requires that OPD complies with the policies and procedures set forth in DGO K-4.1, “*Force Review Boards*” (compliance standard: Yes/No).

The Monitor observed during recent site visits and technical assistance visits for the period covered by the Seventeenth Quarterly Report that the board’s informality and lack of structure was not consistent with the conduct of a review process of this nature. Accordingly, the Department was not in compliance with this subtask.

To address the aforementioned issues for Tasks 26 and 30, the Department held numerous discussions with the Monitor. These discussions have resulted in a change to the structure and procedures governing the FRB and EFRB. The Department has also revised DGO K-4.1, “*Force Review and Executive Force Review Boards*.” The revised policy was finalized and approved on May 20, 2014. The Monitor has observed several boards since the changes were implemented and has provided favorable feedback.

Task 34 – Vehicle Stops, Field Investigation, and Detentions

The Department is in compliance with all subtasks of Task 34 with the exception of Task 34.3.1.

Task 34.3.1 requires that OPD have a stop data database that can be summarized, searched, queried, and reported by personnel authorized by OPD (compliance standard: Yes/No).

The Monitor meets with OPD personnel responsible for data collection and analysis on a monthly basis, during technical assistance and site visits. The Monitor has found that the Department’s revisions to policies and additional training have resulted in the collection of what appears to be accurate data since April 2013. The Monitor noted that the data is being organized into tables and graphs depicting – both globally and by district – the breakdown of stops, reasons for the stops and resulting actions taken, including searches, the results of searches and arrests and other actions.

The Monitor has been waiting for OPD to issue its first report, which the Department released in March. The Monitor noted that OPD now must carefully review the data and analysis to identify any disparities of treatment between the several population groups to “address, resolve and reduce...incidents of racial profiling or biased-based policing” should any be found. The Monitor is encouraged by the progress made during recent reporting periods; however OPD is not in full compliance with Task 34.3.1.

The Department is in the process of hiring a Subject Matter Expert (SME) and staff from Stanford University to analyze the data and provide recommendations.

Task 40 – Personnel Assessment System (PAS) – Purpose

Task 40 requires OPD to have a fully implemented, computerized, relational database for maintaining, integrating and retrieving data necessary for supervision and management of OPD and its personnel.

The Monitor found OPD to be in partial Phase 2 compliance with Task 40 due to issues related to data problems. Arrest data problems persisted through a substantial part of the seventeenth reporting period, thus supporting a continued finding of partial compliance.

The Department has fully implemented the automatic import of arrest data. During the Monitor's next review, the new system of data recording will have been in place for the full reporting period. That will permit a full assessment of the process as part of the compliance review.

The Department continues to work towards developing the IPAS2 system, which is expected to bring stability and efficiency to data and process management.

Task 41 – Use of Personnel Assessment System (PAS)

Task 41 requires that OPD develop a policy for use of the system, including supervision and audit of the performance of specific members, employees, supervisors, managers, and OPD units, as well as OPD as a whole. This requirement addresses the effectiveness of the use of PAS to manage risk in the Department.

In the Seventeenth Quarterly Report, the Monitor noted that the Department dealt with a complicated agenda of risk management issues. Significant policy changes occurred, new data processes were finalized and implemented Department-wide, the Risk Management Unit came under new leadership, and work toward a new risk management database was completed. The outcome of all of this effort is, as yet, unclear to the Monitor. The Monitor looks forward to resolving these concerns in their next review of both the technical and applied dimensions of the risk management process. Therefore, the Department is in partial, Phase 2 compliance with Task 41.

The Department revised and issued DGO D-17, "Personnel Assessment System," in November 2013. This new policy has streamlined and provided consistency to the PAS review process. The Department is also holding monthly Risk Management Meetings, at which police risk data for a selected area are reviewed with executive command and area commanders.

PUBLIC OUTREACH/INTEREST

Through the allocation of significant resources and the commitment by Oakland Police Department staff, the reforms outlined in the NSA are being implemented, and have already

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become part of OPD's policies and training. The NSA reforms are a critical component of improved community-police relations, with an emphasis on sound police practices, police integrity, and professionalism.

The City and OPD continue to reach out to community stakeholders to improve implementation of the police reforms and increase mutual understanding of the community's public safety needs and the Department's responsibilities in delivering police services that are constitutional and reflect best practices in the field of law enforcement.

COORDINATION

The Federal Court has ordered the Compliance Director to assist the City with the final implementation of the NSA through the AMOU. The Budget Office, Office of the City Attorney, and the City Administrator's Office were consulted in their respective fields in preparation of this report.

COST SUMMARY/IMPLICATIONS

This is an informational report on the Police Department's progress toward implementing the remaining active Tasks and achieving full compliance with the NSA.

SUSTAINABLE OPPORTUNITIES

Economic: The NSA provides for the implementation of reforms within the police department. These reforms reflect the best practices and procedures for police management in the areas of supervision, use of force, professionalism, and accountability mechanisms. A highly professional police organization that closely supervises and monitors police activities increases public confidence, improves public relations with the community, and reduces liability and risk for the City.

Environmental: No environmental opportunities have been identified.

Social Equity: The police reforms the City is instituting will enhance the Police Department's ability to provide highly professional services in ensuring the public safety of the residents of Oakland.

Fred Glover-Blackwell, City Administrator

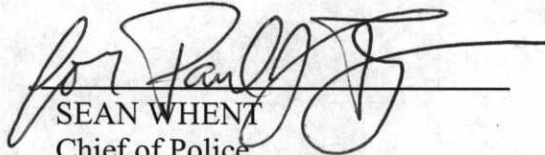
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For questions regarding this report, please contact Lieutenant A. Souza, Office of Inspector General, Oakland Police Department, at (510) 238-3533.

Respectfully submitted,



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Oakland Police Department

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Attachment A – 17th Quarterly Report of the Independent Monitor Compliance Chart

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ATTACHMENT A

Case3:00-cv-04599-TEH Document979 Filed04/28/14

Seventeenth Quarterly Report of the Independent Monitor
for the Oakland Police Department
April 28, 2014

Task	Phase 1: Policy and Training	Phase 2: Implementation			
	In Compliance	In Compliance	Partial Compliance	Not in Compliance	Deferred
Task 2: Timeliness Standards and Compliance with IAD Investigations	√	√			
Task 3: IAD Integrity Tests	√	√			
Task 4: Complaint Control System for IAD and Informal Complaint Resolution Process	√	√			
Task 5: Complaint Procedures for IAD	√	√			
Task 6: Refusal to Accept or Refer Citizen Complaints	√	√			
Task 7: Methods for Receiving Citizen Complaints	√	√			
Task 16: Supporting IAD Process - Supervisor/ Managerial Accountability	√	√			
Task 18: Approval of Field-Arrest by Supervisor	√	√			
Task 20: Span of Control for Supervisors	√		√		
Task 24: Use of Force Reporting Policy	√	√			
Task 25: Use of Force Investigations and Report Responsibility	√	√			
Task 26: Force Review Board (FRB)	√		√		
Task 30: Executive Force Review Board (EFRB)	√		√		
Task 33: Reporting Misconduct	√	√			
Task 34: Vehicle Stops, Field Investigation, and Detentions	√		√		
Task 35: Use of Force Reports – Witness Identification	√	√			
Task 37: Internal Investigations - Retaliation Against Witnesses	√	√			
Task 40: Personnel Assessment System (PAS) – Purpose	√		√		
Task 41: Use of Personnel Assessment System (PAS)	√		√		
Task 42: Field Training Program	√	√			
Task 43: Academy and In-Service Training	√	√			
Task 45: Consistency of Discipline Policy	√	√			
<i>Total Tasks</i>	22	16	6	0	0