

**MINUTES
CITY OF FORT MYERS
CITIZENS POLICE REVIEW BOARD
July 14, 2020**

The Citizens Police Review Board of the City of Fort Myers, Florida, met in regular session at Oscar M. Corbin, Jr. City Hall, 2200 Second Street, its regular meeting place in Fort Myers, Florida, on Tuesday, July 14, 2020, at 5:30 p.m. Present were presiding Robert W. Votaw, Jr., Chair, Erma Boyd-Dorsey, Vice Chair, Forrest H. Banks, Danielle L. O'Halloran, Esquire, Michele Parker and Shawn T. Walker, Board Members. Also present were Grant W. Alley, City Attorney and Wendy J. White, Recording Specialist. Absent: Gwen Carlisle, MMC, City Clerk, Board Administrator.

Chair Votaw led the Pledge of Allegiance to the Flag of the United States of America.

PUBLIC INPUT

None

OLD BUSINESS

None

NEW BUSINESS/APPEARANCES

Lieutenant Jason Pate provided a presentation and overview of the training provided to Fort Myers Police Department Officers over the past three years. Major Newhouse provided the board with a copy of the Internal Affairs Bureau's Standard Operating Procedures.

1. **Minutes of March 10, 2020**

Chair Votaw stated that the minutes of the regular meeting held on March 10, 2020, were delivered to the Board Members. It was moved by Board Member Banks and seconded by Board Member Parker to approve the minutes of March 10, 2020. A roll call vote was taken as follows: Banks – Aye; Boyd-Dorsey – Aye; O'Halloran – Aye; Parker – Aye; Votaw – Aye; and Walker - Aye. Motion was unanimously carried.

REQUESTS

Board Member Banks requested to move Case No. Prelim 2020-006 and Case No. Prelim 2020-010 from the Consent Agenda for discussion.

CONSENT AGENDA

2. **Case No. Prelim 2019-003**

Policy Related to Complaint: Alleged Complaint: Harassment

Complainant: Clem Gloster

Officers: Officer Chad Barnett

Officer Brandon Birch

Officer Miguel Hernandez

Internal Affairs Disposition: No Policy Violation

Discipline: None

Investigator: Lieutenant Brian O'Reilly

3. **Case No. Prelim 2020-004**

Policy Related to Complaint: Alleged Complaint: Performance of Duty

Complainant: Regina Williams

Officer: Officer Kyle Martins

Internal Affairs Disposition/Finding: No Policy Violation

Discipline: None

Investigator: Sergeant Dan Losapio

CONSENT AGENDA (CONTINUED)

4. **Case No. Prelim 2020-005**

Policy Related to Complaint: Alleged Complaint: Harassment

Complainant: John'Keria Massey

Officers: Officer Brandon Birch

Officer Harrison Williams

Internal Affairs Disposition: No Policy Violation

Discipline: None

Investigator: Captain Joshua Steinman

6. **Case No. Prelim 2019-007**

Policy Related to Complaint: Alleged Complaint: Performance of Duty

Complainant: Lorelle Justice

Subject Officers: Officer Ivan Caffroni

Internal Affairs Disposition: No Policy Violation

Discipline: None

Investigator: Sergeant Dan Losapio

7. **Case No. Prelim 2019-008**

Policy Related to Complaint: Alleged Complaint: Standard of Conduct

Complainant: Jeremy Berman

Officers: N/A

Internal Affairs Disposition: No Policy Violation

Discipline: None

Investigator: Lieutenant Brian O'Reilly

8. **Case No. Prelim 2019-009**

Policy Related to Complaint: Alleged Complaint: Harassment

Complainant: David Williams

Subject Officers:

Officer Jimmy Hernandez

Officer Yanny Morales

Internal Affairs Disposition: Judicial

Discipline: None

Investigator: Sergeant Dan Losapio

CONSENT AGENDA (CONTINUED)

10. **Case No. Prelim 2019-011**

Policy Related to Complaint:

Alleged Complaint: Performance of Duty

Complainant: Rosalee Wilson

Officers:

Officer Joshua Kuhl

Officer Anthony Townsend

Officer Luke Walsh

Internal Affairs Disposition: No Policy Violation

Discipline: None

Investigator: Sergeant Daniel Morency

11. **Case No. Prelim 2020-012**

Policy Related to Complaint: Alleged Complaint: Performance of Duty

Complainant: Latoya Gilmore

Officer: Officer Bensly Melidor

Internal Affairs Disposition: No Policy Violation

Discipline: None

Investigator: Sergeant Dan Losapio

12. **Case No. Prelim 2020-013**

Policy Related to Complaint: Alleged Complaint: Performance of Duty

Complainant: Rodney White

Officers:

Officer Michael Luna

Officer Ryan Beiner

Internal Affairs Disposition: No Policy Violation

Discipline: None

Investigator: Sergeant Daniel Morency

13. **Case No. Prelim 2020-014**

Policy Related to Complaint: Alleged Complaint: Harassment

Complainant: Shaquita Hutto

Officers:

Officer David Gaide

Officer Matthew Sellers, Jr.

Officer Jari Sanders

Officer James Moschella

Officer Miguel Hernandez

Officer Zachary Ross

Officer Brandon Birch

Lieutenant Nichole Green

Deputy Chief Randall Pepitone

Internal Affairs Disposition: No Policy Violation

Discipline: None

14. **No. Prelim 2020-018**

Policy Related to Complaint: Alleged Complaint: Not Abiding by the Law

Complainant: Warren Williams

Officer: Unknown

Internal Affairs Disposition: Insufficient Evidence to Investigate

Discipline: None

Investigator: Lieutenant Brian O'Reilly

It was moved by Board Member Banks and seconded by Board Member Boyd-Dorsey to approve the Consent Agenda. A roll call vote was taken as follows: Banks -Aye; Boyd-Dorsey - Aye; O'Halloran – Aye; Parker – Aye; Votaw – Aye; and Walker - Aye. Motion was unanimously carried.

ITEMS REMOVED FROM CONSENT AGENDA – NON-MANDATORY REVIEW BY BOARD

5. **Case No. Prelim 2020-006**

Policy Related to Complaint: Alleged Complaint: Performance of Duty

Complainant: Howard Hawkins

Officer: Officer Manuel Massa

Internal Affairs Disposition: No Policy Violation

Discipline: None

Investigator: Sergeant Dan Losapio

Sergeant Dan Losapio gave the disposition of the case.

Councilperson Banks asked how the Police became involved with a custody exchange of a child between an ex-husband and ex-wife, as the circumstances went beyond what was called upon. Sergeant Losapio responded that the young lady asked for a security escort for a custody exchange and the ex-husband did not like the fact that his ex-wife took the steps to call the police to be an escort.

It was moved by Board Member Banks and seconded by Board Member Walker to accept the findings of the police department. A roll call vote was taken as follows: Banks -Aye; Boyd-Dorsey - Aye; O'Halloran – Aye; Parker – Aye; Votaw – Aye; and Walker - Aye. Motion was unanimously carried.

9. **Case No. Prelim 2020-010**

Policy Related to Complaint:

Alleged Complaint: Improper Driving

Complainant: Devin Hotsko

Officers: Undetermined

Internal Affairs Disposition: No Policy Violation

Discipline: None

Investigator: Sergeant Daniel Morency

Sergeant Dan Losapio provided an overview of the case and stated that Sergeant Daniel Morency was not present. Councilperson Banks stated that the complainant provided two police car numbers and asked if they were valid. Sergeant Losapio noted that no times or date were provided in the report.

It was moved by Board Member Banks and seconded by Board Member Boyd Dorsey to accept the findings of the police department. A roll call vote was taken as follows: Banks -Aye; Boyd-Dorsey -Aye; O'Halloran – Aye; Parker – Aye; Votaw – Aye; and Walker - Aye. Motion was unanimously carried.

MANDATORY REVIEW BY BOARD

15. Case No. Admin 2019-001*

***Continued Case from the March 10, 2020 Meeting; Voted for Full Review at the September 10, 2019 meeting**

Policies Related to Complaint:

- (a.) 9.1 General Rules of Conduct Section VI Police/Community Relations (E): Overreacting
- (b.) 9.1 General Rules of Conduct Section II (A) (21): Conduct Toward the Public

Complainant: Blanca Briones

Officers: Officer Jimmy Hernandez (a.)(b.)

Internal Affairs Disposition:

- (a.) Exonerated
- (b.) Unfounded

Discipline: (a.) None (b.) None

Investigator: Lieutenant Brian O'Reilly

Lieutenant Brian O'Reilly gave the disposition of the case.

Chair Votaw stated that this was an incident that occurred in an apartment development where officers were attempting to execute a warrant on a young man who was in the apartment; the warrant was a failure to appear for driving with a suspended driving license.

Board Member O'Halloran asked if the Board viewed all four videos. The Board confirmed that they listened to all of the body cam videos. She noted that it was Officer Hernandez that escalated the situation and she understands that when the police appear to serve a warrant, the police are prepared with certain mindsets, as you never know what is going to happen. Board Member O'Halloran stated from what she read of the policies, part of the duty of a police officer is to de-escalate a situation, and that is not what she saw.

Board Member Parker stated that she watched all four videos, and it appeared that Officer Hernandez caused a little more turmoil and she noted that Ms. Briones had said she had known him from outside of the situation. Board Member Parker further noted that Lieutenant Pate spoke of a program to break bad communication habits and suggested this would be a program that would help Officer Hernandez. She further expressed her concern for the child and noted that the Fort Myers Police Department was developing a program to mentor and help the youth of the City and she thought he was a good candidate for the program.

Board Member O'Halloran added that Officer Hernandez had noted that he was going to arrest her for obstruction, and she felt that was an over-reaction, and based on the language of the General Order was not appropriate. Board Member O'Halloran read the General Order, which states, employees shall not over-react when working and noted it was over-reacting if they would have arrested Ms. Briones for obstruction of justice. She felt officers should not use harsh language, unjustified use of force, and not escalate the situation.

Chair Votaw stated that he agreed, and he felt that the officer overreacted, and he felt Ms. Briones seemed to put her forearm up to try to stop them from entering. She challenged the number of officers at her apartment and asked to see the warrant when she already

knew there was a warrant. Board Member Walker asked whether she could ask to see the warrant. Lieutenant O'Reilly stated she can ask to see the warrant, only if it was a search warrant. Lieutenant O'Reilly noted arrest warrants are held at the Lee County Jail. Board Member O'Halloran stated that one can go on your computer and pull it up. Lieutenant O'Reilly stated that they cannot pull up the actual language in the warrant, as it is highlighted in red, violation of probation. Lieutenant O'Reilly stated that from the officer's perspective, once they see that someone has a warrant, they have no choice, they have to bring them in, whether it is valid or not valid.

Lieutenant O'Reilly mentioned another case, where a mistake happened, the goal is to try to de-escalate a situation without using certain words; it could have been handled differently. Board Member Walker stated as a trained officer you have to deescalate every situation. Chair Votaw noted that she said she had a 6-year minor child inside. Chair Votaw recommended that Lieutenant Pate review this case, as it might help in his training. Board Member O'Halloran stated that he made that threat, and Chair Votaw agreed that he felt that he overacted as well. Board Member Banks stated that counseling was suggested by the two officers who reviewed the case, and it didn't go very far. Lieutenant O'Reilly stated that the sole decision rests on the Chief of Police. Board Member Banks agreed. Board Member Walker stated that the Board can make a recommendation, to go back to the Chief, and say that we would recommend that he has counseling and something else come of this.

Chair Votaw stated that he recommended the following: Result - Other findings. He stated he was more concerned about the two officers that were being trained, rather than Officer Hernandez. although he was the one that instigated the confrontation, and he is hoping that by determining "Other findings," experience in the field will help determine how one reacts in different situations, especially new officers.

Board Member Banks stated that he understands that Officer Hernandez is a very good police officer, and someone should talk to him before the next time he gets in a situation like this, as he did not want anything on his record. Lieutenant O'Reilly stated that in every profession people have bad days.

Major Newhouse stated that the Deputy Chief met with the officer and spoke with him specifically about some of the things that the Citizens Police Review Board brought up. Board Member Banks stated that it was one of those little things that needed to be dealt with and he appreciated all the hard work of the police department. Board Member O'Halloran stated that there could have been other ways to de-escalate the situation and provided examples on better terminology that Officer Hernandez could have used to be more helpful in the situation to reassure the mother that although her son is being taken to jail, they will do everything they can to make sure he feels safe. Board Member O'Halloran stated it was a time and a place for compassion, once they figured out she was being compliant.

Lieutenant O'Reilly discussed that police training includes constantly reviewing new training videos, as the police are getting ambushed all over the country on almost a nightly basis. The police watch videos and see people come out of their bedrooms with guns over relatively minor issues; they are trained to always watch the person, as you have to expect the unexpected. Board Member O'Halloran agrees with that as she definitely had sad cases where officers responded to incidents and have gotten stabbed and harmed because they turned their back for one moment. She stated that maybe all that was needed to be done was to communicate why the officer had to keep his eyes on him; no disrespect to your son, it is his training.

Lieutenant O'Reilly stated that the police officers are constantly learning in this line of work and hopes that this is a learning tool for the officer that he would have a different approach in a similar situation.

MOTION

It was moved by Board Member Banks and seconded by Chair Votaw to accept the findings of the police department. A roll call vote was taken as follows: Banks - Aye; Boyd-Dorsey - No; O'Halloran - No; Parker - No; Votaw - Aye; and Walker - No. Motion failed 2-4.

Additional Discussion

Board Member O'Halloran asked City Attorney Alley to confirm her understanding that the Citizens Police Review Board have the option to vote to make a recommendation to the Chief of Police, and four options to choose from: 1) approve 2) disapprove 3) modify or amendment 4) ask for additional information, additional investigation or reinvestigation.

City Attorney Alley confirmed that the options are: 1) recommendation for approval 2) recommendation for disapproval 3) recommendation for modification or amendment or a 4) recommendation for additional information or addition investigation or reinvestigation, noting that it would have to comply with the Police Officer Law Officer Bill of Rights, Chapter 112. He confirmed that Board Member O'Halloran correctly stated the four options.

Board Member Walker stated that the initial recommendation included policy review and verbal counseling and she stated that she would approve of either of that go into record; or on his record. Board Member O'Halloran asked Major Newhouse, that in order for that even to happen, would there have to be a modification or recommendation to the disposition, if the Board recommended additional counseling unless he is sustained.

Major Newhouse stated the Board would make a recommendation to the Chief, and it would be up to the Chief if he chooses to modify his original findings, as it has to be within the Bill of Rights. Board Member O'Halloran asked if somebody is exonerated or unfounded, can the Chief still say, listen I am going to find this unfounded, but I am going to have to ask that you go to counseling. Major Newhouse stated not necessarily counseling but training, as under their policy, counseling is a form of discipline, a very low form. He stated that if the Chief wanted to, he may say not sustained or unfounded, but he may still recommend training, and the proper way to say that is "other" that training would apply. Board Member O'Halloran stated that is what she would vote for; a recommendation for a modification or amendment in that we are asking for training; we think that there should be some training in verbal judo. Board Member Parker stated that "verbal judo" equated with "breaking bad communication" in Lieutenant Pate's training presentation.

MOTION

It was moved by Board Member O'Halloran and seconded by Board Member Walker to provide a recommendation to the Chief of Police to modify or amend the Internal Affairs Disposition that Officer Jimmy Hernandez receive; Other: Retraining on effective communication with civilians. A roll call vote was taken as follows: Banks -Aye; Boyd-Dorsey - Aye; O'Halloran – Aye; Parker – Aye; Votaw – Aye; and Walker - Aye. Motion was unanimously carried.

NON-MANDATORY REVIEW BY BOARD

16. Case No. Admin 2019-022

Policies Related to Complaint:

- (a.) 9.1 General Rules of Conduct Section II (8) Performance of Duty
- (b.) 25.3 Mobile Video/Audio Recording Equipment Section IV (A)

Complainant: Joseph Barros

Sergeant Dan Losapio

Officers: Officer John Kuhl

Internal Affairs Disposition:

- (a.) Sustained
- (b.) Sustained

Discipline:

- (a.) Counseling
- (b.) Counseling

Investigator: Sergeant Dan Losapio

Sergeant Dan Losapio gave the disposition of the case.

Chair Votaw stated that the complainant misplaced the license and got it to him the next day. Sergeant Losapio stated that the body cam lens has a fisheye view and you can see all that the new officer went through in this case.

It was moved by Board Member Banks and seconded by Board Member Walker to accept the findings of the police department. A roll call vote was taken as follows: Banks -Aye; Boyd-Dorsey - Aye; O'Halloran – Aye; Parker – Aye; Votaw – Aye; and Walker - Aye. Motion was carried.

NON-MANDATORY REVIEW BY BOARD (CONTINUED)

17. Case No. Admin 2019-023

Policies Related to Complaint:

- (a.) 9.1 General Rules of Conduct Section VI (L) Harassment
- (b.) 9.1 General Rules of Conduct Section II (21) Conduct Toward the Public

Complainant: Daniel Perez

Officer: Officer Martin Davila

Internal Affairs Disposition:

- (a.) Unfounded
- (b.) Exonerated

Discipline:

- (a.) None
- (b.) None

Investigator: Sergeant Dan Losapio

Sergeant Dan Losapio gave the disposition of the case.

Board Member O'Halloran stated that the officer was trying to give her a break, however, she obviously did not hear it that way. Board Member O'Halloran stated that the woman was just arguing about the traffic, which traffic patrol officers receives all the time; and further noted that the officer was trying to be nice, but it went over her head, and then she thinks he got angry.

Chair Votaw stated her husband thought it was harassment, however, asking for an address verification is an example of standard questions that officers need answers to. Sergeant Losapio clarified that the Officer asked her for the documents at the beginning, and she did not hear it, the decision has already been made. Sergeant Losapio further stated that asking those questions are not harassment, as officers need to make sure that an address is up to date in the driving license.

It was moved by Vice Chair Boyd-Dorsey and seconded by Board Member Parker to accept the findings of the police department. A roll call vote was taken as follows: Banks -Aye; Boyd-Dorsey - Aye; O'Halloran – Aye; Parker – Aye; Votaw – Aye; and Walker - Aye. Motion was unanimously carried.

18. Case No. Admin 2019-024

Policies Related to Complaint: 25.2 Police Vehicle Management & Assignments
Section II Proper Use and Care (A1)

Complainant: David Cunningham

Officers: Sergeant Albert Antonini

Internal Affairs Disposition: Not Sustained

Discipline: None

Investigator: Lieutenant Brian O'Reilly

It was moved by Board Member Banks and seconded by Board Member Walker to accept the findings of the police department. A roll call vote was taken as follows: Banks -Aye; Boyd-Dorsey - Aye; O'Halloran – Aye; Parker – Aye; Votaw – Aye; and Walker - Aye. Motion was unanimously carried.

19. Case No. Admin 2019-026

Policies Related to Complaint: 9.1 General Rules of Conduct Section II (21) Conduct
Toward the Public

Complainant: Lauran VanMeter

Officer: Officer Kendall Schaefer

Internal Affairs Disposition: Not Sustained

Discipline: None

Investigator: Captain Joshua Steinman

Captain Joshua Steinman gave the disposition of the case.

Board Member O'Halloran stated that her initial issue was understanding when the observation period started when the complainant went to the bathroom, and her explanation was how she was told to do it. Captain Steinman stated that she could have given her the opportunity to go the bathroom and give her the 20-minute observation after that, but she chose not to.

Board Member O'Halloran asked Captain Steinman to verify that is how they are trained, not to let these people go to the bathroom if they want to or if they have to. Captain Steinman stated that a lot of times the Officer gets that excuse, they want to prolong the process, consequently the officers try to expedite the 20 minutes and get them into the facility. However, he is sure that if the person wanted to use the facilities, they are allowed to use the facilities and the 20-minute observation period is started after the individual uses the facilities.

Board Member O'Halloran agreed and stated she hoped that is the training the Officers receive, and she does not know whether the complainant had to go the bathroom or not, as there seems to be some discrepancy with other witnesses about whether or not she urinated on the floor; she seems to be the only one that says that.

Captain Steinman stated from his interviews with the core facilities and correctional staff, typically if someone soils themselves, they will provide the person with a jumpsuit, and will wash the clothes for them; so when they bond out they will have fresh clothes. Board Member O'Halloran pointed out that that Ms. Schaeffer is the subject of two of the cases, and in both cases, the allegations are that she is rude.

It was moved by Board Member Banks and seconded by Board Member Parker to accept the findings of the police department. A roll call vote was taken as follows: Banks -Aye; Boyd-Dorsey - Aye; O'Halloran – Aye; Parker – Aye; Votaw – Aye; and Walker - Aye. Motion was unanimously carried.

20. **Case No. Admin 2019-027**

Policies Related to Complaint:

- (a.) 24.2 Bias Based Policing/Discriminatory Profiling Section I (A) Bias-Based/Racial Profiling
- (b.) 25.3 Mobile Video/Audio Recording Equipment Section IV (A) Body Worn MVR Operating Procedures

Complainant: Marc Alan Wright

Officer: Officer William Schettino

Internal Affairs Disposition:

- (a.) Unfounded
- (b.) Sustained

Discipline:

- (a.) None
- (b.) Retraining

Investigator: Sergeant Dan Losapio

Sergeant Dan Losapio gave the disposition of the case. He noted that Mr. Wright was arrested for loitering and the initial concern was that it was two unmarked officers in plain clothes that alerted Officer Schettino to check on him. Regarding the biased based allegation, it was unfounded by Chief Diggs, and his body camera allegation was sustained.

Chair Votaw stated that this is a case that the gentleman was loitering, one individual officer, in the area, and two of the officers were watching that area, and so they radioed the other officer to also keep their eye on him. They did stop him, and the gentleman could not say where he lived there.

Board Member Parker asked to clarify the question that there is a red light on the backpack, and asked whether it meant something, for example, was it a symbol. Sergeant Losapio stated that was from the complainant, the red light on his backpack was his way of saying, he wasn't loitering or prowling, as he rides a scooter and keeps a red light on his backpack. The officer was saying, there was suspicious behavior, and Mr. Wright stated there was no suspicious behavior by him, did you notice the red light on my backpack. Board Member Walker stated he was basically saying he was being seen with the red light of the backpack and there was no suspicious behavior.

Board Member Walker noted on Page 9; the purpose of the undercover was to catch the person committing burglaries in the act and emphasized that he was not doing anything and he was not in the act; he was walking or talking.

Sergeant Losapio stated that the officers thought he was about to commit a burglary. Ms. Parker stated that wouldn't they want to wait and watch him longer if they wanted to see him in the act. Sergeant Losapio, stated, no, he would hope that they wouldn't wait for the burglary to be committed, that's why they utilized the loitering and prowling statute, because that would be specific to what those behaviors were.

Board Member Parker stated that she would think that if you see someone, and think they are doing something, that maybe that they would watch for them cause he could be our guy, as they reported lot of things were happening in that area. Sergeant Losapio, stated that the officers were there specifically because of the type of criminal activity that had been taken place. He stated that if they see a person standing on a corner late at night, he may be a lookout for somebody committing a burglary. Sergeant Losapio noted that there might be suspicious activity that they wanted to check out, for example, maybe he has committed a burglary, and maybe all the change in the pocket is because he went through everyone's ashtrays and cars, there is just no way to determine.

Discussion ensued on the police interpretation and response to the complainant's behavior and questions why the police did not verify the phone number and address the complainant provided. Board Member O'Halloran emphasized whether they knew if he ever committed a crime and further asked that despite his claims that he did not want to answer questions, he continued to tell the police and explain that he only lived in the area a short while and he asked the officer if he can call the apartment owner to confirm his residence; Board Member O'Halloran asked if was ever done. Sergeant Losapio stated that he did not think the officer did that or allowed him to do that. Board Member O'Halloran stated that if a person explained that he lived there, why did the police not take the opportunity to verify whether the complainant was saying was true.

Sergeant Losapio stated there were other factors to consider which led to an arrest and further explained that is the reason this case is judicial. Board Member Walker stated his concerns that when a case is judicial, the police say, let the court decide. He stated that innocent people get in trouble when you let the court decide, as court is often biased, and then that person has a problem from then on. Board Member Walker stated this is something that needs to be looked at and addressed.

It was moved by Board Member Banks and seconded by Board Member Boyd-Dorsey to accept the findings of the police department. A roll call vote was taken as follows: Banks -Aye; Boyd-Dorsey - Aye; O'Halloran – Aye; Parker – Aye; Votaw – Aye; and Walker - Aye. Motion was unanimously carried.

21. **Case No. Admin 2019-029**

Policies Related to Complaint:

- (a.) 9.1 General Rules of Conduct Section II (A) (21): Conduct Toward the Public
- (b.) 25.3 Mobile Video/Audio Recording Equipment Section IV Body Worn MVR Operating Procedures

Complainant: Stephanie Jukes

Officers: Officer Laura Marchena

Internal Affairs Disposition:

- (a.) Sustained
- (b.) Exonerated

Discipline:

- (a.) Counseling
- (b.) None

Investigator: Lieutenant Brian O'Reilly

Lieutenant Brian O'Reilly gave the disposition of the case.

Board Member Parker asked what kind of counseling that the Officer received. Lieutenant O'Reilly stated that it was verbal counseling and her personal skills were not the best during this encounter and she needed to do a better job. Board Member Walker asked the difference between Counseling and Policy Review. Lieutenant O'Reilly stated that Counseling and Policy Review are generally synonymous with each other. Board Member Parker stated that she would recommend the same training as Officer Hernandez, to receive; Other: Retraining on effective communication with civilians.

City Attorney Alley reminded the Board that this was a non-mandatory case and advised that before recommending a finding that the Board request and do a mandatory review.

It was moved by Board Member Parker and seconded by Board Member O'Halloran to hear a full review of the case at a future meeting. A roll call vote was taken as follows: Banks – No; Boyd-Dorsey – Aye; O'Halloran – Aye; Parker – Aye; Votaw – No; and Walker - Aye. Motion was carried.

22. Case No. Admin 2019-030

Policies Related to Complaint:

(a.) 9.1 General Rules of Conduct Section VI (E): Overreacting

(b.) 9.1 General Rules of Conduct Section II (A) (23): Department Credentials

Complainant: Sean Ambrioso

Officer: Officer Kendall Schaefer

Internal Affairs Disposition:

(a.) Exonerated

(b.) Sustained

Discipline:

(a.) None

(b.) Counseling

Investigator: Captain Joshua Steinman

Captain Joshua Steinman gave the disposition of the case.

Chair Votaw further described the case and noted it took place in front of Downtown Pizza; there was a fight between two individuals and Officers responded from different directions. Officer Schaefer was making her way through the crowd, they made contact and moved him out of the way. He didn't think that she should have done that.

Board Member Parker stated that she didn't understand why she just didn't apologize for her actions, and she thought the complainant would have been good with that, another Officer apologized for her. Chair Votaw stated that perhaps she should have made her way back after the altercation was taken care of, and apologize, she may not have thought about it. Captain Steinman stated that he confronted her with it and she simply denied it.

Board Member O'Halloran asked for her frame of reference, when they are discussing Officer Schaeffer, whether she was a younger officer, or has she been with the Fort Myers Police Department for a while. Captain Steinman stated that she has been with the FPMD for quite a while. Board Member Banks stated when someone has a complaint like that how would they handle that, would she just sit there and wait and see what the Chief would say. Captain Steinman responded that her Sergeant is Downtown, and the gentleman had an opportunity to speak to her Sergeant as well. The Sergeant said he would speak to her about the matter, but that ultimately led to a complaint which was brought to their office.

Board Member Dorsey stated that someone had to apologize for her. Board Member O'Halloran stated that the Board hears the trainings and appreciates the police as they have to react to situations very quickly. She noted that it would have helped if the officer went back to apologize. Board Member O'Halloran clarified that it is commensurate with the community policing idea, where you have a little more proactive communication about why you are not showing them an arrest warrant, why are there so many officers out the door, why did you have to shove the guy out of the way. She noted that people only know about police what they see on television and movies and stated that sometimes what they are saying is that it would be a good idea if they could maybe slow down after everything transpired and apologize, and say "I didn't even realize I hit you, let me explain to you what I was doing, it was a fight in the bathroom, I was trying to get to it, if I hurt you, I apologize." Board Member O'Halloran stated that she thinks if this occurred, they would not be reviewing the case today. Captain Steinman stated that she actually explained that to him, and he was not satisfied with that explanation, because she did in his narrative. Board Member O'Halloran stated she would have to watch the bodycam. Board Member Parker stated that she would need a full review of the case, because right after that, she said, you do not need to know my name.

It was moved by Board Member Parker and seconded by Board Member O'Halloran to hear a full review of the case at a future meeting. A roll call vote was taken as follows: Banks – No; Boyd-Dorsey – Aye; O'Halloran – Aye; Parker – Aye; Votaw – No; and Walker - Aye. Motion was carried.

Additional Discussion

Major Newhouse clarified that a complaint came in, an investigation was conducted, and the Chief rendered a decision, as to whether or not the allegations were sustained or not sustained. After that point the FMPD, do not come back and talk to that officer, because that would be under a discipline, or an "other" unless the Chief has suggested that in his writing. However, the first line supervisor is constantly reviewing the actions of their employees and the lieutenant as well, and they are constantly having coaching and mentoring sessions with officers. He stated that he cannot specifically address this case, or what specifically was said to this officer by the supervisor, but he shared that it is a constant evolving pattern.

Board Member O'Halloran recommended that another line can be added to the investigative report, that Sergeant Moussa advised that he later spoke to Officer Schaffer to indicate to him that she didn't shove him, she was simply trying to get to the fight, if that said, then, however, Sergeant Moussa explained to her that maybe in the future, she simply just apologized and explained that, she thinks that they would be fine. Board Member O'Halloran stated that they understand that sometimes the Sergeant and the Lieutenant could discuss this with them, and the Board wanted to hear that. Major Newhouse, stated that he is trying to separate those two things, and to remember this is a complaint that came in against the officer, and an investigation was conducted, a final decision was reached. The Chief of Police reviewed the case, and based on the information made a decision not to sustain the allegation, or not to issue discipline, or not to issue retraining to the officer, so it would be improper for them after all that to go back.

Board Member Walker stated that he understands that the Chief made a decision, and that the Board wants to say there is better ways to do things; maybe in an apology to the guy would result in a better outcome and there are ways you have to avoid confrontations even if you have done something wrong, even if someone shoved you and say, "hey, I'm sorry, it usually helps the situation, instead of being more aggressive towards it, creates another problem."

Major Newhouse stated that he knows first-hand that those coaching sessions occur quite often between first line supervisors. Their employees also have co-training and mentoring sessions that occur with more seasoned officers and less seasoned officers. Board Member Walker stated that the Board does not see the other half of that, as they are looking at what is presented. Major Newhouse stated that they cannot do that. Board Member Banks stated that the Board can do that, it's simple to say to an individual; next time; but the Board didn't know that was communicated. Board Member O'Halloran stated that when they call the complainant when they interview him for the complaint, if that investigator had that knowledge of what was said to the complainant to please show and share that you know that the lieutenant did sit her down, and said, I withdrew my complaint. Chair Votaw stated that we do not know the mindset of the guy, the officer was moving fast, going in between people and he was the one making the complaint, and he was not the only one that she touched moving through a crowd. Board Member Parker stated that the Board will find out upon a full review of the case.

23. **Announce next meeting**

Chair Votaw stated that the next meeting will be held on August 11, 2020.

OTHER BUSINESS

- Recording Specialist White stated that nominations and voting for the position of Chair and Vice Chair will take place at the beginning of the next meeting on August 11, 2020
- Chair Votaw requested the terms of each Board member be distributed to the Board
- Chair Votaw thanked the Officers for staying late and expressed his appreciation as the Board knows that the officers have a tough and dangerous job. Board Member Banks stated that he hoped that the word gets back, that the Board is trying to help the police and the Board is very proud of the Fort Myers Police Department.

There being no further business, the meeting was adjourned at 7:18 p.m.