

FORT LAUDERDALE CITIZENS POLICE REVIEW BOARD MINUTES
Ft. Lauderdale Police Department
City Hall – 8th Floor Conference Room
100 N. Andrews Avenue, Fort Lauderdale, Florida
May 8, 2006 - 7:00 P.M.

| Board Members | Present/Absent | 1/06 - 12/06 | |
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| | | Cumulative Attendance | |
| | | P | A |
| Ted Fling | P | 3 | 0 |
| Sergeant Jan Jordan | P | 2 | 1 |
| Officer Thor Lockhart | P | 3 | 0 |
| Steven Muffler, Chair | P | 3 | 0 |
| Linda Shallenberger | P | 3 | 0 |
| Captain Kevin Sheehan | P | 2 | 1 |
| Alan Stotsky | P | 1 | 0 |
| George Trodella | P | 3 | 0 |
| Roosevelt Walters, Vice Chair | P | 3 | 0 |

Staff

Captain John Dale, Internal Affairs
 Officer Sebastian Uebrig
 Officer Doniel Acosta
 Sergeant William Lauginiger, Internal Affairs
 Jamie Opperlee, Recording Secretary

Guests

Jack Lokeinsky, Fraternal Order of Police

A. Roll Call

Chair Muffler called the meeting to order at 7:00 p.m.

Chair Muffler announced that the Board had not met in April.

Chair Muffler welcomed Alan Stotsky to the Board. Mr. Stotsky explained that he was a pharmacist from Michigan who moved to Florida 11 years ago.

Chair Muffler distributed copies of the following items:

- ❖ Letter dated March 14, 2006 from the Board to the City Attorney requesting a legal interpretation concerning the cases heard by the Board
- ❖ Letter dated April 21, 2006 from the City Attorney to the Board providing the legal interpretation requested
- ❖ Two Anonymous letters from a citizen regarding Officer Shields sent directly to Chair Muffler

B. Approve Minutes of the Board's March 2006 Meeting

Mr. Fling said that under General Information, Officer Shields' name was spelled incorrectly.

Motion made by Mr. Fling, seconded by Mr. Stotsky, to approve the minutes for the March 2006 meeting as amended. Motion passed unanimously.

C. General Information

Chair Muffler informed the Board that the City Attorney had addressed their jurisdictional issue. He reminded the Board that last month they agreed that Chair Muffler should draft a letter to the City Attorney requesting clarification of what fell within the Board's jurisdiction. Mr. Stewart had issued a memo on April 21, 2006 clarifying the Board's jurisdiction, and this had resulted in several backlogged cases being put before them for review this evening.

Chair Muffler announced that the Citizens' Police Academy was wrapping up this week and Mr. Trodella was among the graduates.

D. Review the following Internal Affairs investigations:

Chair Muffler noted that the discipline decision for the first six cases was dated March 16, 2006, well outside the 20-day limit for CPRB review, and he wondered if they should even consider them now. Vice Chair Walters said he intended to make one motion for cases 1, 2, 3, 5, and 6 because the discipline for these had already been served; for Case 4, the discipline was scheduled to begin on May 12. Mr. Lokeinsky explained that the "final, final" discipline had not taken place on the furlough cases yet.

Captain Dale explained how the furlough cases had come about. Chair Muffler was concerned because their packets informed them that officers had made statements under oath, but these statements were not included in their packets and he was uncomfortable relying on a summary. Captain Dale explained that these six cases were all reviewed by IA for consistency. He remarked that they usually did not make transcripts for all of these cases, but he would provide copies of the audio file if the Board requested it. Chair Muffler felt they could proceed, but asked that in the future, transcriptions be provided of any statements made by officers as a matter of due process. Captain Dale stated that the CPRB was not part of due process, and preparing transcriptions would be too labor intensive.

Ms. Shallenberger wondered if the punishment was commensurate with other departments in the City. Captain Dale explained that they typically looked at past case discipline when deciding, and the only violations regarding furloughs had occurred in the Police Department, so there were no other disciplines with which to compare these cases.

Motion made by Vice Chair Walters, seconded by Ms. Shallenberger, that the Board consider and vote on cases 05-139, 05-140, 05-141, 05-143, and 05-144 together. In a voice vote, motion passed 8 – 1 with Chair Muffler dissenting.

The following 5 cases were considered together:

1. Complainant: A/Chief Sharon Andersen (CCF 05-139)
Allegation: Disobedience of any rule, order or directive
Officer: Steven Greenlaw

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| | Disposition: | Sustained |
| 2. | Complainant: | A/Chief Sharon Andersen (CCF 05-140) |
| | Allegation: | Disobedience of any rule, order or directive |
| | Officer: | Todd Jackson |
| | Disposition: | Sustained |
| 3. | Complainant: | A/Chief Sharon Andersen (CCF 05-141) |
| | Allegation: | Disobedience of any rule, order or directive |
| | Officer: | Robert Merkel |
| | Disposition: | Sustained |
| 5. | Complainant: | A/Chief Sharon Andersen (CCF 05-143) |
| | Allegation: | Disobedience of any rule, order or directive |
| | Officer: | Doni Robinson |
| | Disposition: | Sustained |
| 6. | Complainant: | A/Chief Sharon Andersen (CCF 05-144) |
| | Allegation: | Disobedience of any rule, order or directive |
| | Officer: | Sebastian Uebrig |
| | Disposition: | Sustained |

Motion made by Ms. Shallenberger, seconded by Vice Chair Walters, to uphold the findings of Internal Affairs. In a voice vote, the motion passed unanimously.

Chair Muffler proceeded to open the public hearing.

Mr. Jack Lokeinsky, Fraternal Order of Police, said several grievances had been filed regarding the payroll software; Officers found it difficult to track their hours with the current system. Mr. Lokeinsky added that there was additional confusion because they had recently changed from an 8-hour day to a 10-hour day.

Officer Uebrig felt this was a combination of clerical error and miscommunication, and explained what led to his case. He clarified for Vice Chair Walters that approximately three weeks elapsed between receipt of the letter and his non-compliance; approximately two of those weeks were while he was on vacation. When he returned, he informed his supervisor that he could not approve his schedule, and his supervisor had informed the Captain of the situation.

Chair Muffler acknowledged that the situation and circumstances were confusing.

Chair Muffler closed the public hearing and brought the discussion back to the Board.

Motion made by Ms. Shallenberger, seconded by Vice Chair Walters, to uphold the findings of Internal Affairs as to the discipline. In a roll call vote, the motion failed 2 – 7 with Mr., Fling, Captain Jordan, Officer Lockhart, Ms. Shallenberger, Mr. Trodella, Vice Chair Walters and Chair Muffler opposed.

Mr. Fling said that for cases 1, 2, 3, and 6, the officers had all discussed the issue with their

supervisor and in one case, with a captain, but offered documentation to support their position that they were unable to do what they should have, and the sergeants had approved. Mr. Fling felt the punishment was too harsh in these cases. Vice Chair Walters said he was bothered by the fact that the officers had not followed the directive in the memo. Chair Muffler agreed, noting that in a paramilitary organization, a direct order must be followed. Mr. Fling noted that per the November 19, 2003 memo, it was the supervisor's responsibility to be sure all required furlough time was taken.

Chair Muffler noted that Internal Affairs, the Assistant Chief of Police and the Chief of Police all felt the discipline was appropriate and he was concerned that if the Board disagreed with their decision, it would undermine the officials' authority.

Chair Muffler proceeded to open the public hearing. There being no one present wishing to speak on the case, Chair Muffler closed the public hearing and brought the discussion back to the Board.

Ms. Shallenberger asked what the discipline options were; Captain Dale informed her that it was usually a one-day suspension plus whatever furlough time was not taken. The other option was a written reprimand and one furlough day.

Mr. Fling said this was something that went on a lot and they should express their displeasure with how it was done and their feeling that the punishment was too severe.

Motion made by Vice Chair Walters, seconded by Captain Sheehan, confirming that the Board disapproved of the punishment and that it would make no recommendation regarding discipline. In a voice vote, the motion passed unanimously.

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| 4. | Complainant: | A/Chief Sharon Andersen (CCF 05-142) |
| | Allegation: | Disobedience of any rule, order or directive |
| | Officer: | Jeffrey Newman |
| | Disposition: | Sustained |

Motion made by Vice Chair Walters, seconded by Ms. Shallenberger, to uphold the findings of Internal Affairs. In a voice vote, motion passed unanimously.

Chair Muffler proceeded to open the public hearing. There being no one present wishing to speak on the case, Chair Muffler closed the public hearing and brought the discussion back to the Board.

Motion made by Vice Chair Walters, seconded by Ms. Shallenberger, to disapprove the recommendation of the discipline, as they believed it was too harsh, and to make no recommendation regarding discipline. In a voice vote, motion passed 8 – 1 with Captain Sheehan opposed.

Chair Muffler proceeded to open the public hearing.

Mr. Lokeinsky wanted to be sure the Board noted that they felt the discipline was too harsh. Captain Dale explained that in this case, the charge was feigning illness. Under one supervisor,

Officer Newman had scheduled and been approved for a vacation. His supervisor had subsequently changed, the new supervisor had not approved the entire vacation, and Officer Newman had called in sick for one of his vacation days. Mr. Fling asked about Officer Newman's discipline history. Captain Dale confirmed there had been no other discipline against the officer.

Chair Muffler closed the public hearing.

7. Complainant: Sergeant Dave Wheeler (I.A. #04-207)
Allegations: 1) Light Duty – In all cases employees assigned to light duty are not permitted to work off duty detail(s)
2) Training – Any absence from a mandatory training assignment will require prior approval from a district major
Officer: Doniel Acosta
Disposition: Both Charges – Sustained

Motion made by Vice Chair Walters, seconded by Mr. Trodella, to uphold the findings of Internal Affairs. In a voice vote, the motion passed unanimously.

Chair Muffler opened the public hearing.

Officer Acosta explained that he had suffered a reaction to medication one day and gone home sick; he was not on light duty, which required a doctor's input. He returned to a regular schedule the next day. The administrative hold was due to an accident in which he had been involved while in a patrol car. The Captain in charge had pulled him off the roll pending review. He was told a week later that he would be on administrative hold. Officer Acosta said that policy required that he be notified of this in writing, which had never been done.

Regarding the training absence, Officer Acosta said he was told he need not attend the training because he had already participated in similar training the prior month. For another scheduled training, he had been in the hospital.

Vice Chair Walters noted that Officer Acosta seemed to have a very clear memory of events now, but several times during the investigation, he had trouble remembering. Officer Acosta explained that over time, he had been able to put together a chain of events based on information he was given regarding the investigation and his medical records.

Chair Muffler asked Officer Acosta about the allegation that he neglected to call on several details; Officer Acosta admitted that he had. Chair Muffler was concerned that Officer Acosta had not followed procedure; he felt this could cause the public to question the integrity of the details and jeopardize future details for all officers.

Chair Muffler closed the public hearing and brought the discussion back to the Board.

Captain Dale explained the proposed discipline to the Board: 40 hours for both cases, 04-207 and 06-040, and informed them that the only other discipline against Officer Acosta was a one-day suspension that was reduced to a letter of reprimand in 1992 for a preventable accident.

Chair Muffler asked Officer Acosta why he felt 40 hours would not be an appropriate discipline. Officer Acosta felt that the off-duty detail allegation was “questionable at best,” and he was never given the opportunity to confront the person who made the accusation about the missed training. He felt the punishment was too harsh compared to other similar cases.

Vice Chair Walters felt they should wait until they had considered the next case, which concerned Officer Acosta as well, before making a determination about the discipline. The other Board members agreed.

8. Complainant: Bruce G. Roberts, Chief (CCF 06-040)
Allegations: 1) Failure to complete a proper police investigation
2) Failure to enforce a law or ordinance
3) Unsatisfactory performance
Officer: Doniel Acosta
Disposition: All charges – Sustained

Motion made by Mr. Fling, seconded by Ms. Shallenberger, to uphold the findings of Internal Affairs. In a voice vote, the motion passed unanimously.

Captain Dale explained that 10 or 12 reports had been combined into the one charge of unsatisfactory performance. Vice Chair Walters asked if Internal Affairs had done anything to prove or disprove the findings of the supervisor; Captain Dale said they had not. They felt it was self-evident in this case.

Mr. Fling stated that of the 12 reports, 6 were sustained, 2 were for dereliction of duty, 4 were not sustained, and 1 concerned a burglar who signed a confession and then escaped. Mr. Fling felt it hard to believe that an officer with 15 years experience could be this derelict in his duties.

Chair Muffler opened the public hearing.

Officer Acosta explained his investigation of the burglary, and noted that he had not made an arrest because there was doubt in his mind. He informed the Board that charges were ultimately prepared against another individual for the burglary. Mr. Fling wondered why Officer Acosta did not send the suspect to detectives.

Chair Muffler closed the public hearing and brought the discussion back to the Board.

Motion made by Ms. Shallenberger, seconded by Mr. Trodella, to uphold the discipline for both cases. In a roll call vote, the motion passed 7 – 2 with Mr. Fling and Vice Chair Walters opposed.

Chair Muffler opened the public hearing.

Officer Acosta stated that several people used the desk in which the papers had been found, and that someone failed to use his mailbox to deliver his mail. This was why the papers were left there; he had never seen them. Officer Acosta said, “there was no dereliction of duty; I did

not fail to prepare proper reports or to conduct a proper investigation.” He said he was very thorough.

Vice Chair Walters asked Officer Acosta if he completed any investigation without receiving documentation he requested. Officer Acosta said he had, someone else had created the supplement and followed up. Internal Affairs had therefore mischaracterized the situation.

Mr. Fling asked about a report which was never turned in regarding larceny of a gun that was found in the desk drawer. Officer Acosta also never issued a BOLO for the case, which he had been instructed to do. Officer Acosta said the individual informed him on the phone that he would turn the gun in to the Miami Police Department. Officer Acosta said no one ever told him to issue a BOLO; the gun had already been found.

Chair Muffler closed the public hearing and brought the discussion back to the Board.

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| 9. | Complainant: | Sergeant M. O'Connor (I.A. #05-126) |
| | Allegations: | 1) Receiving or retaining for personal use any property or evidence which has been discovered, gathered, or received in connection with a Department function 2) Conduct unbecoming |
| | Officer: | Richard Milroy |
| | Disposition: | Both charges – Sustained |

Motion made by Vice Chair Walters, seconded by Captain Sheehan, to uphold the findings of Internal Affairs. In a voice vote, the motion passed 8 – 1 with Ms. Shallenberger opposed.

Mr. Fling asked if the kayak was still missing; Captain Dale confirmed that the kayak recovered by Officer Milroy was not missing. They could not determine if the one involved in the burglary had been found.

Chair Muffler asked about Officer Milroy's disciplinary history. Captain Dale explained that he had received a letter of reprimand in 1990 resulting from an accident in which the Officer was involved.

Chair Muffler asked how property should be tracked when it was found. Captain Dale confirmed that the officer should complete a found property report, and sometimes an incident report as well.

Chair Muffler opened the public hearing.

Mr. Lokeinsky explained to the Board that these types of cases, ending in termination, often meant the end of an Officer's profession. Mr. Lokeinsky felt that this case dealt with perception rather than fact. It was the City's perception that Officer Milroy took the kayak for his own gain and to deprive the owner of it. In fact, Officer Milroy had removed the kayak because it was a waterway hazard and put it in the cage at the Marine Unit. After several months, he decided to use it as a "gag gift" for a retiring Marine Unit sergeant and brought it home. When he learned there was an investigation, Officer Milroy contacted Mr. Lokeinsky, who contacted an attorney, who sent someone out to Officer Milroy's home to photograph the kayak.

Officer Milroy's attorney had advised him to retain custody of the kayak until the criminal case was concluded. When the criminal case was concluded, Officer Milroy turned the kayak over to Internal Affairs.

Chair Muffler reminded the Board that their standard for judgment was a preponderance of evidence, a tougher standard than reasonable cause, but not as tough as beyond a reasonable doubt, the criminal standard.

Chair Muffler quoted from a comment made by the State Attorney that was included in the summary: "We cannot go forward and charge Officer Milroy criminally, particularly due to the fact that the whereabouts of the boat found by him is currently unknown. Lacking in this, we cannot establish that the kayak is the same one as the one reported stolen in March 2005."

Captain Dale explained that at the phase of the investigation that the State Attorney had reviewed the case, they had not recovered the kayak. There was the theft of one kayak, and an unknown whereabouts of another kayak, and based on this, the State Attorney did not know the whereabouts of the one that was reported stolen.

Captain Dale agreed that it would have been helpful if Officer Milroy turned over the kayak during the investigation. Mr. Lokeinsky was not sure if the State Attorney ever asked Officer Milroy to turn over the kayak, but he was sure there was communication between the State Attorney and Officer Milroy's attorney. Chair Muffler was troubled by Officer Milroy's apparent withholding of evidence during an investigation.

Officer Milroy said he had followed the advice of his attorney in declining an invitation to speak to the State Attorney.

Mr. Stotsky asked if the victim of the kayak theft had been contacted to identify the kayak. Sergeant Lauginiger explained that a kayak and other items were stolen from a yacht that was the responsibility of a yacht broker from New Zealand who was absent from November to February. He reported the theft in March. The anonymous letter stating the complaint was received in June. When they attempted to locate the yacht's owner, the yacht had been sold and the broker had returned to New Zealand. Captain Sheehan confirmed that Officer Milroy found the kayak in October, prior to the theft of the yacht kayak between November and January.

Officer Milroy explained that he understood what the incident looked like and apologized. He noted that the Marine Unit policy was to bring in any items they found in the Intracoastal and try to contact the owner. Derelict vessels that were unclaimed were thrown away after a few days. Officer Milroy's sergeant gave him a direct order to get rid of the kayak and instead of throwing it in the trash, Officer Milroy had taken it home in October for use at a sergeant's retirement party. Officer Milroy learned of the investigation in July and noted that he had followed the advice of his attorney.

Officer Milroy said he had been with the Department for 18 years with only one complaint, he was a Training Officer for 7 years, and was exemplary in the Department. He said his termination was devastating to himself and his family, and being treated like this by the Police

Department was very sad.

Chair Muffler closed the public hearing and brought the discussion back to the Board.

Mr. Fling clarified that their vote to uphold the findings of Internal Affairs meant that “their investigation was proper and fair.”

Mr. Trodella noted that the kayak was valued at \$250, so it was not “really a derelict, necessarily,” even though it was an obstruction in the waterway. Chair Muffler agreed. Captain Sheehan agreed, and said he felt the charges should be sustained, but felt the punishment was too severe in this case. Captain Sheehan thought Officer Milroy’s intent was not to steal. He had stored the kayak for months and never tried to fix it up or use it. Captain Sheehan added that Officer Milroy was an eighteen-year veteran with no prior, similar incidents in his record.

Mr. Fling agreed that the punishment did not suit the crime. He wondered why the Department was “firing these experienced, knowledgeable, good officers, when we have such a dearth of qualified officers out there now.” He felt this was unfair to not just the Officer, but also the public, since the City had invested time in training the Officer.

Motion made by Vice Chair Walters, seconded by Captain Sheehan, to uphold the recommendation for discipline. In a roll call vote, the motion failed 3 – 6 with Mr. Fling, Captain Jordan, Officer Lockhart, Ms. Shallenberger, Captain Sheehan and Mr. Trodella opposed.

Mr. Stotsky said Officer Milroy was given a direct order to take the kayak to Property, which he disobeyed by taking the kayak home. Chair Muffler confirmed that the Sergeant’s statement said he had told Officer Milroy to take the kayak to Property, not to the trash. Officer Milroy had also never completed a form to document the intake or disposal of the item. Chair Muffler reminded the Board that the kayak was not provided to the State Attorney, but was only turned over when Officer Milroy was put under oath and ordered to return it.

Mr. Lokeinsky confirmed that Officer Milroy was currently not a City employee. The Board discussed whether or not they should make a specific recommendation regarding discipline or leave that determination to the arbitrator. Mr. Lokeinsky said the next step was for the City Manager to make a final decision regarding Officer Milroy’s dismissal.

Motion made by Ms. Shallenberger to recommend a one-day suspension as Officer Milroy’s discipline. Motion died for lack of a second. Captain Sheehan felt they should recommend a twenty-day suspension.

Motion made by Mr. Fling, seconded by Vice Chair Walters, to send a letter to the City Manager recommending that Officer Milroy suffer a period of suspension without pay in lieu of termination. In a roll call vote, motion passed 8 – 1 with Chair Muffler opposed.

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| 10. | Complainant: | Valerie Bohlander (I.A. #05-148) |
| | Allegations: | 1) Conduct unbecoming 2) Conduct prejudicial |
| | Officer: | William Lilliston |
| | Disposition: | 1) Sustained |

2) Not Sustained

Motion made by Captain Sheehan, seconded by Vice Chair Walters, to uphold the findings and recommendations of Internal Affairs. In a voice vote, the motion passed unanimously.

Chair Muffler proceeded to open the public hearing. There being no one present wishing to speak on the case, Chair Muffler closed the public hearing and brought the discussion back to the Board.

Mr. Trodella felt this was a minor transgression and that Officer Lilliston was genuinely remorseful. After the apology was accepted, Mr. Trodella felt it did not seem necessary for the case to have gone as far as it had. Ms. Shallenberger agreed with Mr. Trodella, and felt it was reasonable to think there could have been a misunderstanding.

Ms. Shallenberger referred to item #6 of the 2005 Settlement Agreement Officer Lilliston signed pursuant to another case against him: "The employee understands and agrees that future misconduct or occurrences of a similar nature..." She felt the two incidents were not similar in the least. Ms. Shallenberger felt he should have been fired for the prior incident, but reiterated her belief that this case could have been the result of a misunderstanding.

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| 11. | Complainant: | Virgil James (I.A. #06-036) |
| | Allegation: | Failure to conduct a complete or proper police Investigation |
| | Officer: | Patrick O'Brien |
| | Disposition: | Exonerated |

Motion made by Ms. Shallenberger, seconded by Vice Chair Walters, to uphold the findings of Internal Affairs. In a voice vote, the motion passed unanimously.

Chair Muffler proceeded to open the public hearing. There being no one present wishing to speak on the case, Chair Muffler closed the public hearing and brought the discussion back to the Board.

E. Other Items of Interest

Mr. Fling wondered if there was any investigation being conducted pursuant to the anonymous letters Chair Muffler had received regarding Officer Shields. Captain Dale said that an anonymous complaint gave them no opportunity to question anyone or pursue a case. The letter amounted to hearsay as well. Captain Dale said they had attempted to find the writer of the anonymous letter, but had been unsuccessful. Chair Muffler informed the Board that any correspondence of this nature he received in the future would be passed on to the Board without editing to avoid any appearance of a cover-up. Captain Dale noted that some complaints IA received were anonymous, but any complaint must be specific enough to be investigated. In this case, the letters were not.

There being no further business before the Board, the meeting was **adjourned at 9:24 p.m.**