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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF SEATTLE,

Defendant.

CASE NO. C12-1282JLR

ORDER APPROVING THE
PARTIES' UPDATED USE OF
FORCE POLICIES

I. INTRODUCTION

Before the court is Monitor Merrick J. Bobb's memorandum submitting the parties' updated Seattle Police Department ("SPD") policies relating to the use of force. (Monitor's Mem. (Dkt. # 204).) In response to the Monitor's memorandum, the Community Police Commission ("CPC"), which is a body created and governed by the parties' Settlement Agreement and Order of Resolution ("Consent Decree"), as modified

1 (see Dkt. ## 3-1, 13), and Memorandum of Understanding (“MOU”),¹ submitted an
2 *amicus curiae* memorandum, suggesting two modifications to the parties’ proposed
3 updated Use of Force Policy. (CPC Mem. (Dkt. # 206-1).) In addition, Plaintiff United
4 States of America (“the Government”) submitted two supplemental memoranda in
5 support of the parties’ proposed revised Use of Force Policy without the CPC’s suggested
6 modifications. (USA Mem. I (Dkt. # 208); USA Mem II (Dkt. # 218).) Finally, on June
7 30, 2015, the court held a hearing to permit oral argument from the parties and the CPC
8 on the proposed revised Use of Force Policy and the CPC’s suggested modifications.
9 (Hr. Tr. (Dkt. # 220).)

10 The court has considered the submissions of the Monitor, the parties, and the CPC,
11 the oral argument of the parties and the CPC on June 30, 2015, the Consent Decree, other
12 relevant portions of the docket, and the governing law. Being fully advised, the court
13 APPROVES the parties’ proposed revised use-of-force policies without modification for
14 the reasons stated below.

15 II. ANALYSIS

16 The parties and the Monitor have engaged in a process of review and revision of
17 the force-related policies that the court originally approved in December 2013. (See Dkt.
18 # 115.) As a part of this process, the Monitor and the parties listened to and incorporated

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20 ¹ On September 21, 2012, the court provisionally approved the parties’ settlement
21 agreement and stipulated order of resolution (see Dkt # 3-1) with certain modifications (see Dkt.
22 # 13). This document, which the parties have informally dubbed the “Consent Decree,” together
with the “MOU,” provide the roadmap the parties have agreed to follow (and the court will
enforce) in developing reform strategies for ensuring both constitutional and effective policing in
Seattle.

1 feedback from officers who have experienced the realities of these policies on the ground.

2 To gather this input, the SPD conducted multiple officer meetings, discussed the policy
3 with its Patrol Advisory Group, and received individual officer input through the Audit
4 Professional Standards Section (“APRS”) email system. (USA Mem. I at 2.)

5 One of the central purposes of the CPC is to receive community feedback about
6 SPD’s progress or compliance with the Consent Decree and to make recommendations to
7 the City to support the reform process. (*See* Consent Decree ¶¶ 7-10.) Thus, in addition
8 to the efforts of the SPD to gather input on the use-of-force policies, the CPC offered
9 three in-person listening sessions in the East, South, and North precincts. (USA Mem. I
10 at 2.) The CPC held a fourth listening session at union offices. (*Id.*) Counsel for the
11 Government also attended these sessions. (*Id.*) Although these sessions were sparsely
12 attended,² the officers’ voices were heard and the proposed revised Use of Force Policy
13 incorporated a variety of changes as a result of the parties’ and the CPC’s attempts to
14 reach out to SPD officers and the community. (*See id.* at 2-3.)

15 Two of the recommendations made by the CPC, however, were not adopted by the
16 parties and not included in their proposed revised Use of Force Policy. The first CPC
17 recommendation relates to section 8.000 of the Use of Force Policy and concerns how the
18 Office of Professional Accountability (“OPA”) should handle situations in which an

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² The Government states that only 22 out of approximately 1,300 sworn officers attended listening sessions hosted by the CPC. (USA Mem. I at 2.) The CPC places the number at “[r]oughly 25 officers.” (Hr. Tr. at 7.) Although turnout appears low, the court notes that the CPC is able to obtain input from two SPD officers who serve on the CPC and through other informal focus groups that the CPC has hosted in recent months. (*See id.* at 14.)

1 officer's actions are in conformity with his or her training but nevertheless inconsistent
2 with SPD policy. The second CPC recommendation relates to sections 8.500-POL-1 and
3 8.500-POL-4 of the Use of Force Policy and concerns a limited exception to the
4 requirement that all SPD employees must notify OPA of non-minor misconduct for
5 members of the Force Review Board ("FRB") in specific circumstances. In its *amicus*
6 submission to the court, the CPC urges the court to adopt its recommendations
7 concerning these two issues despite the parties' previous rejection. The court discusses
8 the CPC's recommendations in turn.

9 **A. Section 8.000 (Use of Force—CORE PRINCIPLES)**

10 First, the CPC's *amicus* letter offers two alternative language changes to section
11 8.000 of the Use of Force Policy, entitled "Use of Force—CORE PRINCIPLES." The
12 CPC suggests the addition of a sentence to section 8.000 that states: "When officer
13 actions are in conformance with current [SPD] training, the actions shall be considered to
14 be within policy." (CPC Mem. at 6.) Alternatively, the CPC states that language
15 subsequently suggested by OPA's Director would also accomplish the CPC's goals. (*Id.*)
16 The Director suggests the following language:

17 When officer actions are in conformance with current [SPD] training, this
18 fact shall be given weight in determining whether a Sustained finding
19 should be entered against the officer. When it is found that [SPD] training
20 was inconsistent with [SPD] policy, the OPA has the option of
21 recommending a finding of Not Sustained (Management Action) rather
22 than Sustained.

(*Id.*) The Government opposes the language proposed by the CPC, but has suggested that
the parties should consider the language proposed by the Director in conjunction with the

1 parties' review of the OPA Manual. (USA Mem. I at 5.) The Government, however,
2 opposes the insertion of either the CPC's proposed language or the Director's proposed
3 language into the revised Use of Force Policy. (*Id.* at 4-5.)

4 The court makes no substantive ruling at this time on the foregoing language
5 proposed by either the CPC or OPA's Director. Instead, the court believes that the CPC
6 has raised this issue prematurely. The court agrees with the Government that this issue is
7 best addressed when the Monitor and the parties review the OPA Manual. Under the
8 Third Year Monitoring Plan (*see* Dkt. # 15), the OPA Manual will be subject to the
9 review process during the course of this summer. Thus, the court declines to insert either
10 the language proposed by the CPC or the language attributed to the Director of OPA into
11 section 8.000 of the revised Use of Force Policy. Accordingly, the court rejects the
12 CPC's proposed revision to section 8.000 of the Use of Force Policy. The court,
13 however, will revisit the substantive issue underlying the CPC's recommendation here if
14 appropriate and if requested to do so following the parties' review of the OPA Manual.

15 **B. Section 8.500-POL-1 (Use of Force – General Principles) and Section**
16 **8.500-POL-4 (Force Review Board)**

17 As presently proposed and agreed to by the parties, SPD's Use of Force Policy
18 provides a limited exception to the rule set forth in SPD Policy 5.002 that, in short,
19 requires all SPD employees to notify OPA when they learn of possible non-minor
20 misconduct. (Dkt. # 156 at 82.) Specifically, FRB members who learn of such
21 misconduct solely through their participation in the FRB may refer such a matter to the
22 OPA, but are not required to do so. Under this limited exception, FRB members consider

1 and review uses of force and vote as a body whether the use of force involved possible
2 misconduct (and therefore should be referred to OPA). FRB members retain their
3 obligation to individually report misconduct they learn about outside of their work on the
4 FRB. Further, FRB members retain their right to refer cases to OPA that they learn about
5 through their work on the FRB—even if the FRB as a body votes to decline to refer a
6 particular matter to OPA. The purpose of this limited exception is to permit the FRB to
7 review uses of force and vote as a body whether the force utilized involved possible
8 misconduct (requiring a referral to OPA).

9 The CPC opposes the limited exception to the reporting requirement described
10 above and recommends its deletion from section 8.500-POL-1 of the revised Use of
11 Force Policy. (CPC Mem at 2-4, 6.) The CPC proposes instead the insertion of the
12 following language into section 8.500-POL-4: “When possible misconduct comes to the
13 attention of any member of the FRB and [SPD’s reporting requirement for non-minor
14 misconduct] would require an employee to may an OPA referral, then a referral must be
15 made.” (*Id.* at 6.) Indeed, the CPC “feels strongly that if even one member of the
16 FRB . . . believes a case should go to OPA, it needs to go to OPA.” (*Id.* at 3.)

17 The court is sensitive to the concerns of the CPC with respect to the limited
18 exception to the reporting requirement for FRB members. Nevertheless, the court is also
19 mindful of the unique and critical role the FRB serves in the reform process. The
20 essential mission of the FRB is to provide SPD with a peer community perspective and
21 robust accountability on all uses of force. It is this type of group deliberation that will
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1 allow SPD, as a unitary body, to be self-reflective and make course corrections if
2 necessary.

3 As noted by SPD's counsel at the June 30, 2015, hearing, the FRB "is not a model
4 that Seattle invented," rather [i]t is a model that has drawn from experiences of other
5 departments," such as Philadelphia, Washington, D.C., and Las Vegas. (Hr. Tr. at 33.)

6 The Government argues that altering this tested model by enabling a single FRB
7 member's vote to send a matter to the OPA threatens to undermine the essential purposes
8 of the FRB and risks other unintended consequences. (USA Mem. I at 6.) For example,
9 removing the element of a majority vote before a matter is referred to OPA risks
10 diminishing the existing significance that attaches to an FRB referral. (*Id.*) More
11 importantly, CPC's proposed change would undermine the FRB's current mission of
12 bringing a peer community perspective to all uses of force by SPD officers. (*Id.*)
13 Finally, CPC's proposal threatens to undermine the robust debate that is at the epicenter
14 of the FRB's role. (*Id.*) If one member's vote serves to trigger an FRB referral, then a
15 single member's statement to that effect may well end any further discussion of the topic.
16 (*Id.*) After all, if the decision of one FRB member results in an OPA referral and that
17 member has decided, what would be the point of further debate?

18 The court was particularly persuaded by the statements of SPD's counsel at the
19 June 30, 2015, hearing concerning the utility of the FRB's group process and required
20 majority vote proponent by the parties:

21 Group process is exactly what this [B]oard is about. One of the hallmarks
22 of the [C]onsent [D]ecree is allowing the [D]epartment to create systems of
critical self analysis, certainly in conjunction with [the Department of

1 Justice], certainly in conjunction with the Monitor and the community, and
2 trying to figure out the best process. But at the end of the day if SPD
3 cannot self regulate and manage its own affairs, and is going to abdicate its
4 authority to OPA to resolve all issues, this [D]epartment is not going to
5 grow.

6 We need to grapple with [issues that arise] internally, figure out the
7 standards for the [D]epartment, what's right or wrong within our policies,
8 and own that. If the [D]epartment is not permitted to own those issues, the
9 [D]epartment is not going to learn from those issues, and it will always be
10 an external force, OPA, the Monitor, the court, imposing this.

11 (Hr. Tr. at 35-36.)

12 The ultimate goal of the reform process is to have a police organization that no
13 longer needs the intervention of the Department of Justice or the oversight of the Monitor
14 or the court, but rather is capable of policing this community both effectively and
15 constitutionally through self-regulation. The FRB is a critical element of that reform
16 process and ensuring that the FRB can act and deliberate collaboratively is essential to
17 the self-regulation function it performs. The court believes that the revised Use of Force
18 Policy as drafted and agreed to by the parties strikes the appropriate balance between the
19 function of the FRB and the SPD's non-minor misconduct reporting requirement.
20 Accordingly, the court rejects the recommendation of the CPC concerning sections
21 8.500-POL-1 and 8.500-POL-4, and APPROVES the revised Use of Force Policy as
22 drafted and agree to by the parties.

23 **III. CONCLUSION**

24 As discussed above, the court hereby APPROVES the revised Use of Force Policy
25 as submitted to the court by the Monitor and parties (Dkt. # 204) and declines to accept
26 the revisions suggested by the CPC (Dkt. # 206). The court emphasizes, however, that

1 this order should not be considered a rebuke of the CPC, its many contributions to the
2 reform process, or the hard work of its members. The court believes that the overall
3 contributions of the CPC regarding the reform process generally and revisions of the Use
4 of Force Policy specifically have been significant and valuable to the parties. The court
5 appreciates the CPC's considerable undertakings and encourages the CPC to continue its
6 efforts consistent with its role as defined in the Consent Decree.

7 Dated this 27th day of July, 2014.

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10 JAMES L. ROBART
11 United States District Judge
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