TESTIMONY: HB 2936
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To: House Subcommittee on Equitable Policing
From: Michael Selvaggio, Oregon Coalition of Police and Sheriffs
Date: February 8, 2021

Testimony given to Subcommittee on Equitable Policing by Michael Selvaggio
February 8, 2020
(Testimony was read; what follows is the source document and may not be a verbatim transcript.)

Madam Chair, members of the Committee:

With regard to HB 2936, I'd like to make a clear statement that ORCOPS is unwavering in its sentiment that there is no place for racism, bias, or discrimination in policing or any public service.

You have my written testimony, which makes several suggestions for improvements to the measure, including our desire for minimum standards for local agencies as well as the need for careful definition of terms and adherence to Brady standards.

I'd like to address some of what we heard last week with regard to the arbitration process, and clear up several statements that were made in the context of this bill.

First, the League of Cities referenced a sergeant in Portland who was dismissed for comments made at roll call, and suggested that the incident precipitated the recent bill stressing adherence to discipline guides, saying that the arbitration process was "unreliable."

This case never went to arbitration, and the reason was that the City's own desired outcome -- termination -- was outside the scope of its own discipline guide. To be clear: In its desire to act outside the scope of its own non-bargained discipline guide, the City of Portland recognized that they would have a weak case and ended up paying lost wages, minus the unpaid suspension that was actually warranted by their own guide.

Using this case as an example of why discipline guides should be more strictly adhered to is a significant disconnect for me.

Second, the League of Cities brought up an example of a West Linn officer who had made offensive Facebook posts, and said that the City had to pay out $154,000 to terminate the officer.

The whole story is a bit different.

What happened in that case is that the arbitrator upheld the City's determination to terminate the officer. But the problem was that management's initial determination upon becoming aware of the posts in question was not to discipline the officer, but rather to "like" the posts.

This created a problem, being that once the situation came to light, management had already given its ill-advised imprimatur of approval to the action, making it difficult to take another bite at that apple.

As I said, the arbitrator absolutely upheld the termination, but also "fined" the City of West Linn $154,000 for the drastic lapse in oversight. It was not a "payout" in order to terminate the officer, but the only avenue an arbitrator has currently to exact such a penalty is an award to the employee. (We'd be happy to explore whether building an additional penalty option would be useful.)

Lastly, the League of Cities has indicated its intention to pursue an amendment allowing for the use of a "just cause" standard for officer termination.

I must confess I find that a bit ironic.

As you may know, that specific standard has been in use and enshrined in ORS 236.360 since 1979, mostly unaffected until last year when -- at the urging of the League of Cities and other groups -- the legislature passed the "Arbitration Bill," SB 1604, allowing discipline guides to supersede the "just cause" standard in certain circumstances.

So if this committee wants to return to a just cause standard, we are OK with that.

Please note that these issues are complex and nuanced, which is why since early 2019, ORCOPS has been asking stakeholders for specific examples of what is trying to be addressed, and being very specific about language, as opposed to relying on half-explained anecdotes.

I sincerely hope that, on Wednesday when this committee hears invited testimony on the arbitration process, it invites a voice from the labor community to ensure that it gets a full and accurate picture.

Thank you.