

*Police
Benevolent
Association*

Of The City Of New York, Inc.



MEMORANDUM IN OPPOSITION TO RESOLUTION T2021-7100

The Police Benevolent Association of the City of New York, Inc. (“NYCPBA”) and its over 23,000 members, who patrol New York City’s streets and do the difficult and dangerous work of protecting every resident, visitor and business operating within the five boroughs, opposes T2021-7100, a resolution to remove the New York City Police Department’s (NYPD”) Police Commissioner’s (“Police Commissioner”) exclusive authority over police discipline (“Reso 7100”). Reso 7100 calls for an unprecedented and ill-considered intrusion into the Police Commissioner’s cognizance and control of the Police Department. Moreover, to the extent that Reso 7100 contemplates authorizing the Civilian Complaint Review Board to make final disciplinary determinations, that agency lacks the impartiality, law enforcement background and experience and infrastructure necessary to take on that great responsibility.

The Police Commissioner’s authority over the discipline of NYPD officers has long been enshrined in the law. Section 434 (a) of the New York City Charter provides that “[t]he commissioner shall have cognizance and control of the government, administration, disposition and discipline of the department, and of the police force of the department.” The companion provision to § 434, at Section 14-115 of the New York City Administrative Code provides further that “[t]he commissioner shall have power, in his or her discretion... to punish the offending party by reprimand, forfeiting and withholding pay for a specified time, suspension, without pay during such suspension, or by dismissal from the force... .” These laws have existed in substantially the same form since the 19th Century.

That the legislature granted the authority to discipline to the Police Commissioner is unsurprising. The Police Commissioner is ultimately responsible for the Police Department’s successful execution of its mission to “preserve the public peace, prevent crime, detect and arrest offenders,” among the countless other responsibilities necessary to protect the City that ultimately fall upon the shoulders of police officers. *See* New York City Charter § 434. The Police Commissioner would be hamstrung in his ability to meet those obligations if the discipline of his officers were subject to the whims of a separate agency. The New York Court of Appeals, the highest court in the state, has long recognized the need for the Police Commissioner to have disciplinary authority in order to preserve the good order and effectiveness of the NYPD. The Court wrote in 1888 that “the government of a police force assimilates to that required in the control of a military body, and the interference of an extraneous power in its practical control and direction, must always be mischievous and destructive of the discipline and habits of obedience, which should govern its subordinate members.” *People ex rel. Masterson v. Police Commrs.*, 110 NY 494 (1888). While much has changed in policing since 1888, basic tenets of organizational effectiveness remain the same. Outsourcing final disciplinary decisions with respect to agency personnel would be no less destructive to the effectiveness of the NYPD today.

The sponsors of Reso 7100 have identified no policy justification for upsetting this longstanding disciplinary authority of the Police Commissioner. The Police Commissioner is already prohibited by law from exercising discretion over the discipline of police officers in a discriminatory or arbitrary manner, and contrary to the suggestions of the sponsors, the Police Commissioner has not been lenient when disciplining police officers. In fact, the PBA has long asserted that the Police Commissioner disciplines police officers too harshly. A disciplinary penalty of 30 leave days (a penalty commonly imposed on police officers in addition to a 30-day unpaid suspension) can cost a police officer the equivalent of more than \$20,000, a substantial sum for any public employee, and particularly for NYPD officers who are among the lowest paid in the policing profession, both locally and nationally. Lesser, but still significant and more frequent, penalties of ten days may amount to most of the yearly vacation compliment for young police officers.

That the Police Commissioner sometimes reaches determination to decline the recommendations of CCRB in no way supports removal of his final disciplinary authority, and certainly provides no justification for the transfer of such authority to CCRB. CCRB investigators are not trained police officers, and receive little to no education on how police officers are required to respond to and handle incidents, particularly where those incidents call for the exercise of on-the-spot judgment and use of force. CCRB investigators, and other institutional actors, are simply ill-suited to act in final judgment of police officers., The Police Commissioner and the majority of staff who advise him on disciplinary matters have themselves served on the street as police officers, have received much of the same training, and are familiar with the policies and rules governing police officers' conduct. This type of knowledge simply cannot be learned in an office-level training course. The Police Commissioner and his deputies are far better suited to adjudge the actions of police officers than CCRB investigators, and other institutional actors, most of whom have no meaningful experience or knowledge of police work or issues impacting the effectiveness of the agency.

Finally, the CCRB is an agency charged by law with investigating, and administratively prosecuting, allegations of misconduct that fall under its jurisdiction. CCRB's funding, indeed the very existence of the agency, relies in large part on the successful investigation and prosecution of police officers. For CCRB to act as final arbiter on cases that they themselves have investigated and prosecuted would constitute a clear conflict of interest and violate fundamental principles of fairness and due process. CCRB is simply not a impartial party that can be expected to hear evidence and make unbiased final determinations regarding an officer's fate when the very evidence and charges against the officer have been prepared and pursued by CCRB itself.

For the reasons set forth above, we object to Resolution 7100.