Labor Arbitration and Police Discipline: Misperceptions and Reforms

By Alan A. Symonette, Arbitrator[1]

Normally papers or articles on this subject begin with a story of a police officer who has been accused of committing a criminal offense or of using excessive force to the point of causing bodily injury or death. The officer is criminally indicted and acquitted of wrongdoing, usually at the preliminary hearing or before. On some occasions the municipality has had to settle with the victimized family for a large sum of taxpayer money. The acquitted officer then seeks reinstatement to the police force and is represented in this effort by his or her union. The matter goes to arbitration and some months later the officer is reinstated with or without back pay. Understandably, the community and the media are outraged. This normally results in a series of articles in local and national newspapers about the lack of accountability in law enforcement and the role collective bargaining and arbitration outcomes and arbitrators themselves play in enabling police to act with impunity. This scenario has been chronicled for decades. The current landscape that has highlighted the recent killings of unarmed African Americans like George Floyd, Brianna Taylor, and others.

One of the most recent comments appeared in an editorial in the October 3, 2020 New York Times entitled "To Hold Police Accountable, Ax the Arbitrators.[2]" In the article, the Times referred to arbitrators as an "entrenched barrier to reform" who "routinely reinstate abusive officers who have been fired for misconduct." Even though mayors and police chiefs

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[2] https://www.nytimes.com/2020/10/03/opinion/sunday/police-arbitration-reform-unions.html?searchResultPosition=1

have engaged in efforts to reform policing and make it accountable. They face "orders from unelected arbitrators [who] give those abusive officers their badges and guns back." Citing a study by Stephen Rushin of the Loyola University of Chicago, arbitrators forced departments to rehire officers in 46 percent of 624 arbitration awards with back pay.

The Times noted that arbitration often employs a standard practice to defend employees who have been treated more harshly than other officer who had committed similar offenses in the past. The editorial board noted that arbitrators employ the seven tests of just cause which they refer to "Daugherty's tests as 'the gold standard of fairness." The Times admitted that evidence of disparate treatment was a concept which protected Black officers from being singled out for doing the same things that white officers did. But today, this concept has become the root of impunity."

The editorial also noted that it is difficult to curb the power of arbitrators because some states "have labor laws that guarantee arbitration to public service employees. Others have a Law Enforcement Officers Bill of Rights that guarantees a right to arbitration if an officer chooses it." The article described the efforts of certain states to change the power of arbitrators and in one instance "making them more accountable to democratically elected officials and the community." In conclusion the Times editorial board stated that officers should still have the right to argue their cases before a "neutral body, but the ultimate decision to terminate [should be] left in the hands of the city manager, who is accountable to the community. That's where it belongs."

Dan Nielson, the current President of the National Academy of Arbitrators wrote a letter in response to the editorial noting that the editorial was "rife with mistakes and misinformation." He noted that Rushin's article had previously set the figure of reinstated officers at 24 percent,

not 46 percent. The former statistic was consistent with a citation to a similar article in the Washington Post and other academic studies. Rather, Departments prevail over three quarters of the time and according to Professor Rushin, the Department loses because "they failed to prove any misconduct."

Arbitrator Nielson concluded his letter by noting that the editorial "fundamentally misstates what arbitrators do and how they come to do it. Arbitrators are *mutually* selected by the public employer and the union to hear the case in accordance with the contract those parties have *negotiated*." [Emphasis mine.] The parties can accomplish a number of reforms to the standards expected of police officers and discipline for violating those standards. Arbitrators will adhere to and enforce them. Arbitrators apply the contract they are given. These "are questions of public policy and they should be addressed by the political process. They cannot and should not be addressed by a grievance arbitrator."

After reading the published editorial which was of course published and the rebuttal letter which was not, I felt a sense of sadness in that during this important time when there are frank and difficult discussions on police brutality and institutional racism and debates raised with respect to accountable policing, we are again engaging in the fruitless discourse surrounding the fundamental misunderstanding of the basic elements of public sector collective bargaining and labor arbitration. The Times should know better. Nevertheless, in these times when communities are searching for ways of reforming their law enforcement departments, it is not sufficient for arbitrators to simply stand back and say "you just don't understand" to critics to the role of collective bargaining when in their view it works against accountability and social justice. Arbitrators do play a role even though they are only construing terms and conditions of employment established by legislatures and the parties themselves.

The purpose of this paper is to provide an institutional overview of the legislative and judicial foundation for police discipline followed by the standards currently applied by arbitrators in hearing appeals of discipline. Finally, I will offer some specific proposals that should serve as a basis for continuing discussion over the reform of officer discipline. Ultimately however, any reform rests with the institutions ultimately responsible for the determination of working conditions within each jurisdiction; the legislatures, the municipal entities, and the unions themselves.

1. The Institutional Foundations of Police Discipline.

Before we begin to discuss the standards that an arbitrator may apply in considering the appropriateness of the discipline of a police officer. One must understand that any discipline, regardless of whether it ends in arbitration or other review, it must be consistent with the due process requirements mandated by the U.S. Supreme Court, provisions adopted by state legislatures securing officers' rights and privileges, and with the negotiated terms and conditions of the collective bargaining agreement. All these considerations must be applied to questions of officer accountability. The review of police discipline is based upon several standards that have been applied in public sector labor relations and collective bargaining for over 50 years.

a. Due Process Foundations

Police officers, like other civil servants have a property right to their employment and those rights cannot be removed without due process. In Garrity v. New Jersey[3] police officers in certain New Jersey boroughs were questioned during the course of a state investigation concerning alleged traffic ticket "fixing." Each officer was first warned that anything he said

[3] 385 U.S. 493 (1967)

might be used against him in the criminal proceeding; the officer could refuse to answer but if he refused, he would be subject to termination of his position. Eventually the officers' answers were used in subsequent prosecutions which resulted in their convictions. The Supreme Court held that to compel these statements were a violation of the Fifth and Fourteenth Amendments. In writing for the majority Justice Douglas stated that:

> "The privilege against self-incrimination would be reduced to a hollow mockery if its exercise could be taken as equivalent either to a confession of guilt or a conclusive presumption of perjury. ***The privilege serves to protect the innocent who otherwise might be ensnared by ambiguous circumstances."[4]

Accordingly, police officers, like teachers and lawyers are not relegated a watered-down version of constitutional rights.

This right to due process should be considered in conjunction with the findings of the Supreme Court in Cleveland Board of Education v. Loudermill.[5] In that case the Court held that certain public sector employees have a property interest in their employment. This right entails a right to "some kind of hearing" before being removed from their position. This includes the right to oral or written notice of the charges against them, an explanation of the employer's evidence and an opportunity to respond to those charges. Accordingly, regardless of whether the police officer is represented by a union which may have separate procedural rights and protections, as a civil servant the officer may not be removed from his or her position without certain procedural requirements.

b. The Police Officer Bill of Rights

Officers have additional protections when subject to discipline than those provided to other civil servants. Some of the elements constituting the most important protections are found

[4] *Id* at 557 – 558.
[5] 470 U.S. 532 (1985)

in the Law Enforcement Officers' Bill of Rights (LEOBR). The LEOBR is intended to protect law enforcement personnel from investigation and prosecution arising from conduct during the official performance of their duties. These rights are detailed as follows:

- Law enforcement officers, except when on duty or acting in an official capacity, have the right to engage in political activity or run for elective office.
- Law enforcement officers shall, if disciplinary action is expected, be notified of the investigation, the nature of the alleged violation, and be notified of the outcome of the investigation and the recommendations made to superiors by the investigators.
- Questioning of a law enforcement officer should be conducted for a reasonable length of time and preferably while the officer is on duty unless exigent circumstances apply.
- Questioning of the law enforcement officer should take place at the offices of those conducting the investigation or at the place where the officer reports to work, unless the officer consents to another location.
- Law enforcement officers will be questioned by a single investigator, and he or she shall be informed of the name, rank, and command of the officer conducting the investigation.
- Law enforcement officers under investigation are entitled to have counsel or any other individual of their choice present at the interrogation.
- Law enforcement officers cannot be threatened, harassed, or promised rewards to induce the answering of any question.
- Law enforcement officers are entitled to a hearing, with notification in advance of the date, access to transcripts, and other relevant documents and evidence generated by the hearing and to representation by counsel or another non-attorney representative at the hearing.
- Law enforcement officers shall have the opportunity to comment in writing on any adverse materials placed in his or her personnel file.
- Law enforcement officers cannot be subject to retaliation for the exercise of these or any other rights under Federal, or State law.

Some or all these provisions have been codified in the laws of sixteen states.[6] According to Professor Stephen Rushin, Assistant Professor, at the University of Alabama School of Law, police have argued that such procedures are necessary because police must be granted the widest latitude to exercise their discretion in handling difficult and often dangerous situation, and should

[6] https://en.wikipedia.org/wiki/Law_Enforcement_Officers%27_Bill_of_Rights

not be second-guessed if a decision appears in retrospect to have been incorrect.[7] Unions have also argued that these protections are necessary to avoid the arbitrary and sometimes political decisions of municipalities. In addition, these provisions have appeared in the Collective Bargaining Agreements in several cities including several in states that have not enacted the Law Enforcement Officer's Bill of Rights.

c. Collective Bargaining and the Negotiation of Police Discipline.

Currently around two-thirds of police officers in the U.S. are members of a labor union and are subject to collective bargaining agreements. These unions received broad, bipartisan support – even from conservative politicians who have fought against unionization privileges for other government employees. Only four states, Georgia, North Carolina, South Carolina, and Virginia generally prohibit police departments from collectively bargaining. Forty-one states have statutes that give local police departments the right to bargain collectively with police unions about salaries, benefits, and other terms of employment.[8]

The question surrounding the negotiation over police discipline has been subject to several interpretations as "conditions of employment". In some instances, collective bargaining statutes, courts and state labor relations boards have held that certain management rights should not be subject to negotiation as conditions of employment. However only a few courts have examined whether disciplinary procedures in police departments are considered "conditions of employment, "thereby making them subject to collective bargaining." A number of these courts have held that police discipline is an appropriate subject of collective bargaining. Others have found exceptions for certain areas of discipline.[9]

[7] *Police Union Contracts* 66 Duke Law Journal 1191 at 1211 (2017)
[8] *Id.* At 1204.
[9] *Id.* At 1206 and attached footnotes.

Critics often find that the combination of legislation and provisions negotiated through the collective bargaining process have blocked the accountability for police actions. This criticism has been raised in six major areas:

1. Disqualifying misconduct complaints that are submitted too many days after an incident occurs or if an investigation takes too long to complete.

2. Preventing police officers from being interrogated immediately after being involved in an incident or otherwise restricting how, when, or where they can be interrogated.

3. Giving officers access to information that civilians do not get prior to being interrogated.

4. Requiring cities to pay costs related to police misconduct by giving officers paid leave while under investigation, paying legal fees, and/or the cost of settlements.

5. Preventing information on past misconduct investigations from being recorded or retained in an officer's personnel file.

6. Limiting disciplinary consequences for officers or limiting the capacity of civilian oversight structures and/or the media to hold police accountable.[10]

In one law review article it has been argued that conferring similar collective bargaining rights on sheriffs' deputies in Florida is associated with an approximately 45% increase in violent incidents.[11] This analysis has been severely questioned by Professors Martin Malin and Joseph Slater of the Chicago-Kent College of Law, Illinois Institute of Technology and University of Toledo College of Law respectively. They claim that the 45% increase was not statistically significant given the number of deputy sheriffs and the overall number of incidents. They concluded that with collective bargaining rights, one additional deputy sheriff in an average

[10] *Campaign Zero* – www.checkthepolice.org.
[11] "Collective Bargaining Rights and Police Misconduct: Evidence from Florida," 38 Journal of Law, Economics and Organization ___ (2022) (forthcoming) Dhmmika Dharmapala, John Rappaport & Richard H. McAdams

office of 290 deputies would be involved in a violent incident every five years.[12] Such an outcome is not as stark as described.

In sum, before we begin to discuss the standards an arbitrator may apply to the discipline of a police officer, he or she must reach a determination consistent with the due process provisions

2. The Role of the Arbitrator and Standards Applied in Matters Involving Police Discipline

The discipline of police officers usually begins with an internal investigation conducted by the department's internal affairs division. That division may also include officers who are also members of the bargaining unit. If the investigation concludes that charges are warranted, the charges are provided to the officer who may come before a review board consisting of other officers. At each step, the officer is represented by a representative from the union. The makeup of the board depends on the municipality or state. They may include fellow officers or in some instances, civilians. If the charges remain founded by the board, only then is a grievance filed under the collective bargaining agreement. If the grievance is not resolved, it is submitted to arbitration. The arbitrator is mutually selected by the municipality and the union either from a rotating "permanent" panel or from agencies that provide panels like the American Arbitration Association or the state Public Employee Relations Board. These arbitrators are vetted by both parties through biographies submitted by the agencies or through research by the parties themselves.

Arbitrators who are members of the National Academy of Arbitrators or are selected through agencies like the American Arbitration Association are subject to the Code of

[12] "In defense of police collective bargaining: Unions and arbitrators do not make it impossible to fire bad cops, Chicago Sun Times, August 12, 2020, https://chicago.suntimes.com/2020/8/12/21365763/chicago-police-fop-collective-bargaining-rights.

Professional Responsibility for Arbitrators of Labor-Management Disputes.[13] Certain provisions of the Code are relevant in arbitrations involving police discipline. Paragraph 2 A provides "An arbitrator should conscientiously endeavor to understand and observe, to the extent consistent with professional responsibility, the significant principles governing each arbitration system in which the arbitrator serves." The arbitrator must decide the case in a manner consistent with the provisions negotiated by the municipality and the union. If the parties agree to include or exclude certain evidence in discipline, the arbitrator must abide by those standards. If an agency must follow statutory law or provision of the Agreement in the investigation of police misconduct, the arbitrator is obligated to make sure that the investigation is compliant with that standard. The failure to follow such legislated or negotiated rules may result in the finding of a violation of the agreement and the reinstatement of the officer.

Another critical aspect of arbitration in police cases involves Paragraph 2 C regarding Privacy of Arbitrations. The Code requires:

> "All significant aspects of an arbitration proceeding must be treated by the arbitrator as confidential unless this requirement is waived by both parties or disclosure is required or permitted by law
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> a. Attendance at hearings by persons not representing the parties or invited by either or both of them should be permitted only when the parties agree or when an applicable law requires or permits. Occasionally, special circumstances may require that an arbitrator rule on such matters as attendance and degree of participation of counsel selected by the grievant.
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> b. Discussion of a case by an arbitration with persons not involved directly should be limited to situations where advance approval or consent of both parties is obtained or where the identity of the parties and details of the case are sufficiently obscured to eliminate any realistic probability of identification. …

[13] https://naarb.org/code-of-professional-responsibility/

c. It is a violation of professional responsibility for an arbitrator to make public an award without the consent of the parties."

This issue is the source of significant consternation and frustration by media and the broader community. Unless the arbitration hearing is subject to a state open proceedings or records law, the arbitration proceeding itself is private. The evidence heard is private. The decision and its reasoning are also private. The arbitrator is forbidden to comment on an award. Unfortunately, the community is only aware of what has happened prior to the department's decision. It is usually not aware of what evidence is presented at the proceeding and in most instances is unaware of the reasoning for the award. Therefore, in many cases, the community and media are forced to comment on processes in the proceeding that due to privacy requirements, it knows nothing about.

At the beginning of the hearing, the arbitrator is given a statement of the question to be decided. Normally that question or issue is stipulated in two sentences; was [the officer] terminated for just cause? If not, what shall the remedy be? The definition of just cause is a term of art.[14] Many of the proponents of greater police accountability point to the application of this standard to the unique responsibilities that accompany police officers. According to those critics, arbitrators who must make these determinations are wedded to what can best be described as the "seven tests" of just cause. These tests are derived from the opinion of Arbitrator Carroll Daugherty in 1964.[15] Many have referred to this standard as the "common law" definition

[14] The concept of just cause draws its origin from the Statute of Laborers enacted in 1562. This statute prohibited employers from discharging employees without a "reasonable cause." While most American jurisdictions initially followed this rule, it was replaced by the employment at-will doctrine in 1877. Just cause resurfaced in the 1930s when unions, concerned about their members' job security, began including just cause provisions in their collective bargaining agreements. Norman Brand and Melissa H. Biren ed., *Discipline and Discharge in Arbitration*, 3rd Edition, Bloomberg BNA (2015), page 2-4, citing Delmendo, "*Determining Just Cause: An Equitable Solution for the Workplace,"* 66 Wash. L. Rev. 831 (1991)

[15] Grief Bros. Cooperage Corp., 42 LA 555 (Daugherty, 1964)

consisting of seven independent questions. If the answer to many of them is "no," then, in Daugherty's view, just cause did not exist for discipline.[16]

Today, 56 years after this was first articulated, some arbitrators still refer to the Seven Tests in their just cause analysis. Many critics focus on the application of these tests as a major roadblock to police accountability. In particular, the proponents of accountability focus on two specific factors. First, they argue that the "non-discrimination" test once used to protect police of Color are used as precedent to excuse wrongdoing by officers based upon instances in which prior police management may have looked the other way. Secondly, even though an arbitrator may have found the officer guilty of the charges, arbitrators have reduced the penalty based upon the employee's prior record or length of service. What is particularly impactful in this determination is that the officer/grievant's record may have been expunged due to negotiated provisions in the collective bargaining agreement or the legislated application of the Law Enforcement Officers Bill of Rights or similar statutes. On the other hand, police unions have noted that officers have been reinstated because departments, in a rush to judgment to satisfy and upset community, have failed to employ appropriate due process.

While there are some arbitrators who have applied the seven tests, many others including this author find that the tests cannot be applied to all circumstances of employment but are applicable based on the expectations and obligations of the relationship. For example, Arbitrators Roger Abrams and Dennis Nolan have explained that just cause for discipline can exist only when an employee fails to meet a fundamental obligation that exists in the employment relationship. They identify employee obligations, legitimate management interests,

[16] The questions are: 1. Was there notice to the employee? 2. Was the rule reasonably related to operations? 3. Was there an investigation prior to imposing discipline? 4. Was the investigation fair? 5. Was there sufficient proof of the wrongdoing? 6. Was the rule applied evenhandedly and without discrimination to all employees? 7. Was the penalty appropriate?

and employee protections applicable to the disciplinary setting must be considered in determining whether just cause exists to terminate.[17]

In other words, there are employee obligations unique to policing that should be considered in accessing police discipline. Officers take an oath to serve and protect the community and at the same time are given the ability to use lethal force in executing that oath. Thus, it would be unreasonable to apply a standard that was derived in the steel industry to this circumstance. Given these conditions, parties have negotiated their own definition of just cause given the obligations of the job, the expectations of management and the community and the negotiated protections.[18]

It is acknowledged that in many circumstances, the application of the standards in the private workplace in 1964 to 21st Century policing is tantamount to "fitting a square into a round hole." However, the power to make these necessary changes rest with the parties through legislation with the involvement of the community or negotiation. Moreover, it is also important that the arbiters of discipline in these circumstances be trained in the unique expectations of both the municipality and the police union regarding officer performance.

It is critical that arbitrators understand the nature of any industry in which they are asked to exercise their judgement. Such training has been provided in other specialized areas in which arbitrators become "certified" to work in an industry. Once complete the arbitrator can certify on their bio that he or she have been trained for consideration and selection by the parties. This has

[17] See Abrams & Nolan, *"Toward a Theory of 'Just Cause' in Employee Discipline Cases,"* 1985 Duke Law Journal 594 (1985)

[18] For example, an employee in the federal government may only be removed "for the efficiency of the service." In consideration of the removal, management must consider 12 "Douglas Factors". Those factors are 1. The seriousness of the offense, 2. The employee's job, 3. Prior Discipline, 4. Past Work Record, 5. Ability to perform in the future, 6. Consistency of penalty, 7. The table of penalties, 8. Notoriety of Offense, 9. Clarity of Prior Notice, Rehabilitative Potential, 11. Mitigating circumstances, and 12. Alternative sanctions.

occurred in such varying industries as railroads and federal sector arbitration.[19] This I believe is a start at the reformation of the arbitration process as it applies to policing.

3. Proposed Reforms to the Arbitration Process

Recently there has been substantial discussion and consideration of reforms in law enforcement labor relations because of the recent incidents involving police violence on civilians. A good example of that discussion appeared a recent article published by Catherine Fisk, Joseph Grodin, Thelton Henderson, John True, Barry Winograd and Ronald Yank.[20] These individuals are law professors and legal professionals involved in collective bargaining, arbitration, and law enforcement. The proposals are focused on law enforcement officers employed by California counties, cities, and some other political subdivisions. The proposals fall into three categories: transparency in contract negotiation and record keeping, reforms (including greater transparency) in law enforcement disciplinary proceedings, and improved accountability in collective representation of law enforcement officers. I choose to summarize their proposals for consideration.

I. Transparency in Contract Negotiation and Record-Keeping

a. Public Access to Negotiations on Use of Force.

Propose that the current (California) law be amended to require that, if a public entity chooses to bargain with a union representing law enforcement officers over use of force policy, the public must be notified in advance of the time and place of any such negotiations and have a right to attend. In addition the law should make clear that even if the effects of a use of force policy are a mandatory subject of bargaining, management has a right to implement the policy before or during effects bargaining.

[19] For example, the author has worked with the Federal Mediation and Conciliation Service in training arbitrators to handle cases in the Federal sector. Once the two-day training is complete, the arbitrator may represent this expertise to the parties for consideration and selection. NAA arbitrators regularly provide such training and other sectors of labor management arbitration.

[20] Catherine Fisk et al., *Reforming Law Enforcement Labor Relations,* Calif. L. Rev. Online (Aug. 2020), http://www.californialawreview.org/reforming-law-enforcement-labor-relations.

b. Transparency for All Law Enforcement Contract Proposals

Before a public entity commences negotiations with law enforcement union, that entity must conduct a public hearing on its bargaining proposals with sufficient notice and opportunity for public comment. After the agreement is negotiated the public entity must conduct a public hearing, with sufficient notice and opportunity for public comment before the agreement is ratified.

c. Transparency of Law Enforcement Disciplinary Records and Decisions

Propose that all disciplinary records and arbitration and civil service decisions involving law enforcement officers be maintained in publicly accessible database subject to disclosure under the (California) Public Records Act. However, to protect those who make complaints against officers or who are victims of misconduct, the name and other private information of complainants will not be disclosed.

II. Procedural Reform of Disciplinary Proceedings[21]

d. Transparency of Law Enforcement Disciplinary Arbitrations and Civil Service Appeals

Propose that, just as a civil or criminal trial is a public proceeding, so too should be disciplinary proceedings against law enforcement officers.

e. Reform the Procedure for Disciplinary Arbitration and Civil Service Appeals.

In this section, the authors propose several changes in the way evidence is used in disciplinary appeals. This includes significant changes in evidence standards, decisions and remedies awarded.

f. Arbitrator Independence and Training

The authors recognize that in cases involving the use of force, arbitrators and hearing officers play a public role in resolving disputes involving officer discipline. Therefore, they propose that arbitrators and hearing officers with appropriate training be assign from list approved by a government agency. In their article they refer to the California Mediation and Conciliation Service. This concept would be applicable to individuals on panels such as the American Arbitration Association as well as respective state Public Employee Relations Boards.

[21] It should be noted here that the authors of the articles recognized that these proposals would necessitate a change in several law enforcement officer collective bargaining agreements in many California jurisdictions as well as the California Peace Officers Bill of Rights.

III. Accountability in Collective Representation

These proposals address several changes to the statutory protections afforded to law enforcement officers.

g. Bargaining Units.

This proposal addresses the concern of structures in police departments being organized with higher-ranking officers having the authority to supervise and discipline lower-ranking officers. In many areas, not just California. Both supervisory and officers in internal investigations are in the same bargaining unit and represented by the same union. In those circumstances, it can be difficult for a higher-ranking officer to effectively discipline or investigate a lower-ranking officer. The group proposed that law enforcement officers above the rank of sergeant shall not be included in the bargaining units of officers at the rank of sergeant or below. In addition, neither officers in units of sergeant and below nor officers in units of higher-ranked officers shall represent officers in the other units in bargaining, grievances, or civil service appeals.

h. Allow Mid-Term Modification of Use of Force Policy

Propose that there be a new law that would clearly state that no term of a law enforcement officer contract, including a "zipper" clause, shall be interpreted to prevent modification of a use of force policy during the term of the agreement.

It is my belief that these proposals represent a starting point in the discussion is necessary to address criticisms and concerns raised about policing, collective bargaining, and arbitration. As indicated in the article, there was not a consensus on several of the proposals and some in the group would consider more "radical" changes. However, these proposals present a modest basis for discussion of reforms to police discipline. Indeed, the ability to enact reform ultimately resets with the legislators, municipal and union leadership, and the surrounding community.

There is also precedent for such efforts. In the comments by Professors Malin and Slater it was noted that:

> "The idea of partnering with unions is probably anathema to most police chiefs. And it is easier politically for union officials to play to rank-and-file feelings that they are under siege than to engage in meaningful cooperation with management. But with calls to defund police departments and to eliminate police

> collective bargaining, both labor and management may feel they are facing existential moments and have some incentive to come together to address that.
>
> Such a partnership should include what highly respected law enforcement professionals have advocated: root cause analysis to review deadly force incident to reduce systematic errors that contribute to tragic loss of life. Instead of city leaders blaming the union and union leaders stoking rank-and-file siege mentality, both might learn from school districts and teacher unions and partner on root cause analysis involving other experts and community leaders as well."[22]

Malin and Slater pointed to successes resulting from cooperation between school districts and teachers' unions in identifying problem performers. The parties have engaged in upgrading evaluation systems and criteria along with peer evaluation. As a result, the rates of improvement and attrition of poorly performing teachers have increased. "The union's role is transformed from protecting members at all costs from the process unilaterally imposed by management to protecting the professional standards that the union itself was involved in developing."

The vast majority of police officers work hard to honor their oaths to serve and protect their communities. Unfortunately, the actions of a few perpetuate the view of policing, as an American institution "created by and for the benefit of the elites of the dominant caste and enforced by poorer members of [that] caste who have tied their lot to the caste system rather to their own convictions."[23] There are officers who seize the opportunity to be engaged in this service while there are a few others who feel they are tasked to enforce the rules in a community they know little about, don't care to know about, or just don't like. Everyone knows who these officers are. These times should present the opportunity for all affected to not engage in blaming the union or protecting the non-performers at all costs. Rather, those involved could work to upgrade and promote the professional standards that are critical to effective policing.

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[22] See "*In Defense of Police Collective Bargaining"* Chicago Sun Times, *supra.*
[23] Isabel Wilkerson, *Caste: The Origins of Our Discontents,* Random House, 2020