

6-16-2021

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Recommended Citation

Ott, Elizabeth Rachel Iva, "Police Union Contracts and Impediments to Accountability: A Case Study Analysis of PPA Bargaining Agreements" (2021). *University Honors Theses*. Paper 1096.
<https://doi.org/10.15760/honors.1123>

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Police Union Contracts and Impediments to Accountability:
A Case Study Analysis of PPA Bargaining Agreements

by

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An undergraduate honors thesis submitted in partial fulfillment of the

requirements for the degree of

Bachelor of Arts

in

University Honors

and

Economics

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2021

Abstract:

Despite a growing widespread recognition that police unions represent a major component of policing and have major influences on aspects of policing such as disciplinary procedures, day-to-day management, and police-community relations, they have until recently been largely ignored by police scholars. In light of significant gaps in knowledge regarding police unions and the impacts that they have on law enforcement behavior and police accountability, this paper utilizes a case study approach to analyze all existing union contracts between the Portland Police Association (PPA) and the City of Portland in order to explore the prevalence of particular contract provisions that critics have placed under scrutiny as having the ability to impede fair and thorough investigations of officer misconduct or otherwise inhibit accountability. Findings show that PPA all contracts dating back from 1969 contain at least one provision that has the potential to thwart accountability efforts. Findings also show a general trend of increasing additional controversial provisions over the course of elapsing contract bargaining agreements.

Introduction

Within the last decade, multiple highly publicized accounts of police involved deadly uses of force against minorities have led to peaked interest from scholars and activists in police accountability, simultaneously raising concerns about racial disparities within the U.S. justice system and the role that law enforcement plays in a racially hierarchical society. These killings and the lasting strains that they impose in the communities these deaths occur in have caused already tense police-community relationships to become further fragmented. In the midst of widespread demands for reform and the removal of barriers to officer discipline after the 2014 shooting of Michael Brown in Ferguson, MI and the recent killing of George Floyd by former officer Derek Chauvin in Minneapolis, MN, police unions have emerged in the public eye as stark defenders of officers who have been accused of excessive uses of force and as critical opponents to reform efforts.¹ In the wake of nationwide unrest, Minneapolis Police Officers Federation president Bob Kroll made multiple controversial public comments as the Minneapolis police force came under pressure by promising to fight the firing of the four officers involved, by dismissing George Floyd's death through calling attention to what he calls Floyd's "violent criminal history", and by framing protests in response to Floyd's death as a "terrorist movement" that has made officers into scapegoats.²

The phenomenon of police unions acting as rhetorical and legal barriers to officer discipline and institutional reform—much like the phenomenon of disproportionate police killings of Black people—has a longstanding history in the United States. In the early years of unionization, police unions in Philadelphia and New York were already striking down major

¹Marcia McCormick. *Our Uneasiness with Police Unions: Power and Voice for the Powerful?* SAINT LOUIS UNIVERSITY PUBLIC LAW REVIEW, vol. 35, no. 47, 2015.

²David Schaper. *Calls For Reform Put Minneapolis Police Union Leader In Hot Seat*. NPR. [npr.org/2020/06/13/876640607/calls-for-reform-put-minneapolis-police-union-leader-in-hot-seat](https://www.npr.org/2020/06/13/876640607/calls-for-reform-put-minneapolis-police-union-leader-in-hot-seat).

civilian review boards.³ Indeed, the major push for unionization in the 1960s was in large part a response to the implementation of reforms that were meant to improve police-community relations and reduce racial tensions.⁴ In accompaniment to fighting reform, collective frustrations have been raised by police chiefs, elected government officials, and concern community members over police disciplinary processes—which are largely determined by statutory labor laws and union bargaining negotiations—over how difficult it seems to be to fire or discipline officers who have committed acts of misconduct.⁵ Instead, communities are often forced to hire back guilty officers or significantly reduce their awarded discipline. For instance, in 2007 an Oakland officer shot and murdered a 20-year-old man who was unarmed. A couple of months after the fact, the same officer "killed another unarmed man, shooting him three times in the back as he ran away."⁶ Oakland paid a \$650,000 settlement to the victim's family and fired the officer. However, during the disciplinary requests measure, a judge requested the City of Oakland to rehire the officer and award him with the pay he had lost while terminated.⁷ Similarly, in 2010, Portland officer Ron Frashour was responding to a mental wellness check at a residence upon a report of a man inside who was significantly distraught over the recent death of his brother. When officers convinced the man to exit his home, he came walking backwards with his hands over the back of his head toward the officers. After slightly lowering his hands, one officer shoots multiple beanbag rounds at the man, and officer Frashour shoots the man once in the back with a live round, killing him. Frashour was initially fired and the City of Portland issued a \$1.2

³ Samuel Walker. *The Neglect of Police Unions: Exploring One of the Most Important Areas of American Policing*. Police Practice and Research: An International Journal, 2008.

⁴ Christopher Harris and Matthew Sweeney, *Police Union Contracts: An Analysis of Large Cities*. Oxford University Press, 2019. p. 1-11.

⁵ Stephen Rushin, *Police Disciplinary Appeals*. Duke Law Journal, 2019. p. 550.

⁶ Benjamin Levin, *What's Wrong with Police Unions?* Columbia Law Review, 2020. p. 1330.

⁷ Ibid.

mil settlement to the victim's family, but after appealing to an arbitrator he was reinstated and has returned to work as of 2016 (after spending two years on paid leave).⁸

Collective bargaining rights allow unionized police officers to negotiate over the terms and conditions of their employment. One of the central features of collective bargaining in policing relates to the disciplinary process. This is pretty standard, given that rank-and-file officers and management both want clearly defined discipline procedures. However, authors have found that there are numerous common provisions outlined in union contracts that are likely to obstruct effective investigations of police misconduct and shield guilty officers from discipline.⁹ According to Kevin Keenan and Samuel Walker (2004), general encumbrances in union contracts that are the biggest causes for concern include: extremely broad language that applies also to routine supervision and is not exclusive to investigations of misconduct, formally established waiting periods that delay investigations, pre-disciplinary hearings that allow peer-ranked officers to serve on the board conducting the hearings, statutes of limitations imposed on the use and retention of officer misconduct data, and conditions on the time and place of interviews.¹⁰ Stephen Rushin (2017) also identifies several provisions under scrutiny such as providing officers with evidence prior to conducting an interview, limiting the length of an investigation, limiting civilian complaints, limiting civilian oversight, and providing for arbitration. In a study of 178 bargaining agreements across the U.S., which govern the working conditions of around 40% of all municipal officers, Rushin (2017) found that around 88%

⁸ Martha Bellisle. *Fired repeatedly, but back on the job: Police officers in misconduct cases routinely return to force through arbitration process*. Chicago Tribune. www.chicagotribune.com/nation-world/ct-nw-police-misconduct-arbitration-20200624-de63ttai3nh6hpfefb6ruf64yi-story.html, see also www.portlandoregon.gov/police/article/538235.

⁹ Samuel Walker. *The Neglect of Police Unions: Exploring One of the Most Important Areas of American Policing*. Police Practice and Research: An International Journal, 2008.

¹⁰ Kevin Keenan, Samuel Walker. *An Impediment to Police Accountability? An Analysis of Statutory Law Enforcement Officers' Bill of Rights*. Boston University Access Journal, 2005.

contained at least one provision that has the potential to thwart legitimate disciplinary proceedings against officers involved in misconduct. A smaller study of 39 union contracts containing disciplinary provisions for officers in some of the biggest cities in the country conducted by Harris and Sweeney (2019) found that all but one contained provisions that could be threatening to accountability.¹¹ Furthermore, a recent and seminal study by Abdul Rad (2018) from Oxford University of contracts and LEBOR provisions in 100 largest U.S. cities has discovered a positive relationship between police protections and cases of abuse in police practice.¹²

Despite serious allegations and anecdotal evidence that police unions demonstrate the ability to successfully obstruct efforts to promote police accountability, it remains a puzzling fact that they remain a severely neglected area of study.¹³ Police unions are complex and always changing, and research on police unions is sparse and unbalanced. Researchers have a particularly difficult time accessing fully accurate information such as data on officer use of force or the number and nature of deaths caused by police officers due to the fact that many police departments refuse to comply with laws that require the accurate reporting of such information or to provide private information to scholars.¹⁴ This gap in literature is problematic during a time when police accountability has often topped media headlines.

This project offers an alternative approach in exploring the broad concerns of police union impact on accountability and police-community relationships by applying them to a single case study of the Portland Police Association (PPA) in Portland, OR, which represents 900

¹¹ Christopher Harris, Matthew Sweeney, *Police Union Contracts: An Analysis of Large Cities*. Policing, 2019.

¹² A. N. Rad, *Police Institutions and Police Abuse: Evidence from the U.S.* University of Oxford, 2018.

¹³ Samuel Walker. *The Neglect of Police Unions: Exploring One of the Most Important Areas of American Policing*. *Police Practice and Research: An International Journal*, 2008. p. 108.

¹⁴ Alex Vitale. *The End of Policing*. Verso Books, 2017. p. 12.

members that include the officers and sergeants of the Portland Police Bureau. This project analyzes union contracts between PPA and the City of Portland over the course of time that the PPA has had bargaining rights in order to identify the prevalence of protective contract provisions related to disciplinary processes and police accountability and identify when these protections first appeared in negotiations and whether they appear to increase over time. Study of this particular independent union is valuable for multiple reasons. PPA is currently the longest standing police union in the United States. The department this union represents is in one of the biggest U.S. cities and has appeared in comparative studies of unions. The Portland Police Bureau has a long history of documented accounts of officers involved in misconduct or abuse who have been shielded by discipline, leading to frustrated community activists, families of victims, and civil rights attorneys. As a case study, this project benefits in providing a detailed account of union characteristics and how they have changed over time for a union that has likely stood in some ways as a model for some of the police unions around the country that emerged later.

This paper has been structured into several sections. First, supplementary information on the history and background of police unionization is provided, followed by a summary exploring the existing research on the top cited concerns of policing, which has been split into main arguments on ideological or obstructionist concerns of police unions. The next section covers a review of the scope and methodology of the case study that has been performed along with an explanation of the variables that have been chosen. Each of the indicated variables will be discussed individually in the results section before concluding with a brief discussion of overall findings.

Framework and Considerations

This paper proceeds on the assumption that employees in the private and public sector have a fundamental right to participate in unions and to engage in bargaining negotiations over the terms and conditions of their employment.¹⁵ The extent of these rights is subject to negotiation with management, policy decisions, and local/state/federal law. In addition to the right to join a union, this paper also recognizes that employees have a legal right to due process in regard to disciplinary action, which includes the right to be informed of any charges of misconduct, the right of a fair hearing involving said misconduct, and a right to appeal any unfavorable disciplinary action that results from the investigation.¹⁶ Once again, the range of these rights are subject to negotiation with management, policy decisions, and local/state/federal law.

Background and Literature

Although it wasn't until the late 1960s that police unionism began to establish as a widely accepted form of labor organization with bargaining power in the eyes of police department management and the general public, the struggle for police officers to organize and gain the right to bargain collectively can be traced back to the turn of the 20th century.¹⁷ In *A Historical Overview of Police Unionization in the United States*, Marvin Levine (1988) notes that the first campaign to unionize police officers occurred when the American Federation of Labor (AFL) began issuing charters to police labor organizations in 30 large cities including Boston after departments became overwrought with complaints of low pay, long hours, lack of opportunities

¹⁵ Kevin Keenan, Samuel Walker. *An Impediment to Police Accountability? An Analysis of Statutory Law Enforcement Officers' Bill of Rights*. Boston University Access Journal, 2005. p.185-243.

¹⁶ Ibid.

¹⁷ Marvin J. Levine, *A Historical Overview of Police Unionization in the United States*. The Police Journal, 1988. p. 334.

for rebuttal on management decisions, nepotism among officers, and general dissatisfaction that became inflamed after the outbreak of World War I due to effects of nationwide inflation that had nearly doubled the cost of living during the time.¹⁸ These efforts by the AFL were met with immediate criticism from police chiefs throughout the entirety of the nation, who held the sentiment that police officers should hold the same level of professionalism as a soldier or a sailor would, and argued that they wouldn't be able to commit themselves to any group aside from an independent benevolent or fraternal organization without inherently removing the principle of neutrality from the practice of policing. Other police reformers and multitudes of unionized laborers such as dockworkers and miners had similarly adverse reactions to the idea of unionization, as police reformers feared that their efforts would be stifled in the process of labor negotiations and other union workers recalled police officers' often violent history of union busting.¹⁹ The initial push for police unionism came to a swift end at the point when three-fourths of the rank-and-file officers within Boston's police department staged a strike as a result of Police Commissioner E.V. Curtis's refusal to recognize their union and to suspend some officers who had joined.²⁰ The Boston Police Strike of 1919—which resulted in days of civil unrest and 9 deaths and caught the attention of President Woodrow Wilson, who referred to the strike as a “crime against civilization”—would heavily influence the opinions and actions of city government and police management regarding the unionization of police over the course of the next century.²¹

The second campaign for police unionization occurred in the 1940s and 50s when the American Federation of State, County, and Municipal Employees (AFSCME), as well as the

¹⁸ Ibid. p. 335.

¹⁹ Ibid. p. 339.

²⁰ Ibid. p. 335.

²¹ Benjamin Levin, *What's Wrong with Police Unions?* Columbia Law Review, 2020. p. 1360.

State, County, and Municipal Workers of America, began issuing charters to local police departments across the nation as they each sought to increase their influence in public sector occupations. According to the book *Pistols, Pickets, and Politics: A History of the Portland Police Association*, a historical narrative about the Portland Police Association by Susan G. Hauer (1996), it was the officers of the Portland Police Bureau who pioneered this campaign in 1942 in their efforts to establish a union. After reaching out to several other national union organizations who refused, the AFSCME agreed to work with them and issued a charter for the Portland Police Association on a strict no-strike stipulation, drawing on fears from the past.²² The establishment of the PPA was met with the same concerns and criticisms that police unions throughout the country had been experiencing at the time. A 1942 edition of the *Oregonian* voiced these concerns in one of their publications, citing that the police would always be publicly suspected of displaying a greater loyalty to the union over their official duty.²³ Portland's Chief of Police during the 1940s, Harry Niles, would refuse to recognize the union up to the point of his death in 1946. While Chief Niles never fired any officers who joined like other police chiefs had been doing in other cities such as Boston, he would typically demote anyone who claimed to be a member. The AFSCME would spend the next 9 years issuing out 36 additional charters to local police departments, although most of these new unions—excluding the PPA, which became the nation's longest running police union as a result of these efforts—would once again swiftly dissolve or become banned until the 1950s and 1960s, when the establishment of the Taft-

²² Susan G. Hauer, *Pistols, Pickets, and Politics: A History of the Portland Police Association*. The Portland Police Association, 1996. p. 24.

²³ *Ibid.* p. 22.

Hartley Act, the Wagner Act, and John F. Kennedy's Executive Order 10988 would extend the formal legal right to bargain collectively to most public sector and federal employees.²⁴

Levine (1988) highlights that the 1950s and early 1960s enumerated a time when rank-and-file police officers were becoming increasingly frustrated with working conditions (which hadn't substantially improved over the first half of the 20th century) as well as frustrated by new waves of departmental reforms that arose out of the civil rights movement, such as the call made by the American Civil Liberties Union to create civilian review boards that would directly address complaints against officers who had been accused of misconduct or malpractice.²⁵ The desire of rank-and-file officers to acquire some form of shared power in reform-making decisions became a major goal for officers continuing to unionize in the 60s, and remains a major component of police unions today. Many new unions became established in the public sector as new and better-versed leaders of private fraternal and benevolent organizations were successfully pressing elected officials on the municipal and state levels for formal grievance procedures by working in local elections, appealing to courts, and lobbying in city halls.²⁶ Ultimately, city officials determined that refusing these demands were no longer a worthwhile endeavor. By the early 1970s, rank-and-file organizations in at least 10 major cities were granted dues checkoffs, bargaining rights, and formal grievance procedures.

As of 2017, it has been best estimated that out of 800,000 sworn officers, approximately 75-80% are members of unions.²⁷ Around 80-85% of these unions are classified as independent and have no affiliation with national labor organization groups, while 15-20% of these

²⁴ Marvin J. Levine, *A Historical Overview of Police Unionization in the United States*. The Police Journal, 1988. p. 342.

²⁵ Ibid. p. 345.

²⁶ Ibid. p.340.

²⁷ Ron DeLord, Ron York. *Law Enforcement, Police Unions, and the Future: Educating Police Management and Unions about the Challenges Ahead*. United States: Charles C Thomas, Publisher, 2017.

organizations are affiliated with the AFL-CIO. Walker (2008) notes that police unions are more common among large police departments (and therefore, larger cities) than in smaller sized departments where communities have smaller populations and are distinctly less common in the southeast portion of the nation where unionism has historically been weak. Since the United States doesn't have a national police department, the formal duties and roles of police agencies are determined by state statutes and local policies. Likewise, police unions are considered to be highly autonomous and fragmented. A report from Community Oriented Policing Services (COPS) in 2006 labelled police unionism as "disorganized labor" with a "maze of different union affiliations".²⁸

Out of the existing literature analyzing police unions, police theorists, reformers, and activists have presented anecdotal and empirical evidence arguing that police unions have the ability to impact the roles and duties of policing and inhibit aspects of accountability in a variety of ways: through the processes of collective bargaining and forming contracts with the city, by establishing Law Enforcement Bills of Rights (LEBoR) within those contracts that grant officers with extra disciplinary protections, by promoting a subculture of police that encourages exclusive solidarity among union officers, by lobbying, fundraising, providing legal representation, and by filing lawsuits.²⁹ The most prominent concerns of police unions can be conceptualized into 2 main categories: the ideological concern and the obstructionist concern.³⁰ Scholars whose focus lies in the former concern of police unions prioritize the public relations role of policing over the specific structural impediments presented by police unions, while the

²⁸ Samuel Walker. *The Neglect of Police Unions: Exploring One of the Most Important Areas of American Policing*. Police Practice and Research: An International Journal, 2008. p. 98.

²⁹ Samuel Walker. *The Neglect of Police Unions: Exploring One of the Most Important Areas of American Policing*. Police Practice and Research: An International Journal, 2008. p.108.

³⁰ Benjamin Levin. *What's Wrong with Police Unions?* Columbia Law Review, 2020. p. 1340.

latter concern hones in on potential structural obstacles to reform or accountability of officer misconduct.³¹ While the data analysis conducted in this paper focuses on the obstructionist concerns of police unions, it's important to recognize that these two categories present similar arguments and often greatly overlap, as policing policies directly impact police-community relationships.³²

The ideological critique of police unions has become increasingly prevalent in literature on policing, as police unions have long used their expression as collective and influential voices to push back on efforts of reform and to support policies and politics that appear to inflame community tensions. Some authors have focused on the relationship between police unions and police roles, arguing that many police unions promote a subculture of policing that situates officers in an us vs. them or 'warrior' mentality which has proven to alienate police from the community, most particularly among people of color.³³ Alex Vitale (2017) from *The End of Policing* argues that this aggressive approach to policing can be partially explained by a combination of 'broken window' policing policies and 'tough on crime' policing styles, the increased militarization of the police as a result of the 9/11 War on Terror, and beliefs that entire communities are suspicious, dangerous, or disorderly.³⁴ He highlights the fact that black people and other communities of color are disproportionately affected by this harsh style of policing; lower income neighborhoods, which have a higher concentration of residents of color due to forces like gentrification and structural inequality, are often classified as 'high-crime' areas and are subsequently overpoliced without being provided with substantial services such as new

³¹ Ibid. p. 1341-1342.

³² Samuel Walker. *The Neglect of Police Unions: Exploring One of the Most Important Areas of American Policing*. Police Practice and Research: An International Journal, 2008. p.110.

³³ Ibid., see also Thomas, M. P., Tufts, S. *Blue Solidarity: Police Unions, Race and Authoritarian Populism in North America*. Work, Employment and Society, 2020. p. 126–128.

³⁴ Alex Vitale. *The End of Policing*. Verso Books, 2017. p. 14.

schools or jobs that would potentially tackle the root of why crime may be occurring in the first place. Efforts to promote more positive police-civilian interactions by emphasizing the service role of policing, such as President Barack Obama's 21st Century Task Force, presented by the Community Oriented Policing Service office, have failed to produce substantial results. An empirical study of police officer views and preferences of police roles conducted by John Manageau and Raymond Hunt (1996) found that unionized officers place a higher emphasis on the "law enforcement" component of policing—which includes activities such as making arrests or issuing citations—over roles pertaining to order maintenance or service delivery.³⁵ To the extent that the law enforcement component was emphasized in departments, unionized officers experienced higher discretion in their day-to-day duties, higher job satisfaction, and more positive views on departmental personnel practices. As Cortright et al. (2018) discover in an analysis of state statutes regarding police roles, state law still primarily focuses on the crime-related components of policing, despite the fact that real responsibilities of the police role related to crime stopping such as writing citations or making arrests accounts for less than 30% of day to day duties.³⁶

Mark Thomas and Steven Tufts (2020) find that the "us vs. them" subculture of policing seems to have become exacerbated with the rise of police unions and has extended into a form of exclusive solidarity among unionized officers which promotes activity such as implementing the 'code of silence' when an officer is faced with accusations of misconduct.³⁷ Acknowledging that police unions are heterogeneous institutions, the authors argue that through selective solidarity,

³⁵ John Manageau and Raymond Hunt. *Police Unions and the Police Role*. Human Relations, 1996. p. 1337.

³⁶ Casey Cortright, Wesley McCann et al. *An Analysis of State Statutes Regarding the Role of Law Enforcement*. Criminal Justice Policy Review, 2020. Vol. 31 (1). p. 104.

³⁷ Thomas, M. P., Tufts, S. *Blue Solidarity: Police Unions, Race and Authoritarian Populism in North America*. Work, Employment and Society, 2020. p. 123.

these unions generally display support and collectivity among members and other police unions while simultaneously setting boundaries between themselves and other members of the workforce in a way that comes off as antagonistic or exclusionary. Outside of collective bargaining, this support is shown by advocating on the behalf of fellow officers, defending the police department when it falls under public scrutiny, and by involving themselves in broader political activity such as lobbying and supporting desired candidates in campaigns. For example, in 2009 when Portland Police Bureau officer Chris Humphreys was placed on paid leave pending an investigation after he had shot a 12-year-old Black girl with a less-than-lethal beanbag round, nearly 600 officers gathered in protest, adorning shirts that read “I am Chris Humphreys”, and “Support The Police”.³⁸ After Michael Brown was killed by Darren Wilson in 2014, previous executive director of the St. Louis Police Officer’s Association Jeff Roorda repeatedly publicly defended Wilson, appearing on multiple media outlets such as CNN to defend the police and critique the unrest in Ferguson.³⁹ One of the largest and most explicit displays of exclusive solidarity to appear among police unions has been the Blue Lives Matter movement that first appeared in December 2014, which was created by police unions as a reaction to the Black Lives Matter movement that itself emerged as a response to widespread police violence against Black people.⁴⁰ Thomas and Tufts point out that the Blue Lives Matter movement demonstrates how police union solidarity may undermine other expressions of working class solidarity, arguing that by constructing a false equivalency between the two movements through casting police as

³⁸ Nigel Jaquiss, Tess Riski. *For Nearly 80 Years, the Portland Police Association Has Wielded Power in a Town that Doesn’t Like Cops. That Power Is Now Under Siege*. Willamette Week, 2020. See also, Maxine Bernstein. *Portland Officer Put on Leave After Shooting Girl, 12, With Beanbag Gun*. Oregonlive.com, 2009.

³⁹ [cbsnews.com/news/ferguson-fallout-st-louis-police-rep-jeff-roorda-its-not-a-problem-with-the-police/](https://www.cbsnews.com/news/ferguson-fallout-st-louis-police-rep-jeff-roorda-its-not-a-problem-with-the-police/).

⁴⁰ Thomas, M. P., Tufts, S. *Blue Solidarity: Police Unions, Race and Authoritarian Populism in North America*. Work, Employment and Society, 2020. p. 127.

unvalued actors and victims of violence, police unions are enfeebling critiques of racialized violence being committed by the police and subsequently undermining other forms of working class solidarity by repressing attempts of the general class to mobilize against a racially ordered system.⁴¹

Academics and activists who have focused on the obstructionist concern of policing have largely directed their attention toward how the collective bargaining process has become a major tool of influence for police unions, the greatest issue of concern being the impact that collective bargaining has on discipline and accountability regarding officers who are guilty of misconduct or criminal actions. A special report on civilian complaints about police use of force in the largest local and state police agencies in 2002 produced by the Bureau of Justice Statistics found that out of over 26,000 citizen use of force complaints submitted to police departments, only about 2,000 were determined to justify disciplinary action.⁴² In a second report conducted by Campaign Zero, a police reform campaign organization that originated shortly after the launch of the Black Lives Matter movement, it was found that out of at least 4,024 people killed by police between 2013 and 2016, only 85 of these cases resulted in an officer being charged and investigated for a crime. Out of those 85, only 6 officers were convicted.⁴³ At the same time, out of over 1,000 people killed by police in 2014 alone, nearly 60% of the victims didn't have a gun or were in situations that shouldn't require armed police intervention, such as 'quality of life' and mental health crises.⁴⁴ Former police officer and current law professor Seth Stoughton—who recently appeared as an expert witness for the prosecution in the trial for Derek Chauvin—

⁴¹ Ibid. p. 134.

⁴² Matthew J. Hickman, *Citizen Complaints about Use of Force*. Bureau of Justice Statistics, U.S. Department of Justice, 2006.

⁴³ DeRay McKesson et al., *Police Union Contracts and Police Bill of Rights Analysis*. Campaign Zero, 2016.

⁴⁴ Ibid.

alludes that one of the three main functions of police union contracts is to create “grievance procedures that are often a central part of collective bargaining agreements that both discourage and frustrate attempts to discipline individual officers”.⁴⁵ Across a number of the nation's largest cities, police supervisors and elected officials have found themselves practically powerless in their ability to adequately investigate or punish officers who have been accused of misconduct due to the disciplinary processes that have been created in part out of negotiations between police union representatives and public government negotiators.⁴⁶ These concerns grow ever more pressing as multiple empirical studies have recently surfaced that link police unions—particularly unions with problematic labor contracts—with increased accounts of violent misconduct, such as the recent study by Abdul Rad from Oxford University of contracts and Law Enforcement Officer’s Bill of Rights provisions in 100 largest U.S. cities has discovered a positive relationship between police protections and cases of abuse in police practice (Oxford 2018).⁴⁷

As for all private and public sector unions with collective bargaining rights, bargaining allows unionized officers to negotiate over the terms and conditions of their employment, such as wages and conditions of employment.⁴⁸ State statutes and court decisions dictating what should or shouldn’t be considered a negotiable condition of employment have allowed the disciplinary process to become one of most central features of collective bargaining for police in many

⁴⁵ Benjamin Levin, *What’s Wrong with Police Unions?* Columbia Law Review, 2020. p. 1341.

⁴⁶ Stephen Rushin, *Police Union Contracts*. Duke Law Journal, 2017. p. 1199.

⁴⁷ A. N. Rad, *Police Institutions and Police Abuse: Evidence from the U.S.* University of Oxford, 2018., for more examples see Dhammika Dharmapala et al. *Collective Bargaining Rights and Police Misconduct: Evidence from Florida*. University of Chicago Law School, 2019., as well as Rob Gillezeau, *Police Unions and Police Deaths*, NPR (2020), www.npr.org/transcripts/869176943.

⁴⁸ Christopher Harris, Matthew Sweeney, *Police Union Contracts: An Analysis of Large Cities*. Policing, 2019., and Marvin J. Levine, *A Historical Overview of Police Unionization in the United States*. The Police Journal, 1988. p. 342.

departments.⁴⁹ While disciplinary processes include many basic legal due process protections that apply to other public sector employees such as the right to be notified of charges, the right to acquire legal representation, the right to a hearing, and the right to an appeal, many authors have cited widespread prevalence of extra disciplinary protections are likely to obstruct effective investigations of police misconduct and shield guilty officers from discipline.⁵⁰ Kevin Keenan and Samuel Walker (2005) along with Stephen Rushin (2017), one source of obstructive protections stems from the emergence of Law Enforcement Officers' Bill of Rights (LEOBoRs), which provide police officers with disciplinary protections that often aren't given to other classes of public employees.⁵¹ In their review of statutory LEOBoRs, Keenan and Walker (2005) identified several general encumbrances in union contracts that are among the biggest causes for concern, including: extremely broad language that applies to routine supervision and investigations of misconduct, formally established waiting periods that delay investigations, pre-disciplinary hearings that allow peer-ranked officers to serve on the board conducting the hearings, statutes of limitations imposed on the use and retention of officer misconduct data, and conditions on the time and place of interviews.⁵² In a study of 178 bargaining agreements and LEOBoRs across the U.S. which govern the working conditions of around 40% of all municipal officers, Rushin (2017) found that around 88% of these contracts contained at least one contract provision that has the potential to thwart legitimate disciplinary proceedings against officers

⁴⁹ Stephen Rushin, *Police Union Contracts*. Duke Law Journal, 2017. p. 1209. The Supreme Court's 1967 decision in *Garrity v. New Jersey*, which barred states from using statements made by police officers during investigations of misconduct in future criminal proceedings, helped establish the precedent of awarding additional disciplinary protections to officers such as those found in Law Enforcement Officer Bill of Rights in police contract bargaining agreements.

⁵⁰ Samuel Walker. *The Neglect of Police Unions: Exploring One of the Most Important Areas of American Policing*. Police Practice and Research: An International Journal, 2008. p.102.

⁵¹ Stephen Rushin, *Police Union Contracts*. Duke Law Journal, 2017. p. 1224.

⁵² Christopher Harris, Matthew Sweeney, *Police Union Contracts: An Analysis of Large Cities*. Policing, 2019. p. 3.

involved in misconduct. These include, but are not limited to, provisions that establish formal waiting periods before an officer may be initially interviewed, provisions allowing access to evidence to be provided to an accused officer before an interview, provisions that set statutes of limitations on the length of investigations, provisions that expunge officers' disciplinary records after a given period of time, provisions that limit civilian complaints, provisions that limit or prohibit the use of independent civilian oversight to investigate police misconduct, and provisions that allow for arbitration.⁵³ In a similar study of 39 union contracts containing disciplinary provisions for officers in some of the biggest cities in the country produced by Harris and Sweeney (2019), all except one contained provisions that could obstruct accountability efforts.⁵⁴

Rushin (2017) argues that some of these provisions, such as the ones relating to the circumstances surrounding officer interviews, prevent police management from adopting the kinds of best policing practices that are outlined in various federal consent decrees and letters of recommendation provided by the Department of Justice.⁵⁵ These consent decrees require investigators to write down officer statements as soon as possible, preferably at the scene of the incident. By delaying interrogations or providing officers with evidence prior to their interviews, Rushin argues that these contracts provide officers with sufficient time to corroborate stories in ways that remove the blame from the police.⁵⁶ Access to officer disciplinary records is limited by law in a handful of states, but in many police union contracts, Rushin (2017) finds that even police chiefs are prevented from using officers' records. Many of these contracts even call for the

⁵³ Ibid.

⁵⁴ Christopher Harris and Matthew Sweeney, *Police Union Contracts: An Analysis of Large Cities*. Oxford University Press, 2019. p. 1-11.

⁵⁵ Ibid. p. 1227.

⁵⁶ Ibid. p. 1228.

destruction of disciplinary records—sustained or otherwise—after a specific period of time, or otherwise prevent supervisors and investigators from considering an officer’s disciplinary histories.⁵⁷ Over the past two decades, police departments have developed Early Intervention Systems (also known as Early Warning Systems) based on best practices, which are designed to document a number of police performance indicators which sometimes but not always include civilian complaints of officers and use-of-force reports. In theory, if a police department were fully utilizing an EIS system to track patterns of problematic behavior, a large number of complaints on a particular officer would prompt attention from management. However, due to the largely unstructured nature of policing, the implementation of these systems hasn’t been perfect in practice, often leading to outdated officer files or files lacking in detail.⁵⁸ Moreover, some police contracts disallow EIS systems from being considered for disciplinary investigation purposes. Keenan and Walker (2005) argue if LEOBoRs disallow information to be included in EIS systems, the utility of the system is limited.

The concept of creating a civilian oversight agency as a tool to assist the victims of police misconduct has been prevalent among civil rights advocates since the early 1920s, though it wasn’t around the 1980s and 1990s that civilian review boards emerged as a great national movement and gained physical prominence.⁵⁹ Despite their limitations, these agencies are intended to allow members of the community to retain some level of sovereignty over the police, which at the margin succeeds at bolstering some levels of confidence among members of the community.⁶⁰ As previously mentioned, the rise of civilian review boards in the 20th century

⁵⁷ Ibid.

⁵⁸ Robert E. Worden, Sarah McLean. *Police Departments as Institutionalized Organizations*. University of California Press, 2017.

⁵⁹ Stephen Rushin, *Police Union Contracts*. Duke Law Journal, 2017. p. 1233.

⁶⁰ Robert E. Worden, Sarah McLean. *Police Departments as Institutionalized Organizations*. University of California Press, 2017. p. 26.

was met with a fervent effort by police unions to limit the scope and power of civilian oversight. For example, some police union contracts limit the subjects that a civilian review board is allowed to investigate; others present ground rules on what the composition of administrators on the board will encompass (such as Miami's bargaining agreement from 2014, which allows exclusively other officers to serve on the board).⁶¹ Likewise, Rushin (2017) finds that multiple police union contracts disqualify some types of civilian complaints, either by limiting the use of anonymous complaints or by establishing time limits on investigations of police misconduct, which is uncondusive of thorough investigation and thereby frustrates accountability.

While arbitration is recognized as a common mechanism used by public sector employees to settle contractual disputes, its use in settling disciplinary appeals has raised concerns among scholars who study policing.⁶² Due to the disciplinary appeals procedures established in these contracts, police departments are often required to reduce disciplinary actions against officers or rehire officers who had been fired as a result of misconduct. Moreover, arbitration processes in most states allow third party actors to make binding decisions behind closed doors and place limits on the judicial review of decisions made as a result of arbitration.⁶³ Arbitration poses a greater threat to achieving accountability when two conditions are met: (1) police union representatives are in control of selecting the identity of the arbitrator, and (2) the arbitrator is awarded the authority of conducting a 'de novo' review, which allows them to re-review any relevant issues related to an officer's appeal without the requirement to defer to any previous decisions that were made by police supervisors, civilian review boards, or city officials.⁶⁴ When police unions are granted the power to select their own arbitrators, the danger is that arbitrators

⁶¹ Stephen Rushin, *Police Union Contracts*. Duke Law Journal, 2017. p. 1235.

⁶² Ibid. p. 1238.

⁶³ Ibid. p. 1239.

⁶⁴ Stephen Rushin, *Police Disciplinary Appeals*. Duke Law Journal, 2019. p. 577.

may feel incentivized to compromise on their disciplinary decisions in order to increase their chances of being reselected for work. After the Supreme Court established that it's legal and appropriate for courts to refuse to review the legitimacy of an arbitration award, de novo review creates a situation where an arbitrator may be mistaken in the facts of the matter or the law and their decision would still be upheld.⁶⁵ Creating such expansive standards of review for contractual appeals encourages officers to appeal any disciplinary decision made to arbitration.⁶⁶

Data and Methods

This study intends to address the research questions of at which point provisions containing language that may impede investigations of misconduct or overall accountability appear in PPA contracts as well as whether the appearance of these provisions has increased in quantity over the 47 years that the PPA has been negotiating labor agreements with the City of Portland.⁶⁷ As highlighted above, authors Harris and Sweeney (2019) along with Rushin (2017) indicate several key provisions from police union contracts and LEBorRs that may frustrate efforts surrounding police accountability. The research that has been conducted was designed to explore the prevalence of similar features within PPA contracts along with changes that have occurred surrounding these provisions as the Portland Police Association develops as an institution over time.

In order to address the questions presented in this study, I gathered, codified, and analyzed the contents of all 12 PPA contracts as well as every publicly available edition of PPA's "Manual of Rules and Procedures", as some of the articles within these contracts

⁶⁵ Stephen Rushin, *Police Union Contracts*. Duke Law Journal, 2017. p. 1239.

⁶⁶ Stephen Rushin, *Police Disciplinary Appeals*. Duke Law Journal, 2019. p. 577.

⁶⁷ Two of these contracts (years 1986-1988 and 2006-2010) appear as city ordinances from the City of Portland that depict major amendments to the existing preceding contracts but otherwise include all of the same content that was in the contracts active immediately before the amendments were made. See, e.g. Figure 1.

reference directives contained inside of the manuals. I used a quantitative archival content analysis using specific variables to guide in order to extract relevant information from the contracts. All of the gathered data were located through public archival databases found on the official City of Portland website or the official PPA website.⁶⁸ The years of these contracts span from 1969-2016, and the Rules and Procedures gathered apply between the years 2007-2021.

My process involved reading through each of the contracts and scanning for characteristics that may impede officer discipline or posit challenges to overall accountability. For the purposes of this study, the general application of accountability is used to describe the ability of public officials to uphold professional standards of conduct on the part of police officers and to establish policies and procedures that allow for effective investigation of alleged officer misconduct as well as the assignment of discipline where appropriate, although it's recognized that there are other dimensions to accountability that exist outside of the realm of effective policies.⁶⁹ The contracts were organized by year and indications were made at every point that a contract contains a provision that falls under one of the directed variables, which cover 6 main areas of concern: (1) provisions containing any condition that delays officer interviews or interrogations after alleged wrongdoing for a specified length of time, (2) provisions that provide officers with access to evidence prior to interviews or interrogations about alleged wrongdoing, (3) provisions that limit or exclude investigations, interrogations, or disciplinary action on the basis of anonymous complaints, (4) provisions that limit or exclude civilian groups from receiving the authority to investigate, discipline, or terminate officers for alleged wrongdoing, (5) provisions that limit the consideration of officers' disciplinary history in

⁶⁸ See www.portland.gov for the City of Portland, www.ppavigil.com for the Portland Police Association.

⁶⁹ Kevin Keenan, Samuel Walker. *An Impediment to Police Accountability? An Analysis of Statutory Law Enforcement Officers' Bill of Rights*. Boston University Access Journal, 2005. p.185-243.

investigations of misconduct or future employment decisions, and (6) provisions that allow or require arbitration of disputes relating to disciplinary penalties or termination. These categories were chosen because they represent some of the most prominent examples examined by Harris and Sweeney (2019), Keenan and Walker (2005), and Rushin (2017) of provisions within police union contracts that potentially challenge accountability efforts. Special distinctions are made at points where variables first appear in contracts over time, change in language or wording, and/or disappear. A complete table of the charted results can be viewed in Figure 1 at the end of this paper.⁷⁰

Due to unanticipated circumstances surrounding the process of localizing and gathering data for this study, it should be noted that there exists a gap in the data involving PPB's Manual of Rules and Procedures, where I was unable to locate information on any editions of the manual produced prior to 2007. Because of this, there is missing information on provisions that limit the consideration of disciplinary history and only a partial analysis can be conducted on this particular variable starting from contract term 2006-2010A. This gap is depicted in the shaded section of Figure 1.

⁷⁰ See page 24.

Figure 1.

	Delays Interview	Provides Access to Evidence Prior to Interview	Limits Anonymous Complaints	Limits Civilian Oversight	Provides for Arbitration	Limits Consideration of Disciplinary History
1969-1972	-	-	-	X	X	
1975-1977	-	-	X	X	X	
1977-1979	-	-	X	X	X	
1979-1981	-	-	X	X	X	
1981-1983	X	-	X	X	X	
1986-1988A	X	-	X	X	X	
1988-1991	X	-	X	X	X	
1999-2002	X ¹	X	X ¹	X	X	
2002-2004	X ¹	X	X ¹	X	X	
2006-2010A	X ¹	X	X ¹	X	X	X
2013-2017	X ¹	X	X ¹	X	X	X
2016-2020	-	X	X ¹	X	X	X

Labor Agreements between the Portland Police Association and the City of Portland

*A= This is a city ordinance announcing a contract amendment to the previous term of contract and not a standalone contract term, although contracts indicated with ‘A’ have their own records. Therefore, contract term ‘1986-1988A’ is interpreted to contain the same provisions as contract term ‘1981-1983’ excluding specified amendments, and contract term ‘2006-2010’ is interpreted to contain the same provisions as contract term 2002-2004.

¹= The language in the contract active during this designated set of years undergoes a change in language that also alters the meaning of the identified provision.

Results

Delays Interview: The contract includes any condition that delays officer interviews or interrogations after alleged wrongdoing for a specified length of time (such as 24 hours or two days).

Labor contract agreements between the PPA and the City of Portland have contained provisions that allow officers who are involved in a disciplinary investigation to delay investigative interviews since the adoption of PPA’s second official labor contract with the City of Portland, which was active between 1975-1977. This contract term establishes a mandatory waiting period of “not less than twenty-four (24) hours before the initial interview commences” or before any written reports are required from the officer.⁷¹ The provision relating to interview waiting periods was edited in contract term 1999-2002, where the minimum advance notice clause increases from 24 to 48 hours.⁷² This 48-hour waiting period has been sustained in the

⁷¹ [From PPA contract (1975-1977)] “Article 59. Officers Bill of Rights Section A3: Whenever delay in conducting the interview will not jeopardize the successful accomplishment of the investigation or when criminal culpability is not at issue, advance notice shall be given the officer [not less than twenty-four (24) hours before the initial interview] commences or written reports are required from the officer.”

⁷² [From PPA contract (1999-2002)] “Article 61. Whenever delay in conducting the interview will not jeopardize the successful accomplishment of the investigation or when criminal culpability is not at issue, advance notice shall be given the officer [not less than twenty forty-eight (48) hours before the initial interview commences] or written reports are required from the officer. The advance notice shall include whether the officer is a witness or a suspect, the location, date and time of the incident, the complainant’s name, and the nature of the allegation against the officer.

PPA contract agreements until its eventual removal in contract term 2016-2020, leaving only a provision stating that “interviews and investigations shall be concluded with no unreasonable delay”. The ‘no unreasonable delay’ provision is also contained in all contracts PPA drafted since 1979. In each of these contracts aside from the very first draft from 1969—which doesn’t contain any provisions specific to interview safeguards—there are sections of the article relating to the due process rights of officers prior to interviews establishing that an officer who is under disciplinary investigation is required to be notified of the nature of the investigation, whether the officer is a suspect or a witness, provided opportunity to secure representation, and “informed of other information necessary to reasonably apprise him of the nature of the allegations of the complaint” prior to being interviewed.⁷³ While an officer’s right to some form of representation and advanced notice is considered to be standard due process, current strategies of best practice, such as those outlined in DOJ consent decrees, encourage prompt investigations of potential misconduct so that witnesses can be interviewed while their memories are still fresh and to ensure that physical evidence can be preserved.⁷⁴

Limits Anonymous Complaints: The contract prohibits supervisors from investigating, interrogating, or disciplining officers on the basis of anonymous civilian complaints.

Prior to the PPA’s 1999-2002 contract, the names of complainants in disciplinary investigations were only required in instances when the investigation resulted in charges being filed against the officer. However, Article 61.2.1.3 from the contracts drafted between 1999-2017 contains a clause related to Internal Affairs Division investigations which requires the

⁷³ [From PPA contract (2016-2020) Under Portland Officers’ Bill of Rights Preamble] Article 61 Section 2.2.9. Interviews and investigations shall be concluded with no unreasonable delay.”

⁷⁴ Kevin Keenan, Samuel Walker. *An Impediment to Police Accountability? An Analysis of Statutory Law Enforcement Officers’ Bill of Rights*. Boston University Access Journal, 2005. p.185-243.

complainant's name as a part of the mandatory advanced notice given to an officer before their initial interview. In the most recent contract term (2016-2020), Article 61.2.1.3 has been omitted.

In 2001, the Independent Police Review board (IPR) and the Citizen Review Committee were created as an extension of Portland's City Auditor's office to create a civilian police oversight system. One of the IPR's main functions is to receive and screen complaints about Portland Police Bureau officers and monitor/participate in Internal Affairs (IA) investigations. Guidance from the National Lawyers Guild in conjunction with the Oregon Justice Resource Center on the IPR process notes that while citizens are technically able to submit complaints in an anonymous fashion, IPR may decline to investigate if it's considered a minor complaint. Additionally, since the IPR has no power to discipline officers on their own, cases that are approved for investigation are transferred to the Internal Affairs Division, where the name of the complainant is provided at least to PPB internal AI investigators.⁷⁵⁷⁶ Mandatory disclosure of complainant's names raises serious concerns about possible retaliation against people who are trying to hold officers accountable for misconduct.

Limits Civilian Review: The contract prohibits civilian groups from being granted the authority to investigate, discipline, or terminate officers for alleged wrongdoing.

⁷⁵ See [static1.squarespace.com](https://static1.squarespace.com/static/524b5617e4b0b106ced5f067/t/52e30178e4b0b88a2745c740/1390608760484/IPRFAQs.pdf)
[/static/524b5617e4b0b106ced5f067/t/52e30178e4b0b88a2745c740/1390608760484/IPRFAQs.pdf](https://static/524b5617e4b0b106ced5f067/t/52e30178e4b0b88a2745c740/1390608760484/IPRFAQs.pdf)

⁷⁶ [From PPA contract (2013-2017)] Article 62 Section 1. "Except as provided in this article, the provisions of Article 61 of the parties' collective bargaining agreement shall apply to investigations conducted or reviewed by the IPR. However, [given that IPR does not have authority or responsibility relating to the imposition of discipline]" and Article 62 Section 1.3. "The parties recognize that IPR has no authority or responsibility relating to Articles 59 (Performance Evaluations), 61.6 (Personnel File), 61.7 (Deadly Force Incidents), and 61.8 (criminal investigations)."

Prior to 2001, the Portland Police Bureau didn't have an established system for civilian review. While the creation of the Independent Police Review system is intended to increase civilian involvement in police oversight, the PPA contracts outlining IPR place significant limitations on its scope of powers and responsibilities. For example, Article 62.1.3. in the contracts drafted between 2002-2020 prohibits IPR from investigating complaints related to deadly use of force incidents or criminal investigations. While the IPR is allowed to make recommendations to the Portland Police Bureau on suggested discipline, they aren't given the authority to impose discipline themselves. The IPR is also barred from having direct access to officers' personnel files and data reports and from using EIS databases during investigations.

In 2020, Portland voters overwhelmingly approved Ballot Measure 26-217, which would replace IPR with a new civilian-run police oversight board that would be granted the power to impose discipline and even fire officers. The new measure would also grant the review board the authority to investigate use of force cases.⁷⁷ The PPA pushed back against this new measure by filing a grievance with the City two days after the passing of the measure. They argue that the ballot measure has misled voters on what the review board is able to accomplish.⁷⁸ PPA representatives have also voiced their concerns in ongoing negotiations with the City, arguing that the measure violates Article 3 of their contract, which states that "standards of employment related to wages, hours and working conditions which are mandatory for collective bargaining". The question of whether or not disciplinary processes fall under the category of "working

⁷⁷ Jonathan Levinson, *Portland police union files challenge to stop voter-approved officer oversight board*, opb.org/article/2020/11/06/portland-police-oversight-union-challenge/.

⁷⁸ *Ibid.*

conditions” is one that has been hotly debated among police reformers, city representatives, and police officers.⁷⁹

Clause 20.2 in contract term 2016-2020, known as the ‘embarrassment clause’, states that “if the City has reason to reprimand or discipline an officer, it shall be done in a manner that is least likely to embarrass the officer before other officers or the public.” This provision has been included in the PPA contract for as long as there’s been a contract. The wording of this provision has been the same since 1969. The ‘embarrassment clause’ has been cited by the 2020 IPR director Ross Caldwell as the primary barrier keeping the details of officers’ cases of misconduct and subsequent discipline from being released as public record.⁸⁰ Not only does this provision make it difficult for outside investigators to collect or analyze information on officers accused of misconduct, but this clause often also makes it difficult for the victims of malpractice from officers to know the identity of the officer or whether any disciplinary measures were taken.

Limits Consideration of Disciplinary History: The contract permits the purging or removal of disciplinary records from officers’ personnel files after a determined length of time, or limits the consideration of disciplinary records in future employment actions.

While none of these contracts contained specific articles that were dedicated to the destruction of an officer’s disciplinary history after a certain length of time, all 12 contract terms refer to the PPB Manual of Rules and Procedures for additional details on PPB policies and standards of practice. The manual contains directives related to various categories such as traffic stops, crowd control situations, and disciplinary investigations including deadly use of force

⁷⁹ Stephen Rushin, *Police Disciplinary Appeals*, 2019. p. 550.

⁸⁰ [kgw.com/article/news/local/portland-police-union-contract-negotiations-begin/283-44d2f0e8-dcfb-4d77-9d5b-6f51f9b53fe2](https://www.kgw.com/article/news/local/portland-police-union-contract-negotiations-begin/283-44d2f0e8-dcfb-4d77-9d5b-6f51f9b53fe2)

incidents. Although I was unable to obtain editions of the manual that are dated prior to 2007, directive 330.00 from the editions of the Manual of Rules and Procedures post-2007 permit the destruction of individual Internal Affairs Division case files and references upon officer request after three years from the date of the incident have passed if the case has been exonerated, unproven, or declined. Dismissed incident claims are not added to an officer's file. Cases that have been sustained are also eligible to be destroyed after 5 years have elapsed since the date of the incident if the request is authorized by the Chief of Police and if the imposed discipline was less than a demotion.⁸¹ Cases that result in an officer's termination may be expunged after 10 years have elapsed.

In addition, PPA contracts place restrictions on the City's use of the Employee Information System (EIS) when conducting disciplinary investigations. The name of this database varies between police departments and over time and other names include Early Intervention System, Early Identification System, and Early Warning System (used by PPB in the contracts from 1999-2013). An officer's EIS (or EWS) compiles data on their performance from the Portland Police Bureau and other sources to create a comprehensive review. The EIS also tracks data on events or incidents that may occur on the job, such as firearm discharges, injury of suspects in custody, police vehicle collisions, use of force events, and the reports of any complaints bestowed upon officers who are on duty. However, the contracts prohibit the City

⁸¹ Portland Police Bureau, *Manual of Policy and Procedure* from Directive 330.00: "Unless otherwise directed by the Chief of Police or court order, *individual IAD case files and other references may be destroyed after three years from the date of the incident* when assigned the following case dispositions: Exonerated/exonerated with a debriefing; Unproven/unproven with a debriefing; Declined; Mediated; Service complaints; Administratively referred. *All sustained IAD cases will be permanently retained in files, unless expunged pursuant to all the criteria listed below: A minimum of five years have elapsed since the incident date of the last sustained complaint; The discipline imposed was less than demotion; Authorized by the Chief of Police.*"

from using EIS reports in disciplinary decisions. This restriction has been in place since the first emergence of EWS in 1999.⁸² The provision expands in the 2013-2017 contract when EWS is replaced with EIS to include a new detail which states that the City may use data on officers in disciplinary decisions if that data is produced from outside of EIS databases.⁸³

Provides Access to Evidence Prior to Interview: The contract provides officers with access to evidence prior to interviews or interrogations about alleged wrongdoing (ex: complete investigative files or written statements from other witnesses)

Officers who are under investigation for criminal misconduct are supplied with “all material facts of the matter” related to their case at least 7 days prior to their mitigation hearing.⁸⁴ Officers are also provided with complimentary copies and complete transcripts of their interviews. By contrast, members of the general public typically have to fight weeks or months to receive police reports about their investigations.⁸⁵ Prior to 1999, officers under investigation

⁸² [From PPA contract (1999-2002) under Discipline]. Article 20 Section 3. The City’s Early Warning System and the information developed therein shall not constitute nor form the basis for disciplinary action.

⁸³ [From PPA contract (2016-2020) Article 20 Section 4. The City’s Employee Information System and the information developed therein shall not form the basis for disciplinary action but may be used for non-disciplinary notice purposes, such as development of work performance plans and letters of expectation. *The reports from EIS may not be used by the City for disciplinary, transfer or promotion decisions.* However, if the underlying data that appears in EIS is maintained separately by the City and is simply reflected in the EIS, nothing in this agreement prevents the City from making appropriate use of the underlying data in disciplinary, transfer or promotion decisions.

⁸⁴ [From PPA contract (1999-2002) under Portland Officers’ Bill of Rights Preamble: When the Investigation Results in Charges Being Filed] Article 61 Section 2.3.1. The officer, upon request, will be furnished with a copy of all materials developed in the investigation which will contain all material facts of the matter. *[Such materials will be provided no later than seven (7) days prior to the officer’s mitigation hearing and shall include any transcripts the City has prepared of recorded interviews.]* The obligation to disclose information to the officer under this section shall not apply to information required to be maintained as confidential under federal or state law. See also, Article 61 Section 2.2.8. The complete interview of the officer, noting all recess periods, shall be recorded and the officer upon request will be provided a copy of the recording, or the officer may also record the interview at the officer’s own expense. If the interviewed officer is subsequently charged and any part of any recording of the interview is transcribed by the Bureau, the officer shall be given a complimentary copy thereof.

⁸⁵ www.uniteoregon.org/policing

were to be provided with a copy of the Internal Investigation Division’s summary report, which includes all serious material evidence gathered during the investigation. Prior to the commencement of an interview, Article 61 Section 2.1.1 relating to interview safeguards states that officers shall be informed of “information necessary to reasonably apprise the officer of the nature of the allegations of the complaint”.⁸⁶ This section contains vague language that doesn’t define what would be considered as necessary information or allude to what level of detail is provided to an accused officer on the nature of the complaint, which could include the identity or full statement of the complainant or details of evidence of misconduct.

Provides for Arbitration: The contract requires or permits arbitration of disputes relating to disciplinary penalties or termination.

All 12 PPA labor agreements establish grounds for arbitration as a route of appeal to appeal the results of disciplinary investigations. In each contract, arbitration is listed as the final step of the grievance process for officers who wish to appeal the results of a disciplinary investigation. The grievance procedure prior to the step of arbitration involves (1) appealing to a direct supervisor, (2) appealing to the chief of police, and (3) appealing to the city’s mayor (during contact term 1969-1977), commissioner-in-charge (during contract term 1977-1999), or the Bureau of Human Resources (from 1999-2020). The primary method of choice in the contracts for selecting an arbitrator is to alternately strike off the names of potential arbitrators from a list provided by the City or PPA until a single name remains. The chosen arbitrator’s decision is “final and binding”, although the arbitrator can only resolve grievances or reassign

⁸⁶ From PPA contract (1999-2002) Article 61 Section 2.1.1. Prior to being interviewed regarding an IAD or EEO investigation for any reason which could lead to disciplinary action, an officer shall be informed of the nature of the investigation and whether the officer is a witness or a suspect, if and when known; [*informed of other information necessary to reasonably apprise the officer of the nature of the allegations of the complaint.*] Such information shall be provided in a reasonable period of time following its receipt by the City.

discipline under the scope of the contract. The approved methods of discipline are listed in the discipline section of each contract (usually Article 20 or 21) and vary across each contract term. In contract term 2016-2020, for example, approved methods of discipline include written reprimand, suspension, loss of vacation time, discharge and demotion. In comparison, contract term 1975-1977 includes additional disciplinary actions such as reduction of pay and extra duty, but those have since been removed in labor negotiations. Each of the 12 contracts includes a sentence proclaiming that nothing prohibits the City or PPA from producing a permanent list or arbitrator.⁸⁷

The use of arbitration as a means of settling contractual disputes is considered to be standard due process for many negotiating unions for public employees, in part as a mitigating condition to disallow strikes among public sector employees, although an observable number of media outlets and scholars have flagged the concern that arbitration as a mechanism of appeal may contribute to the recurrent reversals or lightening of internal disciplinary sanctions (Rushin 2017). Arbitration allows for third parties, who are often from outside of the community, to make final and binding disciplinary decisions that can reverse the decisions of police supervisors or civilian police entities. When combined with other features, such as the implementation of alternative striking of potential arbitrator names or an established authority for arbitrators to conduct a complete re-review of all issues concerning the appeal, arbitration may present as a

⁸⁷ [From PPA contract (2016-2020) Article 22 Section 5. “To invoke arbitration, the City or the Association shall request from the Oregon Employment Relations Board, a list of the names of five (5) arbitrators. [*The arbitrator shall be selected by the method of alternate striking of names under which the first strike shall be determined by lot. The final name left on the list shall be the arbitrator.*] Nothing in this section shall prohibit the parties from agreeing upon a permanent arbitrator or permanent list. [*The arbitrator’s decision shall be final and binding, but the arbitrator shall have no power to alter, modify, amend, add to or detract from the terms of the contract.*] The arbitrator’s decision shall be within the scope and terms of the Contract and in writing.”

more problematic method of limiting accountability in police departments in the U.S.. The alternative striking method of selecting an arbitrator is intended to mirror the process of selection for jurors in the justice system.⁸⁸ The potential issue with using the same type of procedure in internal disciplinary appeals is that it could incentivize arbitrators to compromise on the punishment awarded on a consistent basis in order to increase the probability that they will be selected for future cases.

Discussion

As can be seen from Figure 1, PPA bargaining agreements over time have slowly accumulated an increasing number of potentially problematic contract provisions which prior scholars have indicated represent common impediments to police accountability. While it was hypothesized that the bargaining agreements would increase in police protections over time, it was surprising to discover that out of all 12 contracts, the one that underwent the largest structural change and added the highest number of extra disciplinary protections was contract term 1999-2002. This is notable particularly because the late 1990s was at the crux of when Community Oriented Policing programs presented by the U.S. Department of Justice began rolling out training and technical tools designed to promote officer accountability and the relationship between police and the community.⁸⁹ The COPS office was established through the 1994 Violent Crime Control and Law Enforcement Act. In 1996, members of the PPB participated in a work group during a 200 participant symposium on the topic of ‘police integrity’ hosted by the COPS office and the National Institute of Justice, where the main

⁸⁸ Stephen Rushin, *Police Union Contracts*. Duke Law Journal, 2017. p. 1235.

⁸⁹ Gaffigan, Stephen J., and McDonald, Phyllis P. (1999). *Police Integrity: Public Service With Honor. A Partnership Between the National Institute of Justice and the Office of Community Oriented Policing Services*. United States Department of Justice. www.ojp.gov/pdffiles/163811.pdf

takeaway was outlined that “discussion of police integrity has been broadened from a narrow focus on police officers’ behavior and internal investigations of corruption to an understanding of the importance of other factors. These included leadership, command behavior, supervision, organizational structure, selection, hiring, training, the disciplinary system, the police subculture, community values, and political and economic conditions.”⁹⁰ While it remains out of the scope of this study to determine whether participation in COPS programs had affected the policing culture or departmental practices of the Portland Police Bureau outside of what can be seen in the PPA contract, the influences of these programs didn’t appear to have an impact on the prevalence of officer disciplinary protections that might obstruct accountability.

The question of whether problematic provisions in PPA contracts will continue to increase in the next few years remains to be determined. The guilty verdict and conviction Derek Chauvin for the murder of George Floyd suggests that police across the nation will continue to be placed under higher scrutiny for cases of misconduct. Recent events in Portland also suggest that the public plans to continue to advocate for more police reform and accountability, such as the overwhelming passing of the new civilian review board and the decision of the City of Portland to remove \$15 million from PPB’s budget after thousands of residents had written letters and testified to remove \$50 million from the budget.⁹¹ In an attempt to promote transparency, the City of Portland has opened a few of their 2021 contract bargaining sessions with the Portland Police Association for public viewing as they tackle many of the concerns that have been brought up by city officials and community activists surrounding PPA contract provisions. In these sessions, PPA representatives have already expressed their disfavor of a

⁹⁰ Ibid.

⁹¹ forbes.com/sites/danielcassady/2020/11/04/voters-in-portland-approve-citizen-run-police-oversight-board, see also www.opb.org/news/article/portland-police-budget-15-million-defund-cannabis-council-vote/

number of proposals from the City relating to disciplinary protections, including the implementation of the civilian review board and the proposed removal of PPB's 'embarrassment clause'.⁹² PPA union representatives have in turn proposed additional disciplinary protections, including adding a statute of limitation on the length of disciplinary investigations.⁹³ These negotiations are ongoing.

This study was met with a few limitations. First, the sample size of the collected data (12 contracts covering ~37 years of policing as well as ~9 years of content from PPA Policies and Procedures manuals) was too small to create a statistical measurement, meaning that all coding and analysis processes were conducted by hand. Future studies that wish to conduct case studies of contract analyses over time may consider increasing their sample size by adding additional police bargaining associations covering a single location. Due to the fact that data was collected and analyzed without the use of technology, this study relies on my own informed interpretations of the language contained within these contracts as gathered from previous literature on labor agreements and labor law, along with assistance from sources who are familiar with labor contracts. A second and more significant limitation of the research conducted presents itself with the fact that there is an extremely limited availability of access to information on police union bargaining activities and police officer policies and procedures provided by the PPA which has resulted in gaps of analysis, such as the missing information in the data collection of this paper pertaining to the expungement of officer disciplinary records prior to 2007. Given that the PPA represents the sole negotiating vessel between the City of Portland and the rank-and-file police officers working for the Portland Police Bureau, thorough research on any impacts that the PPA

⁹² Contract Negotiations: City of Portland and Portland Police Association.
www.rethinkportland.com/ppa-contract

⁹³ portlandmercury.com/blogtown/2020/02/11/27965677/city-and-police-union-set-ground-rules-for-contract-negotiations

might have on the practices and institutional outcomes of the Portland Police Bureau would be a larger possibility if researchers were permitted reasonable access to transparent and nonconfidential information. Finally, because police unions remain an understudied topic in the available literature on policing, this study has worked with a limited amount of available empirical research on the impacts that police unions have on various aspects of policing, and there are a lot of questions concerning the direct and indirect powers exerted by police unions that remain unanswered. Suggestions for future directions of empirical research relating to police unions are expansive and include exploring whether and how police unions are able to influence components of police management such as day-to-day operations or department innovation, whether there is a measurable difference in the quality of police-community relationships in unionized vs. non-unionized police departments, the impact of police unions on the policing subculture, and possible influences of police unions on local or county finances.

Conclusion

Police unions represent a crucial component of policing and exhibit the ability to have direct and indirect impacts on policing innovation, police-community relations, and accountability. While the majority of statutory rights provided to officers represent standard constitutional due process and don't fundamentally represent barriers to police accountability, authors have identified numerous provisions that could obstruct accountability efforts. Piggybacking off of previous findings which indicate common contract bargaining agreement provisions that are able to obstruct police accountability efforts, this paper uses a quantitative archival analysis with guided variables to review the contents of labor agreement contracts between the Portland Police Association and the City of Portland from 1969-2020 relating to police disciplinary procedures and mechanisms of accountability. Findings indicate that while

PPA contracts since 1969 have contained at least 2 provisions that might present challenges to conducting fair investigations of officers who are accused of misconduct, over time the majority of these extra protections increased in quantity and detail. Police unions and union contracts have remained a crucially understudied area of research until recently, and more empirical research is necessary to get a full picture of the extent to which police union contracts inhibit accountability.

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