



CITY OF
PORTLAND, OREGON
OFFICE OF THE CITY ATTORNEY

Tracy Reeve, City Attorney
1221 S.W. 4th Avenue, Suite 430
Portland, Oregon 97204
Telephone: (503) 823-4047
Fax: (503) 823-3089

October 11, 2016

INTEROFFICE MEMORANDUM

TO: Mayor Charlie Hales
Commissioner Nick Fish
Commissioner Amanda Fritz
Commissioner Steve Novick
Commissioner Dan Saltzman

FROM: Mark P. Amberg
Chief Deputy City Attorney

SUBJECT: Duty to Bargain Body Worn Camera Policy and Review of Audio/Video

ISSUES

You have asked our office to address two issues: the duty to bargain over implementation of a body camera policy and the duty to bargain over the review of audio/video by officers under a body camera policy or otherwise.

ANSWER

The decision concerning whether a subject is or isn't mandatory for bargaining would ultimately be decided by the Oregon Employment Relations Board ("ERB"). While we would argue that implementation of a body camera policy is a management prerogative that is permissive for bargaining, based on ERB precedent, we think there is a significant risk the ERB would determine that at least parts of the design and implementation of a body camera policy have impacts on mandatory bargaining subjects and, therefore, would be mandatory for bargaining. Similarly, while the ERB has held that how an investigation is conducted generally is a permissive subject that is not mandatory for bargaining (*Eugene Police Employees Association v. City of Eugene*, 23 PECBR 972 (2010), UP 38/41-08; *Oregon Public Employees Union v. State of Oregon*, 14 PECBR 746 (1993)), given recent ERB precedent, we think there is also a significant risk the ERB would find that the that the review of audio/video by officers – whether under a body camera policy or otherwise - impacts mandatory subjects of bargaining and, therefore, is mandatory for bargaining.

Probably the most instructive recent precedent is the Board's decision in *Amalgamated Transit Union, Div. 757, v. Tri-Cnty. Metro. Trans. Dist. of Or.*, 2014 WL 5808351 (Or. ERB Oct. 2, 2014), ERB Case No. UP-009-13. In *TriMet*, the ERB found that TriMet committed an unfair labor practice in violation of ORS 253.672(1)(e), when it unilaterally added an 8th "surveillance" camera to its buses that captured the activities of bus drivers and provided audio capability. TriMet unsuccessfully argued that the change was permissive for bargaining. TriMet argued, among other things, that installing the 8th camera on buses was a management prerogative aimed at increasing public safety and driver safety in the wake of several assaults on bus drivers and a fatal collision between a bus and several pedestrians. *Id.* at *4, *5, *19. The Board found that while TriMet had a "significant operational interest in its buses safely conveying passengers," the impacts of the added surveillance on "conditions of employment" outweighed those management prerogatives and, therefore, the Board determined that implementation of the additional cameras was mandatory for bargaining. *Id.* at *19. As the ERB stated:

"The impact on TriMet's management prerogatives, however, is less than that on employee conditions of employment. Specifically, the electronic recording of bus operators can be used as a tool to investigate employee misconduct and impose discipline, including termination. Indeed, this appears to be one of the reasons that motivated TriMet's decision to expand the use of surveillance devices. This Board has previously concluded that similar investigatory tools are mandatory for bargaining, as are other subjects that involve discipline and job security. (Citations omitted)."

TriMet, supra., at *14.

OTHER JURISDICTIONS

Because the debate over police body cameras is fairly recent, there is little guidance supplied by other jurisdictions, but implementation of a body camera policy in Oklahoma City was found to be a mandatory subject of bargaining under Oklahoma collective bargaining laws. *The City of Ok. City, Ok. V. Fraternal Order of Police, Lodge 123*, Case No. 16-50120-6 (FMCS, Jun. 14, 2016). The State of Washington Employment Relations Commission also recently held that a City's decision to use a public safety camera system for disciplinary proceedings was a mandatory subject of bargaining because discipline has a direct impact on wages, hours, and working conditions. (*Mountlake Terrace Police Guild v. City of Mountlake Terrace*, Decision 11701-A (Wa. PECB, 2014).

CONCLUSION

Although the City of Portland clearly has significant management interests in police accountability and in public and police safety which body-worn cameras are intended to

promote, it is our opinion there is a significant risk that the Oregon ERB would find that implementation of body cameras sufficiently implicates mandatory bargaining subjects and, therefore, would conclude that implementation of a body camera policy is mandatory for bargaining. Similarly, we conclude there is significant risk that the ERB would find that the subject of review of audio/video by officers also impacts mandatory subjects and, therefore, would be mandatory for bargaining.

MPA/pd

c: Tera Pierce
Sonia Schmanski
Tim Crail
Chris Warner
Brendan Finn
Tracy Reeve