Oregon Legislature June 2020 Special Session - Statement Regarding LC-49

From Michael Mann, Community Member from Monmouth, Oregon

June 23, 2020

Honored legislators,

I humbly ask you to fully read my statement and consider the information on its merits; I know your time is valuable and the time for action is short so I thank you in advance.

My name is Michael Mann. I am writing with open and transparent goals regarding this legislation: I want competent and professional law enforcement and I want law enforcement properly held accountable by reasonable and fair means.

I am a member of the Oregon community, as are my family, friends, and acquaintances.

I am knowledgeable about law enforcement as a recent retiree of the criminal justice system. I retired in 2019 as the Training Sergeant at the only police department in Oregon that was awarded international accreditation at the "Gold Standard with Advanced Meritorious Certification." I am not writing as a representative of that agency since I am now retired, but I do have information that you may find valuable. I instructed police officers for 25 years in areas such as de-escalation, police authority, force and other topics including the DPSST developed course "Police Legitimacy and Procedural Justice." I believe that competent, frequent, and progressive training delivered in a consistent manner is the most important component of a successful and trusted police agency.

I believe officers should held accountable for improper actions through a fair disciplinary process. Since retiring, I have been learning a new calling as a labor representative, representing labor interests for some front-line members of law enforcement and other public sector employees. I support Oregon's strong commitment to fairness in the workplace and Oregon's recognition of workers' rights to have a hand in their own destiny through collective bargaining.

I am writing from three perspectives: from the perspective as a human being who is subject to encounters with law enforcement, from the perspective as a knowledgeable trainer of professional police officers and from the perspective of a representative of criminal justice professionals in labor matters including discipline.

I agree with many others who are calling for reform of the criminal justice system. There are many paths to build a justice system that more accurately reflects the vision of our nation; one path that I believe would deliver substantial results would be to require standardized on-going training to all law enforcement officers in Oregon, not just to basic police recruits. Many people likely do not realize that police officers in Oregon only receive state-standardized training during the basic police academy which occurs during the first eighteen months of employment. After that, police officers must receive on-going training, but the content and quality of that training is up to each individual agency; the training it is not standardized which inevitably results in different knowledge, different skills, and different practices on the street.

Today I am giving testimony on LC 49 (the bill that will restrict an arbitrator from changing disciplinary action). It is a well-intended effort to improve the caliber of law enforcement officers in Oregon. I believe this bill is also a flawed approach that, if passed, may lead to unforeseen, unfair, and negative consequences and I urge this bill should not be passed in its current form.

All Oregonians believe in fairness; this bill seeks to solve an unfairly characterized situation – that a plethora of bad officers keep their jobs improperly due to arbitrators' ill-guided decisions based on a one-sided system that favors labor. This is simply not correct.

Collective bargaining agreements require both sides having equal bargaining status and opportunity to bargain. All labor agreements have gone through a bargaining process between the labor group and the employer, as authorized by Oregon law. Unions do not have an advantage and employers have agreed to the conditions in the contract, including any provisions that require just cause for disciplinary actions.

The primary goal of discipline is to correct a performance issue. Officers are corrected for policy violations or misconduct throughout their careers and there are many methods to address officer shortcomings that may include counseling, training, verbal warnings, written warnings, work plans, loss of vacation, unpaid suspension, and demotion in pay grade or rank. All of these examples are intended to correct an officer's behavior, as necessary. Agencies invest considerable resources to hire and train officers and the goal is to provide a competent, professional, and ethical worker for the justice system. If an officer has violated a work standard to the point where the employer/employee relationship is irreparably damaged, termination will likely result.

In the Oregon DPSST police training course "Police Legitimacy and Procedural Justice", it is taught that legitimacy needs to exist both on the street (how officers treat community members) and within the agency (how officers are treated by management). *Grievances are filed and arbitration results when justice is perceived to be absent in the treatment of officers by the agency in employment matters. Grievances do not decide the lawfulness or the civil liability of an officer using force or authority; those matters rightfully belong in the criminal and civil courts. Grievances (including arbitration decisions) address employment matters and the results do not decide criminal or civil liability.*

<u>Officers normally admit when they violate workplace rules and accept reasonable discipline that is imposed by the agency, so most disciplinary matters never reach an arbitrator</u>. Before an issue reaches an arbitrator, a grievance must have been filed where an employee believes they have been treated wrongly by the agency – either that the officer believes they did not commit the alleged misconduct or that the discipline imposed was not proper. Many grievances that are filed are resolved without reaching an arbitrator by agreement. Grievances are not pursued to arbitration simply because an employee is unhappy about a disciplinary action; there must be merit to the grievance.

Disciplinary grievances are normally a disagreement about what actually happened or (if it did happen), what the discipline should be. If an agency does not perform an adequate investigation to show what happened, a grievance may result. If an agency issues discipline that is perceived as unreasonable (or inconsistent with previous discipline for similar conduct), a grievance may

result. If a grievance is not resolved – as many are – and it reaches an arbitrator, that independent arbitrator evaluates the case presented to determine if the agency had just cause to discipline the officer and to determine if the imposed discipline was proper.

Arbitrators simply do not change discipline on a whim; they weigh the evidence with the most serious of minds with great weight on their shoulders. If an employer has not proven misconduct, then no discipline is warranted (this is the reason some disciplinary actions are vacated). If an employer proves misconduct but "the punishment does not fit the crime", then discipline is reduced to an appropriate level. Arbitration is a check-and-balance on decisions made by those in charge, a fundamental principal inherent in the foundations of our governmental system. This bill undermines the check-and-balance regarding correcting employment behavior; it does so because it assumes the disciplinary action to be proper because of the appearance that a disciplinary matrix or grid has been agreed upon (which will not necessarily be the case, based on the language in this proposed bill).

A potential ramification of passing the bill as drafted is that officers may become less likely to perform the dangerous and potentially controversial work they are sworn to do and compelled to do by their oath – protecting the public by pursuing and apprehending suspected criminals. If any person does not feel (including an officer) they will receive just treatment, it will inevitably make the person less likely to perform to the person's fullest capabilities, a self-preservation of economic security being a strong motivator. Officers already willingly put themselves into harms' way as part of their duties but an officer may be hesitant to do what needs to be done if the officer does not believe a reasonably just discipline system will determine the officer's employment fate.

It should also be recognized that sometimes employees are disciplined for attempting to make positive changes in a governmental agency, including police departments. The grievance and arbitration system is also a check-and-balance to ensure officers are disciplined at the appropriate level for minor misconduct. If police reform was easy and accepted by all police administrators, reforms would already be in place in all agencies. If an administrator who is resistant to law enforcement reform does not appreciate an officer trying to improve the system from within, how easy would it be to find that the officer has violated some employment policy and remove them from the department if there is no reasonable check-and-balance on discipline?

Please do not pass this legislation as drafted; there are other paths to explore for reforming policing that would are more worthy of your attention that do not have so many potential negative ramifications.

Thank you for your consideration in this matter

Respectfully submitted,

Michael Mann