



POLICE DEPARTMENT

August 5, 2024

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2023-28275
Chief Jeffrey Maddrey	:	
Tax Registry No. 899501	:	
Office of the Chief of Department	:	

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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Rosemarie Maldonado
Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU: Theresa Freitas, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For the Respondent: Lambros Lambrou, Esq.
The Lambrou Law Firm, P.C.
45 Broadway, Suite 3150
New York, NY 10006

To:

HONORABLE EDWARD A. CABAN
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

INTRODUCTION

On June 28, 2024, Respondent filed a motion to dismiss the Charges and Specifications in the above-referenced disciplinary case on the grounds that the Civilian Complaint Review Board (CCRB) lacked subject matter jurisdiction to investigate and prosecute the charged misconduct. (*See* Respondent's Motion to Dismiss, attached as Appendix A) Specifically, the sole charge alleges that:

Chief Jeffrey Maddrey, on or about November 24, 2021, at approximately 2300 hours, while assigned to NYPD's Community Affairs Bureau and on duty, in the vicinity of the 73 Precinct stationhouse, Kings County, abused his authority as a member of the New York City Police Department, in that he engaged in conduct prejudicial to good order, efficiency, or discipline of the Department, in that he improperly interfered with an arrest.

CCRB submitted its response in opposition to the motion on July 12, 2024. It counters that the CCRB has broad authority under the New York City Charter to define and investigate Abuses of Authority and that improperly voiding the arrest of a former uniformed member of service is a "misuse of police power" that clearly falls within its current jurisdictional parameters. (*See* CCRB's Response in Opposition to the Motion to Dismiss, attached as Appendix B)

This tribunal acknowledges that it is an unusual procedural posture for it, and ultimately the Police Commissioner, to rule on the subject matter jurisdiction of an independent NYPD oversight agency. The Rules of the City of New York, however, explicitly authorizes the Deputy Commissioner of Trials "to render *any* ruling or order necessary and appropriate for the efficient adjudication of disciplinary proceedings instituted against civilian and uniform members of the Department." (*See* 38 RCNY §15-02 [emphasis added]) This includes rulings on pre-hearing motions. (*See* 38 RCNY §15-03(g)) It is pursuant to this authority that I have reviewed and

considered all submissions filed and find that CCRB lacks jurisdiction to investigate and prosecute the particular allegation of misconduct set forth in this case.¹

FACTUAL BACKGROUND

The purpose of a pre-trial motion to dismiss is to make a tribunal aware of a defect in the charge or the proceeding that would render it invalid or moot, including a jurisdictional defect. Where properly asserted, the tribunal must “liberally construe the complaint” and “accept as true the facts alleged in the complaint and any submissions in opposition to the dismissal motion.” (*Disciplinary Case No. 2021-24349* [Oct. 20, 2022], citing *Dep’t of Education v. Oliver*, OATH Index No. 1889/13 at 6 [June 18, 2013]) Accordingly, the following summary of facts is based primarily on CCRB’s submission.

CCRB asserts that on the evening of November 24, 2021, three boys between the ages of 12 and 14 were walking in the vicinity of Saratoga Avenue and Pacific Street in Brooklyn. As the boys approached a business on Pacific Street, one of them threw a basketball and struck the building security camera. The boys ran away. Retired NYPD Police Officer Kruythoff Forrester emerged from the business and pursued the boys for “a significant period of time.” During this chase, Mr. Forrester is alleged to have menaced the boys by brandishing a firearm. Mr. Forrester denied that he menaced the boys with a weapon, but acknowledged that he was carrying a licensed firearm in his waistband.

¹ CCRB is correct that Respondent’s Motion to Dismiss was filed after the June 7, 2024 deadline for pre-hearing motions. The basis for this motion, however, is akin to a subject matter jurisdiction challenge. Subject matter jurisdiction generally pertains to a court’s authority to adjudicate the subject matter of the dispute. Unlike personal jurisdiction, “subject matter jurisdiction is a concept that is absolute—it either exists in its entirety or it does not exist at all. A defect in subject matter jurisdiction may be raised at any time by any party or by the court itself, and subject matter jurisdiction cannot be created through waiver, estoppel, laches, or consent.” (*Caffrey v. North Arrow Abstract*, 160 A.D.3d 121 [2d Dept. 2018]; See NY CPLR §3211 (a)(2), (e)) Subject matter jurisdiction “is so fundamental to the power of adjudication of a court that [the defense will] survive even a final judgment or order.” (*GMAC Mortgage LLC v. Winsome Coombs*, 191 A.D.3d 37 [2d Dept. 2020], quoting *Lacks v. Lacks*, 41 N.Y.2d 71 [1976])

The tribunal notes that this is not a traditional subject matter challenge – the authority of this court to adjudicate whether a member of service improperly interfered with an arrest is not in question. Instead, the instant matter presents a more procedurally nuanced question: whether an administrative agency, whose purpose is clearly defined by the Charter, has jurisdiction to prosecute the matter. Notwithstanding, the tribunal finds that very similar principles apply and the question of whether jurisdiction is established is so fundamental that it must be allowed to be raised, even at this late date.

During the chase, one of the boys called 911 to report the incident. Multiple police units responded and a preliminary investigation was conducted at the scene. After interviewing Mr. Forrester and the three boys, as well as reviewing surveillance video, Sergeant Karl Hanisch placed Mr. Forrester under arrest for menacing. While Mr. Forrester was in custody and awaiting processing at the 73 Precinct stationhouse, he requested that the officers contact Respondent. At the time, Respondent was Chief of the Community Affairs Bureau, but had previously been Mr. Forrester's commanding officer at the 73 Precinct. CCRB asserts that Mr. Forrester's brother informed Respondent of Mr. Forrester's arrest.

Soon thereafter, Respondent arrived at the 73 Precinct and "participated in the investigation" into the alleged criminal menacing charge. Respondent ultimately ordered Sergeant Hanisch to void the arrest and Mr. Forrester was released. (*See* Respondent's Motion at pp. 1-2; CCRB's Response at p.2)

ANALYSIS

1. Expanding CCRB's Jurisdiction to Include the Alleged Misconduct is Inconsistent with the Mandate of its Governing Statute

It is uncontested that Respondent did not interact with any member of the public as he spoke to the sergeant, reviewed the evidentiary basis for the arrest and made the decision to void it. Furthermore, there is no allegation that any uniformed members of service who responded to the scene had a problematic interaction with the boys. These facts are dispositive of the motion to dismiss because the authorizing statute determining the scope of CCRB's jurisdiction requires that the agency investigate allegations of police misconduct *towards* members of the public. Specifically, New York City Charter (hereinafter "Charter") §440(a) explains the agency's mandate as follows:

It is in the interest of the people of the city of New York and the New York city police department that the investigation of complaints *concerning misconduct by officers of the department towards members of the public* be complete, thorough and impartial. These inquiries must be conducted fairly and independently, and in a manner in which the public and the police department have confidence. [emphasis added]

The plain meaning of the phrase, “*misconduct by officers of the department towards members of the public*,” is that a direct interface between uniformed members of service and members of the public is required to trigger CCRB’s jurisdictional authority to investigate and prosecute a complaint.

It is within the context of this jurisdictional mandate that Charter §440(c)(1)² enumerates the types of direct contact offenses CCRB has the power to investigate and prosecute, including Abuse of Authority. Since 1993, CCRB has promulgated rules defining and expanding what allegations of misconduct fall within the broad category of an Abuse of Authority.³ That definition is set forth in 38-A RCNY §1-01:⁴

[M]isusing police powers. This conduct includes, but is not limited to, bias-based policing and racial profiling, improper use of body worn cameras, improper searches, entries, seizures, property damage, refusals to provide identifying information, intentionally untruthful testimony and written statements made against members of the public in the performance of official police functions, and sexual misconduct.

² NYC Charter §440 (c)(1) provides: “The board shall have the power to receive, investigate, hear, make findings and recommend action upon complaints by members of the public or complaints initiated by the board against members of the police department that allege misconduct involving excessive use of force, abuse of authority including bias-based policing and racial profiling, discourtesy, or use of offensive language, including, but not limited to, slurs relating to race, ethnicity, religion, gender, sexual orientation and disability. The board shall also have the power to investigate, hear, make findings and recommend action regarding the truthfulness of any material official statement made by a member of the police department who is the subject of a complaint received or initiated by the board, if such statement was made during the course of and in relation to the board’s resolution of such complaint...”

³ CCRB’s authority to define Abuse of Authority is derived from NYC Charter §1120: “Any elected or appointed officer of the city or any board or commission or any member thereof shall, in addition to the powers and duties vested in such officer, board or commission by this charter, perform any duties and exercise any powers vested in such officer or in such board or commission by any other provision of law and any power necessary to carry out the powers and duties vested in such officer, board or commission.”

⁴ 38-A RCNY §1-02 (a) reiterates the parameters of CCRB’s jurisdiction: “Pursuant to Chapter 18-A, Section 440(c)(1) of the Charter, the Board has the power to receive, investigate, hear, make findings and recommend action upon complaints by members of the public or complaints initiated by the Board against uniformed members of the New York City Police Department that allege misconduct involving excessive use of force, abuse of authority, including bias-based policing and racial profiling, discourtesy, or use of offensive language, including, but not limited to, slurs relating to race, ethnicity, religion, gender, sexual orientation, immigration and housing status, and disability. The Board also has the power to investigate, hear, make findings and recommend action regarding the truthfulness of any material official statement made by a member of the police department who is the subject of a complaint received, or initiated, by the Board, if such statement was made during the course of and in relation to the Board’s resolution of such complaint.”

It is important to note that each example of what constitutes an Abuse of Authority under 38-A RCNY §1-01 fully complies with the Charter's statutory parameter limiting its jurisdiction to police-civilian interactions.

CCRB's public reports also conform to its fundamental Charter mandate. For example, on CCRB's public-facing website, the *Data Transparency Initiative*, states that an Abuse of Authority, "Refers to abuse of police powers to *intimidate or mistreat a civilian*; for example, an officer's refusal to provide a name and badge number, or an improper stop, question and frisk."⁵ In addition, CCRB's *2023 Annual Report* includes a detailed chart listing approximately 75 categories of misconduct that fall within its definition of Abuse of Authority. All the specified examples involve allegations of police action directed "*towards*" civilians, including: searches, refusal to provide civilians with their names, unlawful entries into a home, unlawful threats to arrest or hospitalize a civilian, release of a civilian's medical information, the issuance of an unlawful summons, and retaliatory arrests.⁶ (See *2023 CCRB Annual Report* at p. 15, attached as Appendix C)

In sum, this tribunal notes that there is a common component to all matters that are properly investigated and prosecuted by the CCRB: at their inception, they involve an allegedly problematic encounter between police and a civilian victim. The individual should not have been stopped, and searched, had property seized, been summonsed or arrested, been strip-searched, had his home entered and searched, had his property damaged, or been threatened. Even the most recently added categories falling within Abuse of Authority begin with allegations of a problematic police-citizen encounter: BWC not activated during the encounter; a false

⁵ *Allegations Page*, available at: <https://www.nyc.gov/site/ccrb/policy/data-transparency-initiative-allegations.page>

⁶ The Report states that 1% of complaints filed fall under the category "Other." CCRB did not assert that any of the cases listed as "Other" consisted of misconduct allegations similar to those at issue here.

statement made afterward regarding the encounter. Here, in contrast, the matter did not begin with allegations of a problematic encounter between any uniformed member of service, including Respondent, and the boys. Rather, the allegation of misconduct in this case involves a Respondent who had *no interaction* with the public, but made allegedly questionable orders after the public encounter, back at the precinct. Therefore, Respondent's "participation in the investigation" at the stationhouse, and his subsequent decision to void the arrest, is a matter to be investigated by IAB or another NYPD oversight entity, not CCRB.

This tribunal has considered and rejected CCRB's argument that this case falls within its mandate because the three boys pursued by Mr. Forrester were "absolutely and directly affected" when Respondent prevented their criminal complaint against Mr. Forrester from "moving forward in a just and impartial manner." They assert that civilians who make criminal complaints to the NYPD have the right to expect that their complaints be handled fairly and that no "preferential treatment" be given due to any pre-existing relationship the accused may have with NYPD personnel. (*See CCRB's Response at pp.2-3*)

The tribunal certainly concurs with CCRB's assertion that the public is entitled to a Police Department that provides an unbiased assessment of all criminal complaints. This fundamental expectation of fairness, however, is not the issue currently before the tribunal. What is at issue is whether Charter §440(a) grants CCRB jurisdiction to review and prosecute this type of misconduct. It does not. The plain language of Charter §440(a) clearly states that misconduct must be "*towards*" a member of the public and not merely "*affect*" a member of the public. Accordingly, CCRB's faulty interpretation of Abuse of Authority, as applied here, must fail.

In making this finding, the tribunal acknowledges that administrative agencies have broad powers to interpret laws and enact rules defining relevant statutes. This authority, however, is not limitless. It is well-established law that judicial deference does not relieve an agency from the obligation of acting within its statutory parameters. The Appellate Division, First Department has repeatedly adopted this reasoning when reviewing CCRB rules and has held that:

Given the CCRB's expertise in studying and investigating police disciplinary matters, we defer to its interpretation of the term "abuse of authority," unless that definition is irrational, unreasonable, or *inconsistent with the governing statute*. *Lynch v. NYC Civilian Complaint Review Bd.*, 206 A.D.3d 558 (1st Dept. 2022), lv. appl. denied, 39 N.Y.3d 902 (2022) (emphasis added)

Contrary to CCRB's contention, the Appellate Division's reasoning does not authorize an interpretation of its rules that bypasses its own jurisdictional mandate. In serving these charges, CCRB ignored the requirements set forth in Charter §440 (a) and (c)(1) and erroneously served charges based on an interpretation of Abuse of Authority that is "inconsistent with [CCRB's] governing statute."

In sum, this tribunal rejects CCRB's argument that Respondent's alleged misconduct – improperly interfering with the arrest of Mr. Forrester – "clearly" fits into the definition of Abuse of Authority, because CCRB rules broadly defined this category of misconduct as the "misuse of police powers." (*See* 38-A RCNY §1-01) This is circular logic that overlooks the clear jurisdictional mandate of Charter §440 (a).

2. CCRB Cannot Unilaterally Expand the Scope of its Jurisdiction

The Motion to Dismiss must also be granted because the wrongdoing alleged clearly falls within a spectrum of misconduct that encompasses both conflicts of interest and corruption.

CCRB's analysis of the alleged misconduct supports the tribunal's assessment:

[T]he three young boys who were menaced with a gun by Mr. Forrester are members of the public. All three boys gave statements to the NYPD alleging they were the victims of

a crime perpetrated by Mr. Forrester. After conducting his investigation, Sergeant Hanisch made the decision to arrest Mr. Forrester. *It was only then that Respondent became involved, based solely on his prior personal and professional relationship with Mr. Forrester—a fact that Respondent's attorney completely fails to address in his motion.* Not only did Respondent have a professional relationship with Mr. Forrester, but their relationship was also quite personal. Respondent stated during his CCRB interview that he was notified of Mr. Forrester's arrest by Mr. Forrester's brother—clear cut evidence of a personal relationship between the two. (See Response in Opposition to the Motion to Dismiss at p.3 [emphasis added])

The crux of this charge, as described by CCRB, is that Respondent wrongfully voided Mr. Forrester's arrest, not on the merits, but solely based on his personal relationship with Mr. Forrester. If proven, this would be a breach of public trust rising to the level of a conflict of interest or corruption. Neither category falls within CCRB's jurisdiction.

CCRB's own website explains that this type of allegation is to be referred to the Internal Affairs Bureau.⁷ As set forth below:

What is the difference between CCRB and the Internal Affairs Bureau?

The IAB functions as the police department's internal watchdog, to prevent, uncover, and investigate corruption, perjury and off-duty criminal conduct. When the IAB receives a complaint that falls within the CCRB's jurisdiction, it refers the case to us. Likewise, when the CCRB gets a complaint that is outside its jurisdiction, it refers that to the IAB. For example, if you file a complaint that an officer punched you and cursed at you during an arrest, and then stole your money, we would investigate the force and discourtesy allegations, but the alleged theft of money would be referred to the IAB.⁸

In 2019, the Supreme Court, New York County, confirmed this jurisdictional distinction, noting that: "... the carve-outs in the legislative history, that are not within the CCRB's jurisdiction, with respect to police misconduct, are for allegations of corruption and criminal acts. The [CCRB] Board follows these carve-outs." (*Lynch v. New York City Civilian Complaint Review Bd.*, 2019 NY Slip Op 29089; 64 Misc.3d 315 [Sup. Ct., NY County, 2019]) It has been over

⁷ Such allegations may also be investigated by other independent entities including the Brooklyn District Attorney's Office, the Office of the New York State Attorney General or the New York City DOI's Office of the Inspector General (OIG-NYPD).

⁸ See *CCRB Frequently Asked Questions*, available at <https://www.nyc.gov/site/ccrb/about/frequently-asked-questions-faq.page>

three decades since CCRB was created. In that time, there has been nothing in the legislative history, or mayoral executive orders, that even hint at an intent to turn corruption-related matters over to CCRB.⁹

To illustrate this jurisdictional limitation, the tribunal has analyzed a series of ticket-fixing cases in which police officers improperly voided traffic tickets as a “favor” for their family and friends or for those of other members of service. As noted in the passage below, the misconduct alleged in a 2014 ticket-fixing case echoes the elements of wrongdoing CCRB alleges here:

Respondent was not “calling upon an officer on the scene to consider the circumstances. Rather, he was calling upon someone to do a ‘favor’ regardless of the circumstances...” The facts did not matter to Respondent; instead, doing a favor was what mattered. Further, Respondent only damaged his case when he testified that he went into the local precinct to have his parking ticket “corrected.” If there was something about the summons that legitimately needed “correction,” the place to do that was in the traffic violations court. The issuance of a summons to a police officer, his relative, friend, friend’s relative, or any other “connected” person is not a “mistake” that needs “correcting.” It is a valid legal process and must be responded to as such by members of this Department. (*See Disciplinary Case No. 2011-5714* at pp.7-8 [July 18, 2014], quoting *Disciplinary Case No. 2011-6397* at p.7 [Dec. 17, 2012])

These cases were appropriately investigated by IAB, and prosecuted by the NYPD Department Advocate, not CCRB.¹⁰

⁹ Charter Chapter 18-B, Sections 450 and 451, as well as the creation of the Commission to Combat Police Corruption by Executive Order, support the conclusion that the legislature never intended for CCRB to investigate and prosecute allegations of conflict of interest or corruption. CCRB was created in 1993 as an independent civilian oversight agency. Pursuant to City Charter Section 440, it has jurisdiction over what became commonly known as FADO (force, abuse of authority, discourtesy and offensive language). In 1998, Section 450 of the City Charter was added, creating a second police oversight entity: the Independent Police Investigation and Audit Board (IPIAB). Under Section 451, this entity was tasked specifically with “detecting, investigating and preventing corruption among uniformed and civilian members of the police department, and making recommendations for the improvement of those systems.” Sections 450 and 451 remain part of the New York City Charter to this day; however, due to years of litigation the IPIAB Board was not appointed at that time. Instead, in 1995, Mayor Giuliani created the Commission to Combat Police Corruption (CCPC) to monitor all aspects of the NYPD’s policies and procedures that relate to corruption control. The Commission is specifically empowered to “perform audits, studies and analyses to assess the quality of the Police Department’s systems for combatting corruption...” (*See* Mayoral Executive Order 18 of 1995) CCRB’s mandate is devoid of language referencing this category of misconduct.

¹⁰ This tribunal takes judicial notice that a number of NYPD ticket-fixing cases were also criminally prosecuted by the Bronx County District Attorney’s Office.

It is well-settled law that CCRB cannot unilaterally expand its own jurisdiction by simply serving charges that allege that the actions of a member of service constitute a conflict of interest or corruption. The recent expansion of CCRB's jurisdiction to investigate "untruthful statements" is instructive on this point. In 2018, CCRB sought to investigate a subset of untruthful statements made by members of service against members of the public if the statement was made during the course of the agency's resolution of a complaint. Inasmuch as CCRB had historically referred these complaints to IAB, this jurisdictional expansion required a City Charter amendment. In 2019, NYC's electorate voted and approved a ballot initiative granting CCRB the authority to "investigate the truthfulness of any material statement that is made within the course of the CCRB's investigation or resolution of a complaint by a police officer who is the subject of that complaint." In accordance with that electoral mandate, the City Charter was amended in March 2020 to reflect CCRB's expanded jurisdiction. Subsequent to the Charter amendment, CCRB released rules amending 38-A RCNY §1-01 and §1-02, to include untruthful statements as an Abuse of Authority. The amended definition of Abuse of Authority was upheld by the Appellate Division, First Department, but only after CCRB had undertaken a ballot initiative, a City Charter amendment and followed proper rulemaking procedures. (*Lynch v. CCRB*, 206 A.D.3d 558 [1st Dept. 2022], lv. appl. denied 39 NY.3d 902 [2022])

CCRB has pursued amendments to its jurisdiction in other areas as well, including the authority to self-initiate complaints and conduct biased policing investigations; always using appropriate procedures.¹¹ In this case, CCRB is attempting to circumvent the statutory and

¹¹ In January 2022, CCRB's jurisdiction was again expanded after an amendment to New York City Charter §440(c)(1), which now provides that the Board "has the power to receive, investigate, hear, make findings and recommend action upon complaints by members of the public *or complaints initiated by the board* against members of the police department...." (emphasis added) This Charter change was precipitated by legislation; in December 2021, the City Council passed Int. 2440, a Local Law that amended the Charter to allow CCRB to commence a case and open an investigation without having to wait for a formal complaint from a member of the public, as was previously required. Proposed revisions to CCRB's related rules and a rulemaking process followed thereafter, and CCRB's rules were amended effective October 2022. (See 38-A RCNY §§1-01 & 1-02) Biased policing and racial profiling were also specifically added to CCRB's jurisdiction through legislation. In March 2021, the City Council passed Local Law 47, amending the Charter to "clarify" that CCRB was empowered to investigate bias-based policing and racial

regulatory process required to expand its jurisdiction by simply serving charges concerning a new category of misconduct. This procedural irregularity may not proceed.

3. Rulemaking is Required When a Complaint Falls within CCRB's Jurisdiction But Deviates from a Prior Policy or Practice

Even if the tribunal had accepted CCRB's position that conflict of interest and corruption cases currently fall within its jurisdiction, this type of misconduct has not traditionally been investigated by CCRB. It is well-settled law that when CCRB seeks to investigate and prosecute a new category of misconduct, it must first engage in rulemaking. Accordingly, this tribunal finds that the prosecution of this matter is a nullity because CCRB failed to follow the public vetting process required by the City Administrative Procedure Act ("CAPA"), prior to expanding its definition of Abuse of Authority. (*See* NYC Charter §1043)

In its Response in Opposition to the Motion to Dismiss, CCRB asserts that it is not barred from investigating misconduct that it has historically referred to IAB. In essence, CCRB claims that a long-standing practice of referral does not divest the agency of its jurisdiction. This argument is only partially correct.

In support of its position, CCRB cites *Lynch v. New York City Civilian Complaint Review Bd.*, 206 A.D.3d 558, 560 (1st Dept. 2022), where CCRB prevailed on a challenge to revise rules regarding their authority to investigate and prosecute sexual misconduct - a category of wrongdoing that clearly satisfies the jurisdictional requirement of a direct police-civilian interaction. In that case, CCRB had already engaged in the rulemaking process required by CAPA prior to adding sexual misconduct to the definition of Abuse of Authority set forth in 38-A RCNY §1-01. Based on those specific facts, the Court held that, "while CCRB had a prior

profiling. This Charter amendment took effect in January 2022. Proposed revisions to CCRB's related rules and a rulemaking process followed thereafter, and CCRB's rules were amended effective October 2022, at the same time as the changes related to Board-initiated complaints. (*See* 38-A RCNY §1-01)

practice of referring such matters to the Police Department's Internal Affairs Bureau, that prior practice does not render CCRB's current interpretation arbitrary, especially where CCRB has set forth a rational basis for changing its approach.” In citing this case, however, CCRB ignored a critical distinction: that prior to adding sexual misconduct to its rules, CCRB had engaged in a formal rulemaking process, including notice, a public hearing and the opportunity for public comment. Here, CCRB did not.

It must be noted that in a prior court proceeding, the same court nullified a unilateral CCRB resolution announcing that it would begin investigating allegations of sexual misconduct by police officers against civilians, because CCRB did not follow CAPA before it adopted this new rule. (*Lynch v. New York City Civilian Complaint Review Bd.*, 183 A.D.3d 512, 518 [1st Dept. 2020]) The Court opined that, “by declaring that the CCRB would assert jurisdiction over an entire category of misconduct that it had historically referred as a matter of policy, the resolution announced a sweeping policy change that materially affected the rights of all alleged victims ... and allegedly offending police officers...” and thus amounted to the adoption of a new “rule.” (*Id.*)

Another example is CCRB’s efforts to include the improper use of body-worn cameras when interacting with members of the public as part of Abuse of Authority. CCRB’s Policy Unit noted in a publicly available “Justification Memo” that the 2020 *Lynch* Court had “determined that CCRB must proceed by rulemaking in order to exercise its jurisdiction over a category of misconduct it had historically referred as a matter of policy.”¹² Accordingly, before taking action on BWC allegations, CCRB complied with CAPA and then subsequently adopted a rule

¹² July 6, 2022 Policy Memorandum available at:
https://www.nyc.gov/assets/ccrb/downloads/pdf/about_pdf/board/2022/memo/07062022_BWC_Justification_Memo.pdf

that included the improper use of BWCs as part of the Abuse of Authority definition. (*See NYC Patrolmen's Benevolent Ass'n v. New York Civilian Complaint Review Bd.*, 2024 N.Y. Slip Op. 30003 [N.Y. Sup. Ct., N.Y. County, 2024])¹³

This tribunal notes that sexual misconduct, as defined by CCRB, clearly comprises an Abuse of Authority “towards” a member of the public and contemplates an officer’s direct involvement with an alleged victim. Likewise, the improper use of a body-worn camera while interacting with a member of the public provides a real-time visual memorialization of an officer’s direct encounter with a civilian. If both of those categories, each with a much closer nexus to the public, were deemed to be subject to the CAPA rulemaking process, there is no question that CCRB must, at the very least, engage in rulemaking to lawfully expand the definition of Abuse of Authority to include the misconduct charged in this matter.

CONCLUSION

The tribunal has considered and rejected all other evidence and arguments presented by CCRB in opposition to this motion. Accordingly, I recommend that Respondent's Motion to Dismiss be granted and that the instant Charges and Specifications be dismissed.

APPROVED

AUG 19 2024
Edward A. Caban
EDWARD A. CABAN
POLICE COMMISSIONER

Respectfully submitted,

Rosemarie Maldonado

Rosemarie Maldonado
Deputy Commissioner Trials

¹³ The New York Supreme Court found CCRB’s justification for the inclusion of BWC-related misconduct compelling. “Put another way, body cameras help to avoid, although not eliminate, a ‘he said, she said’ situation in which CCRB is reliant upon eyewitness testimony rather than an objective video...it is important violations are disciplined appropriately. This is an entirely rational reason to exercise jurisdiction over the improper use of BWC...Because of the ubiquitous nature of body cameras, it is highly likely that issues involving the improper use of BWC will inevitably arise as part of complaints before CCRB. It only makes sense that this be part of the abuse of authority definition as it might evidence an effort to conceal misconduct.”



ERIC L. ADAMS
MAYOR

CIVILIAN COMPLAINT REVIEW BOARD
100 CHURCH STREET 10th FLOOR
NEW YORK, NEW YORK 10007 ♦ TELEPHONE (212) 912-7235
www.nyc.gov/ccrb



ARVA RICE
INTERIM CHAIR

August 2, 2024

The Honorable Edward A. Caban
Police Commissioner
New York City Police Department
One Police Plaza
New York, New York 10038

Re: Chief Jeffrey Maddrey DADS #: 2023-28275

Commissioner Caban:

The above-referenced case was being prosecuted by Administrative Prosecutor Theresa Freitas for the New York City Civilian Complaint Review Board (hereinafter “CCRB”) pursuant to the Memorandum of Understanding between CCRB and the New York City Police Department (hereinafter “NYPD”).

The CCRB has reviewed the draft decision of Deputy Commissioner of Trials (hereinafter “DCT”), Rosemarie Maldonado, dated July 23, 2024, granting the Respondent’s Motion to Dismiss. I respectfully submit the following comments regarding that draft decision pursuant to *Fogel v. Board of Education*, 48 A.D.2d 925 (2d Dept. 1975).

Respondent, Chief Jeffrey Maddrey, was charged with the following:

1. Chief Jeffrey Maddrey, on or about November 24, 2021, at approximately 2300, while assigned to NYPD’s Community Affairs Bureau and on duty, in the vicinity of the 73rd Precinct Stationhouse, Kings County, abused his authority as a member of the New York City Police Department, in that he engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that he improperly interfered with an arrest.

AG 304-06, page 1, paragraph 1—PROHIBITED CONDUCT; PG 200.02—MISSION, VISION, AND VALUES OF THE NEW YORK CITY POLICE DEPARTMENT

In the attached draft decision, DCT Maldonado recommended that Respondent’s Motion to Dismiss be granted and the instant Charges and Specifications be dismissed. For the reasons stated below, it is respectfully requested that DCT Maldonado’s decision be reversed, the sole specification be reinstated, and the case be scheduled for an administrative trial.

STATEMENTS OF FACTS

On November 24, 2021, at approximately 9:30 p.m., three (3) juvenile boys—§ 87(2)(b) and § 87(2)(b) were walking in the vicinity of Saratoga Avenue and Pacific Street in Brooklyn. As the boys approached 2125 Pacific Street, § 87(2)(b) threw a basketball he was carrying, and it struck the surveillance camera of a local business. The boys ran away. A man, later identified via investigation as former NYPD Police Officer Kruythoff Forrester (hereinafter “Mr. Forrester”), emerged from the business and chased the boys. During the chase, Mr. Forrester is alleged to have menaced the boys by pulling out a firearm.

§ 87(2)(b) called 911 to report the incident and numerous officers responded. After conducting a thorough investigation, which included interviewing all three boys and Mr. Forrester and reviewing surveillance video, Sergeant Karl Hanisch (hereinafter “Sergeant Hanisch”) made the decision to place Mr. Forrester under arrest for menacing. Mr. Forrester was then transported to the 73rd Precinct stationhouse. Mr. Forrester denied brandishing the firearm but acknowledged that it was in his waistband while he pursued the children. While Mr. Forrester was in custody, he requested that the officers contact Chief Jeffrey Maddrey (hereinafter “Respondent”), who was his former colleague and supervisor while with the Department and the Chief of the Community Affairs Bureau at the time of this incident. Respondent eventually arrived at the 73rd Precinct stationhouse and participated in the investigation of the menacing allegations. Respondent then ordered Sergeant Hanisch to release Mr. Forrester and void his arrest.

I. The CCRB’s jurisdiction over the alleged misconduct in this case is consistent with its governing statute, rules, and long-standing history of investigating this type of misconduct.

DCT Maldonado is incorrect that the charge against the Respondent is outside the CCRB’s jurisdiction, inconsistent with the CCRB’s governing statute, or involves a new policy. The exercise of the CCRB’s abuse of authority jurisdiction in this case is not an overreach and is perfectly in line with the language and intent of the City Charter and the CCRB’s long-standing practice of investigating this type of misconduct. The entire draft decision is based on the faulty premise that “a direct interface between uniformed members of service and members of the public is required to trigger CCRB’s jurisdictional authority to investigate and prosecute a complaint” (Draft Decision page 5). However, no such requirement is proscribed in the City Charter and there is no basis for DCT Maldonado unilaterally reading such a requirement into the statute.

The New York City Charter, Chapter 18-A, § 440(a), specifically states:

It is in the interest of the people of the city of New York and the New York City police department that the investigation of complaints concerning misconduct by officers of the department *towards* members of the public be complete, thorough and impartial. These inquiries must be conducted fairly and independently, and in a manner in which the public and the police department have confidence. An independent civilian complaint review board is hereby established as a body comprised solely of members of the public with the authority to investigate allegations of police misconduct as provided in this section. (*Emphasis added*).

The draft decision seems to draw this “direct interface” requirement from the word “towards” in the Charter language. However, contrary to the assertions in the decision (Draft Decision page 5), that is not the plain meaning of this phrase. The Merriam-Webster dictionary defines the word “towards” as meaning: “in the direction of; along a course leading to; in relation to,”¹ none of which suggest this “direct interface” that the decision creates seemingly out of whole cloth. As such, the plain meaning of this term is correctly interpreted as involving conduct that relates to or affects a civilian rather than the incongruent “direct interface” meaning asserted in the draft decision. The CCRB’s abuse of authority jurisdiction was intentionally left broad in the City Charter because it can encompass a wide range of conduct. There is nothing to indicate that the City Council intended to leave the type of alleged misconduct involved here out of the CCRB’s abuse of authority jurisdiction.

In fact, the First Department’s decision in *Matter of Lynch v. New York City Civilian Complaint Review Bd.*, 206 A.D.3d 558 (1st Dept. 2022), which validated the CCRB’s definition of abuse of authority in its Rules to mean “misusing police powers,” including “intentionally untruthful testimony and written statements made against members of the public in the performance of official police functions” is an explicit example of conduct that falls within the CCRB’s jurisdiction, but that does not involve the “direct interface” between the subject officer and the civilian that the draft decision purports to exist. Abuse of authority falling into his category can include, for example, false statements made in an arrest report or during courtroom testimony. A member of service who engaged in this type of misconduct would still be subject to the CCRB’s jurisdiction even if that person did not interact directly with the civilian, such as where a supervisor completed false paperwork.² This definition of abuse of authority clearly contemplated conduct that could be described—in the draft decision’s nomenclature—as “indirect,” and the First Department determined that it “is consistent with the plain language of the governing statute.” *Id.* at 560. Therefore, the draft decision incorrectly interpreted the CCRB’s jurisdiction under the City Charter.

The ticket-fixing cases that the draft decision cites to for support for the jurisdictional limits on the CCRB’s authority (See Draft Decision at 10) are completely inapposite. In those instances, there was no individual civilian involved; the injury was to the public at large. Here, by contrast, the affected civilians are three readily-identifiable juveniles who were the victims of Respondent’s alleged misconduct. Therefore, those cases offer no analogue for dismissing the charges at issue here.

The draft decision also argues that the CCRB must engage in rulemaking before investigating and prosecuting the alleged misconduct in this case because it represents a new category of misconduct that the CCRB has not investigated in the past. Contrary to this claim, the CCRB has historically investigated and prosecuted complaints that did not involve such direct interaction, and where those investigations resulted in the filing of Charges and Specifications for substantiated misconduct, disciplinary penalties have been accepted by respondents and approved by the Department, demonstrating that “direct interface” is not an essential component of the CCRB’s jurisdiction and that the CCRB’s investigation and prosecution of the alleged misconduct in this case is neither a new policy nor an expansion of its jurisdiction.

¹ https://www.merriam-webster.com/dictionary/towards?utm_campaign=sd&utm_medium=serp&utm_source=jsonld

² It should be noted that the draft decision seems to conflate the authority to investigate untruthful statements made during the course of the resolution of a CCRB complaint, which came about as a result of a Charter change that was voted on by New Yorkers in 2019, and the false statements that fall within the definition of abuse of authority as defined in the 2021 rulemaking process. See Draft Decision page 11. However, these are different. Untruthful statements that fall under the Charter revision are, by definition, made after a CCRB investigation already has been commenced. The false statements involving a civilian that fall within the abuse of authority, as defined by the Rules, serve as the basis for filing a complaint with the CCRB.

For example, in CCRB Case no. 202004301, LT Adam Mellusi (DADS # 2022-24742) was charged and tried for wrongfully using force in that he authorized the use of a bike to push back protesters without police necessity although he was one of the officers who actually used a bicycle to push back protesters. The Department allowed the administrative trial to go forward although LT Mellusi was not present at the scene when the alleged force was used and did not directly interact with the protestors.

In CCRB Case no. 202003822, former Sergeant Edward Mullins (DADS # 2021-23191) was charged with abusing his authority by disseminating information via the internet from the Sergeant Benevolent Association's Twitter Account regarding the arrest of the child of the former Mayor. Although this case did not involve any direct interaction with the victim, the Department retained the case and imposed a penalty of the forfeiture of thirty (30) vacation days.

In CCRB Case no. 202004437, former Sergeant Edward Mullins (DADS # 2021-23192) was charged with making remarks over the internet regarding the gender of then Commissioner of Mental Health and Hygiene, Oxiris Barbot, by published a tweet calling her a "bitch." This statement was not made during a direct interface with then-Commissioner Barbot, yet former Sergeant Edward Mullins was found guilty after an administrative trial and the Department imposed a penalty of the forfeiture of twenty (20) vacation days.

In CCRB Case no. 2018103868, the complainant alleged that PO Joseph Arena and PO Nicole Martinez instructed another civilian to break the locks on the complainant's property. The complainant was not present when this occurred and had no interaction with either respondent. The Board substantiated the allegations, and the Department issued a penalty of Instructions against both respondents.

In CCRB Case no. 201910663, the complainant alleged that, while he was not present, Sergeant Joseph Carolan unlawfully searched for items within his apartment. There was no interaction whatsoever between the complainant and the respondent during the incident. The Board substantiated the allegations, and the Department imposed a Command Discipline Schedule "B."

As shown in the cases above, the CCRB has prosecuted cases involving abuses of authority that do not involve a direct interface between members of service and members of the public. Therefore, the CCRB disagrees with DCT Maldonado's finding that the CCRB is attempting to expand its abuse of authority jurisdiction by investigating and prosecuting Respondent for voiding the arrest of a former officer that was based on a complaint filed by civilians, despite Respondent not directly interacting with those civilians. Respondent's alleged conduct was a misuse of police powers and that conduct involved a member of the public, which is exactly what the CCRB's abuse of authority jurisdiction was meant to cover. The draft decision's attempt to constrict the CCRB's jurisdiction to cases only involving "direct" civilian interactions is improper and limits the CCRB's jurisdiction in contravention of the plain language and the intent of the City Charter.

DCT Maldonado's decision relies heavily on the CCRB's website for examples of what constitutes an "abuse of authority," but that list is not exhaustive, and more importantly, does not constrict the CCRB's jurisdiction to abuse of authority allegations listed on our website. The City Charter and the CCRB's Rules govern the agency's jurisdiction, not its website, and the City Charter imposes no requirement of there being a direct interface between members of service and members of the public in order to trigger CCRB's jurisdiction. Moreover, it would be impracticable to list every single type of

misconduct that could fall within the CCRB's abuse of authority jurisdiction, which as mentioned above, as written in the City Charter, was intended to be a broad.

As such, the conclusion in the draft decision that the CCRB lacks jurisdiction over this matter should be rejected and Respondent's Motion to Dismiss should be denied.

II. Where the former Police Commissioner offered Respondent Command Discipline B with respect to this conduct, and allowed an administrative prosecution to go forward, the Department already determined that the CCRB had jurisdiction over this matter and DCT Maldonado does not have the authority to dismiss this matter.

Former Police Commissioner Keechant Sewell agreed with the substantiation of these charges against Respondent and was willing to offer a Command Discipline Schedule B and the forfeiture of ten (10) vacation days for this misconduct. This offer was rejected by the Respondent and the case was scheduled for an administrative trial. Given that the Department, at the direction of the former Commissioner, offered Respondent a plea to the charge in this matter, it necessarily determined that the underlying investigation was within the CCRB's jurisdiction, and the DCT does not have the authority to contravene the determination of the former Commissioner and dismiss the charges based on lack of jurisdiction. For these reasons, the findings and recommendations of the draft decision should be rejected and the CCRB should be permitted to proceed with the prosecution of this matter.

CONCLUSION

For all the aforementioned reasons, the CCRB requests that you reject DCT Maldonado's findings, deny the Respondent's Motion to Dismiss, and allow CCRB to proceed with its prosecution of the Respondent.

Respectfully submitted,

Theresa Freitas

Theresa Freitas

Prosecutor

Administrative Prosecution Unit

Civilian Complaint Review Board

CC: Lambros Lambrou, Esq.