

NEGOTIATING BODY WORN CAMERA POLICIES

The following is a summary of the presentation from the Rains Lucia Stern and Buena Park POA / “The Kelly Thomas Trial, NOT GUILTY VERDICT: The Effect on Orange County Law Enforcement and You” by Rocky Lucia on March 6, 2014 in Buena Park.

Body worn cameras will significantly change the working environment of every department that mandates they be worn. History has shown that the effects on those who wear them can be overwhelmingly positive. However, policies that fail to provide safeguards for abuse can be devastating to both the department and individual wearing the camera. The departmental approach to these policies is wide ranging and at best, in a developmental phase.

Policies driven primarily by political interests that are disconnected from the practical demands of police work will surely put both the individual peace officer and the department at risk. Communities that embrace and acknowledge the demands and perils of professional policing will implement policies that protect their police officers and deputies, while ensuring accountability through video technology.

The Meyers-Milias-Brown Act (Government Code section 3500 et seq.) mandates that these policies are subject to bargaining. Each labor association has an affirmative duty to negotiate the terms and conditions of body worn camera policies. In that regard, the full range of issues to be addressed in negotiating these policies is wide ranging and complex. The following is a summary and sampling of those issues and is **NOT** intended to be legal advice or a thorough explanation of how to go about negotiating a body worn camera policy.

BACKGROUND

- Media and politics may drive discipline, criminal prosecutions and policy when videos are involved.
- Employers seeking transparency with video technology are often times not prepared for the consequences.
- In car cameras, Taser video and electronic surveillance have changed the culture of law enforcement.
- Working in a fishbowl – Camera phones, video surveillance, social media, the Internet and YouTube.

THE POLICY

- Identify the interests behind policies requiring body worn cameras.
- Who or what is driving the debate?
- Cameras impact privacy, disciplinary standards and the manner in which you do your job.
- Where are you in the process? Rumors, pilot programs, committee analysis or draft policies?
- Where did the draft policy originate? Lexipol, internally drafted, hybrid or “borrowed”?

EXERCISE YOUR RIGHTS

- Make a timely demand to meet and confer (Government Code sec. 3505).
- Treat the negotiations as you would for bargaining an MOU – be prepared!
- Understand that “meet and confer” is not meet and agree.

- Become familiar with the impasse procedure.

POLICY ISSUES

- Use of private/personal video cameras.
- Where will the camera be situated on the uniform?
- Will the camera be affixed to stationary objects?
- To what extent will the officer/deputy be responsible for equipment functionality?
- Batteries, video capacity, storage, and malfunctions.
- When will testing be required?
- How and when will video be downloaded?
- Has the department addressed storage of video files and integrity of software?
- Are third party vendors being used?
- Who has access to files and when?
- What rights do officers have to review video files and when?
- Review for report writing, pending administrative and criminal investigations.
- When can an officer involved in an OIS review the video?
- When does the policy require activation and deactivation?
- Limits on use and frequency of department review by supervisors / management.
- Conditions under which video files will be released to the public.
- Prohibited activation during certain private communications.
- What rights does the officer have when accidental recordings occur?
- What are the disciplinary standards when an officer fails to comply with the policy?
- To what extent will the department offer policy training?
- Has the Department conferred with the District Attorney on the policy?
- How much discretion does the officer have to activate or not when engaged in:
 - Citizen contacts
 - Consensual encounters
 - Preliminary investigations
 - Detentions
 - Arrests
 - Psychiatric evaluations
 - Guard assignments
 - Hospital / medical facility assignments
 - Informant communication
 - Pursuits
 - SWAT callouts
 - Crowd control
 - Transports
 - Searches of person and property
 - Witnesses
 - Victims
 - Victims of sexual crimes

There are, of course, many other issues which will need to be addressed in the meet and confer process. Each labor association is cautioned to exercise great care in negotiating these policies.

Please feel free to contact [Rocky Lucia](mailto:rlucia@rlslawyers.com) at rlucia@rlslawyers.com for a comprehensive explanation of policies requiring the use of body worn cameras.

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