

BART Management Audit



**Conducted by the
National Organization of Black Law Enforcement Executives (NOBLE)**

BART Management Audit Executive Summary

BART Management Audit Executive Summary of Major Recommendations

The following are some general conclusions that the NOBLE Study Team of consultants has drawn from its work on the BART Police Management Audit review.

1. ORGANIZATIONAL STATEMENTS

The vision, mission, major goals and core values needs to re-established to provide the future direction for BART Police. It is time to recalibrate the metrics of performance.

2. POLICY & PROCEDURE MANUAL

The general orders manual needs a total revision in format, process, and content. This should be based on international law enforcement accreditation standards.

3. TRAINING

BART PD needs to develop and implement a comprehensive pre-service, in-service, specialized and advanced training plan needs to be established in alignment with the BART Police mission.

4. EMPLOY PERFORMANCE STANDARDS

The supervision and accountability of employees needs to be established to ensure the mission and major goals of the agency are being achieved through effective employee performance.

5. PATROL PRIORITIES

Patrol Visibility on the BART trains and the stations is major concern to your constituency and to the crime control strategy of BART. Officers must ride the trains to achieve maximum visibility and access to BART customers. Officer presence at the stations and in the parking lots is also important. A. visibility on trains. B. visibility at stations. C. visibility in parking lots.

6. PERSONNEL SELECTION

The selection of personnel is the single most important factor in transforming the agency. A revision of the methods of personnel selection in hiring, promotion, and assignments consistent with achieving the BART Police mission would be beneficial.

7. COMMUNITY INVOLVEMENT

The BART Police department needs to develop and implement an on-going strategy for involving the community in assessing the quality and scope of police services. Developing a police advisory board, utilizing community surveys and involvement in community organizations are some of the methods which may be used to accomplish this.

8. CRIME CONTROL STRATEGY

The department needs to develop and implement a crime control strategy which measures its effectiveness in preventing, reducing, and solving crime. This needs to be measured and evaluated month to month and from year to year to determine who, what, when, where, why and how crime is being addressed by BART Police.

9. FACILITIES MAINTENANCE

The BART Police main office and some of its satellite facilities are in dire need of renovation or a new facility. The quality of these facilities as an effective working environment serves as a disabling factor for all the employing working in them. It creates the perception that the BART administration does not value their contribution to the BART mission.

10. JOB SATISFACTION

BART Police employees appear to enjoy a high degree of satisfaction in working for a transit police agency. There appears to be a high degree of alignment in type of services provided or needed and the desire to do that type of policing.

11. SHOULD BART HAVE A POLICE DEPARTMENT?

A transit police agency is highly beneficial in response to BART's decentralized environment and based on the quality of life issues in the communities it serves. Some of the reasons the answer to whether BART should have a police agency is most effectively responded to in the affirmative:

- a. Better responsiveness to calls for service;
- b. Higher degree of safety to all patrons;
- c. Understanding the goals of administration;
- d. Cohesiveness of response to client needs;
- e. Developing and implementing counter-terrorism strategies;
- f. Intelligence information gathering and sharing;
- g. Officer presence on the trains;
- h. Establishing police-community relations;
- i. The level of community crime;
- j. The volume of commuter traffic;
- k. Fare evasion and cashier stations; and
- l. Parking lot safety.

12. PUBLIC INFORMATION OFFICER

The establishment of a public information officer that works with the BART Administration PIO to more effectively respond to all media request for information and to draft press releases on all BART Police matters.

13. PROMOTION

BART PD needs to do a comprehensive revision of its management promotion process. This revision will include the addition of new promotional instruments and written policies which specify the qualifications for promotion. Additionally, BART should consider lateral entry for all management positions.

14. INTERNATIONAL LAW ENFORCEMENT ACCREDITATION

BART should require international law enforcement accreditation through the Commission on Accreditation for Law Enforcement Agencies. If the agency achieves accreditation and maintains accreditation every three years, BART Administration has the assurance that the PD is

maintaining the highest performance standards in the law enforcement profession. Compliance with these standards are in the best interests of the community and the employees of BART PD.

15. DEPUTY CHIEFS JOB

BART PD should establish the job of Deputy Chief. There should be two positions in this job category, one for Operations and the other for Administration. This job should not be in a collective bargaining unit. It should be established as a full-time salaried position. The Police Chief will have the discretion to rotate the individuals from Operations to Administration so that they have the ability to gain experience in both areas. Candidates selected for these positions should be part of the organization's succession plan.

16. ALL HAZARD PLAN

The BART PD should develop an All Hazard Plan for responding to critical incidents, such as natural and man-made disasters. This would also include details for responding to civil disturbances, mass arrests, bomb threats, hostage/barricaded person situations, acts of terrorism, and other unusual incidents. This plan should also follow the Standard Incident Command protocol.

17. RACIAL PROFILING

The BART PD should collect data on all police officer contacts and citations or arrests to analyze to determine if biased-based policing is occurring by officers on the department.

18. USE OF FORCE

The agency should incorporate the various policies governing use of force into a single comprehensive policy to both reduce confusion and provide easy to find guidance in this critical area.

The agency's members should receive annual use of deadly force training and biennial less-lethal force training. Training should include the legal justification for the use of force, with a provision for tracking and mandating attendance for those that do not attend regularly scheduled training. The removal of personnel from any position requiring a firearm should occur when they fail to attend and achieve firearms qualification, until the member satisfies the Agency qualification requirements. There also should be a provision for tracking and mandating attendance at make-up training for those that do not attend regularly scheduled training. The agency should develop a written use of force testing instrument.

The agency should develop a reporting system that ensures all incidents involving the application of force, including leg sweeps, elbow jabs, punches, kicks or other weaponless force, are well documented and the salient facts surrounding the event noted. Serious consideration should be given to developing a separate use of force report that is completed when an incident involves the application of force; training in the proper documentation of use of force events is paramount.

A part of the use of force policy should include a response to the scene of any use of force incident by a supervisor requiring that the supervisor to conduct a documented review of the incident.

All officers and supervisory personnel should be trained on the importance of immediately notifying the communications center when a use of force incident occurs and the necessity of

identifying and securing witnesses.

The process should include a charge requiring Internal Affairs to conduct an independent review of all use of force reports and to make a separate finding in addition to tracking and recording use of force events. Additionally, the Training function should receive a copy of reviews or analysis so they are in a position to identify training needs or policy issues.

The agency should consider modifying its policy to provide for an “outside” agency to conduct the criminal investigation anytime an application of force by an officer results in death or serious bodily injury.

The agency should conduct an annual analysis of all use of force events. A review of incidents of force may reveal patterns or trends that could indicate training needs, equipment upgrades, and/or policy modifications.

19. CIVILIAN OVERSIGHT

BART should develop a model of civilian oversight which is most suitable to address the key concerns of the stakeholders regarding the issue of police accountability. Each model currently in use by law enforcement agencies across America has their strengths, weaknesses, and desired outcome. An effective oversight model should be properly staffed and funded, have the ability to conduct an investigation, and make appropriate recommendations for discipline. A civilian oversight entity should have independence while establishing and maintaining credibility with the community while working in a collaborative manner with BART PD. The following are NOBLE’s major recommendations in the area of civilian oversight.

- a. All appeals should stop at the General Manager. The decision at that level is final. The Board of Directors is a policy making body of elected officials and should avoid issues of management oversight other than for the General Manager.
- b. The process of establishing an independent Citizen Oversight System for the BART Police Department should be developed at a pace sufficient for proper planning and should not be established solely because of the urgent and vocal demands of the community. The community may not like the end results because the system may be flawed as a result of establishing the policies, procedures and system too rapidly. The System must also be properly subsidized and carefully thought out and planned. The community should also be provided with monthly updates on the progress of the Civilian Oversight System.
- c. The Independent Police Auditor, members of the Citizen Board or Investigators should not be police officers or former law enforcement officers. They also should not be investigators. When police officers are part of Citizen Boards they can inadvertently function as or be perceived as a “Police Commission or Panel of Review”. In fact, since recommendations shall be made about BART Police Officers’ behavior and conduct, respected psychologists and sociologists might be considered to be members of the Citizen Board. For example, psychologists are trained to perform psychological research, testing and therapy. They can recognize aggressive, “hyper-vigilant” police officers. Sociologists study human social behavior. This

shall be helpful when reviewing complex cases involving multiple complainants, witnesses and police officers.

- d. The BART Board of Directors should not appoint the Citizen Board directly. The Citizen Board should be free of politics and even the perception that they are influenced by politicians. If Board of Directors are politicians (or associated with politicians), appointment of Citizen Board members by politicians may appear impartial. Citizen Board members can be interviewed and hired by NACOLE, the California Human Relations Commission or another independent organization that Citizen Board members and Investigators should be established. The BART Board of Directors should select Citizen Board members from a list provided by NACOLE.
- e. There must be a clear, dedicated funding source for the Citizen Oversight System. The source of funding should be determined now. A budget must also be established as well as an organizational structure.
- f. Regular and consistent training must be provided to Citizen Board members. This training shall include familiarization with POST, the BART system, Operational Directives (especially Positive Discipline Policy or Disciplinary Code), Contract Agreements, Grievance Procedures, Due Process Policies and Internal Affairs policies and procedures.
- g. Citizen Board members as well as the Auditor should have a relationship with local prosecutors (District Attorney) along with the Offices of the State Attorney General and the United States Attorney. Complainants allegations should be forwarded to the appropriate agency for action.
- h. Recommendations for Corrective Action: Independent investigative findings made by the Office of the Police Auditor shall include recommendations for corrective action, up to and including termination where warranted and shall include prior complaints and their disposition. Discipline that is recommended shall be consistent with past practice and uniformly applied. Any discipline action initiated by the Bart Police Department will comply with the Positive Discipline System guidelines (e.g. Operational Directive #77), other appropriate guidelines and any labor agreements in effect. Every officer is entitled to Due Process. When the evidence does not support the allegations of misconduct, the Auditor shall recommend to the Citizen Board that the matter be dismissed. The Citizen Board shall have a simple vote to determine if the matter shall be dismissed. This process must be appropriately documented in writing and endorsed by the Auditor and each member of the Citizen Board. Proper notification must be made in writing to the complainant and the BART police officer regarding the disposition of the investigation.

If the complainant wishes to withdraw a complaint, the Auditor shall forward documentation to the Citizen Board that is endorsed by the complainant. These procedures must be clearly communicated to all parties including the community.

- i. Time limits should be indicated throughout the policy. For example, “In a confidential personnel meeting, the Auditor shall submit his/her investigative findings and recommendations in writing to the Citizen Board for review within 60 calendar days. Should the Citizen Board agree with the findings and recommendations, the report will be submitted to the Chief of Police for appropriate action within 10 calendar days. The Chief of Police shall implement the recommended action in accordance with the Positive Discipline guidelines, absent appeal.”

20. INTERNAL AFFAIRS

BART PD needs to a comprehensive revision of the Internal Affairs function. A written directive system should be developed and implemented which addresses the policies, procedures, and standards for conducting internal investigations. Additionally, the agency needs to develop and implement an early identification system. This is a computerized record system with specific benchmarks to indicate when an employee may be experiencing job-related difficulties to facilitate early intervention.

21. SWAT & TACTICAL TEAM

Our Review Team had questions about the establishment of a SWAT unit within the BART Police Department. We believe that the department, the General Manager, the Board of Directors, and the public should consider this issue.

While the unit seems to have its primary value and on-going function of the execution of high-risk warrants, its overall benefit needs to be evaluated against cost, value, and liability. Since the entire rail service area is contiguous with other jurisdictions with full service SWAT and hostage negotiation units, it might be beneficial and cost effective to establish MOU's with each respective jurisdiction for SWAT, and possibly, high risk warrant service. However, to have a SWAT team available across all the respective jurisdictions with a counter-terrorism focus also has value. In a post-9/11 society, transit systems which have always been a high value community asset, have a greater degree of vulnerability.

Our sense is that tactical units are more the norm for similarly situated departments and, with the elimination of the SWAT unit, more resources might be devoted to this functionality. We would think that more senior experienced officers be assigned this kind of duty. However, the threat of terrorism to a transit system increases the value of a transit police SWAT team. **The agency should conduct its own analysis in this area to validate its decision.**

22. EARLY INTERVENTION

BART PD should develop and implement a computerized early intervention system. Early intervention is an effective strategy for preventing mitigating or solving potential employee problems. The concept is for management to identify, manage, or resolve employee problems in their early stages.

- a. Internal affairs case management software is available and should be employed to categorize investigations, officer behavior, discipline, developing trends and many others. In addition to serving as a repository for statistical data, periodic analysis can provide indicators that written policies may be deficient, deviant behavior may be prevalent, the

number and kinds of disciplinary actions taken against an individual officer may be inordinate, or officers on the same shift or in the same unit may have developed a subculture contrary to the values of the department.

- b. The purpose of an early warning and intervention system is to track indicators that will identify patterns of officer conduct that fall outside of the norm. The indicators may show positive performance by an officer or it may show unsatisfactory behavior.
- c. This program will assist BART by identifying problem employees, identifying training needs, indicating the type of intervention required, and ultimately reducing misconduct.

23. DISCIPLINE

The Agency should consolidate the various discipline process general orders, directives, policies, and guidelines into a single Agency discipline policy to avoid confusion in applying and interpreting the disciplinary system.

The agency should adopt a more traditional police discipline system, and centralize the Employee Development Record [EDR] files. This would simplify discipline records review by supervisors, managers, and Internal Affairs. Numerous affordable computer software programs are available that can simplify this process.

Purging disciplinary matters in 90-days to a year or less does not provide for the proper and deliberate monitoring of problem employee behaviors or performance. The agency should consider significant modifications to the agency disciplinary system as the current disciplinary process does not provide for an effective Early Warning or Early Intervention program.

24. BART PD EMPLOYEE SURVEY [Respondents: 109]

The following is a general summary of the strongest responses received by BART PD employees to topics within the Employee Survey.

- a. The majority of employees indicated that their job motivation is low. [Question 1]
- b. Effective communication needs to be established by management with line personnel. [Question 2]
- c. The majority of employees desire increased involvement in decisions that affect them. [Question 3]
- d. The majority of employees believe there is a greater need for appropriate job-related training for personnel. The employees the following areas as those they deem most important [Question 8]:
 - i. Investigative Skills
 - ii. Current Law Changes & Effects
 - iii. Computer / Software Use
 - iv. Use of Force and Defensive Tactics [tie]

- e. The vast majority of employees believe that the organization should establish new organizational statements. Specifically, the agency should develop a new Vision Statement, Mission Statement, Core Values, and major Goals. [Question 3H]
- f. The majority of employees believe that the agency should develop and implement effective crime control strategies. [Question 3 P]
- g. The majority of employees believe that better equipment is needed. [Question 3 T]
- h. The majority of employees believe that there should be improvement to the promotional process. [Question 3 S]
- i. The majority of employees believe that there is a need for a comprehensive and contemporary general orders manual. [Question 2 N]
- j. The majority of employees believe that there is a need for increased supervision and accountability. [Question 3 L]

25. COMMUNITY SURVEY OF BART PD [Respondents: 1214]

The following is a general summary of the strongest responses received by community members to topics within the Community Survey.

- a. Respondents to the survey most indicated they ride 5 days a week. [Question 3]
- b. 48% of the respondents indicate they are satisfied with BART police services. [Question 4]
- c. 59% of the respondent indicate that the relationship between BART police and the community is Fair or Better. [Question 5]
- d. BART patrons indicated that the police patrol priorities should be [Question 9]:
 - i. Trains
 - ii. Stations
 - iii. Parking Lots
 - iv. Streets near BART stations
- e. The majority of respondents [62%] indicate that police presence on the trains has stayed the same or decreased. [Question 11]
- f. The majority of respondents [54%] indicated that police presence at BART stations has stayed the same or increased. [Question 12]
- g. The majority of respondents [71%] indicate that travel on a BART train is safe after dark. [Question 17]
- h. The majority of respondents [60%] indicate that they feel safe in a BART station after

- dark. [Question 18]
- i. The majority of respondents [58%] indicate that they feel unsafe in a BART parking lot after dark. [Question 19]
 - j. The majority of respondents [59%] indicate that they have some or great confidence in the BART PD to prevent crime. [Question 20]
 - i. The majority of respondents would rate the overall performance of the BART PD as from Fair to Good [70%]. [Question 21]