

**Testimony of Dorothy W. Dugger, General Manager
San Francisco Bay Area Rapid Transit District**

**Assembly Public Safety Committee
Informational hearing:
BART Police: Training, Policies and Procedures
Tom Ammiano, Chairman
Room 126 State Capitol
October 20, 2009**

Chairman Ammiano,

My name is Dorothy Dugger and I am General Manager of the San Francisco Bay Area Rapid Transit District (BART). This morning I am joined by Matt Burrows, BART General Counsel, and Commander Travis Gibson, currently acting for BART Police Chief Gary Gee who is on medical leave.

I appreciate the opportunity to come before you today to discuss the actions that BART has taken in response to the officer-involved shooting of Oscar Grant on January 1st. While the events that bring us here today are irreversible, I want to assure you that we have worked diligently this year, along with members of the public - to conduct a comprehensive review of our Police Department and to make the improvements necessary to strengthen the Department in ways that will help avoid a similar tragedy in the future.

In January 2009, the BART Board of Directors established the BART Police Department Review Committee to provide greater Board focus on BART Police and the services they provide to the public. The Board has also held dozens of public meetings to hear community concerns; to involve the public in the efforts we have undertaken to get to the bottom of what happened on New Year's Day; to review the training, policies, practices and procedures of our Police Department; and to establish citizen oversight at BART.

I will begin by giving you an overview of actions BART has taken in response to the officer-involved shooting at the Fruitvale Station on January 1. Commander Gibson will conclude by reporting on the

draft action plan the Police Department developed in response to the recommendations in the Meyers Nave public report. On October 5, the draft action plan was presented and discussed with the BART Police Department Review Committee and members of the public.

Overview since January 1

BART hired two outside experts to conduct independent reviews of the BART Police Department.

Meyers Nave

- The first independent review began in February when BART turned over its internal affairs investigation to the Meyers Nave law firm. While it is unusual for an agency with an Internal Affairs (IA) division to turn an IA investigation over to an external third party, the BART Board of Directors retained Meyers Nave to conduct the investigation as a way to ensure objectivity and complete independence. Meyers Nave is an Oakland-based law firm known throughout the state for its extensive experience in investigating police conduct. As an independent third party, Meyers Nave investigated the actions of all the officers present during the events leading up to the shooting death of Oscar Grant on January 1 on the Fruitvale Station platform. Meyers Nave also reviewed the policies, practices and procedures governing the response to potentially violent incidents as well as the use of force in such incidents.
- In August, BART received the final internal affairs investigation report from Meyers Nave that contains extensive information regarding personnel matters, which are confidential and cannot be released under California State law. BART also received a second public report that was specifically included in the scope of work as part of our commitment to make as much information available to the public as is permissible by law. The public report, included in your information packet, contains recommendations for the improvement and overhaul of Police Department policies, procedures and practices. The public report is also available on our website at www.bart.gov.
- We have carefully reviewed the Meyers Nave report and recommendations and believe them to be thorough and comprehensive. The report identified a number of areas where BART can and must improve its response to future incidents and strengthen its policies, practices and procedures. We

are moving forward through our internal process to act on the recommendations which we believe will effectuate substantial improvements in our Police Department. The report's recommendations include:

- Updating the police policy manual
 - Additional training on train tactics, teamwork, TASER use, and updated policies
 - Improving communications and command during incidents
 - Instituting more strenuous use of force and deadly force reporting requirements and investigations process
 - Enhancing transparency and accountability in reporting and investigation process
- The BART Police Department Review Committee will receive frequent updates from the Police Department on the progress of implementing the Meyers Nave recommendations and will make periodic reports to the full Board of Directors.
 - Momentarily, Commander Gibson will discuss key actions that are planned based on the recommendations contained in the Meyers Nave public report. First, I would like to take a moment to highlight actions in five important areas that the Police Department initiated earlier this year. The areas are Use of Force, Training, Policy Manual Updates, Discipline and Probation Periods and Organizational Structure.

1. *Use of Force*

- ALL use of force incidents will now be reported and investigated instead of just significant use of force incidents
- Use of force reports are forwarded through the chain of command and filed with Internal Affairs
- A new Use of Force Review Panel has been established to review all uses of force and report recommendations to the Chief of Police

2. Training

- BART officers will now receive 40 hours of training annually. The current fiscal year budget provides for this enhanced level of training for all officers. Police Officers Standards and Training requires a minimum of 24 hours every two years.
- The 40 hours of training per year will facilitate the delivery of the additional training recommended in the Meyers Nave report.
- Training curriculum includes: cultural diversity, racial profiling, tactical and inter-personal communication, policy manual review, firearms/range/use of force options/policy review, defensive tactics/arrest control and TASER recertification.

3. Policy Manual Update

- The BART Police Department is in the process of updating and converting its policies into a new system by Lexipol. The first group of 8 critical policies has been revised and issued - all BART police officers received training on these 8 revised policies as part of this year's expanded training program
- The 8 revised policies are:
 - Racial/Bias Based Profiling
 - Shooting Policy
 - Electronic Control Device (i.e. TASER)
 - Officer Response to Calls
 - Use of Force
 - Control Devices and Techniques
 - Vehicle Pursuit Policy
 - Officer-Involved Shootings
- The remaining policy updates will be issued by December 23, 2009

4. Discipline and Probation Periods

- BART has reached agreement with the BART Police Managers Association (BPMA) and has reached tentative agreement with the BART Police Officers

Association (BPOA) to adopt a more traditional police disciplinary system providing a wider range of discipline actions.

- BART has also reached agreement with BPMA to establish a 1-year probationary period for all police management positions.

5. *Organizational Structure*

- BART has reached agreement with BPMA to remove the two commander positions from the collective bargaining unit.

NOBLE

- The second independent review of the BART Police Department began in April when the BART Board of Directors selected the National Organization of Black Law Enforcement Executives (NOBLE) to conduct a comprehensive management audit of the department. NOBLE has assisted police departments across the country with various issues. The goal of the management audit was to provide BART with evaluation results and recommendations. This report will help us identify the changes needed to ensure the BART Police Department is structured and administered effectively and align the department's activities more closely with the industry's best practices.
- NOBLE presented their draft management audit at a Special Board Meeting on September 17th. The draft NOBLE report makes more than 100 recommendations. Highlights of their major recommendations are:
 - Establishing Citizen Oversight
 - Revising the BART policy manual and training officers on new policies
 - Developing and implementing more comprehensive training methods
 - Establishing better data collection and record keeping to support analysis tracking and compliance
 - Instituting a more comprehensive use of force policy
 - Revising the methods of personnel selection in hiring and promotions
 - Increasing presence of police on trains and in stations
 - Implementing on-going strategies for community involvement
 - Develop and implement a computerized early intervention system
 - Adopting a more traditional police discipline system

■ **Adopting a more efficient organizational structure**

- When the NOBLE management audit is final, BART will work to develop an action plan that is responsive to its recommendations. The actions planned in response to the Meyers Nave report will ultimately be combined with those planned in response to the NOBLE report as a single blueprint for change for the BART Police Department.
- Commander Travis Gibson will now discuss the major actions planned in response to the recommendations contained in the Meyers Nave public report.