

weaker system of internal police accountability. Chair Laue says he'd like the review to include an examination of complaints by police officers that the department is too strict and lacks "consistency and fairness" to officers in handling citizen complaints.

POWERFUL UNION

Meaningful police reform may face opposition from Eugene's powerful police union. The union opposed the 1998 police review board measure.

The last chief to come to Eugene from outside the department and try to tighten discipline faced stiff union opposition. Chief Leonard Cooke said he was "stunned" by the "loose discipline" he found in the department in the 1990s, according to testimony before the state Employee Relations Board. Cooke later was forced to resign after the union heavily criticized his efforts to increase discipline and impose community policing. The union also played a major role in ousting former city manager Vicki Elmer in 1998 after she angered local officers by asking the state police to investigate the June 1 pepper spraying of tree sitters.

In 2000, the union threatened to sue Councilor David Kelly for libel after he ques-

tioned police use of force against protesters and called for police reform.

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In 2002, police union members were suspected of breaking video camera equipment in their patrol cars to destroy evidence of their actions, according to a report in *The Register-Guard*. Police apparently didn't investigate.

Last year, the union successfully revoked the hiring of George Aylward as chief. Aylward had angered the police union in Middletown, Conn., for firing an officer accused of racist arrests and for suspending another officer who threatened college students. Aylward was named as the top candidate for chief in Eugene, but withdrew in the face of opposition from the Eugene union.

The union then supported Lehner for the chief job. Lehner had served in Tucson as president of the police union there.

Lehner says some officers oppose external citizen oversight of their activities, taking a "we know best" attitude. But Lehner says without community involvement in police decisions, "we don't know best."

But the chief can't change the department's disciplinary system significantly without the permission of the union. The city has signed a contract through 2005 that sets forth detailed disciplinary rules and requires union consent to changes.

The union has the power to pursue binding arbitration with the city if it disputes any disciplinary action. The union has often won such arbitration cases by successfully arguing that efforts to tighten discipline make disciplinary actions illegally inconsistent with past, looser discipline.

That arbitration system has made the complaint/discipline policies of the EPD inherently resistant to reform. Former Chief Cooke ran into that consistency roadblock repeatedly in

the early 1990s when he tried to tighten discipline, according to employment board documents.

Lehner says the union so far appears "amenable" to changes in the way police handle citizen complaints. "I really don't think it will be a problem."

Laue says union officials he's talked to are open to negotiating reforms in the wake of the scandals. "They are just as appalled as a lot of people in the community."

In dealing with the union, Lehner's experience as a union president may even help, says Fidanque. "I'm hoping he can make that case that dramatic changes are needed to restore confidence in the department and that it will take more than just window dressing."

SECRECY

Lehner says a key part of his efforts to restore trust with the community will be opening the department's records to the public. "The more open our records are, the better off we are."

"I've never seen an example where openness was detrimental — embarrassing yes," says Lehner, but in the long run public scrutiny improved the department. "There's no reason that our records, our actions can't be open."

But despite Lehner's public proclamations of "sunshine on police practices" the department continues to refuse to release documents relating to Magaña and police discipline. Police PR person Pam Olshanski has refused requests by *Eugene Weekly* to view Roger Magaña's personnel file, records of complaints against Magaña and records of allegations of similar misconduct against other officers.

"That is not a public record and it is not releasable," says Lehner of the requested personnel files.

Actually, under the Oregon Public Records Law, the documents are releasable. The law allows *but does not require* cities to withhold personnel and disciplinary records, but only if the public interest in disclosure is outweighed by the need for secrecy. In the past, courts have held that when crimes are alleged, the public interest requires disclosure.

Lehner says he thinks more documents should be released but has run into concerns from "fellow executives" in the city who oppose disclosure. He says he's asked Eugene's attorney to give an opinion on the matter.

A culture of secrecy is deeply ingrained in the city bureaucracy. In the Police Operations Manual, not criticizing the department by blowing the whistle on wrongdoing is official policy. The rules for officer conduct state: "While on duty, or off duty and identifying yourself as a department employee, you may not publicly criticize or ridicule the department, its policies, or other employees by any expression, where what you say or write produces intolerable disharmony, inefficiency, dissension, chaos, or is without a factual basis."

In an apparent further effort to plug embarrassing leaks, the EPD has in recent years imposed a policy of requiring reporters to first get

permission from the police PR office before talking to department staff.

The city has also agreed in its police union contract to keep wrong-doing by officers secret, in apparent violation of the Public Records Law. The contract states, "personnel files of all employees shall be considered confidential."

The contract often even keeps complaints against officers secret from command staff. Documentation of complaints found lacking evidence or dismissed cannot be kept in an employee's personnel file. Even complaints that were proven true are deleted after as little as two years. Such programmed amnesia would make it more difficult to catch a serial offender like Magaña.

Eugene may have one of the most secretive police departments in the nation. Lehner says his former Tucson department was far more open with the public and says he was "surprised" when he came to Eugene and found out how much information the city withheld from the public.

EPD secrecy is backed by policies of increasing secrecy in the city as a whole. City Manager Dennis Taylor imposed a new public records policy in February requiring high fees and formal written requests for documents that

the city had in the past simply handed over for free to the public.

City Manager Taylor has even sought to control information provided to the City Council. He has told councilors that, unlike other citizens, they must first go through him before talking to city staff to gather information.

UNACCOUNTABLE

Although elected officials supposedly hold office to hold government accountable, in Eugene the council hasn't played that role.

The Eugene council has yet to hold a meeting to discuss police reform after the Magaña and Lara scandals.

Part of the problem with the council doing its accountability job is the city charter. The charter gives enormous exclusive power to the unelected city manager to hire, fire and supervise city employees, including cops. The council can only hire and fire the city manager. If elected officials "attempt to influence the manager in the making of any appointment or any removal of city personnel" they can be forced from office, the charter states. "The mayor and council may, however, in open council session, discuss with or suggest to the manager anything pertaining to city affairs," the charter makes clear.

That last provision would allow the council to openly discuss Magaña and Lara and order policy reforms and suggest to the manager any possible discipline/firing of other officers who might be implicated in the scandal. Mayor Jim Torrey used the open session provision once to tell former City Manager Vicki Elmer not to hire a specific assistant city manager candidate.

But Councilor Bettman says it's hard to dis-

cuss such matters without information. She faults the city manager for keeping the council in the dark on Magaña and Lara. "I know as much as the average citizen reading the newspaper knows."

Bettman also faults the conservative mayor and majority on the council for years of weak leadership of the police department and city. After the council fired Elmer in 1998, the city went through five years of acting and short-time managers before the council hired Taylor as a permanent manager last year. The acting managers before Taylor in turn hired a series of acting and short-time police chiefs after Cooke resigned in 1998 until hiring Lehner this year. "There's some higher accountability here," Bettman says.

The acting managers and police chiefs who still work for the city as executives also share some potential blame, Bettman says. "With crimes of this magnitude, there's accountability all the way to the top of the organization."

Bettman says passing a charter change to allow the city council to hire an independent auditor to check up on city management would help establish public accountability.

A city charter reform committee unanimously recommended such an auditor in 2002, but the conservative council majority voted not

to refer the change to voters.

In Portland, an independent auditor reviews police complaints and recently played a role in the ouster of a police chief and police reforms after a string of questionable shootings.

But in Eugene the auditor reform would challenge the enormous power of the city manager to control information and faces stiff opposition from the secretive city bureaucracy. "I don't see what the problem is right now," Taylor said in opposing calls for an auditor in the wake of the Eugene police scandal.

Bettman says the current system leaves the council in the dark with little ability to hold the city accountable to citizens. An auditor "would give the council the ability to ask the hard questions," Bettman says. Had the auditor been in place a few years ago, "it may have resulted in much more responsive action on these [police reform] issues."

In the end if the city doesn't answer to itself on police accountability, it may still have to answer to others.

Local municipal and circuit court judges have thrown out criminal cases that relied on officers the judges apparently didn't believe. Attorney Regan says in such cases judges should tell police managers about the suspect officers. "They should have a duty to protect citizens."

More accountability and public information could come from a host of multi-million-dollar civil lawsuits filed against the city by Lara's and Magaña's victims.

"A lot of it will come out in the civil suits," Regan says. "Those [money] judgements will certainly spur policy choices by the EPD."

But Lehner says even if Eugene does police reform perfectly, it won't guarantee there will be no more officers like Lara and Magaña. Police are human, he says, and, "there will always be those who abuse power." **EW**