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Newark went too far with civilian oversight of police, N.J. Supreme Court rules

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New Jersey's top court on Wednesday limited civilians' ability to investigate local cops in a ruling that sets up a broader fight in the Legislature over how much power non-officers should have to look into alleged abuse.

In a 6-1 decision, the state Supreme Court said Newark's Civilian Complaint Review Board may not have subpoena power, nor may it launch investigations at the same time a department is investigating its own, although the justices allowed the board to retain some other review powers.

"We hold that this civilian review board can investigate citizen complaints alleging police misconduct, and those investigations may result in recommendations to the Public Safety Director for the pursuit of discipline," Justice Jaynee LaVecchia wrote for the majority. However, the justices found "no authority" to support broader investigatory powers.

State lawmakers would have to change the law if a board wants to issue subpoenas, LaVecchia said.

The only judge to disagree was Chief Justice Stuart Rabner.

"Indeed, without the power to compel witnesses and other evidence by subpoena, it is difficult to see how the CCRB or a similar review board could gather the information it would need," he wrote in a dissent.

Mayor Ras Baraka said he was "disappointed" the board had been "weakened immensely," but he remained optimistic about what it could still accomplish.

The group had already hired lawyers and was receiving complaints, he said, and trained investigators would soon be able to review some internal police files because of new rules from the state attorney general.

Going forward, city officials said they would ask the attorney general to loosen restrictions on what information boards have access to, lobby lawmakers to essentially give subpoena power back and appeal the decision to a federal court.

"It's gonna take a fight still," Baraka said during a conference call. "We got fight in us."

The city had been sued by Newark Fraternal Order of Police Lodge No. 12. James Stewart Jr., president of the police union, said the ruling validated their belief that some of the board's original powers were illegal.

“The Newark Police Department has improved greatly over the last several years,” he said in a statement, and “we look forward to bettering our relationship with the community to bring about true change in Newark.”

Calls for civilian oversight have increased in the wake of George Floyd’s death in Minneapolis.

State Assemblywoman Angela McKnight, D-Hudson, introduced legislation in June that would require every municipality to create a civilian complaint review board, and lawyers for the American Civil Liberties Union of New Jersey released statements Wednesday saying they would push lawmakers to give outside investigators more power.

A Jersey City councilman recently drafted an ordinance to create a board with subpoena power similar to Newark’s, and the City of Orange Township proposed a board in July which would’ve included its police director, but the ordinance later failed.

The supreme court’s decision was the latest twist a long-running legal saga.

In 2016, the Newark City Council passed an ordinance creating the board, two years after a scathing report from the U.S. Department of Justice found more than a fifth of Newark cops used excessive force and Black residents were disproportionately the target of stops and arrests.

Baraka said at the time he viewed the report as an “opportunity to build a new roof” and transform the department.

The city agreed to a list of reforms known as a consent decree and a federal monitor was assigned to oversee those goals.

In addition to those ongoing reforms, the city created an 11-member civilian board to investigate allegations of abuse. The appointed inspector general of the board could be a former Newark cop, the ordinance said.

The ordinance was challenged in court by the police union, which argued the board would interfere with the department’s own internal affairs process.

New Jersey Attorney General Gurbir Grewal agreed. Last year, he supported the union’s stance, arguing the city “exceeded its authority” when it created a board that could influence discipline.

In the meantime, Newark has hit a 50-year low in crime, and Baraka signed an ordinance in July that diverted \$11.4 million from the police department toward social services after anti-police brutality protests took place around the nation.