

Editorial: Binding arbitration leaves public in dark

June 4, 2013

Menlo Park and at least 15 other jurisdictions in California rely on binding arbitration to resolve police disciplinary cases.

The Almanac spent five months investigating the process to find out how Officer Jeffrey Vasquez [got his job back](#), with \$188,000 in back pay, despite being fired after he was caught naked with a prostitute in a motel room, and admitting, according to the police report, that it wasn't his first time soliciting a hooker for sex.

The Almanac found that:

* No state agency has oversight of the binding arbitration process. The state doesn't track how many times arbitrators overturn or uphold employee discipline, and doesn't keep a centralized database of their rulings. In short, no one knows how well or how badly binding arbitration works in California, particularly in police misconduct cases.

* The arbitrator's decision can be legally and factually wrong, and it's still binding.

* A sampling of 17 police arbitration decisions in California obtained by the Almanac revealed that in nearly 59 percent of the cases, arbitrators overturned disciplinary actions against police officers. That pattern corresponds with statistics from other cities, such as Houston and Chicago.

Efforts to examine the arbitration decision in a specific case smashes into a wall of secrecy, thanks to confidentiality laws that prohibit public agencies from commenting on personnel disciplinary actions.

The criminal case against Jeffrey Vasquez ended after the officer pleaded not guilty to a misdemeanor charge of solicitation, and the court dismissed the case for a [procedural issue](#).

Details of the binding arbitration case -- even the name of the arbitrator -- came to light only after the police officer's attorney published a column about how he won the case. The attorney claimed the city erred in its investigation, an assertion denied by police officers involved in the investigation. The arbitrator declined to comment on the case or whether the column accurately described his ruling.

Menlo Park carries the secrecy even further than the law requires, refusing to release information that it could disclose, such as how many police officers have faced discipline and how many cases have gone to binding arbitration. In contrast, San Jose posts annual reports on employee disciplinary actions, and the final outcome if appealed, on its public website, stripped of identifying information to remain within the law. Where Menlo Park looks for reasons to turn down a public records request, San Jose and other jurisdictions look for ways to say yes, in keeping with the spirit of transparency laws.

The Menlo Park City Council is currently negotiating next year's contract with the police officers' union. The council should seriously consider eliminating binding arbitration in favor of a civilian review board or administrative panel like that found in other cities.

It's also time for the city to stop hiding information about employee disciplinary cases that can legally be disclosed, such as the number of actions and the outcomes. When the Almanac asked several months ago how many police officers have been fired in recent years, the city claimed it [didn't keep track](#). It's time to start, and to make that information available to the public, which has a vested interest in the performance of all city employees.

Finally, state legislators also need to step up and examine whether to make it easier for a public agency to appeal an arbitrator's ruling. They can also push to create a database of arbitration decisions, accessible to at least the attorneys handling these cases, as well as statistics available to everyone for evaluating the system's effectiveness.