

Lawsuits would make city the latest test case

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Riot police respond to a group of protesters gathered Sept. 25 in Oakland's Schenley Plaza.

When Pittsburgh police ordered an Oakland crowd to disperse hours after the Sept. 25 end of the G-20 summit and then arrested scores of people, they marched down a path that has led other cities into lawsuits and seven-figure settlements.

Witold "Vic" Walczak, legal director of the American Civil Liberties Union of Pennsylvania, said his group is "carefully considering" litigation over the mass arrests in Oakland amid allegations that police violated people's constitutional rights.

"The police cannot simply designate a peaceful gathering as illegal and tell everybody to disperse. That's the hallmark of totalitarianism," Mr. Walczak said. "The most problematic part of both nights [Thursday, Sept. 24 and Friday, Sept. 25] is the declaration of an unlawful assembly under extremely questionable circumstances."

Any suits contesting the Oakland arrests will make Pittsburgh the latest test case in the ongoing struggle between cities balancing constitutional rights with protecting life, limb and property during mass gatherings.

Pittsburgh Public Safety Director Michael Huss said the city permitted some marches and tolerated unpermitted gatherings, up to a point.

"We tried to balance peoples' First Amendment rights with the safety of our city," Mr. Huss said. "If you look at the week of the G-20, I think we balanced it pretty well."

Mayor Luke Ravenstahl last week praised Pittsburgh's relative calm during the G-20, offering it as proof that the city "passed with flying colors" compared to other venues that have faced large protests such as Seattle and London. However his administration -- like the ACLU -- also is reviewing the events of Sept. 25.

"Do we wish we could have prevented or avoided the events of Friday night? Absolutely. We absolutely do," Mr. Ravenstahl said in an interview. "But you learn from it, you move on and you figure out what worked, what didn't work. If somebody acted inappropriately, of course you identify it and move on."

Even so, the Oakland arrests may end up as the basis for lawsuits.

In that case, Pittsburgh's fate might depend on the rationale for emptying Schenley Plaza -- police cite thrown objects, suspicions of an anarchist plot and fear of a second night of window smashing --

and whether a judge will view the crowds as participants in a constitutionally protected assembly or an illegal mob meriting arrest.

Absent law-breaking activity, speakers inciting the crowd to violence or a clear and present danger, police do not have the right to disperse a crowd of protesters, constitutional experts said.

Roundups and lawsuits

Mass roundups of protesters have gone hand in hand with subsequent litigation alleging false arrests, violations of due process, unreasonable seizures and violations of the right to assemble since at least the 1999 gathering of the World Trade Organization in Seattle. Police made 600 arrests there, but most charges were later dropped.

"Some of the arrests didn't hold up to the standard of probable cause," Norm Stamper, the city's police chief at the time, said in an e-mail message last week. "And for those that did meet the legal threshold, we simply didn't have nearly enough officers to process the arrests in a way acceptable to the charging authorities."

Two years ago, the city of Seattle agreed to pay \$1 million to 175 protesters who were arrested during the WTO gathering after a federal jury ruled that the arrests violated the Constitution, according to the Seattle Times.

Metropolises across the United States -- Seattle, Los Angeles, Miami and New York are among them - also have paid out hefty amounts to settle cases. Litigation is pending in Colorado and Minnesota over arrests at the 2008 Democratic and Republican national conventions, respectively.

"It is striking that we see this pattern in city after city, and the police do not seem to be learning that the appropriate response to protest activity is not to lock everyone up," said Christopher Dunn, associate legal director of the New York Civil Liberties Union.

Mr. Dunn's group remains involved in litigation challenging arrests during the 2004 Republican National Convention in New York and issues surrounding the fingerprinting and detention of arrestees there. The city has settled numerous cases. A 2008 New York Times story put the cost to the city at \$8.2 million and rising.

The biggest mass-arrest settlement in the United States stemmed from the 2007 May Day immigration rally in Los Angeles, when police breaking up the event injured 42 people while using rubber bullets, beanbag rounds and hand weapons, according to news reports.

Along with litigation involving the injured people, attorneys filed a class-action lawsuit on behalf of 5,000 rally attendees. Los Angeles agreed in February to pay almost \$12.9 million.

The size of that settlement was driven in large measure by the number and severity of injuries, said Carol Sobel, co-chair of the National Lawyers Guild Mass Defense Committee, and one of the lawyers representing May Day plaintiffs.

That's not likely to be the case in Pittsburgh where, Mr. Ravenstahl said, there were no serious injuries.

Training and insurance

Mr. Huss said the city trained police with an eye toward minimizing liabilities and obtained insurance against lawsuits. It spent close to \$3 million on insurance with high liability limits, although he could not immediately cite the amounts.

Training provided by the U.S. Department of Homeland Security included instruction on how to issue a dispersal order. The use of the Long Range Acoustic Device -- a speaker system that blasts a recorded message or emits high-pitched noise -- ensured that "no one can argue that they didn't hear the order to disperse," he said.

The training helped police deal with intense provocations.

"People were in [officers'] faces trying to egg them on, trying to get them to react, and they didn't react," Mr. Huss said.

Pittsburgh police Deputy Chief Paul Donaldson, who served as the on-scene commander in Oakland on both nights, defended officers' actions in deploying OC vapor and less-lethal munitions, saying they felt threatened by people in the crowd.

On the night of Sept. 25, hundreds of people gathered at Schenley Plaza, a park between the University of Pittsburgh's Hillman Library and the Carnegie Library's main branch.

They included anarchists, people drawn by a flier for a 10 p.m. "police resistance" rally, music lovers attending a free concert, journalists, college students, the merely curious and protesters playing "anarchist-anarchist-cop," a variation on the game duck-duck-goose.

Even with the Group of 20 Summit over and world leaders, including President Barack Obama, gone from the city, police from Pittsburgh and other agencies that assisted them remained on high alert and clad in riot gear. Twenty-four hours earlier, anarchists had smashed storefront windows in Oakland, causing thousands of dollars in damage.

On Sept. 25, police feared more window-breaking after learning from students and members of the Oakland business community that anarchists -- frustrated over their inability to disrupt a peaceful, permitted march from the Hill District to the North Side earlier in the day -- planned to repeat the vandalism.

"Being aware that the occurrence of violence on one day is not justification for banning all demonstrations the following day, we prepared for this event," Deputy Chief Donaldson said.

As the night wore on, officers became edgy. At one point, Deputy Chief Donaldson said, a city police lieutenant posted on Schenley Drive sought reinforcements when protesters confronted his unit. A supervisor from an out-of-town agency requested shields for his officers, which the deputy chief said indicated objects were being thrown at police.

"This and other actions were the basis of the decision to announce that they had to disperse," Deputy Chief Donaldson said.

A Pittsburgh police sergeant who was in Oakland Sept. 25 said officers scanning the crowd from within the Cathedral of Learning were "eyeing up a kid with a bag of C batteries" that they thought would become missiles.

Police fears were further heightened by a report that people hiding "along the woodline" of Schenley Park were planning to "attack the officers from the rear when they began to move the crowd," Deputy Chief Donaldson said. Hiding in the woods, he said, is "indicative of bad intent."

A state police helicopter flying overhead confirmed those suspicions, and the people were "dispersed," he added, without explaining how.

In the aftermath of the summit, public safety officials said they were worried about talk of purchases of lighter fluid. Deputy Chief Donaldson later downplayed the role those rumors played in police decisions.

"Any [references] to lighters and lighter fluid in conjunction with this event were vague," he said.

Even as officers in riot gear stretched across Forbes Avenue and faced down the crowd, 23-year-old Luke Rudkowski of Brooklyn, N.Y. -- wearing a red-white-and-blue bandana over his head -- took up a bullhorn and quoted the First Amendment.

Then he yelled: "It's an idea that you guys are destroying right now with your behavior. You have a choice right now to respect your superiors, who don't care about you and use you, or to respect the sacred oath of the United States Constitution."

A short time later, police moved in.

A police affidavit indicates that police ordered the crowd to break up at 10:29 p.m. but were ignored. At 10:33 p.m., the crowd moved onto Forbes "into the business district where another group of protesters committed acts of criminal mischief and vandalism the prior evening," according to the affidavit.

Once protesters stepped onto Forbes Avenue, the affidavit said, "they began to obstruct the normal flow of traffic."

Twenty minutes later, the affidavit said, the crowd started throwing things at police.

Police officials later issued a different timeline, stating that officers used the Long Range Acoustic Device to command a "disorderly" crowd of about 1,000 people to disperse starting at 10:42 p.m. and continued broadcasting warnings for 15 minutes. The first arrest for failure to disperse took place at 11:04 p.m., police said.

No way out?

Most of the 140-odd people arrested were taken into custody at Fifth Avenue and Thackeray Street and charged with disorderly conduct and failure to disperse. Many of them said they felt as if they had no way out, that officers encircled them and did not provide an escape route.

"You can't order people to disperse and not give them an avenue to leave, which is what seemed to have happened," Mr. Walczak said.

Police counter that people had plenty of time to leave after loud and numerous warnings.

"Anyone who made a voluntary or knowing decision to obey the dispersal orders could have walked more than a mile away from that location at a normal walking pace by then," Deputy Chief Donaldson said. "Even if they were standing on the sidewalk, they failed to disperse."

Many affidavits supporting the charges against people arrested in Oakland contained boilerplate sections referring to "disorderly anarchists," an "antipolice rally" in Schenley Plaza, protesters who "encroached" on the police, the bullhorn-wielding man who was "enticing the crowd with antipolice messages," and people throwing things at officers.

No one was charged that night with propulsion of missiles; one person was charged with obstructing traffic.

Jules Lobel, a Pitt law professor and legal counsel for the Thomas Merton Center, which organized the permitted march on the afternoon of Sept. 25, took issue with the police account as justification for mass arrests.

"There's nothing in that affidavit that says anybody was inciting the crowd to do anything unlawful. And I think it's interesting that they don't make that claim ...," Mr. Lobel said.

"The police cannot engage in preventive sweeps to stop people who they think potentially might engage in disturbances. And that's what I think characterizes what happened on Friday. It was sort of preventive detention in a way," Mr. Lobel said.

Some experts said there could be issues with police acting based on suspicions or intelligence rather than evidence that criminal activity was planned.

"You can wrap almost anything into intelligence. It's kind of a catch-all term," said Robert D. Richards, founding director of the Pennsylvania Center for the First Amendment at Penn State University.

"If the police had found people with some type of incendiary devices, if they had found people with weapons on them, that certainly would be more evidence than them saying, 'We heard some sort of violence might erupt.' "

But "unless the police can show that they were in imminent fear of some sort of violent conduct or lawless action arising, I think the protesters and bystanders are on the better side of the equation here," he said.

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