



SEATTLE CITY COUNCIL

Legislative Summary

Res 31930

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Final Action: 02/20/2020

Title: A RESOLUTION affirming the City's good faith intent to consider raising in the collective bargaining process for the Seattle Police Officer's Guild (SPOG) 2021 contract renewal police accountability proposals that have been identified by the public and the City's police oversight agencies.

Date

Notes:

Filed with City Clerk:

Mayor's Signature:

Sponsors: Herbold

Vetoed by Mayor:

Veto Overridden:

Veto Sustained:

Attachments: Att 1 - CPCs Recommendations Concerning City of Seattle's Labor Negotiations with SPOG and SPMA, Att 2 - Upcoming Contract Negotiations with SPOG, Att 3 - OIG feedback regarding SPOG contract negotiations with the City

Reviewer: G. Doss

Uploaded By: Emilia.Sanchez@seattle.gov

Filing Requirements/Dept Action:

History of Legislative File

Legal Notice Published:

Yes

No

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	City Clerk	01/24/2020	sent for review	Council President's Office			
	Action Text: The Resolution (Res) was sent for review. to the Council President's Office						
1	Council President's Office	01/24/2020	sent for review	Public Safety and Human Services Committee			
	Action Text: The Resolution (Res) was sent for review. to the Public Safety and Human Services Committee						
1	City Council	01/27/2020	referred	Public Safety and Human Services Committee			
	Action Text: The Resolution (Res) was referred. to the Public Safety and Human Services Committee						

Legislative Summary Continued (Res 31930)

1 Public Safety and Human Services Committee 01/28/2020 adopt as amended Pass

Action Text: The Committee recommends that City Council adopt as amended the Resolution (Res).
In Favor: 3 Chair Herbold, Member Lewis, Member Morales
Opposed: 0
Abstain: 1 Alternate Pedersen

2 City Council 02/10/2020 adopted Pass

Action Text: The Resolution (Res) was adopted by the following vote, and the President signed the Resolution:
In Favor: 7 Councilmember Herbold, Councilmember Lewis, Councilmember Morales, Councilmember Mosqueda, Councilmember Pedersen, Councilmember Sawant, Councilmember Strauss
Opposed: 0

2 City Clerk 02/20/2020 attested by City Clerk

Action Text: The Resolution (Res) was attested by City Clerk.

CITY OF SEATTLE

RESOLUTION 31930

A RESOLUTION affirming the City's good faith intent to consider raising in the collective bargaining process for the Seattle Police Officer's Guild (SPOG) 2021 contract renewal police accountability proposals that have been identified by the public and the City's police oversight agencies.

WHEREAS, the mission of the Seattle Police Department is to prevent crime, enforce the law, and support quality public safety by delivering respectful, professional and dependable police services; and

WHEREAS, public confidence in the fairness and integrity of the Seattle Police Department and its policing practices is a necessary component of effective policing; and

WHEREAS, the City Council recognizes the sacrifice and contributions of Seattle Police Officers Guild (SPOG) members, who strive to ensure the City achieves its public safety goals while being strong partners in ongoing efforts to implement lasting policing reforms and accountability structures, critical to ensuring the security of Seattle communities but especially those that have been disproportionately impacted by unconstitutional policing; and

WHEREAS, the City Council recognizes the right of SPOG and all public employee unions to collectively bargain for wages, hours, and working conditions in the best interest of their members; and

WHEREAS, the Collective Bargaining Agreement (CBA) between The City of Seattle and the SPOG will expire on December 31, 2020 and the parties will begin negotiating a new contract as soon as March 2020; and

1 WHEREAS, the City respects the collective bargaining process and will negotiate and bargain a
2 new CBA in good faith with the SPOG and respect the confidentiality of the process as
3 required by Seattle Municipal Code (SMC) subsection 4.04.120.E; and
4 WHEREAS, SMC subsection 4.04.120.F requires the Council's Labor Policy and Public Safety,
5 Human Services and Education committees or the successor committees to hold a public
6 hearing on the effectiveness of the City's police accountability system and that this
7 meeting should be held at least ninety days before the City begins collective bargaining
8 agreement negotiations with the SPOG; and
9 WHEREAS, SMC subsection 4.04.120.G requires the City to consider in good faith whether and
10 how to carry forward the interests expressed at the public hearing; and
11 WHEREAS, the Council's Labor Policy committee and Gender Equity, Safe Communities, New
12 Americans and Education Committee held on December 5, 2019 a public hearing and
13 received input from the Office of Police Accountability (OPA), Community Police
14 Commission (CPC), the Office of Inspector General for Public Safety (OIG), and 32
15 citizens that provided personal testimony or represented community, non-profit or labor
16 organizations that have a stake in police accountability and the SPOG contract; and
17 WHEREAS, represented organizations included, but were not limited to local businesses,
18 neighborhood groups, communities of color, police and fire bargaining units, public
19 safety advocacy associations and community building organizations that focus on civil
20 liberties and represent the rights of citizens who are disproportionately affected by police
21 misconduct and/ or are over-represented in the criminal-legal system; and
22 WHEREAS, representatives of the CPC supported full implementation of the Police
23 Accountability Ordinance (Ordinance 125315) and highlighted ten key priorities

1 including: 1) the burden of proof and standard of review for disciplinary cases; 2)
2 reforming the calculation of the 180-day timeline for disciplinary investigations; 3)
3 subpoena authority for the OPA and OIG; 4) reforming features of the disciplinary
4 process affecting public confidence; 5) ensuring civilian oversight authority includes
5 allegations of criminal misconduct; 6) revising statute of limitations and record retention
6 rules; 7) disclosure of material information during investigations; 8) empowering the
7 SPD Chief to place employees on leave without pay; 9) reforms to secondary
8 employment; and 10) whether complainants and victims should be allowed to appeal
9 disciplinary decisions, and these priorities are further detailed in a letter from the CPC
10 dated November 25, 2019 as Attachment 1 to this resolution; and

11 WHEREAS, the OPA and OIG identified three principles for the bargaining process, including a
12 desire for more information about what has happened or is happening in the collective
13 bargaining process, enhancing public trust and solidifying accountability entity
14 independence; and

15 WHEREAS, specific recommendations from the OPA and OIG included: 1) a request that the
16 City include in the negotiations process an external advisor with accountability
17 experience ; 2) ensuring full subpoena authority of the OPA and OIG; 3) holding
18 misconduct allegations to a quantum of proof that reflects a preponderance of the
19 evidence; 4) providing clarity around the calculation of the 180-day timeline, newly
20 discovered evidence, and time lags in reporting; 5) increasing the transparency and
21 efficiency of the arbitration process; 6) prohibiting *de novo* review of the Chief's final
22 disciplinary decisions; 7) improving the selection process for arbitrators; 8) providing
23 authority for OPA to decide to whom criminal referrals are made and to oversee

1 investigations of criminal SPD misconduct; 9) creating a uniform enforcement
2 mechanism to ensure SPD cooperation with accountability agencies; and 10) providing to
3 OPA and OIG sufficient funding and staffing to support robust accountability and for the
4 City to employ means to solidify oversight authority in ways that cannot be weakened by
5 the collective bargaining process, and these priorities are further detailed in a letter from
6 the OPA dated January 27, 2020 as Attachment 2 to this resolution, and these priorities
7 are also further detailed in a letter from the OIG dated January 27, 2020 as Attachment 3
8 to this resolution; and

9 WHEREAS, testimony from individuals and on behalf of interest groups largely echoed the
10 requests made by the CPC, OIG, and OPA, and included support for full implementation
11 of the Police Accountability Ordinance (Ordinance 125315), support for additional police
12 training including de-escalation and mental health training, support for bringing the City
13 into compliance with the United States Department of Justice Consent Decree with regard
14 to police accountability, opposition to racial disproportionality in the criminal justice
15 system, support for new citizen review powers, support for new rights for complainants,
16 support for making the role of the discipline appellate process consistent with the values
17 of transparency and accountability, support for SPD officers to follow department
18 policies and when privately employed, support for third party investigations, support for
19 the hiring of additional officers, support for the protection of workers' rights as
20 maintained through the collective bargaining process, support for more outreach to the
21 community on issues of police accountability, and support for requiring officers to have a
22 relationship/ tie to the community they serve; and

1 WHEREAS, the City Council voted in November 2018 to approve Council Bill 119368
2 (Ordinance 125693) and, with it, the current SPOG CBA, while acknowledging that the
3 Community Police Commission, the Office of Police Accountability, and the Office of
4 Inspector General for Public Safety, identified concerns about the SPOG CBA's
5 compliance with the Police Accountability Ordinance (Ordinance 125315); and

6 WHEREAS, the City Council passed in November 2018 Resolution 31855, which requested that
7 the City Attorney's Office petition the Court to review those contract terms that fall
8 within the scope of the Court's judicial oversight role pursuant to the Department of
9 Justice Consent Decree, specifically including, but without limitation, the following
10 terms of the CBA:

11 A. **Article 3.1** (page 6) - The standard of review and burden of proof in labor
12 arbitration (SMC 3.29.135.F);

13 B. **Article 3.6.B-D** (pages 9-12) - The calculation, extension and/or re-calculation of
14 the 180-day timeline for the Office of Police Accountability to investigate complaints
15 of misconduct by the Seattle Police Department (SMC 3.29.130); and

16 C. **Appendix E.12** (page 84) - Narrowing of legislated subpoena powers of the Office
17 of Police Accountability (SMC 3.29.125.E) and the Office of Inspector General
18 (SMC 3.29.240.K); and

19 WHEREAS, on May 21, 2019 the Court found that The City of Seattle had fallen partially out of
20 full and effective compliance with the Consent Decree due to concerns about the
21 disciplinary appeals process and its impact on police accountability. The Court ordered
22 the City to develop a methodology (1) to assess the present accountability regime, and (2)
23 for how the City proposes to achieve compliance; and

1 WHEREAS, in July 2019, The City of Seattle hired 21CP Solutions, LLC to work with the City
2 and the Department of Justice, and with the assistance of stakeholders and accountability
3 partners to develop a methodology to assess the Seattle Police Department's
4 accountability regime as it relates to officer discipline and appeals process; and

5 WHEREAS, the Court on October 15, 2019 authorized the City to proceed with the proposed
6 assessment, to include the City's proposal to "present objective, evidence-based
7 observations to inform the decisions of the City's elected leaders, appointees and
8 community... including an analysis of ... four features of City's accountability system:
9 (1) 180-day timeline for disciplinary investigations; (2) burden of proof and standard of
10 review in disciplinary appeals; (3) subpoena authority of OPA and OIG; and (4) features
11 of arbitration to promote public confidence"; and

12 WHEREAS, the City filed with the Court on December 13, 2019 its response, including a report
13 authored by 21CP that made findings on the issues noted above, some of which were
14 identified by both members of the community and the accountability agencies in the
15 December 5 hearing pursuant to SMC 4.04.120.F; and

16 WHEREAS, consistent with SMC 4.04.120.G, the City of Seattle will consider in good faith
17 whether and how to carry forward the interests expressed at the public hearing. Those
18 suggested changes that are legally required to be bargained with the SPOG, SPMA, or
19 their successor labor organizations will be considered by the City, in good faith, for
20 inclusion in negotiations but the views expressed in the public hearing will not dictate the
21 City's position during bargaining; and

1 WHEREAS, the City Council has in the past adopted resolutions that memorialize the testimony
2 given at hearings pursuant to SMC 4.04.120.F, including City Council Resolution 31535,

3 NOW, THEREFORE,

4 **BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEATTLE THAT:**

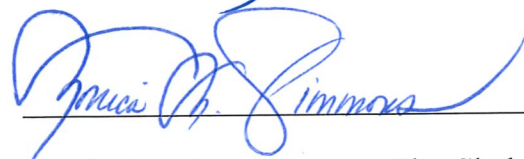
5 Section 1. The City of Seattle will consider in good faith whether and how to carry
6 forward these interests through various means including, but not limited to, enactment of
7 appropriate legislation, development of collective bargaining goals and objectives, and
8 facilitating community police dialogue. To the extent that Washington law requires any changes
9 to be bargained with employee representatives, the City will seek to discharge such obligations
10 in good faith.

11 Adopted by the City Council the 10th day of February, 2020,
12 and signed by me in open session in authentication of its adoption this 10th day of
13 February, 2020.

14 

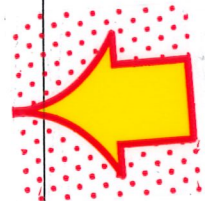
15 President _____ of the City Council

16 Filed by me this 10th day of February, 2020.

17 

18 Monica Martinez Simmons, City Clerk

19 Attachment 1 – Community Police Commission’s Recommendations Concerning City of
20 Seattle’s Labor Negotiations with Seattle Police Officers Guild and Seattle Police
21 Management Association, November 25, 2019
22



- 1 Attachment 2 – Upcoming Contract Negotiations with the Seattle Police Officers’ Guild, January
- 2 27, 2020
- 3 Attachment 3 – OIG feedback regarding Seattle Police Officers’ Guild contract negotiations with
- 4 the City, January 27, 2020
- 5 (Seal)

November 25, 2019

VIA E-MAIL

Mayor Jenny Durkan
Seattle City Hall
600 Fourth Avenue, 7th Floor
Seattle, Washington 98104

Council President Bruce Harrell
Councilmember Sally Bagshaw
Councilmember M. Lorena Gonzalez
Councilmember Lisa Herbold
Councilmember Debora Juarez
Councilmember Teresa Mosqueda
Councilmember Mike O'Brien
Councilmember Kshama Sawant
Seattle City Hall
600 Fourth Avenue, 2nd Floor
Seattle, Washington 98104

RE: Community Police Commission's Recommendations Concerning City of Seattle's Labor
Negotiations with Seattle Police Officers Guild and Seattle Police Management Association

Dear Mayor Durkan and City Councilmembers:

On behalf of the Seattle Community Police Commission (CPC), we thank you for the opportunity to provide our thoughts and recommendations concerning the City's collective bargaining agenda as the City begins another round of negotiations with the Seattle Police Management Association (SPMA) and the Seattle Police Officers Guild (SPOG).¹

At the outset, the CPC continues to call for full implementation of the reforms in the Accountability Ordinance.² That law, which passed unanimously, represented a watershed moment in our City's ongoing efforts to ensure fair, transparent, and equitable police accountability. But many of those reforms did not survive the City's collective bargaining with its police unions. We recall, and are heartened by, the City's pledge at the conclusion of the last rounds of bargaining to continue building upon the reforms from the ordinance that were included in the contracts at that time.

¹ SMC 3.29.450 provides as follows: "Those who provide civilian oversight of the police accountability system shall be consulted in the formation of the City's collective bargaining agenda for the purpose of ensuring their recommendations with collective bargaining implications are thoughtfully considered and the ramifications of alternative proposals are understood. These individuals shall be subject to the same confidentiality provisions as any member of the Labor Relations Policy Committee." The same accountability processes should apply to all ranks. SMC 3.29.100.D.

² See *United States v. City of Seattle*, 2:12-cv-01282-JLR, Dkt. 533 (Levinson Decl.), which we incorporate by reference.

Given the complexity of these issues, we strongly recommend the City appoint an external advisor with accountability expertise, jointly recommended by the OPA, OIG, and CPC to assist the City in bargaining and navigating the impacts of any proposed contract changes. The City has the authority to make this appointment.³ And to build community trust, the advisor should participate with the Labor Relations Policy Committee during development of bargaining agendas, during the bargaining process, and in any re-opener discussions, and be tasked with reporting out to the community after the conclusion of bargaining on the process, to the extent possible considering confidentiality limitations.

The CPC also takes this opportunity to highlight **10 key priorities**:⁴

1. **Burden of Proof and Standard of Review:** Return to use of the preponderance standard for all allegations of misconduct.
2. **Reforming the Calculation of the 180-Timeline for Disciplinary Investigations:** Ensuring that start and end of the 180-day timeline is consistent, ends once OPA issues its findings, and is tolled or otherwise extended in various circumstances, including (i) any type of criminal investigation that delays the disciplinary investigation; (ii) witness or labor representative unavailability; (iii) failure to refer a complaint to OPA in a timely manner; (iv) new evidence being brought forward after the investigation that reasonably requires additional time; and (v) vacancy of the OPA Director position. Union approval of extensions to the 180-day timeline should not be required when OPA is not responsible for the delay.
3. **Subpoena Authority for OPA and OIG:** Align the SPOG contract with the Accountability Ordinance and with the SPMA contract to provide OIG and OPA with full subpoena authority.
4. **Reforming Features of Disciplinary Process Affecting Public Confidence:**
 - a. *Standard of review:* Disciplinary decisions should only be overturned applying the good faith for cause standard.
 - b. *Deference:* Modifications to disciplinary decisions should be narrowly tailored to address any underlying defect in the process, and otherwise defer to the factfinder (e.g., the Chief).
 - c. *Dishonesty:* Remove requirements that intentionality must be proven or that the information must be knowingly incorrect to sustain allegations of dishonesty. The obligation to be honest should extend to all actions and statements, not only OPA interviews.

³ SMC 4.04.120.B

⁴ These priorities are not ranked in any precedential order.

- d. *Transparency*: Disciplinary appeal hearings should be open to the public.
 - e. *Timelines*: Firm timelines should be required for each step of the disciplinary process (including appeals) to reduce the length of time for cases to be resolved.
 - f. *Neutral panelists*: Align the SPOG contract with the Accountability Ordinance and the SPMA contract so that no member of the Public Safety Civil Service Commission is a peer, subordinate, or supervisor of officer appealing discipline, but instead a neutral third party, appointed by the Mayor using a merit-based selection process.
 - g. *Public Policy*: Clearly stating right to appeal to Superior Court for decisions that violate public policy (should arbitration be maintained).
5. **Ensure Civilian Oversight Authority Includes Allegations of Criminal Misconduct**: If an alleged misconduct claim triggers potential criminal liability, OPA should have the authority to *refer* the criminal investigation to an independent agency (e.g., another police department), *oversee* both the administrative and criminal investigations, and *coordinate* with the investigative agency and prosecutors (e.g., determine sequencing of investigations, sit in on interviews, review documents, etc.) to ensure that the most effective, thorough, and rigorous criminal and administrative investigations are conducted. The tolling reforms outlined above would dovetail with this reform.
6. **Revising Statute of Limitations and Record Retention**: The statute of limitations should not apply for serious excessive force (e.g., Type III force), dishonesty, criminal conduct, or where the underlying allegations were concealed by anyone. Otherwise, the statute of limitations should be five (5) years. And to ensure an adequate record, personnel files (including OPA files) should be preserved for at least six years after the officer is no longer employed by the City.
7. **Disclosure of Material Information During Investigations**: The named employee or bargaining representative must disclose material evidence or witnesses during OPA investigation as soon as possible. If not disclosed, the information may not be used in an exculpatory manner, either at the due process hearing or on appeal.
8. **Chief Should Be Empowered to Place Employee on Leave Without Pay**: Where the allegations in a complaint, if true, could lead to termination, or where the Chief determines that it is necessary to ensure public safety, public trust, or otherwise warranted under the circumstances, the Chief should have the authority to immediately suspend an employee without pay. This authority should be discretionary and not subject to appeal, and if the employee is subsequently acquitted or the charges are dropped, the employee's wages and benefits would be restored.
9. **Reforms to Secondary Employment**: Secondary employment is a practice by which police agencies permit officers to work for other employers when off-duty, while still wearing SPD

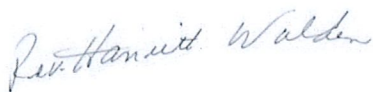
uniforms, carrying weapons, and maintaining the powers and authority of on-duty officers. But various allegations relating to the management of secondary employment have demonstrated that the practice is not sufficiently regulated. The Mayor's Office issued an executive order in September 2017 "directing a coordinated interdepartmental effort to require [SPD] to provide greater oversight through internal regulation and management of all secondary employment for SPD officers.⁵ The substantive requirements concerning secondary employment in the Accountability Ordinance, the oversight officials' recommendations, and the executive order should be included in the City's bargaining agenda.

10. Whether Complainants and Victims Should Be Allowed to Appeal Disciplinary Decisions:

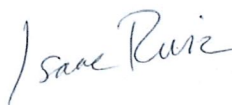
When a complainant alleges that she has been a victim of excessive force, an officer is typically allowed to appeal—but the complainant/victim is not allowed to do the same. The City Council discussed this topic in 2017 when it passed the Accountability Ordinance, passing a resolution expressly directing the CPC to lead stakeholders in assessing the need for developing a complainant right of appeal process. That work is about to get underway.

We look forward to meeting with each of you at your earliest convenience to discuss these issues and how we can cooperate with the City to ensure these priorities are placed on the bargaining agenda. Again, we strongly suggest that the City appoint an advisor jointly recommended by the oversight agencies to facilitate this process.

Sincerely,



Rev. Harriett Walden



Isaac Ruiz



Emma Catague

Co-Chairs, Community Police Commission

cc:

Peter Holmes, Esq., Seattle City Attorney (via e-mail)
Chief Carmen Best, Seattle Police Department (via e-mail)
Merrick Bobb, Police Assessment Resource Center (via e-mail)
Commissioners, Seattle Community Police Commission
David A. Perez, Esq., Perkins Coie, outside counsel to Community Police Commission (via e-mail)

⁵ Executive Order 2017-09: Reforming Secondary Employment at the Seattle Police Department (Sept. 27, 2017), available at <http://www.seattle.gov/Documents/Departments/Mayor/Executive-Order-2017-09-Secondary-Employment.pdf>.



VIA ELECTRONIC MAIL ONLY

January 27, 2020

Lisa Herbold
600 Fourth Avenue, Floor 2
PO Box 34025
Seattle, Washington 98124-4025

RE: Upcoming Contract Negotiations with the Seattle Police Officers' Guild

Dear Councilmember Herbold,

I am writing in response to your request for written comments from the Office of Police Accountability (OPA) concerning the upcoming contract negotiations between the City of Seattle and the Seattle Police Officers' Guild (SPOG). This is a topic into which I have put much thought and careful consideration. Along with the other accountability entities, I presented to City Council at the December 5, 2019 public hearing. I also provided feedback on the related resolution that is being considered in committee tomorrow. I believe the resolution accurately reflects the input previously provided by my office and the other accountability entities.

The issues outlined in the resolution remain areas of focus for OPA. While I understand that the final collective bargaining agreement between the City and SPOG may not incorporate all of the technical advice offered by OPA and the other accountability entities, I am confident that the City is committed to thoughtfully and comprehensively addressing these issues.

Below are two categories of recommendations. The first are issues previously identified by OPA and the other accountability entities at the December 5 hearing. The second are additional issues that OPA believes the City should consider in bargaining. These lists are not exclusive; there are several other improvements to the collective bargaining agreement that the City could consider that are not set forth herein.

While not included in these lists, in advance of the December 5 hearing, OPA and the OIG encouraged the City to more broadly consider during negotiations the overall transparency of the collective bargaining process, the enhancing of public trust in both the process and the outcome, and, wherever possible, to strive to solidify the independence of the accountability entities. OPA reiterates that advice here.

A. Issues Previously Identified

- Simplify the calculation of the 180-day deadline
- Establish mandatory extensions to the 180-day deadline when new evidence is discovered and where there are delays in reporting
- Make Rapid Adjudication permanent and add timeline flexibility
- Eliminate the five-day notice
- Clarify and expand the tolling of criminal investigations
- Lift restrictions on how OPA utilizes civilian investigators and acting sergeants
- Institute mandatory rotations between Patrol, Investigations, and specialty units



- Require the burden of proof for all allegations of misconduct to be preponderance of the evidence
- Make improvements to the arbitrator appeal option, including, but not limited to: instituting firm timelines; eliminating de novo review; ensuring the neutrality and expertise of arbitrators; and increasing transparency of the process
- Allow OPA to determine the investigative agency for allegations of criminal misconduct and increase OPA's ability to coordinate with the agency during the pendency of the investigation
- Strengthen and clarify subpoena authority and the process for how subpoenas are to be issued and enforced
- Include an external advisor in the bargaining process who understands labor negotiations and the intricacies of Seattle's police accountability system

B. Additional Issues for the City to Consider

- Bargain and fully implement supervisor handling of minor misconduct
- Clarify who may attend OPA interviews and define the nature and extent of permissible SPOG objections
- Address the impact of the new rules under Initiative 940

I very much appreciate being afforded the opportunity to address the issues set forth in this letter. Please do not hesitate to contact me with any questions concerning the above.

Sincerely,

Andrew Myerberg

Andrew Myerberg
Director, Office of Police Accountability

cc: Mayor Jenny A. Durkan
Michelle Chen, Mayor's Office
Chief Carmen Best, Seattle Police Department
Deputy Chief Marc Garth Green, Seattle Police Department
Executive Director Bessie Scott, Community Police Commission
Lisa Judge, Inspector General for Public Safety
Pete Holmes, City Attorney
Council President Lorena Gonzalez (Position 9, Citywide)
Councilmember Teresa Mosqueda (Position 8, Citywide)
Councilmember Tammy Morales (District 2)
Councilmember Kshama Sawant (District 3)
Councilmember Alex Pedersen (District 4)
Councilmember Debora Juarez (District 5)
Councilmember Dan Strauss (District 6)
Councilmember Andrew Lewis (District 7)



SENT VIA EMAIL

MEMORANDUM

January 27, 2020

To: Councilmember Lisa Herbold

From: Lisa Judge, Inspector General for Public Safety

Re: OIG feedback regarding Seattle Police Officers' Guild contract negotiations with the City

In response to your request for input, and in support of the resolution put forth regarding upcoming labor contract negotiations with the Seattle Police Officers' Guild (SPOG), the following comments are offered by the Office of Inspector General (OIG). Although offered by OIG, the three oversight entities, including OIG, the Community Police Commission (CPC), and the Office of Police Accountability (OPA), have expressed accord with the principles discussed below.

These comments memorialize the testimonial feedback I provided regarding upcoming SPOG negotiations to committee on December 5, 2019. They also mirror and integrate feedback offered jointly by OIG and OPA regarding the Seattle Police Management Association (SPMA) contract. Notably, the current SPMA contract contains numerous provisions that promote police accountability. Prompt bargaining of the SPMA contract could provide an excellent pathway for approaching SPOG negotiations, especially if additional beneficial terms are negotiated to bolster the accountability system.

A strong accountability system must promote the following principles:

- 1) **public trust** built through transparency, clarity, and a culture of accountability in government actions,
- 2) **fair outcomes** that provide procedural justice for both affected community members and law enforcement service providers, and
- 3) **strong, independent oversight** by entities who possess the authority to hold the system accountable to the public interest, even in the face of countervailing pressures that may arise.

Public Trust Through Transparency

A recurring theme from community is lack of transparency and, correspondingly, lack of public trust, in the collective bargaining process and disciplinary appeals system. When the public has insight into and understanding of the workings of government, it enhances public trust that the process is fair, community needs are considered, and the system is working as intended. Making processes more



accessible to the public serves to inform community about issues being considered and provides a means of holding government to account if public needs are not being appropriately considered.

Transparency in the bargaining process can be bolstered in two ways. First, there is an opportunity to enhance accountability outside the bargaining room. The three oversight entities (OIG, CPC, and OPA) should continue to be consulted during both the agenda-setting (as required by ordinance) and during negotiations. The City's bargaining team should meet with the three oversight entities to review issues throughout bargaining, so that collective wisdom on technical aspects can be shared.

Second, use of a neutral "advisor" to enhance transparency, and correspondingly trust, in the bargaining process has been suggested by community and oversight partners. This recommendation should focus on the concept of a neutral party whose function would be to provide process visibility to those outside the bargaining room, while being mindful of confidentiality restrictions on what can be reported and to whom. This endeavor would require safeguards to protect the confidentiality and integrity of the system, provide timely information to decision-makers, and instill confidence in the public that the **process** is working as intended regardless of the **result**.

Fair Outcomes

During bargaining, the City should ensure that it addresses elements that have been identified as significantly affecting accountability-related operations and oversight authority. There is substantial consensus on these issues, as many of these issues were previously identified by OPA, OIG, CPC, and the City in memoranda and Court briefings.¹ Five issues highlighted by OIG include the following:

1. Subpoena power - Preserving subpoena power as achieved in the SPMA contract;
2. Quantum of proof - Holding all misconduct allegations to a preponderance of the evidence standard for determination by OPA and the Chief, as well as on appeal;
3. 180-day timeline - Providing clarity around the calculation of the 180-day timeline for disciplinary investigations, including appropriate tolling for criminal investigations, newly discovered evidence, and time lags in reporting;
4. Arbitration - Examining features of arbitration that affect public confidence, such as increasing transparency and efficiency of the hearings process, prohibiting *de novo* review of the Chief's final disciplinary decisions, and improving the selection process for arbitrators to ensure objectivity, fairness, and expertise; and
5. Civilian/Sworn investigation staffing authority - The SPOG contract permits OPA to hire up to two civilian investigators. Because this represents about 20 percent of OPA's investigators, it potentially constrains OPA's ability to determine the ideal mix of civilian and sworn investigators. This limit also impacts the ability of OIG to analyze the effects of civilianization.

¹ See, e.g., Court Document 576, City of Seattle's Stipulated Motion to Approve Accountability Methodology, p. 24-25.



Strengthening Oversight Independence

In line with the Court's suggestion to embrace new ways of thinking about accountability, the City also has the opportunity to innovate ways to strengthen oversight independence both within and outside the context of bargaining. For example, the City could explore additional ways to ensure that staffing and resources for oversight entities are sufficient to support robust accountability. When the City is no longer the subject of federal oversight and the Monitor is no longer routinely examining core accountability areas like use of force, that responsibility will fall to the existing entities, and they must be able to carry out those functions with proper resources without having to rely on favorable relationships or political expediency. OIG would welcome the opportunity to work with Council and the Mayor to identify ways that they can, through legislation, executive orders, or other lasting means, express support for oversight entity authority and independence.

Conclusion

All contract negotiations require compromise. However, the above recommendations, if adopted by the City as bargaining priorities, could strengthen the current system and more fully align the SPOG collective bargaining agreement with the landmark accountability law.

Contracts by their nature come up for renegotiation and individuals change, so to the extent necessary oversight authority can be preserved and maintained independently, institution of structural changes that can survive administrations are also critical in furthering Seattle's robust independent oversight process. OIG, in partnership with OPA and CPC, seeks to work with the City in responding to the Court on novel permanent ways outside of bargaining where the City can strengthen its accountability system.

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Councilmember Tammy J. Morales
Councilmember Teresa Mosqueda
Councilmember Alex Pedersen
Councilmember Kshama Sawant
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