



Seattle Office of Police Accountability

VIA ELECTRONIC MAIL ONLY

October 26, 2018

M. Lorena González
600 Fourth Avenue, Floor 2
PO Box 34025
Seattle, Washington 98124-4025

RE: Proposed Tentative Collective Bargaining Agreement with Seattle Police Officers' Guild

Dear Councilmember González,

I am writing in response to your request for OPA's written analysis of the implications of the tentative collective bargaining agreement (TA) between the City and the Seattle Police Officers' Guild (SPOG).

I do not believe that implementation of this TA would prevent OPA from fulfilling its legislated purpose as set forth in the Accountability Ordinance.¹ I further do not believe that it would prevent OPA from carrying out its specific duties and responsibilities, such as holding officers accountable when appropriate; conducting objective, fair, thorough, and timely investigations; and recommending needed improvements to Department policies, tactics, and training. Indeed, when evaluated from an OPA-specific perspective, the TA provides multiple improvements from the existing contract, including:

- Civilianizing two OPA investigator positions;
- Removing the "knew or should have known" language regarding the 180-day timeline;
- Simplifying classification notifications;
- Eliminating the Discipline Review Board;
- Adding flexibility around OPA transcription due dates;
- Relaxing the initial complaint notification timing requirement; and
- Implementing a Rapid Adjudication pilot and Frontline Investigations.

Despite these positive changes, I do have reservations about some aspects of the TA that deviate from the Accountability Ordinance, including those that:

- Limit OPA's authority to coordinate criminal investigations;
- Add elements of complexity to the 180-day timeline and make it more restrictive than the language set forth in the Seattle Police Management Association contract;
- Remove the automatic tolling of the 180-day timeline when a case is criminally investigated within SPD;
- Allow for new evidence to be raised at due process hearings without a mandatory extension to the 180-day timeline; and
- Constrain OPA's ability to allocate staffing and resources as it sees fit.

¹ SMC 3.29.010(B) states OPA's purpose as to "...help ensure the actions of SPD employees are constitutional and in compliance with federal, state, local laws, and with City and SPD policies, and to promote respectful and effective policing, by initiating, receiving, classifying, investigating, and making findings related to complaints of misconduct."



Moreover, while it may affect OPA only tangentially, I feel that not addressing mandatory transfers to facilitate the consistent rotation of officers to new assignments was a missed opportunity to strengthen SPD's culture and effectiveness.

In my evaluation of the TA and its impact on OPA, I closely reviewed the documents generated by the Community Police Commission (CPC) and greatly appreciated the depth and perspective of their analysis. All the accountability entities have a responsibility to ensure fidelity to a system that is sound and well-functioning. In this regard, the CPC carried out its purpose thoughtfully. The CPC highlighted the TA's exclusion of some of the systemic reforms legislated by the Accountability Ordinance and noted the incongruous language around the disciplinary appeal process. While these provisions may not implicate OPA directly, I agree that they have potential downstream consequences and could, if not monitored closely, impact the system on a larger scale.

While I agree with much of the CPC's analysis, my interpretation of the potential implications of some of the provisions differs slightly. An example of this includes the language surrounding the roles and responsibilities of the civilian investigators. Furthermore, I do not agree with certain baseline provisions of the Accountability Ordinance that the CPC identified as being rolled back by the TA and, as such, I am less troubled by some of the discrepancies between the two documents. For example, the Accountability Ordinance untethered the 180-day timeline from the imposition of discipline. In my opinion, that is not procedurally just or fair to officers and could, in fact, undermine trust in the disciplinary system.

I recognize, however, that the conceptual arguments surrounding the TA cannot be divorced from the reality that officers, detectives, and sergeants have been working without a contract for the last four years. They have done so while implementing the reforms under the Consent Decree and acting as the engine to move the Department to full and effective compliance. I firmly believe they deserve a contract. I share the concerns raised by many others that Department morale is low, and if the TA is rejected, it could undermine the oversight system and further erode the trust and buy-in that OPA has been working hard to build. These concerns must be balanced against the City's prerogative to negotiate lasting reforms that will ensure accountability and equitable policing moving forward.

Labor contracts consist of a bargained-for exchange. Whether the trade-offs included in the TA – and the non-inclusion of several provisions contained in the Accountability Ordinance – are acceptable is not a question for OPA to answer; that is for City Council to decide. Similarly, I cannot speak to whether the TA is consistent with the Consent Decree, as this is a question for the parties to the Decree and, ultimately, District Judge Robart. Regardless of the Council's decision, OPA will continue to carry out its mission and effectuate its purpose under both the Accountability Ordinance and the Consent Decree.

Lastly, it is OPA's hope that the City and SPOG keep an open dialogue, not just in preparation for negotiations on the next contract, but soon after action on the TA. There are reopeners that will need to be discussed and, ideally, conversations concerning refining the language of the TA, what is and is not working, and how to advance the accountability system by adopting best practices. This will demonstrate that the City and SPOG are committed to a fair, transparent, and constantly improving system. OPA looks forward to participating in these ongoing discussions and assisting in setting the bargaining agenda for 2020.



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I 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
Anthony Auriemma, Mayor's Office
Ian Warner, Mayor's Office
Chief Carmen Best, Seattle Police Department
Deputy Chief Marc Garth Green, Seattle Police Department
Fé Lopez, Director, Community Police Commission
Lisa Judge, Inspector General for Public Safety
Pete Holmes, City Attorney
Council President Bruce Harrell (District 2)
Councilmember Teresa Mosqueda (Position 8, Citywide)
Councilmember Sally Bagshaw (District 7)
Councilmember Mike O'Brien (District 6)
Councilmember Kshama Sawant (District 3)
Councilmember Lisa Herbold (District 1)
Councilmember Rob Johnson (District 4)
Councilmember Debora Juarez (District 5)