

June 2, 2022

MEMORANDUM

To: Seattle City Council
From: Greg Doss, Analyst
Subject: CB 120332: Seattle Police Management Association Proposed Collective Bargaining Agreement

On June 7, 2022, the City Council (Council) will discuss and possibly vote on [Council Bill \(CB\) 120332](#), legislation that would authorize a proposed Collective Bargaining Agreement (CBA) between the City of Seattle (City) and the Seattle Police Management Association (SPMA). This memo provides a summary of the CBA, including financial impacts, and identifies next steps.

Summary

This legislation would approve a proposed CBA between the City and SPMA that would cover approximately 22 Captains and 59 Lieutenants at the Seattle Police Department (SPD). The proposed CBA would supersede an existing CBA that expired on December 31, 2019, and establish a new contract period from January 1, 2020, through December 31, 2023.

The proposed CBA would make changes to existing police accountability provisions, including the addition of a new Discipline Review system that would significantly overhaul appeals that are currently settled through arbitration. These changes and the financial impacts of the contract are itemized below.

Police Accountability

Table 1 summarizes many key police accountability changes in the CBA. The most significant change is the institution of a new discipline review system, which is described after the table.

Table 1. Key changes / highlights of the collective bargaining agreement

Issue	Collective Bargaining Agreement
<p>Notice of Complaint: The current CBA requires that a notice of complaint must be issued to officers within ten days of the receipt of a complaint.</p>	<p>The ten-day notice of complaint requirement is eliminated. Officers will be notified upon complaint classification, which typically occurs within 30 days.</p>
<p>180-Day Time Clock: The current CBA requires the Office of Police Accountability (OPA) to complete an investigation within 180 days of receiving a complaint. While the 180-day clock is generally stopped during an ongoing criminal investigation, the current CBA does not stop the clock when the alleged criminal activity occurred in Seattle but has been referred to another jurisdiction to conduct the criminal investigation.</p>	<p>The 180 clock is stopped whenever a criminal investigation is conducted, regardless of where the alleged criminal activity occurred or what agency is conducting the investigation.</p>

Issue	Collective Bargaining Agreement
<p>180-Day Time Clock: If additional time is needed to complete an investigation, the current CBA requires OPA to request an extension and that SPMA “will grant” the request if it is made within the 180-day period and if “OPA exercised due diligence in conducting the investigation.”</p>	<p>The “due diligence” test is replaced. The burden is now on the union to establish a reason to deny the extension based on “good cause.”</p>
<p>Criminal Investigations: The current CBA prohibits OPA from coordinating with criminal investigators, regardless of whether a criminal investigation is being conducted by the City or in another jurisdiction.</p>	<p>New CBA language says: “While OPA will not direct the conduct of a criminal investigation, OPA may communicate with the criminal investigators and/or prosecutors about the status and progress of a criminal investigation.”</p>
<p>Civilian Investigators in OPA: The current CBA limited the ability of the OPA to assign civilian investigators to certain tasks.</p>	<p>The new CBA removes these restrictions, allowing the OPA to make assignments based upon the skills and abilities of the investigator rather than whether they are a civilian or a uniformed Sergeant.</p>
<p>Information Disclosure: While generally disallowing such practices, the current CBA allows under some conditions an employee to raise during an appeal information or witnesses that were known but not disclosed during the OPA investigation.</p>	<p>No longer relevant due to establishment of the Discipline Review system.</p>
<p>Dishonesty: The current CBA defines dishonesty as “intentionally providing false information, which the officer knows to be false, or intentionally providing incomplete responses to specific questions, regarding facts that are material to the allegation.” Arguably, this definition could be interpreted to limit dishonesty charges to responses provided during an investigation.</p>	<p>The intent of the definition is made clear by removing “intentionally” and changing “facts that are material to the allegation” to “material facts.”</p>
<p>Mediation and Rapid Adjudication: The current CBA does not allow officers to independently seek mediation when involved in a multi-officer complaint. The current CBA established a Rapid Adjudication (RA) as a pilot program.</p>	<p>Changes allow more flexibility for officers to seek mediation regardless of whether they are involved in a multi-officer complaint. Changes establish circumstances under which RA may be initiated by OPA or officers at any time during an investigation, not just at the commencement of the matter.</p>
<p>Retention of OPA Files: For sustained complaints, the current CBA provides for retention for six years after employment. For unsustained complaints, the current CBA requires retention for six years plus the remainder of the current year.</p>	<p>Files are retained for six years after employment regardless of whether the complaint was sustained.</p>

Issue	Collective Bargaining Agreement
<p>Layoffs: The current CBA does not expressly recognize the right of the City to lay off employees.</p>	<p>Lay off language is added to the Management Rights section of the CBA, allowing the City to decide on the necessity for a layoff without having to bargain. The determination of who gets laid off is governed by the rules of the Public Safety Civil Service Commission.</p>

Discipline Review:

Background - The current CBA allows officers to appeal discipline through a grievance that is adjudicated at the Public Safety Civil Service Commission (PSCSC) or through binding Arbitration. In either case, the processes are “de novo” (new again) because SPMA can call witnesses and introduce evidence to reach a better outcome. Unless otherwise specified in the contract, the evidentiary standard is set by the reviewing body. National research shows that it is common for arbitrators to use a higher standard of “Clear and Convincing” for many cases that involve termination and suspension. Arbitrators generally use a more moderate standard of “Preponderance of the Evidence” (more likely than not) for less serious discipline appeals.

Discipline Review – The proposed CBA would institute a Discipline Review that is limited to the determination of (1) whether the evidentiary standard was met by the City; and (2) whether the discipline is “Arbitrary or Capricious.”

The proposed CBA sets the evidentiary standard at “Preponderance of the Evidence,” regardless of whether the discipline is appealed to the (PSCSC) or through arbitration. Under the proposed Discipline Review process, an arbitrator (Neutral Examiner) that found discipline to be arbitrary or capricious would have the option to modify the discipline, although only to the minimum extent necessary to no longer be arbitrary or capricious. The same would be true of Commissioners if the appeal is made to the PSCSC.

Elimination of de novo Review – The proposed CBA would institute a Discipline Review that does not allow a new hearing of the facts and circumstances related to the Office of Police Accountability (OPA) investigation, including testimony from witnesses that would be called by either the City or SPMA. Rather, the Neutral Examiner’s review is limited to presentations that are restricted to the Investigatory Record and: (1) any new information that was not discoverable at the time of the Chief’s decision that could reasonably be expected to change the Chief’s decision; and/ or (2) new information arises regarding the reliability of existing witness testimony.

Creating the OPA Investigatory Record – Because the Discipline Review is limited to an examination of the Investigatory Record, the proposed CBA allows SPMA to review and supplement the OPA Investigatory file with new or missing information before it is transmitted to the Chief for the Loudermill Hearing with the officer.

Selection of the Neutral Examiner - The Neutral Examiner shall be appointed using the Law Enforcement Disciplinary Grievance Roster established by the State Legislature in [RCW 41.58.070](#), thus ensuring the Neutral Examiner will have the expertise and neutrality necessary to provide the parties and the public with a thorough and transparent process.

Financial Impacts

The Executive estimates that the aggregate wage costs to implement this CBA would be about \$6.1 above the baseline contract over the four year period of the contract. Specific costs for the contract are highlighted below.

Table 2. Key changes/ highlights of the collective bargaining agreement

Item	2020 + 2021	2022	2023	Total
Wages: 2020 - CPI Annual Averaging Formula (2.7%) 2021 - CPI (1.9%) 2022 - CPI +1% (4.0%) 2023 - CPI +1% (4.0%)	\$37,068,611	\$19,457,073	\$20,235,356	\$76,761,040
Precinct Commander Premium: Current at 5%. Increase to 6% in 2022	\$105,683	\$66,567	\$69,229	\$241,479
Deferred Comp Match: Current at 2%. Increase to 3% in 2022.	\$524,631	\$413,064	\$429,583	\$1,367,277
Watch Commanders Premium: New 3% premium added in 2022		\$80,455	\$83,673	\$164,128
Captains Flex Time Buyout: (See details below)		\$132,287	\$98,265	\$230,552
Sick Leave: Current cash-out at 25%. Option to roll into new tiered VEBA system in 2022. (See details below)	\$471,234	\$215,165	\$223,762	\$910,161
Body Worn Video Premium: New 2% premium. (See details below)		\$77,841		\$77,841
Total	\$38,170,159	\$20,442,451	\$21,139,869	\$79,752,478
Cost Over Existing SPD Appropriations	-	\$3,386,924	\$2,731,307	\$6,118,231

Captain's Flex Time Buyout – A 2007 Memorandum of Understanding (MOU) between the City and SPOG allows SPD Captains to earn up to 384 hours of Flextime in lieu of overtime, which is a paid leave that cannot be cashed out upon separation. The proposed CBA would cap Flextime accrual at 200 hours and give each Captain the opportunity to cash-out at 35 percent their earned Flextime hours for those hours over 200 and up to 384 hours¹. This change would effectively eliminate a Captain's ability to use more than 200 hours of Flextime in a consecutive period, such as prior to a retirement.

¹At end of transition period, time is cashed out at 25% to the 200 hour cap, 2) TA establishes a method to determine approval for excess of 384 hours, which are currently held by some SPMA members.

VEBA Benefit/ Sick Leave Cash Out – The current CBA allows SPMA members to cash out 25 percent of unused sick leave upon retirement or death. The proposed CBA would allow SPMA members put into a VEBA trust fund accumulated sick leave at the following rates:

- between 0 and 400 at 25 percent;
- between 401 and 800 at 50 percent;
- above 800 at 75 percent.

Body Worn Video – The proposed CBA would provide to any Watch Commander that regularly wore Body Worn Video (BWV) while on duty a two percent premium for each pay period during which they were wearing the BWV, retroactive to 2019. Effective the first pay period after ratification of the proposed CBA, and continuing through the remainder of 2022, an additional two percent would be paid to each employee required to wear BWV while on duty for the City. The two percent premium for wearing BWV would terminate on January 3, 2023.

Impacts to the SPD Budget and Current Council Legislation

The City is currently holding funds in the General Fund’s planning reserves to cover the costs of implementing the SPMA contract. However, the Executive has indicated that it intends to instead use sworn salary savings in SPD’s Adopted Budget to fund the \$3.39 million that is required to pay SPMA members for retroactive and current wage adjustments through the end of 2022. Therefore: (1) it becomes unnecessary for the Executive to request in separate legislation or a supplemental budget additional appropriation authority for SPD to cover the cost of the SPMA contract; and (2) the funds held in planning reserves could be appropriated for other purposes or used to mitigate the impacts of the anticipated gap in GF revenues and expenditures in 2023 and 2024. Future (2023) contract costs will be appropriated through the 2023 budget process.

As noted in Central Staff’s SPD 2022 Q1 Sworn Staffing Report posted to the April 26 Public Safety and Human Services (PSHS) Committee agenda, staff estimates that, based on hiring to date, \$4.5 million in SPD salary savings is currently available. If these one-time funds are used to cover the 2020-2022 costs of implementing the SPMA contract, the estimated salary savings in SPD’s 2022 budget would decrease from an estimated \$4.5 million to \$1.11 million.

The 2022 Adopted Budget includes a proviso (SPD-003-B-001) that restricts SPD’s ability to expend its sworn salary savings without future appropriation from the Council. On May 10, 2022, the PSHS Committee recommended approval of Resolution 32050 and Council Bill 120320. Resolution 32050 states the Council’s intent to modify the proviso to authorize using these funds for staffing incentives and a recruitment support program in SPD. Council Bill 120320 provides authorization to use up to \$1,150,000 of the funds for:

- 1) An additional recruiter position in SPD;
- 2) A national ad campaign to market police officer positions to potential candidates;
- 3) A national search to hire a permanent Chief of Police; and
- 4) Moving expenses for new police officer hires in 2022;

As noted above, SPD will have \$1.1 million remaining in salary savings to fund items that are specified in Resolution 32050 and/or CB 120320. The Executive's use of salary savings on items 2-4 above will affect its ability to use remaining salary savings for staffing incentive programs. Additional spending on staffing incentives would require additional savings in SPD (sworn salary savings or other savings) or additional appropriations provided in a supplemental budget.

Next Steps

If the Council votes to approve CB 120332, the Executive would have authority to execute the CBA with SPMA. Per the information provided in the Fiscal Note, it is unlikely that the Executive would transmit separate budget legislation to appropriate the funding needed to cover the costs of implementing this legislation. Rather, the department would use \$3.4 million of its sworn salary savings to fund the backpay and wage adjustments required in the CBA.

Please contact me if you have questions about this proposed legislation.

Attachments:

1. Summary of New Discipline Review Process in the SMPA TA

cc: Aly Pennucci, Deputy Director

Attachment 1. Summary of new Discipline Review Process in the SPMA TA (January 24, 2022)

Overall Goals for Discipline Review (below is from the TA)

“The parties agree that there are legitimate and significant areas of concern that must be balanced during the disciplinary review process. The Association requires a disciplinary process that is reliable, fair, and consistently applied; the City requires a transparent process that aligns with public policy and does not undermine the Department; the community expects a transparent process that results in discipline when warranted. These concerns must be carefully weighed to create a disciplinary review process in which the Association, the City and the community all have confidence.

The arbitration model previously utilized created a grievance resolution mechanism that was outside of the established accountability process in that it took a “new look” at the circumstances of a disciplinary investigation.

This Discipline Review model addresses these issues and establishes a sustainable grievance resolution model for the resolution of discipline appeals involving a suspension, termination, demotion, or disciplinary transfer.”

Investigatory Record

- Upon completion of the OPA investigation, the Association is provided a copy of the investigatory record (IR) and the 180-day clock is tolled.
- The Association has thirty (30) days to review the IR and determine whether it wants to submit additional information (“Supplemental Submission”) as part of the material to be forwarded to the Chief.
- Prior to forwarding the Supplemental Submission to the Chief, OPA will have an opportunity to decide whether to forward the IR and Supplemental Submission to the Chief, or re-open the investigation.

Loudermill / Due Process Hearing

- After reviewing the IR and Supplemental Submission the Chief will schedule the Loudermill/Due Process Hearing.
- After reviewing all of the information and considering the statement of the employee at the hearing, the Chief will issue a written decision (the “Decision”).

Initiation of Appeal

The Association may then initiate the Disciplinary Review process described below by filing a Notice of Appeal within ten days of receipt of the Decision.

Discipline Review

- Neutral Examiner. A Discipline Review will be conducted by a Neutral Examiner, to be appointed by the PERC from their Law Enforcement Disciplinary Grievance Roster established by the State Legislature in RCW 41.58.070. This ensures the Neutral Examiner will have the expertise and neutrality necessary to provide the parties and the public with a thorough and transparent process.
- Hearing is Not De Novo. The Discipline Review hearing is not a de novo hearing. Rather, the Neutral Examiner will review the IR, any Supplemental Submission, and the Decision.
- Standard of Review. The standard of review whether there is a preponderance of evidence supporting the Chief's Decision. In the event misconduct is established, the level of discipline assessed by the Chief will be upheld unless it is found to be arbitrary and capricious.

Hearing

- The Hearing will be much like an appellate court review, with a representative from each party presenting the position of that party to the Neutral Examiner. The record generally is limited to the material that was before the Chief.
- The parties will use their best efforts to conduct the Hearing within 90 days of the assignment of a Neutral Examiner by PERC.
- The Neutral Examiner's decision is final and binding, unless in violation of Washington State public policy.
- Discipline Review hearings will be made available to the public, via live-stream, written record, or similar means, such that the public can review the process either in real-time or shortly thereafter.

Public Safety Civil Service Commission Hearings

- As an alternative to Discipline Review, SPMA unit members may challenge the discipline through the PSCSC.
- In any such hearing involving a suspension, demotion, termination or disciplinary transfer, the preponderance of evidence standard will apply, and the discipline may only be overturned if it is arbitrary and capricious.
- The parties will work with the PSCSC to ensure adoption of this approach for SPMA member appeals.