



# Seattle Office of Inspector General

Attachment 3 – Seattle Office of Inspector General, Input regarding Seattle Police Management Association (SPMA) Collective Bargaining Parameters, September 8, 2023.

September 8, 2023

Sent VIA Email

To: Mayor Bruce Harrell; Council President Deborah Juarez; Public Safety and Human Services Committee Chair Lisa Herbold

From: Lisa Judge, Inspector General for Public Safety

Re: Input regarding Seattle Police Management Association (SPMA) Collective Bargaining Parameters

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## **Introduction and background**

The City is required by ordinance to receive input about collective bargaining parameters from those who provide civilian oversight of the police accountability system – the Community Police Commission (CPC), the Office of Police Accountability (OPA), and the Office of the Inspector General for Public Safety (OIG) – as the City defines its approach to upcoming bargaining with Seattle police unions. Creating and fostering systems and processes to ensure police officers are accountable to the public they serve is a primary goal of the Office of Inspector General. Providing meaningful feedback to policy makers at critical decision points, such as setting bargaining parameters and considering ratification of collective bargaining agreements for police, is one such way OIG can assist in identifying potential barriers to accountability, as well as positive changes that bring those agreements closer in alignment with community expectations.

In advance of bargaining in 2019, OIG generated a memorandum to the Seattle City Council identifying potentially problematic provisions in the SPMA agreement that impact accountability. That memo was intended to highlight areas of focus for the City in bargaining efforts to strengthen and actualize the accountability reforms enacted by the Seattle City Council in 2017. Primary areas of concern at that time included ensuring measures that provide transparency, enhance community trust, and solidify authority and sustainability for accountability entities. Specifically, subpoena power for OPA and OIG, quantum of proof on appeal, 180-day timeline clarity, arbitration reform, and OPA authority in criminal cases were identified as primary areas for improvement. Additionally, increased transparency in the bargaining process was also called out for reform.



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### **Progress achieved in the current CBA**

Since that time, the current CBA was negotiated, resulting in substantial strides that address specific concerns raised by OIG and other stakeholders. Improvements and gains that directly benefit accountability efforts in the current CBA include:

- Additions to Article 15 that clearly acknowledge and adopt the philosophy and purpose that underpins the accountability ordinance, including prioritizing community trust and transparency, and recognizing the role of proper discipline in police legitimacy;
- Clearly acknowledging “preponderance of evidence” as the standard for appeal;
- Clearly repudiating *de novo* review and clearly describing what evidence may be considered in appeals, with deference to decisions of the Chief;
- Providing that discipline review hearings will be made publicly available for viewing;
- Language acknowledging the City may implement the accountability ordinance, while reserving rights to potentially bargain effects;
- Addressing a tolling loophole for crimes committed in other jurisdictions;
- Allowing any OPA staff to investigate SPMA members; and
- Clarifying and formalizing processes for mediation and “rapid adjudication.”

With regard to the bargaining process itself, the City has made significant improvements allowing for accountability stakeholder input throughout the process, as well as adding a neutral observer at the bargaining table.

### **Parameter considerations for the next SPMA CBA**

Few issues remain that are potentially problematic for accountability and both parties appear to have taken community concerns to heart in negotiating the current agreement. Issues for future bargaining parameters include: strengthening OPA processes for mediation and rapid adjudication, records retention conformance to state law, and addressing potentially concerning issues in Article 16.

Mediation and Rapid adjudication: These provisions should include the recommendations previously made by civilian oversight officials to strengthen these alternative resolution processes and provide greater latitude for OPA development of these processes.

Records Retention: State law provides that all personnel records for any peace officer or corrections officer must be retained for the duration of the officer's employment and a



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minimum of 10 years thereafter. An employing agency may not enter into any agreement or contract with an officer or union allowing the agency to destroy or remove any personnel record while the officer is employed and for 10 years thereafter.

These records include all misconduct and equal employment opportunity complaints, progressive discipline imposed, written reprimands, supervisor coaching, suspensions, involuntary transfers, investigatory files, other disciplinary appeals and litigation records, and any other records needed to comply with the requirements set forth in the statute. [See: RCW 43.101.135; RCW 40.14.070]

Future CBAs should defer to retention periods defined by state law, or alternatively, remain silent on records retention, thereby allowing state law to control with no conflicting CBA provision.

### Section 16.6 Issues:

The potentially concerning section provides:

**“Bill of Rights- The ‘Police Officers’ Bill of Rights’ spells out the minimum rights of an officer **but where the language of the contract or the past practices of the Department grant the officer greater rights, those greater rights shall pertain.”****

This has been identified by some in community as a provision with the potential to allow practices perceived as problematic to appropriate discipline and accountability to override newly adopted provisions. This language potentially locks in past decisions as precedent, limiting opportunity for course corrections from undesirable past practices or rulings. While the Department should not be allowed to treat people with similar misconduct differently week to week or month to month, there must be the ability to improve practices, decisions, policies, and training with appropriate communications, disclosure, and policy stating what the approach will be going forward.

In an effort to assess whether such issues are theoretical or are actually occurring, OIG will gather and assess data related to deviation from OPA Director recommendations and findings, and where discipline imposed by the Chief falls within possible ranges. In 2019, an OIG audit described a condition wherein Chiefs in the last few years have tended to impose discipline on the lower end of the possible range, thereby arguably creating a presumption in practice. Such data analysis can inform future negotiations and shed light on whether this provision is indeed problematic.



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### Other Possible Considerations:

The OIG audit of discipline processes also identified a potential issue related to accrual of overtime by SPD members while under a disciplinary suspension, which was flagged by SPD as possibly impeded by collective bargaining. OIG acknowledges that management has a significant interest in maintaining proper staffing and may need to use personnel in an overtime capacity. The issue should be explored to determine if bargaining could mitigate public trust impacts related to this issue, while preserving necessary management rights to ensure proper staffing.

While much of this input specifically concerns accountability provisions, OIG also strongly supports contract advances that will allow for new staffing configurations, additional civilianization, and alternative responses and investigative approaches, so that neither CBA poses barriers to partnering with the community and moving forward swiftly on potentially transformative programs.

Although SPOG and SPMA are different bargaining units, one of the recommendations that was made by past accountability oversight officials, and was then incorporated in the 2017 accountability law, is that the City ensure that contract terms related to the accountability do not allow for different ranks to be treated differently. To accomplish that, all contracts should require the same best practices for OPA investigations, discipline and disciplinary appeals, for all ranks.

### Conclusion:

Overall, the current CBA presents a dramatic step forward in fostering meaningful oversight of the Seattle Police Department and increasing accountability and transparency to community. Addressing remaining recommendations in future agreements will further strengthen the accountability system established by the City in 2017. Finally, the changes and improvements achieved in the current and future SPMA agreements provide a roadmap for a fruitful path forward for ongoing bargaining with the Seattle Police Officers' Guild (SPOG).