

This document is an overview by Council Central Staff of the contents of Council Bill 118969. To the extent there are any discrepancies between the substance of this document and the draft legislation, the text of Council Bill 118969 governs. Nothing in this document shall be deemed to bind the Council.

Police Accountability Legislation CB 118969

DISCUSSION IN GESCNA ON 5-18-17

Description: CB 118969 creates a new Chapter 3.29 on police accountability. It is the substitute bill introduced and referred to GESCNA on May 8 that replaces CB 118907, the Mayor's transmitted accountability legislation. CB 118969 includes all language approved in GESCNA via amendments to CB 118907 on April 26 and May 5.

Amendment 1 to CB 118969 would expand on historical and community origins of constitutional policing, clarify provisions on investigation timelines, remove a Seattle residency percentage requirement for the Community Police Commission, designate the Public Safety Civil Service Commission as the disciplinary appeal procedure, clarifies the effective date relative to collective bargaining, and other streamlining clarifications. Highlights from Proposed Amendment 1 to CB 118969 for May 18 are in **bold**. *Language previously amended in GESCNA is in italics.*

Chapter 3.29: Introduction Sections

- *WHEREAS clauses and Findings were added, recognizing the history and goals of accountability, including the importance of geographic representation.*
 - **Added new emphasis on historical community voice and constitutional policing**
- Purpose section identifies role of OPA, OIG, and CPC.
 - *Role of Chief of Police was added.*
 - *Primary purposes were clarified (OPA - handling misconduct complaints; OIG - systemic auditing; CPC – community-based systemic review and community engagement).*
- Each entity advises and recommends changes in support of systemic improvements.
- Each entity engages in quarterly collaborative conversations on the extent to which the purposes of this Chapter 3.29 are being met.

3.29.100 OPA Functions

- OPA can initiate, receive, classify, investigate and otherwise handle misconduct complaints.
- OPA policies are to be applied uniformly regardless of rank.
- It is made clear that Management Action findings may be made for either Sustained or Not Sustained complaints of misconduct.
- OPA shall coordinate its investigations with any criminal investigations.
- OPA's recommendations for system improvements occur within the context of OPA's work.
- OPA shall enhance a culture of police accountability in various ways, including strengthening supervisor involvement, assisting SPD with development and delivery of in-service training related to the accountability system, and collaborating with SPD to make disciplinary processes fair and transparent.
- OPA must be responsive to community needs and concerns in various ways, including frequent communications with complainants, improve access such as by providing additional channels for filing complaints, using CPC's expertise for community outreach, and providing technical assistance on OPA matters to CPC. *These efforts must include the use of complaint navigators.*

3.29.105 OPA Independence

- OPA is to be housed separately from SPD but be organizationally within SPD in order to ensure complete and immediate access to all SPD data, evidence, and personnel.
- *The OPA Director will submit an annual budget request directly to the Mayor instead of through SPD and may advocate for resources directly to the Council.*
- Only the OPA Director, **or the OPA Director's designee**, may publicly comment on the specifics of an ongoing OPA investigation.

3.29.110 OPA Director Qualifications

- The OPA Director is a civilian with relevant expertise.
- *The OPA Director may not be a former sworn SPD employee.*

3.29.115 OPA Director Appointment and Removal

- The OPA Director is appointed by the Mayor and confirmed by the Council.
 - *CPC Commissioners must be at least 25 percent of the search committee and one of the co-chairs.*

- *If the Mayor fails to act, the public safety committee appoints the Director (as opposed to a 3-member Select Committee).*
- If the Council does not act on a confirmation within 30 days, the Director is deemed confirmed. **This includes any appointment, including when the public safety committee is the appointing authority.**
- The OPA Director can serve a maximum of three four-year terms.
- The terms are staggered from the Mayor's term of office.
- **The term begins on January 1 instead of July 1.**
- The OPA Director can only be removed for cause, and has the right to a hearing.
 - **Publicly-funded counsel is not provided.**
- A majority vote of the full Council is required to approve removal.
- A background check from an outside law enforcement agency will be conducted by the Seattle Department of Human Resources.
- *The Mayor is responsible for the performance evaluation of the OPA Director, with input from stakeholders.*

3.29.120 OPA Director Duties

- The OPA Director manages all of the functions of OPA.
- The OPA Director must meet all deadlines.
- The OPA Director or a designee must be present at all officer-involved shooting scenes or other serious use of force incidents.
- *The OPA Director provides input to the Council on the performance evaluation of the Inspector General.*

3.29.125 OPA Classifications and Investigations

- Unnecessary or excessive force, biased policing, and violations of law cannot be classified as Supervisor Action.
- Complainants may remain anonymous and must be given the option of an in-person interview.
- All SPD employee interviews are to be conducted in-person (for all ranks).
- OPA has authority to be present at all scenes and administrative investigation unit interviews or meetings.
- The OPA Director has subpoena powers.
- Every OPA investigation must have an investigation plan.

3.29.130 OPA Classification and Investigation Timelines

- OPA notifies employees of complaints within 30 days. The notice does not include the identity of complainants when they are members of the public.

- OPA has 180 days to complete an investigation. **This provision is silent on whether this deadline must be met in order for discipline to be imposed (under the CBA, it must be).**
- The investigation clock begins when OPA initiates or receives a complaint. **The clock does not begin when a complaint should have been referred to OPA by SPD. Related provisions that are no longer applicable as a result of this change are struck or modified to be consistent, including timelines regarding misconduct for failing to timely refer a complaint.** The clock ends when the OPA Director issues proposed findings. (This bases the start and end times on things within OPA’s direct control.)

3.29.135 OPA Explanations of Certain Complaint Dispositions

- If the Chief and OPA Director disagree on the OPA Director’s findings, the Chief and OPA Director must meet to discuss it after any due process meeting.
- The Chief has 30 days to provide a written explanation of any disagreement on findings.
- If OPA exceeds an investigation time limit, the OPA Director has 30 days to provide a written explanation. **Previously this provision was triggered if no discipline resulted due to a missed investigation time limit.**
- Termination is the presumed discipline for material dishonesty. The finding is based on the same evidentiary standard as for any other allegation of misconduct.

3.29.140 OPA Staffing

- The OPA Director and Deputy Director must be civilians.
- Within 18 months, all investigative supervisors must be civilian.
- Within 12 months, intake and investigator personnel must be entirely civilian or a mix of civilian and sworn.
- All OPA staff supporting SPD supervisors with the handling of minor violations and public access to the accountability system must be civilians.
- No civilian staff are required to have sworn experience. *No civilian staff shall have been formerly employed by SPD as a sworn officer.*

3.29.145 OPA Reporting

- OPA must maintain certain web site content to keep the public informed.
- OPA gives OIG bi-annual status reports on criminal investigations.
- OPA produces an annual report. *The report shall cover the work of OPA in fulfilling the responsibilities of this Chapter 3.29, the status of OPA’s recommendations, and how community outreach has informed OPA’s work, in addition to various statistics and trend analysis.*

3.29.150 OPA Confidentiality of Files and Records

- OPA has confidentiality requirements.

3.29.200 OIG for Public Safety Functions

- The IG shall be a civilian.
- *There shall be a civilian Deputy IG.*
- **All staff who have access to confidential information must undergo an outside background check.**
- OIG conducts reviews and audits of SPD processes and operations, and any other areas or departments related to policing and criminal justice matters.
- OIG reviews OPA misconduct complaint handling.
- OIG shall enhance a culture of police accountability in various ways, including strengthening supervisor involvement, assisting SPD with development and delivery of in-service training related to the accountability system, and collaborating with SPD to make disciplinary processes fair and transparent.
- OIG must be responsive to community needs and concerns in various ways, including using CPC's expertise to understand community perspectives and concerns, conducting outreach in consultation with CPC, consulting with CPC on readability and accessibility of OIG materials, providing technical assistance on OIG matters to CPC, and maintaining a hotline for anonymous reports.
- OIG will review other jurisdictions and make recommendations to policymakers for increasing the effectiveness of SPD and related criminal justice processes.

3.29.210 OIG Independence

- *The IG will submit an annual budget request directly to the Mayor and may advocate for resources directly to the Council.*
- OIG shall have timely, full, and direct access to all relevant City employees, facilities, files and data.
- OIG has authority to observe review, meetings, and trainings.

3.29.220 OIG Inspector General Duties

- The IG manages all of the functions of OIG.
- *The IG handles misconduct complaints involving OPA staff where there is a potential OPA conflict of interest.*
- The IG will perform the Police Intelligence Auditor functions (Chapter 14.12).
- OIG has an annual workplan. *It must be submitted to the Council by January 1. It is developed in consultation with OPA, CPC, and the Chair of the public safety committee.*
- OIG has authority be present at all scenes and administrative investigation unit interviews or meetings.

- OIG monitors implementation of OIG, OPA, and CPC recommendations.
- The IG semi-annually reviews OPA complaint-handling for cases not investigated, and SPD follow-through on OPA Management Action and Training Referral recommendations.
- The IG has subpoena powers.
- *The IG provides input to the Mayor on the performance evaluation of the OPA Director.*

3.29.230 OIG Review of OPA Classifications

- IG shall audit OPA classifications quarterly or may review each case.

3.29.240 OIG Review of OPA Investigations

- OIG shall review and certify OPA investigations as thorough, timely, and objective.
- OIG reviews all misconduct evaluations of particular listed types and can request any others.
- OIG can instead conduct random audits for any type of misconduct except for Type III Force.
- OIG can require additional OPA investigation.
- The OPA Director must submit investigations sufficiently in time **to allow investigation deadlines to be met in the event OIG requires additional OPA investigation.** (Previous language required submission in time to allow discipline to be imposed.)

3.29.250 OIG Qualifications

- The OPA Director is a civilian with relevant expertise.
- *The OPA Director may not be a former sworn SPD employee.*

3.29.260 OIG Appointment and Removal

- *The IG is appointed by the public safety committee and confirmed by the Council (as opposed to a 3-member Select Committee).*
 - *CPC Commissioners must be at least 25 percent of the search committee and one of the co-chairs.*
 - *If the public safety committee fails to act, the Mayor appoints the IG (as opposed to a 3-member Select Committee).*
 - If the Council does not act on a confirmation within 30 days, the IG is deemed confirmed. **This includes any appointment, including when the Mayor is the appointing authority.**
- The IG can serve a maximum of two six-year terms.
- The terms are staggered from the OPA Director's term of office.
- **The term begins on January 1 instead of July 1.**
- The OPA Director can only be removed for cause, and has the right to a hearing.
 - **Publicly-funded counsel is not provided.**

- A two-thirds vote of the full Council is required to approve removal.
- A background check from an outside law enforcement agency will be conducted by the Seattle Department of Human Resources.
- *The Council is responsible for the performance evaluation of the IG, with input from stakeholders.*

3.29.270 OIG – Audits, Reviews and Reporting

- OIG conducts audits and reviews of police operations and policies. Many examples of OIG audits are provided.
- OIG shall maintain a web site.
- OIG, in partnership with CPC, will periodically issue reports on diversity, recruitment and retention of officers.
- OIG produces an annual report. *The report shall cover the work of all entities and OIG in fulfilling the responsibilities of this Chapter 3.29, the status of OIG’s recommendations, and how community outreach has informed OIG’s work, in addition to various summaries of reviews and trend analysis.*
- Departments review a preliminary draft of the annual report within ten days.

3.29.280 OIG – Files and Records

- OIG has confidentiality requirements.

Subchapter III of Chapter 3.29: CPC

3.29.300 CPC Functions

- Responsibilities under the consent decree take priority while the consent decree is in effect.
- CPC reviews and provides input to stakeholder entities on the police accountability system, police services and SPD policies and practices, including input on recommendations by OPA, OIG or SPD.
- CPC must be responsive to community needs and concerns in various ways (community outreach and engagement, assisting SPD/OPA/OIG with community feedback, technical assistance on community matters to OPA/OIG).
- Advocate for state reforms.

3.29.310 Office of the CPC Established

- The Office of the CPC is established to administer and manage the functions of the CPC.

3.29.320 Office of the CPC – Executive Director

- The current CPC Executive Director (ED) has a term ending on December 31, 2018, and can be reappointed.
- *The ED is appointed by the CPC. **The appointment process uses merit-based criteria.***
- *The ED cannot have been formerly employed by SPD.*
- *The ED term is six years and Council confirmation processes consistent with the Seattle Ethics and Elections Commission approach.*
- CPC has ten days to fill an ED vacancy. **Reference to key qualifications is deleted.**
- CPC may remove the ED for cause.
- ED duties include overseeing and managing the office and its staff, preparing the budget, and representing the CPC along with Commissioners.

3.29.330 CPC – Independence

- *The ED will submit an annual budget request directly to the Mayor and may advocate for resources directly to the Council.*
- *No CPC staff may be former SPD officers.*
- CPC shall have timely access to information without having to make public disclosure requests.

3.29.340 CPC Qualifications

- **Commissioners shall reside or work in Seattle.**
- *Commissioners shall be appointed in a manner that allows CPC to assign Council district representation by Commissioners who have a nexus with the district (live, work, or significant professional or civic ties).*
- Commissioners shall be representative of Seattle’s diverse populations.
- Commissioners shall have various subject matter expertise related to their work.
- There shall be at least one public defense lawyer and one civil rights lawyer. *There shall also be one SPOG and one SPMA representative.*
- All Commissioners are required to have good reputations, a commitment to the accountability purposes of Chapter 3.29, a history of leadership or deep community connections, the ability to communicate with and understand diverse people, and ability to operate in a controversial environment.

3.29.350 CPC Appointment, Removal, and Compensation

- *CPC shall have 21 Commissioners.*
- A third are appointed by the Mayor, a third by Council, and a third by CPC.
- CPC appoints the legal *and police guild* representatives.
- Commissioners can serve three three-year terms (seven terms end each year).

- The appointing authorities need to make sure that appointees meet the qualifications. **The appointing authorities also need to make appointments that allow CPC to be able to designate Council district representation among its members.**
- **The 80% live-in-Seattle membership requirement is eliminated.**
- There are timelines for timely appointments and confirmations of Commissioners to minimize vacancies.
- Commissioners may be removed only for cause by the appointing authority. Removal requires a majority vote at full Council.
- Commissioners shall be compensated, if at all, as provided by ordinance.

3.29.360 CPC Authority and Responsibility

- CPC appoints Commissioner co-chairs to the OPA Director and IG search committees, and provides input on their reappointment or removal.
- CPC assigns district representation to Commissioners, who must actively engage people in the district and regularly report back to CPC on community law enforcement issues.
- CPC convenes an annual meeting.
- CPC holds at least monthly meetings open to the public and establishes subcommittees as needed.
- CPC monitors the implementation of recommendations made by OIG, OPA, and CPC.
- CPC reviews reports required by Chapter 3.29 and any OPA or OIG recommendations.
- CPC makes recommendations on areas for OIG investigation and evaluation in the IG's annual workplan.
- CPC reviews closed OPA investigations and other data for opportunities for systemic improvement, but not to review or opine on the determinations of any specific OPA investigation.
- CPC collaborates with SPD, OPA, and the City Attorney's Office in improving transparency, public disclosure procedures, and timely OPA online posting of the status of investigations and outcomes.
- CPC reviews and provides input into SPD's recruitment, hiring and promotional practices.
- CPC assists SPD in the development and delivery of in-service training related to the accountability system.
- CPC reviews and comments on the OPA manual.
- *CPC annually evaluates the performance of the CPC Executive Director after seeking input from stakeholders.*
- *CPC provides input to the Mayor on the performance evaluation of the OPA Director and to the Council on the performance evaluation of the Inspector General.*

Section 41.

- Provisions specify how current CPC Commissioners would transition to the new CPC.

3.29.370 CPC Reporting

- CPC produces an annual report. *The report shall cover the work of all entities and CPC in fulfilling the responsibilities of this Chapter 3.29, the status of all recommendations, and how community outreach has informed OIG's work.*
- CPC, in partnership with OIG, will periodically issue reports on diversity, recruitment and retention of officers.

Subchapter IV of Chapter 3.29: Mechanisms to Support Accountability

3.29.400 Reporting of Potential Misconduct and Police Accountability Issues

- SPD shall establish policies requiring timely forwarding to OPA of significant matters of misconduct or policy violations, including cases originating from outside sources and from SPD administrative investigation units or boards.
- The IG and CPC Executive Director shall present a mid-year report to the public safety committee on the status of OPA, OIG, and CPC recommendations. The Chief and OPA Director will participate, as well as the Mayor's Office as appropriate.
- Performance review procedures by any SPD Board, unit, or process must be approved by the Chief and set forth in the SPD Policy Manual.
- SPD administrative investigation unit reviews are limited to 90 days, and they shall not make determinations of misconduct or recommend discipline.
- SPD shall make sure cases referred by OPA to employees' supervisors have timely and substantive follow-through.
- SPD and OPA shall establish an effective system for referring potential misconduct to OPA when others in the criminal justice system have concerns about officer integrity or honesty.
- **The City Attorney's Office, Department of Finance and Administrative Services, and OPA shall establish a system to coordinate the investigation of tort claims involving potential misconduct and the OPA investigation of the potential misconduct. OPA keeps status information updates flowing between these entities and with the complainant. OPA notifies FAS and the City Attorney's Office within five business days after the OPA case is closed.** (This language does not conflict with the terms of the public observer bill, CB 118761, that passed out of GESCNA on May 10 and is pending before Council.)
- All City stakeholders have a duty to timely inform the IG of any problems or deficiencies not previously reported related to police accountability.

- The City Attorney, as appropriate, will advise the OPA Director and Chief of any issues identified through litigation, grievances, or disciplinary appeals that would help make improvements to policies and procedures.
- Complaints against OPA, OIG, or CPC staff involving discrimination, harassment, retaliation or Equal Employment Opportunity laws shall be investigated by the Seattle Department of Human Resources.

3.29.410 Continuous Improvement

- SPD and OPA have 30 days to respond in writing to any oversight recommendations contained in reports required by this Chapter 3.29. The response must include a plan for implementation or an explanation of rejection.
- The OPA Director, IG, CPC co-chairs, and Chief, or their designees, shall meet at least quarterly to review and verify their positions on the status of all recommendations.
- *CPC shall compile and maintain a database of all entities' recommendations and their status, which may include CPC's analyses and comments.*
- *SPD shall explain in writing the actions taken in response to any Training Referral or Supervisor Action.*
- SPD shall establish a schedule and protocol for regular review of the SPD Policy Manual, in consultation with CPC, OIG, and OPA. **It is clarified that recommendations of the oversight entities are advisory, not mandatory.**
- SPD shall maintain systems of critical self analysis including audits and reviews of critical events, lawsuits, claims, and complaints.
- When the Mayor submits the annual proposed budget to the Council, the Mayor must identify to the Council and CPC when oversight entity recommendations requiring funding are not included in the proposed budget. **The Mayor must also identify any Mayor proposed budget reductions to OPA, OIG, or CPC compared to the previous year or compared to the budgets as proposed by the entities, with an explanation.**
- When the Mayor presents the proposed state legislative agenda to the Council, the Mayor must identify any oversight entity recommendations that are not included.
- The City's Office of Intergovernmental Relations shall consult with the OPA Director, IG, and CPC during development of the state legislative agenda.
- The City Attorney's Office shall provide the OPA Director and IG with two semi-annual status reports on appeals to OPA case findings or discipline from the previous six months and any OPA cases from earlier periods that are still open due to appeal.

3.29.420 Disciplinary, Grievance, and Appeals Policies and Processes

- SPD disciplinary, grievance, and appeal policies and processes shall be timely, fair, consistent, and transparent.
- SPD shall track all Chief disciplinary determinations.

- There must be set and enforceable timeframes for notice to an employee of SPD proposed findings and discipline, for the employee to request a due process hearing, for the Chief to issue findings and disciplinary decisions, and for any employee appeal.
- SPD shall implement discipline right after it is imposed, not after the conclusion of any appeal.
- The Chief has authority to place an SPD employee on leave without pay prior to completion of an OPA investigation when the employee has been charged with a felony or gross misdemeanor. **Other situations are expanded to include where the allegations could lead to termination, or where the Chief determines it is necessary for the public trust, employee or public safety, or security or confidentiality of law enforcement information. If reinstated the employee receives net back pay less any amounts representing a sustained penalty of suspension.**
- There is a 3-year statute of limitations for discipline to be imposed, except when it is an allegation of criminal conduct or concealed acts of misconduct. **Material dishonesty is exempt from the 3-year statute of limitations also.**
- **Employee appeals related to discipline must go through the Public Safety Civil Service Commission (PSCSC). The public safety-selected member of the PSCSC is replaced by a Mayoral appointee. The PSCSC may delegate its authority to the City hearing examiner or a hearing examiner that the PSCSC retains.** Challenges by employees to all other administrative actions or working conditions will be handled through a separate employee grievance process as determined by collective bargaining.
- SPD employees may not use accrued time balances to be compensated for unpaid suspensions.
- The City Attorney's Office determines legal representation for SPD in disciplinary challenges, and must approve the settlement or resolution of grievances or disciplinary appeals.
- All appeal hearings shall be held within a set timeframe from when the Chief issues final findings and discipline, and all appeal rulings shall be issued within a set time from the hearing.
- The Chief is required to include case details when notifying the Washington State Criminal Justice Training Commission (WSCJTC) of a termination due to misconduct that would qualify for decertification.

3.29.430 Recruitment, Hiring, Assignments, Promotions, and Training

- SPD shall have recruiting, hiring, etc. practices that build accountability, in consultation with CPC and OIG.
- SPD may employ civilians in positions that do not require sworn personnel, for best use of resources.

- SPD shall use preference points based on multilingualism or other skills useful in working with diverse and challenged communities.
- SPD shall establish a second employment office with input from OIG, OPA, and CPC.
- SPD shall make other improvements in setting standards for the application process for specialty units and in the take-home policy for SPD vehicles.
- The process for transitioning sworn staff into and out of OPA is detailed, involving volunteer lists and a two-year rotation.
- SPD shall collaborate with OPA, OIG, and CPC in in-service training on the accountability system.

3.29.440 Public Disclosure, Data Tracking, and Record Retention

- There are various provisions related to prompt release of information and data transparency by OPA and SPD.
- SPD personnel and OPA case files are retained as long as the employee is employed by the City plus six years, or longer if there is ongoing action related to that employee.
- Additional information is to be provided to WSCJTC when sworn employees are terminated not in good standing, including Chief statements that the employee will not be authorized to serve in a Special Commission capacity or carry a concealed firearm.

3.29.450 Criminal Cases

- **A requirement regarding criminal prosecution protocols is deleted as being outside of the City Attorney's jurisdiction.**
- The City Attorney will maintain a protocol for concurrent case review of cases referred to prosecutors for possible filing of charges in order to minimize delay.

3.29.460 Collective bargaining and labor agreements

- Those who provide civilian oversight shall be consulted in the formation of the City's collective bargaining agenda, subject to confidentiality provisions.
- The terms of all collective bargaining agreements and separate agreements shall be posted online.
- When collective bargaining occurs, any existing separate agreements shall be incorporated or else eliminated.

3.29.470 Public statements

- City employees should not comment in a way that suggests any conclusions have been reached about an incident that is under OPA, SPD, or OIG review.

3.29.480 Protection of civilian oversight entities

- Retaliation by a City employee against someone for complaining to, cooperating with, or assisting OPA, OIG, or CPC in the performance of their duties is prohibited. It can be

reported to the IG, who is authorized to open an investigation and refer the complaint to the appropriate authority.

Some Provisions Outside of Chapter 3.29

Chapter 14.12 (Police Intelligence Auditor provisions)

- **Police intelligence auditor functions under SMC Chapter 14.12 are to be performed by the IG or designees. Qualifications for this position are eliminated as they are both redundant with IG qualifications and are not unique to a police intelligence auditor position (e.g., reputation for professionalism). Any OIG staff with access to confidential information must undergo a background check from an outside law enforcement agency.**

Chapter 4.08 (Public Safety Civil Service Commission)

- **Employee appeals related to discipline must go through the Public Safety Civil Service Commission (PSCSC). The public safety-selected member of the PSCSC is replaced by a Mayoral appointee. The PSCSC may delegate its authority to the City hearing examiner or a hearing examiner that the PSCSC retains.**

Subchapter IV of Chapter 3.29: Mechanisms to Support Accountability

3.29.500 Construction

- **Provisions subject to collective bargaining shall not be effective until the City completes its collective bargaining obligations. Timely and comprehensive implementation supports constitutional policing. The City will fulfill all legal prerequisites within 30 days of Mayoral signature or as soon as practicable thereafter, including negotiating with police unions to update all affected collective bargaining agreements.**
- **Standard severability and bill construction language is included.**

3.29.510 Implementation

- **Provisions for which the City has fulfilled collective bargaining requirements, if any, will go into effect after Court approval and 30 days after Mayoral signature. Any provisions for which bargaining is not yet complete shall not go into effect until collective bargaining obligations are satisfied.**