



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.

Cc: Mayor Jenny Durkan
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Councilmember Dan Strauss
City Attorney Pete Holmes
Andrew Myerberg, Office of Police Accountability Director
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