

Letter to Mayor Greenberg and Members of Metro Council

From: The 490 Project

Thursday, March 16th, 2023

Dear Mayor Greenberg & Metro Council Members,

We write to urge you to read the Collective Bargaining Agreements (CBA) between the LMPD and the FOP as you work on implementing the DOJ's recommendations. Without changes to the CBA, implementing the proposals will be difficult or impossible. We share with you eight changes the Mayor can seek in collective bargaining. We first mention the part of the report and page number we address. We then offer a change.

1. Change to Article 17, Section 3 Suspension without Pay Pending

The DOJ report states at pages 49-50:

In 2017, two white officers saw a Black man standing in the street. When the officers got out of their car and approached the man, the man fled and allegedly discarded a handgun. The officers chased him, tackled him, and struck him with their knees and elbows. One officer yelled, "Gimme your arm, boy!" The officers continued striking and cursing at the man after he yelled, "I'm down!" and "I can't breathe!" The man's face was bleeding in multiple places. After the officers handcuffed the man, and while he was lying on the ground, an officer said, "This is what happens when you act like a fucking thug." When the man denied having a gun and asked why the officers chased him, the officer said, "That's the problem with this community, nobody wants to take a stand for what they did." Supervisors found the officers' force justified and recommended "no further action," stating that the officers were "verbally counseled for vulgar language in the heat of the moment."

Article 17, Section 3 in the CBA states in relevant part that in order to suspend an officer with pay: "Where the conduct constitutes use of force, the force involved must be plainly and obviously unjustified and would warrant termination."

Ideally, Section 3 would be amended to require all suspensions be without pay. In any event, the provision sets too high a ceiling to discipline officers for the types of offenses set

out in detail in the report by suspension without pay. Because of this verbal counseling, written reprimands, or suspension with pay will continue to be imposed rather than suspension without pay. Section 3 should be changed to state that when officers act on racial bias, even unconscious implicit bias, and use force – that behavior warrants suspension without pay.

Article 17 Section 3: Suspension Without Pay Pending

A. This Section is intended to apply only where an officer has been suspended "without pay pending," as permitted by KRS 67C.326 and shall not apply to disciplinary proceedings and appeals where that has not occurred.

B. The Chief of Police may suspend an officer without pay pending completion of administrative investigation and before imposition of formal disciplinary charges and penalty (herein "without pay pending"), only under extraordinary circumstances. Examples of such circumstances include, but are not limited to instances where: a) The Chief is in possession of evidence of a disciplinary violation warranting termination, which evidence eliminates genuine doubt regarding what conduct has occurred. Examples, by way of illustration but not limitation, may include video or audio recordings, or photographs, unmistakably establishing facts or events constituting a disciplinary offense. b) The officer conduct in question also constitutes a felony under applicable criminal law, or is wrongful conduct that is so outrageous as to create a genuine threat to the public peace and order. c) The conduct clearly constitutes an offense for which, if disciplinary charges should be sustained, the Chief will terminate the officer, barring mitigating circumstances. d) The offense is so extreme in degree that it is shocking to reasonable minds and compels immediate action such as extreme violence, or sexual abuse of a child; or, e) Where the conduct constitutes use of force, the force involved must be plainly and obviously unjustified and would warrant termination.

C. A suspension "without pay pending" may not exceed thirty 8-hour work days. If the Louisville Metro Police Merit Board ("LMPMB"), after a hearing on formal disciplinary charges and penalty fails to sustain termination, or if the charges and penalty imposed by the Chief are less than termination, then the time the officer was suspended "without pay pending" shall be deemed time served toward any suspension finally imposed, and should the final penalty be less than a suspension equal in length to the time already served, the officer shall be made whole.

D. When an officer is suspended "without pay pending," the officer shall be advised in writing of the reasons for the suspension within 24 hours of being suspended.

E. Consequently: a) A decision by the Chief not to suspend an officer "without pay pending" shall not constitute a waiver of the right to impose formal disciplinary charges and discipline, and shall not be deemed to reflect on the merits of any such charges or penalty. b) An officer suspended "without pay pending" shall have the right to appeal to the LMPMB from such suspension subject to the following: i. Election not to appeal until imposition of formal disciplinary charges and penalty shall not be deemed waiver of any right to appeal from formal written charges, and the time limit for appeal to the LMPMB from formal charges shall begin to run only upon the imposition of such charges and penalties. ii. If an officer who has already appealed from a suspension "without pay pending" later appeals from formal written charges regarding the same occurrence that triggered the suspension "without pay pending," the two appeals shall be merged to avoid duplicated LMPMB hearings.

2. Change to Article 17, Section 4

The DOJ report states on page 50:

In June 2020, officers pursued a car that another officer reported had been stolen at gunpoint. Two Black teenagers and a 20-year-old were in the car. The pursuit ended when they got into an accident and got out of the car. A white officer ran towards the 20-year-old driver with his gun drawn, screaming, "Get on the fucking ground! I will fucking kill you!" The young man laid down flat on his stomach by the side of the road, motionless. Although he was unarmed and posed no threat to the officer, the officer grabbed him by his dreadlocks, yelled, "What the fuck!" and shoved the youth's head back to the ground. The officer then handcuffed him while he was on the ground. The young man did not immediately stand up when the officer tried to lift him off the ground. The officer then dragged him, handcuffed, along the side of the road, telling him, "I'll drag you through the fucking dirt like an animal if you don't want to move." After pausing for a moment to speak with other officers, the officer turned back to the young man and again threatened to treat him "like a fucking animal." A sergeant reviewed the incident and "verbally counseled" the officer about "courtesy," "tactics," and

“conduct unbecoming,” and a lieutenant recommended “[n]o further action,” before a major recommended an internal investigation. In October 2020, the chief initiated an investigation into the officer’s conduct. More than two years later, in November 2022, LMPD suspended the officer for 10 days based on excessive force and courtesy violations, but LMPD exonerated the officer of a prejudice violation. LMPD investigators did not examine whether the officer’s threat to treat a young Black man “like a fucking animal” reflected racial prejudice.

Article 17, Section 4 I & J state in pertinent part:

The Professional Standards Unit (PSU) shall complete its investigation within a reasonable period of time of the Chief’s directive or complaint. J. All complaints and PSU directed investigations begun after the effective date of this Agreement not involving criminal allegations shall be completed and forwarded to the Chief or his designee for review and disposition within one hundred and eighty (180) days of the complaint, initiation of the PSU investigation or a return of the case by the Chief or designee to PSU, whichever is later in time. In the event that Metro Government needs additional time to complete an investigation, prior to the expiration of the one hundred and eighty (180) days, Metro Government shall provide a written explanation to the Member and FOP setting forth the specific reasons for the need for additional time.

Therefore, Article 17, Section 4 needs to include many clear short timelines to avoid situations like this one where officers continue to work or are suspended with pay for years after engaging in misconduct. I. should state, “reasonable period of time, no longer than two months”. J. should require the Chief to act within 60 days not 180 days and a similar deadline should be placed on return of the case.

Article 17 Section 4: Manner of Investigation

A. The parties recognize the rights provided to the police officer in KRS 67C.326 as it currently exists or may be amended.

B. All investigators assigned to SID will be required to complete a minimum of 40 hours KLEC approved training or the equivalent certification, similar or equivalent to the Southern Police Institute’s Internal Affairs Policy, Practice & Legal Considerations course, covering topics of investigation techniques, human dynamics and memory, specifically as they relate to police/citizen interactions prior to being assigned as lead investigator on a case. Those currently assigned shall complete within 6 months of execution of this agreement.

C. A Member required to submit a written report shall be informed in writing of the nature of the alleged misconduct or rule violations.

D. The written notice of interrogation shall be served to the police officer in a private setting and include a copy of the complaint before a member is subjected to interrogation in a departmental matter alleging misconduct on his or her part. In the event a written complaint does not exist, the notice shall include other written information sufficient to advise the Member of the specific allegations of misconduct.

E. All statements or interrogations of Members, complainants and other witnesses shall be electronically recorded. Statements obtained from complainants, either sworn or otherwise, shall be transcribed and sworn to. Non-recorded statements may be taken from a civilian witness who refuses to give a recorded statement.

F. Upon request of the Member under investigation or his representative, the Member shall be provided a copy of the transcript of the recorded interrogation, if one has been made, and a copy of the recording. The Member shall provide the Professional Standards Unit (PSU) with an audiotape, or technological equivalent at his expense.

G. Metro Government shall provide the Member any written or recorded statements in the possession of the department in connection with any disciplinary action taken against the Member except for attorney work product. Likewise, the Member and the Lodge shall provide Metro Government with statements or other information regarding any disciplinary action that has been taken against a Member except for attorney work product. The written statement shall be provided to the Member or Metro Government within ten (10) days after a written appeal is filed with the Louisville Metro Police Merit Board.

H. If discipline is imposed and the Member files a timely written appeal with the Louisville Metro Police Merit Board, Metro Government shall make available to testify at the hearing all current Members requested by the appealing Member or his counsel.

I. The Professional Standards Unit (PSU) shall complete its investigation within a reasonable period of time of the Chief's directive or complaint.

J. All complaints and PSU directed investigations begun after the effective date of this Agreement not involving criminal allegations shall be completed and forwarded to the Chief or his designee for review and disposition within one hundred and eighty (180) days of the complaint, initiation of the PSU investigation or a return of the case by the Chief or designee to PSU, whichever is later in time. In the event that Metro Government needs additional time to complete an investigation, prior to the expiration of the one hundred and eighty (180) days, Metro Government shall provide a written

explanation to the Member and FOP setting forth the specific reasons for the need for additional time.

K. The PSU shall provide a status update of its investigation in a timely manner upon request of the affected Member. This update will include an estimated completion date.

L. The parties recognize the Civilian Review and Accountability Board and the Office of Inspector General and their powers and duties as a government entity according to Chapter 36 of LMCO, or as later addressed by Statute.

3. Change to Article 14, Conditions of Employment, Section 9

The DOJ report states on pages 59-60:

LMPD officers are the primary and generally the sole responders to situations involving behavioral health issues in Louisville, even in instances where safety does not require a law enforcement presence. . . . While some calls necessitate a primary law enforcement response because of violence or threats of violence, thousands of calls per year could be safely and more effectively resolved through a response by behavioral health professionals, such as a mobile crisis team,

Article 14, Section 9 states: “There will be no layoffs of Members for the duration of this Agreement.”

Article 14, Conditions of Employment, Section 9 must be deleted. Prohibiting layoffs makes it difficult to lay off the officers who aren’t needed to respond to health calls and provide the duties and pay to qualified health professionals instead.

Article 14 Section 9 Conditions of Employment

There will be no layoffs of Members for the duration of this Agreement.

4. Change to Article 17 – Disciplinary Procedure and Bill of Rights, Section 2 Receipt of Complaints

The DOJ report states on page 73: “Before 2022, LMPD lacked a functioning early warning system to flag officers who may need additional support. It remains to be seen if recent efforts to implement such a system will be successful.”

Article 17 – Disciplinary Procedure and Bill of Rights, Section 2 Receipt of Complaints is a long section that sets out the process for complaints, including complaint inquiry forms. It nowhere mentions the early warning system, which should be a key component in the receipt of complaints process. It should be revised to require all complaints of any sort about an officer be logged into the early warning system and retained for the duration of the officer’s employment plus 5 years.

Article 17 Section 2 Disciplinary Procedures & Bill of Rights

Receipt of Complaints

The following procedures apply for processing the complaint: a) The complaint procedure as defined in KRS 67C.326 and this Agreement shall be explained to the complainant by a LMPD commanding officer or Professional Standards Unit (PSU) investigator. b) If the complainant elects to file a formal complaint, the complaint shall be taken in the form of an affidavit, signed and sworn to by the complainant. If, after the completion of an investigation, it is determined by the Chief of Police or his/her designee that a complainant filed a false affidavit in violation of KRS 523.040 or falsely reported a criminal incident in violation of KRS 519.040, the affected Member may be afforded a meeting with the Special Investigations Division (SID) Commander and other appropriate personnel, as designated by the SID Commander. c) If the complainant declines to file a formal complaint, a complaint inquiry form shall be completed. The commanding officer or the PSU investigator shall record as many specifics as possible. When a complaint inquiry form is completed the PSU shall do one of the following: i. Forward to the Chief’s Office if the allegations involve criminal activity. ii. Determine if there is information independent of that obtained from the citizen substantiating the allegations of misconduct. iii. Handle the complaint in an informal manner. In these cases, no investigative paperwork is entered into a Member’s personnel file.

The complaint inquiry form shall be maintained solely and exclusively by the PSU. The contents of this information shall be transmitted to the Chief or his/her designee for appropriate handling. If the Chief or his/her designee directs an investigation, the procedures outlined in KRS 67C.326 and this Agreement shall

be followed. The complaint inquiry form will be retained pursuant to Louisville Metro's Commonwealth approved document retention policy.

5. Another Change to Article 17 – Disciplinary Procedure and Bill of Rights, Section 2 Receipt of Complaints

The DOJ report states on page 75: “LMPD does not consistently investigate potential misconduct. One reason for this failure is structural: In the absence of a sworn civilian complaint, only the police chief may initiate an administrative investigation. LMPD does not authorize any other official to open investigations, and LMPD policy does not specify when the chief should or must open an investigation.”

Article 17 – Section 2 Receipt of Complaints should be changed to clarify that management other than the Chief can order administrative investigation and should provide broad authority for them to do so in all circumstances.

Article 17 Section 2 Disciplinary Procedure & Bill of Rights

Receipt of Complaints

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6. Change to Article 18 -- Personnel Files, Section 4 Supervisor Files

The DOJ report states on page 75: "The collective bargaining agreement between Louisville Metro and the union that represents LMPD officers further constrains supervisors by requiring destruction of supervisory notes and performance reviews after one year. Even supervisors who wish to keep track of minor violations addressed with counseling cannot do so for more than a year."

Article 18, Personnel Files, Section 4 Supervisor Files C states in pertinent part: "Documents contained in supervisory files shall not be retained after one (1) year from said documentation."

Article 18, Personnel Files, Section 4 Supervisor Files must be changed to retain supervisory files for the length of the officer's employment plus five years.

Article 18 Section 4 Personnel Files

Supervisor Files

A. Supervisors may maintain one file for each Member under their supervision which contains informal notes by the supervisor concerning the Member's job performance or conduct, notes made in performance review or other counseling sessions with the Member, copies of completed work assignments, drafts or work in progress and informal written communications between the Member and the supervisor concerning performance or conduct issues.

B. The purpose of supervisory files is to encourage supervisors to maintain informal records on a continuing basis, which will provide substantiation for

performance ratings or other performance or conduct related actions. File materials become part of a Member's personnel file only if they are incorporated in or attached to related personnel actions. In the event a Member transfers within the department, his supervisory file materials may be transferred to a new supervisor.

C. Documents contained in supervisory files shall not be retained after one (1) year from said documentation.

7. Another change to Article 17 -- Disciplinary Procedure and Bill of Rights, Section 2 Receipt of Complaints

The DOJ report states on page 76-77:

Rather than freely accepting complaints of officer misconduct, however, LMPD imposes numerous barriers not required by state law:

- If a civilian wants to file a complaint against an officer, LMPD policy “encourage[s]” commanding officers to resolve “minor concerns” informally, without disciplinary action. LMPD does not document informal complaints in officers’ personnel files.

- Officers exercise discretion over whether to send unsworn complaints to the internal affairs units. Until 2021, LMPD destroyed documentation of unsworn complaints 90 days after receipt.
- Patrol divisions do not follow a standard practice for receiving complaints of officer misconduct from civilians. Some supervisors screen out complaints from ever being submitted, including by persuading civilians not to file complaints.

- LMPD’s complaint form requires the complainant to initial two statements: that anyone who “makes a false statement under

oath” about any “material” issue “shall be guilty of Perjury in the Second Degree,” and that an officer can sue any person who makes “a false statement under oath” against the officer. As a federal court found after examining similar language in another law enforcement agency’s complaint form, this type of warning can intimidate complainants and “undermines the integrity of any internal investigation process because it may prevent a complaint from ever being made.”

All of these practices are included in Article 17, Section 2, Receipt of Complaints so it needs to be revised to eliminate these and perhaps specify some other practices.

Article 17 Section 2 Disciplinary Procedure & Bill of Rights

Receipt of Complaints

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The complaint inquiry form shall be maintained solely and exclusively by the PSU. The contents of this information shall be transmitted to the Chief or his/her

designee for appropriate handling. If the Chief or his/her designee directs an investigation, the procedures outlined in KRS 67C.326 and this Agreement shall be followed. The complaint inquiry form will be retained pursuant to Louisville Metro's Commonwealth approved document retention policy.

8. Change to Article 17, Section 6, D

The DOJ report states on page 83: "Some LMPD officers have violated the law and LMPD policy again and again over the course of years."

Article 17, Section 6, D needs to change so it no longer prohibits the use of reprimands and suspensions in additional cases of discipline.

Article 17 Section 6 Disciplinary Procedure & Bill of Rights

File Retention

A. All PSU files shall be maintained in accordance with applicable statutes and regulations regarding archive retention. B. All PSU files will be maintained in accordance with Article 18, Personnel Files, of this Agreement.

