

To: Council Member Dorsey and Louisville Metro Council

From: Ariana R. Levinson, in personal expert capacity (not representing University of Louisville)

Re: Proposed C&L CBA

Date: 11/8/21

I. State Law Does Not Require These Provisions

These are some of the provisions that the LMPD and the FOP could revise without requiring any reform of state law.

A. No Layoffs

Article 14, Section 9 prohibits layoffs. Layoffs are not addressed, and certainly not prohibited, by KRS 67C.

B. Paid Suspension

Article 17, Section 2 provides only for suspension with pay unless there are extraordinary circumstances whereas the CBA can be changed to provide that all suspensions are without pay. 67C.326 simply provides an investigation must be finished in 60 days. It does not provide the suspension must be paid – it clearly states, “paid or unpaid.” One easy solution would be to put an officer who is captured on video tape engaging in violence against an unarmed protestor, or engaging in similar terminable conduct, on unpaid leave and wrap the investigation up in 60 days. If the Merit Board finds the suspension was unwarranted, back-pay will be paid. Other employers have no difficulty suspending workers without pay, completing investigations in a timely manner, and paying back pay when so ordered.

For reference here is the statutory language: “For any police officer suspended with or without pay who is not given a hearing as provided by this section within sixty (60) days of any charge being filed, the charge then shall be dismissed with prejudice and not be considered by any hearing authority and the officer shall be reinstated with full back pay and benefits;”

C. Informal Complaints

Article 17, Section 1 provides that informal complaints will not be placed in a member’s personnel file and will be destroyed after two years. 67C.326 does not require destruction of complaints at all and does not limit complaints being placed in an officer’s personnel file. It simply states that informal complaints can be taken, they can be investigated, and they can lead to charges against the officer if substantiated by additional evidence.

For reference here is the statutory language: “If a complaint is required to be obtained and the individual, upon request, refuses to make allegations under oath in the form of an affidavit,

signed and sworn to, the department may investigate the allegations, but shall bring charges against the police officer only if the department can independently substantiate the allegations absent the sworn statement of the complainant;”

D. Supervisory Files

Article 18, Section 4 provides that documents within a supervisory file shall be destroyed after one year. Neither supervisory files nor destruction of documents is addressed by 67C.

II. These Provisions are Out of Line with Other Contracts

A review of three other nearby cities’ police contracts demonstrates that none of these provisions, with two partial exceptions, are included in any of these comparable cities’ contracts. I reviewed the following CBAs.

Collective Bargaining Agreement 1: The City of Cincinnati, hereinafter referred to as the "City" and the Queen City Lodge No. 69 of the Fraternal Order of Police, hereinafter referred to as the "FOP". May 2, 2021 – April 27, 2024

Collective Bargaining Agreement 2: The CITY OF INDIANAPOLIS (hereinafter referred to as the City) and the FRATERNAL ORDER OF POLICE, LODGE #86 (hereinafter referred to as the “F.O.P.): January 1, 2017, through December 31, 2020

Collective Bargaining Agreement 3: This Memorandum of Understanding (hereafter "MOU") is made and entered into by and between the Metropolitan Government of Nashville and Davidson County (METRO) and the Fraternal Order of Police, Andrew Jackson Lodge #5, (hereinafter "UNION"). July 1, 2009- June 30, 2012

Tennessee and Indiana are two of the 21 states that, like Kentucky, have a police bill of rights.

A. Article 14, Section 9, No Layoffs

Cincinnati: Article XXI, Layoff Provision

The City shall be required to provide the Union President a minimum of thirty (30) calendar days written notification of any layoffs in the bargaining unit, and a minimum of ten calendar days written notification of any layoffs to the affected employee(s).

Indianapolis: Article IV, Miscellaneous, Section 7. Layoffs.

If the City decides a layoff is necessary, it will comply with all applicable legal requirements including LC.§ 36-8-4-11.

LC § 36-8-4-11(A) states:

If it is necessary for the safety board to reduce the number of the Police or Fire Department by Layoff for financial reasons, the last member appointed must be the first to be laid off, with other members also laid off in reverse hiring order, until the desired level is achieved.

Nashville:

No provision addresses layoffs.

B. Article 17, Section 2, Paid Suspension

Cincinnati: Article II, Management Rights

The FOP recognizes that, except as provided in this labor agreement, the City of Cincinnati retains the following management rights as set forth in Ohio Revised Code Section 4117.08(C) 1- 9:

. . . . To suspend, discipline, demote or discharge for just cause, or lay-off, transfer, assign, schedule, promote or retain employees;

Indianapolis: Article III, Section 3, City Rights

The City, on its own behalf and on behalf of its citizens, hereby retains and reserves all powers, rights, authority, duties, and responsibilities conferred upon and vested in it by the laws and the Constitution of the State and of the United States, the City Charter, the Code, and any modifications made thereto. Further, all rights which ordinarily vest in and are exercised by employers except to the extent such are specifically relinquished herein are reserved to and remain vested in the City, including but without limiting the generality of the foregoing right: . . . to discipline and discharge employees for cause under applicable laws;

Nashville: Article 11 – Corrective Action and Discipline

Disciplinary actions include suspension, demotion, and/or dismissal from employment. Refer to Civil Service Rule 6.5, Types of Disciplinary Action, for further information.

Section 6.5 – Types of Disciplinary actions states in pertinent part: In the interest of good discipline, an Appointing Authority or his designee may for just cause and after proper notice and hearing take the following types of disciplinary action: A. Suspension - An Appointing Authority may suspend an employee without pay for cause, provided that the suspension does not exceed an accumulation of 30 working days during a twelve (12) month period. Upon mutual agreement by the Appointing Authority and the employee, suspensions may be deducted from accrued vacation. The Appointing Authority or his

designee shall have the discretion to determine whether or not an employee in a leave without pay status loses their vacation and sick accrual, and must notify the employee in the determination letter.

C. Article 17, Section 1, Informal Complaints

Cincinnati: Article XI, Service Record Availability Section

All entries and copies placed in the member's personnel service record pertaining to allegations or charges which are determined to be "not sustained" or "unfounded" or which result in an exoneration of the accused member shall be immediately removed from the member's personnel service record and destroyed in accordance with law.

Indianapolis: Internal Affairs Files and Investigations.

It is understood that the information retained by the Internal Affairs Office is not included in an employee's Personnel File. An employee may have access to his/her own statement given to Internal Affairs. Further, once an employee is scheduled for interrogation by the Internal Affairs Office, he/she will be provided a copy of the Officer's Bill of Rights, the complaint in non-criminal cases, where one exists or an oral summary of the complaint where one does not, and will be informed of the nature of the complaint in criminal cases, but in neither case will the name of the complainant necessarily be disclosed. Officers who are subject to investigation by Internal Affairs shall be individually notified in writing of the disposition of said investigation within two (2) weeks of said disposition. Officers subject to interview or interrogation by Internal Affairs shall have the right to have an attorney or representative from the F.O.P. present during the interview or interrogation, but the representative shall not participate except to advise the officer.

Nashville:

The Nashville CBA does not address complaints.

D. Article 18, Section 4, Supervisory Files

Cincinnati: Article XI, Service Record Availability

The Cincinnati CBA does not address supervisory files.

Indianapolis: Section 2, Access to Files

The Indianapolis CBA does not address supervisory files.

Nashville: Article 10, Personnel Policy

The Nashville CBA does not address supervisory files.

Summary of the Findings - Comparing Other City Contracts

In summary, a review of three other nearby cities' police contracts demonstrates that none of the other contracts contain a no layoff clause, prohibit suspension without pay other than in extraordinary circumstances, or specify that supervisory files should be destroyed after one year. None of these CBAs require that complaints are not placed in personnel files and destroyed after two years either. Cincinnati places charges in an officer's personnel file and only removes them if they are determined to be unfounded or the officer is exonerated. On the other hand, Indianapolis does not include information retained by the Internal Affairs Office in an officer's personnel file, but they complete reviews within two weeks, and the agreement does not specify that the Internal Affairs Office should destroy complaints after any time period.

Louisville's proposed Captains and Lieutenants CBA as currently written restricts Metro Government rights in these areas more than Cincinnati's, Indianapolis', and Nashville's CBAs.