

**FOP Collective Bargaining Agreement Questions
Submitted by Louisville Metro Council Members**

1) Does KRS 67C.326 only apply to citizen complaints or do all the proscriptions and prohibitions apply in all matters involving alleged misconduct, including specifically disciplinary matters initiated by the Chief or his designee?

The title of the statute itself suggests that it only concerns the review of citizen complaints against police officers, but the body of the statute refers to complaints taken by any individual. The Kentucky Supreme Court has held that the KRS 15.520 procedures apply to complaints filed by any individual as well as disciplinary actions originating from within the police department. *Pierce v U of L*, 448 SW3d 746 (KY 2012). KRS 67C.326 is virtually identical to KRS 15.520.

2) Does Article 17, Section 2(F) conflict with state and/or local law and/or the CBA in that disciplinary matters shall not be subject to binding arbitration?

FOP and Metro did not bargain for non-progressive disciplinary matters (or health insurance issues) to be subject to binding arbitration. The Metro ordinance on binding arbitration controls per the intention of the parties and Article 3 Subordination. In addition, according to the Article 12, Section 1, discipline is not subject to the grievance process. Instead, discipline is appealed only to the Police Merit Board pursuant to the procedures spelled out in KRS 67C.301 to 67C.327. A recent arbitration decision, however, suggests that the FOP believes that discipline can be overturned by an arbitrator even if the discipline is upheld by the Police Merit Board. FOP can clarify its position at the next hearing.

3) Regarding the “Preface” in the Agreement (page 4) has the FOP made any commitment to actually change any of the provisions of the agreement in the future discussions called for in the agreement?

The FOP agreed to incorporate the “Preface” into this contract. There have been no further agreements regarding any specific articles of a future contract to be negotiated. FOP also addressed this question during the October 13 Council hearing, committing again to change in general but needing to review the details of any specific proposals.

4) Article 15, Section 9 (page 22). Why was the provision added to the agreement to permit officers to review body camera evidence prior to making a statement or report regarding the incident? Do all Metro employees have the right to review all camera evidence related to incidents in which they are involved before making any statement or report? Is this right for police officers required by state law?

We are not aware of any state law that mandates this right. This is a best practice for law enforcement as LMPD can elaborate during the next hearing. LMPD also releases body camera footage to the public within hours in most cases.

In an effort to be responsive to this and all further questions regarding if there are similar provisions in any other Metro contract, it must be noted that there are 21 collective bargaining agreements, which are all different in regard to discipline and investigations. Because of these differences, our summary will be general.

For most other Metro employees and CBAs, incidents consist of rules, regulations and/or operating procedure violation. Outside of LMPD, no other Metro employee's job requires them to wear a body camera. In addition, we are not aware of other Metro employees being allowed to review evidence prior to the completion of the investigation.

When non-criminal complaints alleging misconduct or rule/regulation violation is received, the complaint is typically investigated within a reasonable time and a determination is made as to the validity and/or the appropriate action taken. In most CBAs, the department is not obligated to investigate anonymous complaints.

A union Member will have the right to have a Union representative, steward, or officer with him/her at the fact finding or disciplinary meeting, at which time any and all evidence available (including any signed statements, video, etc.) can be disclosed. Depending on the CBA, previous violations or charges may not be considered if they exceed 1 year (or, in some CBAs, 6 months for minor charges or violations).

If the complaint alleges criminal activity on behalf of the union member, the complaint is typically referred to an appropriate law enforcement entity.

5) Article 17, Section 1, A, f. (page 23). New language has been added giving officers a right to meet with various personnel in the event a citizen files a complaint which the Chief of Police deems to be false? What is the purpose of this provision? Is there a concern that this discussion of potential action against complainants will inhibit citizens from making complaints? Was the concern considered by the administration? Are there similar provisions in any other Metro employee contract? Is this right for police officers required by state law?

We are not aware of any statutory mandate for this provision. However, it must be noted that falsely reporting an incident is a Class "A" misdemeanor under KRS 519.040 The officer is allowed in those instances to request that the commander of PIU/PSU to enforce that law.

FOP proposed a change to this article and section in their first proposal on 7/11/2018. After numerous discussions, the compromised change was agreed to on 2/6/2019.

6) Article 17, Section 2 (page 24). The Suspension Without Pay Pending Section has never been approved by Metro Council in a prior agreement. It severely limits the ability of LMPD to suspend an officer without pay. For example, pursuant to the provision, which is currently in a side letter agreement Metro Council never approved, Officer Robert Neff received full pay from March of this year until October despite having been

criminally charged by his own department with six offenses, including official misconduct Is this limitation on suspensions without pay required by any state law? Is this right to maintain pay despite afforded to other Metro employees? Are there similar provisions in other Metro contracts, limiting managerial rights to suspend employees without pay? What agreements?

The provision does not limit the ability to suspend without pay because there was no ability to suspend without pay until the original Letter Agreement was reached in 2015. Metro and FOP entered a Letter Agreement on this issue in 2015 after incidents arose in which the suspension without pay would have preferred. Letter Agreements are temporary to address specific issues that may arise during the term of the CBA. Council approval is not required and they are negotiated for other CBAs as well. In this particular case, state law does not provide for the suspension of officers without pay, and the Letter Agreement, now incorporated into the CBA, filled that void.

In addition, suspension without pay is not discipline and cannot be used as such. Discipline can be administered only for "just cause." The purpose of suspension without pay arises when the allegation itself is so egregious that the officer must be taken off the street while the investigation into a crime or misconduct is completed.

7) Article 17, Section 3, A. (page 25) Is the provision that allows officers to refuse to speak to an investigator of alleged misconduct for 48 hours after an incident afforded to other Metro employees? Are there similar provisions in other Metro contracts? Which contracts?

If the similar provision in state law is changed by the Kentucky General Assembly will police officers still have this right under the contract Metro Council is being asked to approve? Will this right continue beyond June 30, if no agreement is reached by that time?

This is current contract language and has been in the collective bargaining agreement since before merger. Labor Relations found it as far back as 1998. The officers will retain contractual rights if the statute changes, which is the reason we entered into a short-term contract after we had the deadline set to complete negotiations before the next state legislative session began.

8) Article 17, Section 3, B. (page 25). This is a new section never before approved by Metro Council giving officers a right to specific information about any alleged violations of consolidated local government rules or regulations prior to being questioned. Is this right afforded to other Metro employees? Are there similar provisions in other Metro contracts? Which contracts? Is this requirement required by any state law?

KRS 67C.326 applies but does not require this provision. Any charge involving violation of any consolidated local government rule or regulation shall be made in writing with sufficient specificity so as to fully inform the officer of the nature and circumstances of the alleged violation. This provision only requires the officer to be provided enough information to

understand the allegation and respond thoroughly. LMPD can elaborate during the next hearing.

FOP proposed this change to this article and section in their first proposal on 7/11/2018. After numerous discussions, the compromised change was agreed to on 2/6/2019.

9) Article 17, Section 3, E. (page 25). Is the right to a transcript and recording of any questioning afforded to other Metro employees? Are there similar provisions in other Metro contracts? Which contracts? Is this required by state law? If so, will the provision remain effective, even if state law is changed?

Anyone who makes a statement to PSU (complainant, witness, or officer) has the right to a transcript and recording of their statement. All LMPD employees (Teamsters, AFSCME, non-union, FOP) as well as any citizen are afforded this right.

This is current contract language and has been in the collective bargaining agreement, which was passed by Council, since 2004.

10) Article 17, Section 3, M. (page 26). This section limits public comment about alleged officer misconduct, including by elected officials. It has been widely condemned by Mayor Fischer and Metro Council members as preventing transparency and fostering much concern and confusion in the community. Why did the administration leave it in the contract?

If the similar provision in state law is changed by the Kentucky General Assembly, will public comment still be prohibited because of the approval of this contract? Will this right continue beyond June 30, if no agreement is reached by that time? Has the FOP made a binding agreement to remove it if the state law provision is removed?

This is current contract language and has been in the collective bargaining agreement, which was passed by Council, since 2013. It is contained in KRS 67C.326. It will continue per the contract, which is why Metro entered into a short-term contract. FOP has not made a binding agreement to remove it if the law changes as that will be part of the collective bargaining process. Metro is reviewing this as a potential part of our legislative agenda.

11) Article 17, Section 3, N. (page 26). This provision eliminates the ability of a civilian review board to require officers to speak or testify to it, limiting civilian oversight of our police department. If the similar provision in state law is changed by the Kentucky General Assembly will police officers still have this right under the contract Metro Council is being asked to approve? Will this right continue beyond June 30, if no agreement is reached by that time? Has the FOP made a binding agreement to remove it if the state law provision is removed?

The civilian review board would be considered of a governmental nature, as FOP and LMPD can elaborate during the next hearing. This is current contract language and has been in the collective bargaining agreement, which was passed by Council, since 2013

12) Article 17, Section 4, D. (page 27). This section limits discipline, by not allowing previous disciplinary actions to be considered after certain time limits have elapsed. Is this right afforded to other Metro employees? Are there similar provisions in other Metro contracts? Which contracts? Is this requirement required by any state law?

This language was in the last contract that Council passed and allows for the most significant violations to be considered for discipline for the longest period of time in a progressive-like fashion. LMPD can elaborate at the next hearing.

13) Article 17, Section 6, C. (page 27). This section limits who can participate in interviews regarding critical force incidents. Do any other citizens have the right to say which category of police officer may interview them? Is this right afforded to other Metro employees? Are there similar provisions in other Metro contracts? Which contracts? Is this requirement required by any state law?

This section involves *Garrity* rights, which are derived from the Supreme Court and protect public employees from being compelled to incriminate themselves during investigatory interviews. PSU can compel testimony to make progress with its investigation without interfering with *Garrity* rights. PIU, however, cannot compel testimony because of 5th Amendment protections. The PIU investigates officers involved in critical force incidents and they are the only investigators that shall be present during the interview.

14) Article 18, Section 2, F. (page 28). This provision limits who can see officer personnel files and would appear to prohibit review by a new Inspector General, members of a new Civilian Review Board and members of Metro Council? Is this right afforded to other Metro employees? Are there similar provisions in other Metro contracts? Which contracts? Is this provision required by any state law?

Any of the above-mentioned entities could obtain an officers personnel file through an open records request, once personal information has been redacted. This is current contract language and has been in the collective bargaining agreement since before merger. Labor Relations found it as far back as 1998.

15) Article 18, Section 4, C. (page 31). This provision requires destruction of some documents in supervisory files. Is this right afforded to other Metro employees? Are there similar provisions in other Metro contracts? Which contracts? Is this requirement required by any state law?

Metro HR should be the official repository for personnel files as it maintains the records in accordance with State Archive policies. LMPD, like other departments, may maintain its own

files on personnel for convenience or additional copies of documents. Any documents of significance should be forwarded to Metro HR for placement in the officer's official Metro HR personnel file, or the incidents should be documented on the officer's annual evaluation which is maintained in the officer's Metro HR personnel file.

Supervisory files are different than the official personnel files maintained by Metro HR. They are maintained by the officer's supervisors and may include documents and notes that allows the supervisor to complete the officer's annual review.

This contract language did not change. Document retention in supervisory files changed from 3 years to 1 year in the 2004 collective bargaining agreement.

Metro is reviewing this as a potential part of our legislative agenda.

16) Article 23, Section 5 (page 33). This provision requires Metro to pay judgments and settlements against Officers except in specified cases.

Does this same provision apply to other Metro employees? Are there similar provisions in other Metro contracts? Which contracts?

Is this provision required by state law?

KRS 65.200 to .2006 generally requires Metro to defend and indemnify all Metro employees sued for acts committed within the scope of their authority (limited exceptions do exist). Also, LMCO sections 35.180 to 183 requires the same, with a couple of exceptions.

17) Article 33, Section 2 (page 42). This provision is new and includes \$0 Monthly premium plans for spouses, children or families, beginning on July 1, 2021.

Does the administration intend to make these options available to all Metro employees?

Has the cost of this new benefit been discussed with Metro Council or any Metro Council committee?

What is the estimated cost to Metro for this benefit in FY 22?

We have not developed our FY22 health plan yet. This is usually completed after the actuarial review of the first six months of the current plan year and prior to the development of the open enrollment communication plan during March and April of each year (stop loss cost, health claims trends, pharmaceutical cost trends, etc.). It is our intent to extend this \$0 premium option for the Managed Choice plan as broadly as possible. It is viewed as a matter of equity (to reduce the percentage of an individual employee's pay dedicated to health care—that is, an individual who makes double the salary of another employee effectively pays half the rate of pay toward health whereas if the premium is \$0 the differential will be eliminated) as well as a more consumer-driven approach to health care. This will extend the growth of the Managed Choice plan that was under 400 participants 8 years ago and is now at greater than 2,000 participants.

The topic of health insurance premiums as they relate to the non-grandfathered FOP members has come up at multiple Council committees as it relates to Public Safety, Budget, and budget hearings each year. Several Council Members have expressed concern regarding net take-

home pay for less tenured FOP members after health care costs are factored into compensation.

The cost of the plan for FY22 is still to be determined as above referenced. Aside from plan development, the cost will also be determined based on individual member choices (some may stay on their existing plans, some may opt to have other members of their household covered through a spouse's plan or some other option, and still others may migrate to this plan or migrate multiple family members). In the current year of FY21, Metro provides approximately \$17.9 million of the \$19.8 million in estimated premiums for the plan (it varies by exiting employees and the decisions of newly hired employees). Of the non-Metro premiums, FOP members pay approximately \$400K of the \$1.9 million in employee-paid premiums. The Managed Choice plan has a lower cost per beneficiary than either the Choice or Balanced Choice plans so the increase in employer-paid premiums may be offset by a lower cost per beneficiary for the Managed Choice plan (savings from migration from the other two plans to the extent that there is any migration).

18) Article 39 (page 44). This provision provides a new incentive for officers purchasing a home in certain census tracts.

Except for this one provision, are there any reforms called for in the Breonna Taylor settlement in this contract?

The majority of reforms are not driven by collective bargaining agreements. There are revisions regarding drug testing and personnel files that were stated in the settlement as items to address in 2021 through collective bargaining.

19) Appendix 1, Section 6 (page 52). This provision limits the use and distribution of drug tests, and a new provision (the last sentence) would appear to prohibit review by members of a new Civilian Review Board.

Are these limitations afforded to other Metro employees? Are there similar provisions in other Metro contracts? Which contracts?

Are these limitations required by any state law?

FOP proposed a change to this appendix in their first proposal on 7/11/2018. After discussion, the compromised change was agreed to and the tentative agreement was signed (TA'd) on 7/11/2018. LMPD can elaborate at the next hearing.

20) Salaries and Budgetary Impact. Daniel Frockt testified that the contract would not require an increase in the current year appropriation to LMPD because of the reduced number of officers.

What would be the budgetary impact this fiscal year if the number of officers was at the actual level beginning on July 1, 2019 and compensation is as set out in the new contract?

What is the estimated budgetary impact of the new compensation for FY 22? What level of general fund appropriation does the administration believe will be needed for LMPD for FY 22?

We generally use an averaged sworn strength across a 12-month period (or quarterly from the budget documents), but for a point-in-time comparison between our most recent month-end of 9/30/20 compared to 6/30/19 there is a difference of 128 people (1,249 to 1,121). The cost per hire annually would be approximately \$80,000 with an additional \$5,000 for outfitting/computers/ancillary costs for a total estimate of \$85,000 per person and \$10.88 million for the complement of 128 additional people (assuming that the net gain of recruit classes less departures could increase the sworn level by 128 within a single year). Other than the aforementioned health plan, there is no compensation increase built into FY22 because the future contract has not been negotiated at this point in time. It is too early at this time to determine the general fund appropriation level for LMPD in FY22 due to unknown major items such as the department's strategic plan, community input/feedback, initial staffing levels, contract usage review, contract bid review, pension rates, health care costs after actuarial determination, US energy information guidance on unleaded fuel costs, workers' compensation claims, auto liability experiences, statutory changes, grant application status for operating matches, overtime trends/usage, court availability as it relates to court pay, language services, information technology needs, and the cycle timing of recruit classes to name a few variables that will inform the ultimate FY22 general fund appropriation recommendation.

21) General. Louisville's police contract has been criticized by academics and activists for containing provisions which limit accountability and transparency, including by organizations like Campaign Zero (<https://www.joincampaignzero.org/contracts>) and criminal justice experts like Professor Samuel Walker (<https://wfpl.org/with-police-union-contract-under-negotiation-fischer-could-push-for-changes/>).

Is there a single change in the agreement addressing any of these concerns? If so, what are those changes?

The issues raised in the Campaign Zero and Samuel Walker links provided in this question are issues of a non-economic nature. Many of the non-economic articles were TA'd long before the protests began in 2020. More importantly, Metro continued to have significant turnover and recruiting issues for a variety of reasons, including pay equity with nearby cities. Accordingly, as the preface states, Metro wanted to enter into a short-term agreement to attract and retain professional officers while the community discussions continue, including the 2021 Legislative Session. The Preface is entirely new and highly unusual for a CBA. No other Metro CBA contains any similar provision. Specifically, the new Preface states that both Metro and the FOP recognize this is a "time of great social and economic change and debate in our community and country". In addition, both parties "commit to begin negotiating a new Agreement no later than January 31, 2021, reflective of the continued community discussion and the need for reform...".

22) My understanding of any CBA that if there are any changes in the language of the agreement it must be sent back for further negotiations is this still the case?

This is the contract that was ratified by the membership of the FOP. As such, no changes can be made unilaterally by either side. Metro is not aware of Council voting against a CBA and working through that process will be a case of first impression. For any current and approved CBA, changes are negotiated either at the next CBA negotiation or through a Letter Agreement between union and Metro management.

23) Colonel Parks stated that she joined the negotiation team part way through, in December of 2019 and at that time, “we were essentially already through all the non-economic aspects of the contract.” Is that an accurate statement? Were there any additional non-economic items negotiated after December of 2019?

Colonel Parks joined the negotiation team at that time. Non-economic Articles that were open included the Preface, Article 3 Subordination, Article 14 Conditions of Employment, and Article 17 Disciplinary Procedure and Bill of Rights. The open economic articles included leave, insurance, CDBG incentive, allowances, and term of agreement.

24) In general terms, what is a collective bargaining agreement? Why, specifically is the collective bargaining agreement necessary with the FOP? What are the consequences of not ratifying the proposed contract? How is this contract better or worse and why?

In general terms a collective bargaining agreement (CBA, Agreement) is a written and signed document between an employer and labor organization that specifies the terms and conditions of employment. The terms and conditions of employment generally include wages and benefits, hours of work, working conditions including work rules, job classifications, and seniority rights as well as grievance resolution.

The CBA between Metro and the FOP is necessary because the two parties have a duty to bargain collectively as specified by state law (KRS 67C.402-.418) and Metro Ordinance (§35.053). This is the same general process followed by Metro and its other labor organizations.

The Labor team is not aware of any agreement that Council has not ratified and, therefore, not ratifying may be a case of first impression for how to address next steps. The contract addresses a long-needed pay equity adjustment to help recruit and retain officers while recognizing the need for change that continues to be debated in public discourse, including at Council and the upcoming 2021 Legislative Session.

Finally, state law requires good faith bargaining over terms and conditions of employment. Failure to good faith bargain by either side could be an unfair labor practice.

25) When will Chief Gentry’s internal policy changes/reforms review be complete? What are these ongoing reforms? What policies / reforms have already been implemented? Please enumerate each of those in a separate document.

Chief Gentry will provide an update into her first 30 days and changes that have been requested/implemented by November 1.

26) Can the Metro Council include a reverter clause in the resolution or contract? Could the reverter clause include time constraints requiring the enumerated policies listed in the whereas clauses be implemented by a time certain?

The Metro Council may amend the resolution as it sees fit. A time constraint can be suggested but rights that are bargained collectively must be agreed to within a contract which may not follow a specific time certain until the parties reach an agreement.

27) Please compile a cliff notes version (not the line by line differences document already provided) of the FOP CBA explaining the additions, deletions, improvements and changes of this contract in a succinct one- or two-page document, easy to read as this will be shared with the general public.

In addition to the former and proposed contracts and the summary document previously provided, Metro will supplement this answer with a document showing the prior CBA compared to the newly negotiated CBA being considered by Council now (for the changes of significant matters).

CW Dorsey question / requests made in committee:

28) Please produce a document that educates the public, not just on management rights, things we need to do on the state level and council level. Articulate that in an education base document to say, “here is what we heard from you” and “here is what we are doing from a management level,” whether that be from the Mayor or the executive level, here are the things that can be done at the Louisville Metro Council and here are the things that need to be done at the State level that we need to advocate for.

Attached is the Mayor’s letter to the Legislature that also addresses this question.

CW Dorsey question / requests made in committee:

29) Release a document that specifies what changes Mayor Fischer and the administration want to see and where those items lie. Publish that document for the public.

Attached is the Mayor’s letter to the Legislature that also addresses this question.

30) What are our LMPD policy change goals? What limitations are keeping us from introducing these policy changes now? What do we need to change / advocate changes for so we can implement these changes and achieve our goals?

As with the answer to Question 25, Chief Gentry will provide an update into her first 30 days and changes that have been requested/implemented by November 1. In addition, LMPD is in the process of learning more from the Hillard Heintze Review to determine any major changes to policy. Chief Gentry has initially focused on the department having an active supervision model and requiring lieutenants to work shifts with their people during peak hours, effective October 24th. The department also will begin a Night Chief rotation of majors and above in November to have additional leadership and supervision on nights and weekends. In addition, District Detectives are shadowing Homicide for several weeks as we transition shootings away from homicide to the division to decrease the workload and to hopefully increase the closure rate for victims and their families.