

**QUESTIONS TO JCAO FROM NOVEMBER 2 2020
SPECIAL LABOR AND ECONOMIC DEVELOPMENT MEETING**

From President James:

Was the LMPD chief able to suspend an officer without pay pending an investigation prior to the execution of the letter agreement between the FOP and Metro providing for suspensions without pay pending?

Response:

“Suspension without pay pending investigation” means suspending an employee without pay before the Chief has enough evidence to determine that there was “cause” for formal discipline. Usually such evidence is obtained through an investigation into the circumstances surrounding alleged misconduct. Per KRS 67C.321, discipline based on “cause which promotes the efficiency of the service” can include termination, demotion, or suspension up to thirty (30) days.

There is no statute or contractual provision that explicitly prohibits “suspension without pay pending investigation.” It should be noted that “suspension without pay pending investigation” is not discipline and cannot be used as discipline in lieu of discipline for “cause.” The only reason for “suspension without pay pending investigation” is because the allegation of misconduct is so egregious and the evidence of the alleged misconduct is so blatant that the officer must be taken off the street while the investigation into a potential crime or misconduct is completed.

The JCAO has not normally been involved in LMPD disciplinary decisions so questions about the history and past practices may ultimately be better addressed by representatives of the LMPD and the FOP. LMPD’s reluctance to impose suspension without pay pending investigation is likely because of the “cause” requirement for discipline included in KRS 67C.321 and the procedural rights contained in KRS 67C.326 and the CBA.

Our office has no first-hand information about the discussions and circumstances leading up to the MOU. We understand that in 2015, an incident of alleged police misconduct (domestic violence) was caught on video. There a dispute between LMPD and the FOP about the circumstances under which the officer involved could be suspended without pay since no parameters had been set by statute or contract about how to impose such suspensions. The FOP may have threatened an unfair labor practice, a grievance or some other type of litigation. The April 9, 2015 Memorandum of Understanding (mistakenly referred to in recent discussions as a “letter agreement”) setting out standards for “suspensions without pay pending investigation” was a result of discussions between LMPD and the FOP.

LMPD leadership or the FOP will be better able to answer any questions about the circumstances and discussions leading up to the MOU.

From CM Coan:

Article 41 Section (2): the 150 day notice: if Metro fails to notify FOP of "desire to alter any portion of any terms" of the agreement by January 31, 2021 and July 1, 2021 comes and goes without a new agreement, does the notice by 1/31/21 requirement preclude Metro from negotiating any changes to the contract as extended (if extended) beyond June 30, 2021?

Response:

This is another question best posed to the parties to the CBA--Metro and the FOP – as they are best suited to elaborate on their intent underlying in this term. The language seems to preclude any changes if notice of the change is not provided prior to the deadline. But Mike Carrell (and Penny Bland) apparently believe this has never been enforced by either side in terms of bringing specific new (or different) items to the table. Mr. Carrell stated last night that the parties interpret that term to mean notification generally that a party intends to open negotiations on a new CBA. The Council may wish to confirm that understanding with the FOP.

What is the law and process on letter agreements, generally? Is Council approval required for letter agreements to be effective?

Response:

As discussed above, MOUs generally memorialize the parties' agreement as to how to interpret existing provisions of their contracts. Letter agreements generally are used to add a component to an existing agreement. As is true of the CBA itself, the JCAO is not part of the negotiations for letter agreements.

We are unaware of any legal requirement that a letter agreement be presented to Council for approval. By its terms, LMCO 35.057 requires only union collective bargaining agreements to be presented for approval. By analogy, amendments to procurement contracts are not required to be presented to Council unless additional appropriations are needed to fund the modifications.

Reviewing Appendix XI of the LMCO, it appears that the practice of the executive branch prior to merger was to present letter agreements for legislative approval. It is unclear whether all letter agreements between unions and the former City of Louisville were presented to the Board of Aldermen. Since merger, it appears that only one letter agreement has been sent to Council for approval. As JCAO is not involved in crafting these agreements, we cannot speak to whether Metro has executed any other letter agreements with unions since merger. The FOP and the administration could provide you with that information.

From CM Yates:

Is Council approval required for extensions of the terms of collective bargaining agreements CBAs while the parties negotiate new CBAs?

Response:

An extension of a CBA is executed to continue the terms of an existing contract while the parties negotiate terms for a new CBA. Extensions are generally viewed as a part of the collective bargaining process, and JCAO not involved with this process. As we understand it, extensions generally continue the terms of the existing contract and do not create additional rights or obligations. As the parties to the extensions, the administration and the FOP can speak to the scope of their extension agreements.

As is true of letter agreements, we are unaware of any legal requirement that a contract extension be presented to Council for approval. By its terms, LMCO 35.057 requires only union collective bargaining agreements to be presented for approval. Appendix XI of the LMCO reflects only one CBA extension agreement was ever presented by the City of Louisville to the former Board of Aldermen; no extensions have been presented to Council since merger.