



TO: Michael Cox, Chief of Police
Jason Forsberg, Deputy Chief of Police
Amy Metzger, Deputy Chief of Police
Margie Radabaugh, Senior Assistant City Attorney
Heather Koch, Human Resources Service Partner
FROM: John Fournier, Assistant City Administrator
RE: Draft Second Round Bargaining Proposals for AAPOA
DATE: 6/15/2020

This memo details draft bargaining positions that we may present to the AAPOA at our next bargaining session for their consideration. These proposals have been created based on conversations with city staff, external review of the city's proposed bargaining agreement with the AAPOA, and a discussion with the City Council Budget and Labor Committee held on 6/13/2020. This document is not a final strategic approach, and will be reviewed and finalized prior to the city's scheduled bargaining session with the AAPOA on Friday, June 19, 2020.

High Priority Bargaining Positions

1. Amend the 24-month Expiration on Disciplinary Decisions

Article 5, Section 4 of the contract states that no discipline older than 24 months may be factored into progressive disciplinary decisions. We could propose the following amendment:

*Section 4: The investigating supervisor shall, upon completion of his or her investigation, make a recommendation to the ~~employee's Division Commander~~ **Deputy Chief** regarding the formal disposition of the complaint, and, if that recommendation is "sustained", recommend specific discipline, if any. These recommendations shall not be based on infractions which have occurred more than twenty-four (24) months prior to the incident currently under investigation **with the exception of discipline related to:***

- 1) **Excessive use of force:***
- 2) **Mishandling of a weapon:***
- 3) **Mishandling of evidence:***
- 4) **Integrity related misconduct; or***
- 5) **Unprofessional interaction with a community member.***

2. Amend the City's Requirement to Follow Progressive Discipline in Certain Cases

Article 5, Section 7 of the contract states that the city must follow the rules of progressive discipline in all cases. We could propose the following amendment:

*Section 7: The forms of discipline may consist of the following, however, depending on the offense, discipline for a particular incident or infraction may result in more than one of the listed disciplines. The Employer shall employ the principles of progressive discipline, **with the exception of discipline related to:***



- 6) Excessive use of force;
- 7) Mishandling of a weapon;
- 8) Mishandling of evidence;
- 9) Integrity related misconduct; or
- 10) Unprofessional interaction with a community member.

~~but the~~ The circumstances and severity of the incident will determine the actual discipline imposed.:

3. Create a Disciplinary Chart

We could propose a disciplinary chart, similar to the chart that is provided in the DC police contract (starting on page 20:

https://dchr.dc.gov/sites/default/files/dc/sites/dchr/publication/attachments/edpm_16_18_discipline.pdf)

The advantage of this approach is that an arbitrator would be bound to the discipline in the contract, and so if the standards are to our approval we could prevail on disciplinary issues pretty regularly. However, the drawback is that the union will always want to bargain these standards down and if we lose an Act 312 arbitration on some of these disciplinary issues we could be locked into some standards that are problematic. Ultimately this would involve the City ceding our management rights to determine discipline to the union, which is notable. Councilmember Eaton asked us to discuss this idea, so I would like to work through it and decide if this is an approach we would like to take.

4. Amend the Provision Related to Binding Arbitration

Article 5, Sections 3 and 4 state that unresolved grievances must be appealed to the American Arbitration Association. We could propose changes that protect binding arbitration, but ensure that grievances related to discipline are appealed to a local arbitration panel. I am not sure I want to start with this proposal, but I wouldn't mind ending with what is detailed in the following language:

e) Step 4: If the grievance is not satisfactorily settled at Step 3, and the Executive Board determines the grievance to be valid, the employee or the Association shall have the right to appeal to the Director of Human Resources; provided said appeal is made within twenty one (21) calendar days of receipt of the written Third Step answer. The representatives of the Association shall meet with the Director of Human Resources and/or his/her designated representatives within fourteen (14) calendar days of the presentation of the appeal. The Association representatives may meet thirty (30) minutes prior to this meeting. The Director of Human Resources or designated representative's written answer shall be filed within fourteen (14) calendar days after that meeting. In lieu of filing an answer, the Director of Human Resources, in his/her discretion, may submit the grievance to a mutual agreeable arbitrator. ~~If the parties are unable to agree on an arbitrator, the services of the American Arbitration Association shall be used in making a selection. In such case, the decision of the arbitrator shall be binding on both parties.~~ as detailed in Step 5.

f) Step 5: if the Fourth Step answer is unsatisfactory to both the Association and the employee, the grievance may be submitted to a mutually agreeable arbitrator; provided said submission



is made in writing within fourteen (14) calendar days after receipt of the written fourth step answer. **For arbitration on purely non-disciplinary grievances,** if the parties are unable to agree to an arbitrator, the grievance shall be submitted to arbitration through the American Arbitration Association in accordance with its voluntary labor arbitration rules; provided such submission is made in writing within fourteen (14) calendar days of receipt of the fourth step answer. The decision of the arbitrator shall be binding on both parties. The arbitrator shall have no power to add to, subtract from, or modify any of the terms of this Agreement, nor shall he/she substitute his/her discretion for that of the Employer or the Association where such discretion has been retained by the Employer or Association, nor shall he/she exercise any responsibility or function of the Employer or the Association. It is recognized that some issues that may be the focus of a grievance are only able to be addressed properly at Step 3, 4, or 5. Examples of this are issues related to benefits or issues that affect multiple union members. In these cases, the union may appeal to the Chief of Police to "fast track" the process skipping the preliminary step and steps 1 and 2. If a new grievance is submitted to the Chief of Police, she/he will either handle the grievance starting at Step 3 or will direct the union to begin at a different step.

For arbitration on disciplinary grievances, or any economic or procedural issue related to a disciplinary grievance, if the parties are unable to agree to an arbitrator, the grievance shall be submitted to arbitration through a locally appointed three-member arbitration board who shall serve on a continuing basis and shall only be utilized when required by the procedure detailed in this agreement. Members of this arbitration panel shall be appointed as follows:

1. **One member shall be chosen by the Employer providing a list of ten persons to the Association not more than thirty (30) days after the effective date of the agreement in which this provision originally appears, after which the Employer and the Association will each rank order their preference from one to ten with ten being the most preferable choice. Ranking will occur without knowledge of either party's rank order, and will be compared after selections have been made at a time and date mutually agreed upon by the Employer and the Association but in no case more than thirty (30) days after the initial list has been provided by the Employer. Points will be assigned by rank, and the person with the most points will serve as the member of the arbitration panel for this seat. In the event of a tie, a name will be drawn from a hat and the person so drawn will serve as the member of the arbitration panel for this seat.**
2. **One member shall be chosen by the Association providing a list of ten persons to the Employer not more than thirty (30) days after the effective date of the agreement in which this provision originally appears, after which the Employer and the Association will each rank order their preference from one to ten with ten being the most preferable choice. Ranking will occur without knowledge of either party's rank order, and will be compared after selections have been made at a time and date mutually agreed upon by the Employer and the Association but in no case more than thirty (30) days after the initial list has been provided by the Employer. Points will be assigned by rank, and the person with the most points will serve as the member of the**



arbitration panel for this seat. In the event of a tie, a name will be drawn from a hat and the person so drawn will serve as the member of the arbitration panel for this seat.

3. One member shall be chosen by the city's Independent Community Police Oversight Commission (ICPOC) providing a list of ten persons to the Employer upon the request of the Employer, but in any case not less than one (1) day and not more than thirty (30) days after the other two members have been appointed. The Employer shall communicate this list, unedited, to the Association upon receiving it. If there is a person on this list who also appears on the list provided by the Association through the process detailed in paragraph two (2) of this sub-section, and that name has not already been appointed to the panel, that person shall be appointed and if there are multiple persons who appear on both lists, those individuals will have their names placed in a hat and one name shall be drawn, and the name so drawn shall be appointed to serve as the member of the arbitration panel for this seat. Otherwise, after the Employer communicates the list to the Association, the Employer and the Association will each rank order their preference from one to ten with ten being the most preferable choice. The Employer and the Association may each strike up to nine persons from this list, and those persons shall not be ranked and shall be removed from consideration. Ranking and striking will occur without knowledge of either party's rank order, and will be compared after selections have been made at a time and date mutually agreed upon by the Employer and the Association but in no case more than thirty (30) days after the initial list has been provided by the ICPOC. The name with the most points will serve as the member of the arbitration panel for this seat. In the event of a tie, those individuals will have their names placed in a hat and one name shall be drawn, and the person whose name is drawn shall be appointed to serve as the member of the arbitration panel for this seat. In the event that there remains no single mutually ranked person between the Employer's list and the Association's list, the Employer shall request a second list immediately from the ICPOC, and this second list shall be received from the ICPOC within thirty (30) days of being requested by the Employer. No person shall appear on this list who appeared on the immediately previous list provided by the ICPOC. The same process shall repeat, except that the Employer and the Association shall each be able to strike four (4) persons from the list of names and no more.

All members must have at some point been licensed attorneys and must have professional experience administering provisions of or negotiating collective bargaining agreements.

Arbitration decisions shall be rendered by a majority vote of the arbitration panel. All other procedures of the panel shall be established either by City ordinance, or by the mutual agreement of the arbitration panel members but in no way shall contradict any provision of this agreement.



Each member will serve staggered three-year terms, with one member serving an introductory one-year term, and one other members serving an introductory two-year term. The members who serve these shortened, introductory terms will have their names placed in a hat to be drawn, and the name so drawn first will serve the introductory one-year term and the name so drawn second will serve the introductory two-year term.

In instances when the arbitration panel has not been fully appointed, the parties shall use the process detailed in this agreement for resolving purely non-disciplinary grievances to resolve disciplinary grievances.

5. Alter Language Dictating What Records Officers May View Prior to Interviews

Article 5, Section 2 of the contract states that when an officer is being interviewed related to a misconduct allegation they may review "written records before responding," but we have always interpreted this to mean that they will only have access to their own written records. Therefore to bring this language in line with our own practices, we should amend the language to read as follows:

If the employee is unable to reply accurately, he/she will have the opportunity to review ~~the appropriate~~ written records **that they have personally and individually authored** before responding.

6. Diversity Requirement for AAPOA Executive Board

We could add language requiring diversity in the department to be represented on the board of the AAPOA by adding a Section 6 to Article 4 as follows:

At least 20% of the executive board positions of the AAPOA shall be held by people who are ethnic minorities and at least 20% of the same positions shall be held by people who are not male.

Concessions

1. Revisit Proposal from First Round

There are several proposals the police union made during negotiations that we did not accept that may need to be back on the table, including:

1. A \$1000 one-time master's degree bonus (would match COAM contract provision);
2. An RHRA Increase to \$4,000 or \$5,000;
3. A limit on the number of years a detective can be in the DEA Task Force position;
4. Associates Degree Pay equivalency for those without a degree;
5. An increase of Longevity Pay from \$500 to \$750 at five years of service;
6. An increase to Vacation accruals:
Start – 9 years: 6.92 hours per pay (maximum of 180 hours per year)



10-14 years: 8.08 hours per pay (maximum of 210 hours per year)

15-on years: 9.23 hours per pay (maximum of 240 hours per year)

7. Sick leave accruals adjusted according to how many hours per day they work, although this proposal still require some work to make sure our payroll system can calculate it;
8. A funeral leave provision to match the PSS CBA;
9. Overtime job for job, though this proposal still requires some clarification.

2. Offer an Early or Incentivized Retirement Package

The union has told us and several members of Council that we could have changes to the disciplinary process if we offer an early retirement. I am not sure that I want to offer this up front, however I do want it to be on the table for a few reasons. First, and most importantly, with changes to the disciplinary process in the contract we could have a nearly model contract for police management by any reasonable standard proposed by police reform advocates and having that under our belts will be an incredibly powerful asset both in terms of public perception and for our ability to manage the department.

Second, and also very important, if we want to reshape the department to be a more community oriented policing department and to be more geared to bolstering important social services such as mental health, we will need open positions and budget flexibility to do so. While I will not presuppose what such an organizational plan would look like for the department, I do know that it will take money and budget space. We can achieve that in this contract if we bargain properly.

For these important reasons, we should discuss what an early retirement package might look like keeping in mind that it would have to include two important provisions: First, officers retirements would have to be offered by seniority until we hit a certain number so we could guarantee that we have enough officers on staff to complete our important public safety work. Second, if we offer early retirement officers will have to make sure that the pension fund is made whole. So an officer could retire early by say up to one year, but they would have to pre-pay their pension contributions before they could.

I believe that we will have to offer economic incentives to make this deal happen, and so let's discuss how we should approach that question.

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