

Police Collective Bargaining Agreement Provisions that Should be Changed

Chicago Council of Lawyers

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Introduction

The City of Chicago has several Collective Bargaining Agreements (CBAs) that cover police officers. It has entered into three agreements with the Policemen's Benevolent and Protective Association of Illinois, Unit 156 – one for Sergeants, one for Lieutenants, and one for Captains. Each of these expired on June 30, 2016. The City has also entered into an agreement with the Fraternal Order of Police, Chicago Lodge Number 7, that covers police officers. It expires on June 30, 2017. The agreements have similar provisions that impact the ability of the City to hold police accountable for misconduct. We understand that the City is currently negotiating new contracts that would cover Sergeants, Lieutenants and Captains. We understand that any provisions that may be agreed upon in those contracts affecting police accountability are likely to be later adopted in a contract with the Fraternal Order of Police. We urge the Chicago City Council promptly to communicate to the negotiators for the City and the Police unions its views on these matters, before the negotiators have reached final agreements on these CBAs.

Recommendations

The Chicago Council of Lawyers urges the City Council and the negotiators for the City and the Police unions to adopt our recommendations below.

1) Affidavit Requirement.

Both Illinois law and the CBA with the Fraternal Order of Police (“FOP”) require that complaints against police officers must be supported by a sworn affidavit, and that police officers be advised of the names of complainants. The purpose of these requirements is to protect police officers from false complaints. The 2016 Report of the Mayor's Police Accountability Task Force (PATF) recommended that persons should be allowed to file unsworn and anonymous complaints against police officers because the affidavit requirement and the requirement that the complainant's name be disclosed to the officer deter some persons from filing truthful complaints. The Council of Lawyers supports these recommendations, provided that a police officer is not penalized solely on the basis of an anonymous or unsworn complaint.

The PATF Report recommended that the name of a complainant need not be disclosed until **after** a sustained finding of misconduct has been made. We disagree. The

officer should be advised of the name of the complainant **before** a finding of misconduct has been made, so that the officer may challenge the credibility of the complainant, and so that the officer is fully advised of the charge against him, which is especially important when the officer has stopped or arrested several people, but only one of them complains.

The PATF Report observed that the CBAs with the police unions authorize the Independent Police Review Authority (IPRA) and the the Chicago Police Department's Bureau of Internal Affairs (BIA) to override the affidavit requirement if either found, after reviewing “objective verifiable evidence,” that an investigation into the officer’s conduct should proceed. Because the PATF found that this authority was rarely used, it recommended that IPRA should start an investigation whenever it obtains information from any credible source, including media accounts of an incident, information from civil lawsuits alleging police misconduct, and motions to suppress filed in criminal cases based on allegations that an officer failed to comply with constitutional search and seizure requirements. We support this recommendation, and further recommend that the Chicago Municipal Code be amended to grant such authority to IPRA, and now the recently created Civilian Office of Police Accountability (COPA), in case these sections of the current CBAs are not renewed .

2) Whistle-blowers

The PATF Report recommended that a hot-line should be created to encourage persons (including whistle-blowers) who might fear retaliation to file complaints anonymously. The Report also noted that the current CBA with the FOP expressly prohibits the CPD from rewarding officers who come forward as whistle-blowers and recommended that that provision not be renewed. We support these recommendations.

3) Destruction of Records.

Records of complaints against police officers should never be destroyed. The CBA with the FOP requires that they be destroyed after five years. This CBA provision should not be renewed, and the City Council should mandate that no records of complaints against and discipline imposed on police be destroyed.

4) 24 Hour Delay Before Statement.

The PATF Report stated that under the CBAs, officers involved in shootings cannot be required to provide a statement to IPRA until after at least a 24-hour period. It noted that critics contend that the waiting period provides officers time to agree on a false story they will later tell investigators – a view that has gained support after the officers present at the shooting of Laquan McDonald gave remarkably similar reports of incident that were clearly inconsistent with the video of the shooting. We agree that the 24-hour waiting period should not be renewed.

5) Amending Statement after Reviewing Video of Incident

The PATF Report states that the FOP contract gives a police officer who already has given a statement about an incident the right to clarify and amend it after later reviewing an audio or video recording of the incident. The contract also provides that officers cannot be charged with filing a false statement unless they are given an opportunity to review the recording. The Report recommended that such provision not be renewed. We agree because the provision at a minimum does not encourage officers to tell the truth in the first instance. Moreover, we have not found a similar provision in the CBAs of other employees of the City of Chicago who are required to provide statements about incidents they have observed. Nor are civilians who are questioned about an incident by the police told they amend their statements after observing a video of the incident.

6) Micromanaging Investigations.

The PATF Report noted that the CBAs have provisions that micromanage how investigators may ask questions. For example, the FOP contract provides that: “Generally, the secondary interrogator will ask follow-up questions for clarification purposes. The primary interrogator will not ask any questions until the secondary interrogator has finished asking questions and invites the primary interrogator to ask follow-up questions.” The Report recommended that this provision be eliminated. We agree because it interferes with the discovery of the truth.