

Civilian Oversight Entities and
Law Enforcement Union
Collective Bargaining Agreements:
Comparison of King County and
other Relevant Jurisdictions

December 2016



Ilana Rosenzweig
Julie Ruhlin

323-821-0586
7142 Trask Avenue | Playa del Rey, CA 90293
OIRGroup.com

Executive Summary

The role of law enforcement labor unions in shaping the culture of a law enforcement organization has recently come under scrutiny nationwide. When the Department of Justice investigates a law enforcement agency, it routinely examines the relevant labor agreements to determine their impact on an agency's ability to investigate and discipline misconduct by officers. DOJ also examines any impact the agreements have on the ability of any independent oversight to function effectively.

In 2008, King County created the Office of Law Enforcement Oversight (OLEO) with the goal of deepening the community's trust in the Sheriff's Office by ensuring the integrity, transparency, and accountability of internal investigations into allegations of deputy misconduct. In November 2015, under King County Charter Amendment 1, the voters chose to expand the authority of OLEO. The powers of OLEO are contained within the King County Code, Chapter 2.75.

The conditions of employment for deputies and sergeants in the King County Sheriff's Office (KCSO) are governed by the Collective Bargaining Agreement between King County and the King County Police Officers Guild. Article 22 of that Agreement contains a number of provisions that were negotiated between the County and the Guild that directly impact OLEO operations. These provisions relate to, among other things, OLEO's role at the scene of critical incidents, at Use of Force Review Boards, and during administrative interviews; OLEO's access to KCSO documents; OLEO's process for certifying internal investigations as thorough or requesting additional investigation; applicable deadlines for completion of OLEO's review process; and the requirements and process for selecting the OLEO Director.

OLEO asked OIR Group to examine the provisions of Article 22 of the Agreement and to compare them to Collective Bargaining Agreements (CBAs) negotiated by police unions in other jurisdictions with active law enforcement oversight entities. We analyzed such agreements from 20 jurisdictions.

With one exception – Spokane, Washington’s Office of Police Ombudsman – no other law enforcement oversight entity we examined operates with limitations and restrictions enforced through a union’s CBA similar to those imposed on OLEO by the Agreement between King County and the King County Police Officers Guild. To the extent other jurisdictions reference their oversight entities in agreements with officers’ unions, the provisions are non-restrictive and do not dictate the procedures and protocols of the oversight entity in the manner of the King County Agreement.

While all independent oversight entities operate with specifically defined duties, responsibilities, and limitations, King County and Spokane are unique in the scope and breadth of the provisions contained within their agreements with the Police Officers Guild.¹ There are a number of consequences of including these limitations in the CBA.

First, it constrains OLEO’s ability to adjust its processes and deadlines to address current realities. Instead, any changes to OLEO protocols covered by the Agreement can only be made with agreement of the Guild, or through arbitration. In this context, necessary changes can get inappropriately linked to issues such as wages, holidays, and medical benefits.

Second, this distances these discussions from the political and public forum. In other jurisdictions we examined, restrictions on the authority of civilian oversight exist – to comply with legal proscriptions on reporting or record maintenance, to protect the privacy rights of officers, or to limit the types of complaints the agency may investigate or review, for example – but those boundaries generally are created as part of a political process where diverse interests have a voice in the outcome. While some of these provisions may be subject to mandatory bargaining in Washington, by going beyond the mandatory and making additional issues the subject of a bargained-for agreement with the officers whose conduct is subject to review by OLEO, King County has expanded the ability of the Guild to influence its civilian oversight to a degree even greater than in Spokane, and not seen elsewhere in the country.

About OIR Group

OIR Group has broad and wide-ranging experience in the independent oversight of law enforcement. We have worked with numerous jurisdictions in both direct and ongoing oversight functions and have been called on repeatedly by local governments to assist in reviewing police and oversight policies, practices, and organizational systems and to offer recommendations intended to improve the manner in which those law enforcement

¹ It is worth noting that both unions employ the same legal team for negotiations.

agencies and oversight organizations serve the public through greater transparency, objectivity, and accountability. Our previous public reports can be found at our website: www.oirgroup.com.

Our work was greatly assisted by teams of students at Harvard Law School working under the direction of Benjamin Levin, a Climenko Fellow and Lecturer on Law on the Harvard faculty. The students pored over numerous CBAs and provided insightful memos summarizing their findings. We are grateful for the contributions of Anastassia Baldrige, Leila Bijan, Amanda María Gómez, Melissa Greenberg, Kyra Kaufman, Caitlin Kearney, Josh Looney, Luca Marzorati, Danait Mengist, and Michael Zhang.

Analysis

The King County Office of Law Enforcement Oversight (OLEO) is an independent, civilian-run, county agency that is tasked with providing oversight of the King County Sheriff's Office (KCSO). OLEO's core tasks are to monitor the investigation and resolution of complaints against KCSO personnel and determine if internal investigations conducted by the Sheriff's Office are thorough and objective, as well as to conduct audit and reviews examining trends and issues in KCSO policing. To implement Charter Amendment 1, King County is currently in the process of updating OLEO's ordinance to add investigative functions to OLEO, allowing it to perform independent investigations into allegations of misconduct by KCSO employees.

OLEO's authority is defined by charter and ordinance. Limitations on and details of that authority are contained in the provisions of a Collective Bargaining Agreement between King County and the union representing Sheriff's Office deputies and sergeants, the King County Police Officers Guild. We analyzed these provisions and reviewed numerous other agreements between municipalities and law enforcement agencies to conclude that King County is unique in the way it subjects the scope of operations of its law enforcement oversight entity to the bargaining process.

Limitations in King County – Police Officers Guild Agreement

Article 22 of the Agreement between King County and the King County Police Officers Guild contains the following terms relating to the functioning of OLEO:

- At scenes of Critical Incidents, OLEO staff shall be stationed at the Command Post and interact only with the administrative team as liaison with the Criminal Investigations Division.
- After the initial investigation is complete and scene secured, a representative from Criminal Investigations Division will escort the OLEO representative through the scene.
- The OLEO Director/designee is a non-voting member of Use of Force and Driving Review Boards.
- The KCSO will be the custodian for all KCSO investigative records.

- OLEO will not print or download KCSO complaints or investigative records of any kind.
- OLEO will have subsequent access to closed cases for only two years.
- Access to closed cases is solely for reporting purposes.
- If there is a legitimate business necessity to review files older than two years, the OLEO Director will notify the KCSO in writing of such business necessity when requesting access.
- The Sheriff can deny an OLEO member further access to records if the Sheriff determines the member violated the terms of access to investigative records.
- Only one member of OLEO can attend administrative interviews.
- OLEO will not participate in criminal investigations of Sheriff's Office employees in any way.
- OLEO will not be notified of any part of the criminal investigation until the criminal investigation is concluded.
- Upon completion of an internal investigation, OLEO will determine, in writing, whether the investigation was thorough and objective in the opinion of the Director of OLEO.
- Director of OLEO has only five (5) business days to determine whether an internal investigation was thorough and objective.
- OLEO may send a closing letter to the complainant. The letter may summarize the case findings.
- Once the KCSO enters a finding in a particular investigation, OLEO will not be involved further in the processing of that case, with few exceptions.
- OLEO is prohibited from disclosing the name(s) or other identifying information of employees or other individuals involved in incidents or investigations.
- OLEO will have unimpeded access to all complaint and investigative files for auditing and reporting purposes.
- OLEO will immediately notify the Sheriff of any request or demand for, or court action seeking, OLEO records.
- Absent a court order, OLEO is prohibited from providing information related to pending investigations to any third party.
- If a court order requiring disclosure is issued, OLEO shall immediately provide a copy of the order to the Sheriff.
- OLEO may make observations regarding statistical trends revealed by disciplinary results of internal investigations, but shall not take issue with discipline imposed by the Sheriff in specific cases.

- OLEO may recommend policies and procedures for the review and/or audit of the complaint resolution process, and review and recommend changes in Sheriff's Office policies.
- Police unions have two of five designated seats on selection committee for the OLEO Director.
- One of the minimum job requirements for the OLEO Director will be to have a history that includes the establishment of a reputation for even-handedness and fairness.

Some of these terms are also included in King County Code Chapter 2.75, but many of these limitations are not.

Scope and Methodology

For purposes of this analysis, we looked at a broad sample of agreements between government entities and the unions representing law enforcement in jurisdictions where there is an active civilian oversight entity. We looked both at jurisdictions with an oversight authority similar to that of OLEO – where the primary authority is to monitor or review the police agency's internal investigations and conduct reviews and audits – as well as jurisdictions where the civilian oversight entity is empowered to perform its own independent investigations, an additional scope of authority that is envisioned for OLEO under the terms of a revised charter.

The goal of this analysis is to compare restrictions on OLEO found in the King County Agreement with restrictions placed on other oversight entities in their respective collective bargaining agreements (CBAs). In order to do this, we looked for both instances where the CBAs restricted the oversight entity, as well as instances where the CBAs expressly empowered the oversight entity.

A complete list of all the jurisdictions and agreements we assessed is included in the attached Appendix.

The following is a general list of areas we examined:

- Access to personnel records (including discipline files, performance evaluations, early warning systems).
- Time limits on access to, use of, or maintenance of personnel records.
- Access to the officers and ability to compel the officer to act (to give a statement, to appear at a mediation, to provide other evidence). Time frames in which officers can be required to act and any notice period.
- Access to records of the law enforcement agency.

- Ability to receive complaints from the public or members of law enforcement organization and what happens to those complaints.
- Types of complaints or law enforcement activity accessible to the oversight entity.
- Whether the oversight entity can examine systemic issues not tied to a specific complaint or incident.
- Whether the oversight entity can investigate a matter itself or only review an investigation by the law enforcement agency.
- Limitations on how any investigation can proceed.
- Information that can be made public (ability to name officers who are accused, ability to release information about allegations, etc.).

We attempted to identify restrictions that are outright prohibitions, and also restrictions that are embodied in procedural requirements imposed on the oversight entity. We looked not only for restrictions that named the oversight entity, but also those that apply to any non-police entity.

Findings

For purposes of our analysis, we divided jurisdictions into two broad categories of civilian oversight. The first includes entities whose oversight role is solely to monitor or review internal investigations of officer misconduct that a law enforcement agency conducts, to audit citizen complaint responses, or to review general police practices.

Other entities may perform monitoring tasks, but also have the authority to conduct independent investigations of citizen complaints or allegations of officer misconduct. Proposed revisions to the King County charter currently being discussed would give OLEO this new level of authority. The distinction, however, is not always significant, as we found that some of these so-called investigative entities, while empowered to investigate allegations, do not often, if ever, invoke that authority to perform investigative tasks. Nonetheless, the differing models of oversight are notable because an investigative role confers an authority that is more likely to impact an officer's procedural rights and therefore is more likely to be the subject of concern for police unions.

Civilian Oversight Through Audit and Review

Examining first those jurisdictions where the civilian oversight entity utilizes solely audits and reviews, we found only one collective bargaining agreement – in Spokane, Washington – that expressly limited the conduct of the oversight entity in the way it is

limited in King County. In fact, most agreements do not even mention civilian oversight generally, or a specific oversight entity by name.

For example:

- **San Jose, California.** The Office of the Independent Police Auditor (IPA) reviews investigations performed by the police department, and does not perform its own investigations. The Memorandum of Understanding between the city and the police officers' union does not impose any limitations on IPA. It does not discuss IPA's ability to access records, reports, scenes, or any other item needed for its audits. It does have some relatively standard provisions about how investigations of misconduct will be performed, but those apply solely to the San Jose Police Department's Internal Affairs.
- **Los Angeles County, California.** The Los Angeles County Sheriff's Department has had some form of civilian oversight for nearly 20 years. It has consistently been a review-based model that at times has generated considerable criticism from the deputies' union. Nonetheless, nothing in its Memorandum of Understanding between the County and the Deputies' Association limits or restricts the conduct of civilian oversight. Its Memorandum of Understanding also does not impose requirements on the conduct of investigations by the Sheriff's Department, other than stipulating that employees investigated in a criminal matter have a right to counsel and a right to recorded interviews.
- **Orange County, California.** The Memorandum of Understanding with its Peace Officers and Supervising Peace Officers similarly does not mention its then-existing civilian oversight. Its sole reference to investigations is to affirm the rights of officers to a union representative before questioning in a disciplinary matter.
- **City and County of Denver, Colorado.** The agreements between the City and County of Denver and employees of its Police Department and its Sheriff's Department also do not mention civilian oversight, though Denver's Office of the Independent Monitor is a robust agency that has been in existence for more than 10 years. It is well-staffed and regularly issues reports that generate significant media attention and spur systemic changes within the law enforcement agencies it monitors.

- **Tucson, Arizona.** The agreement entered into by the City of Tucson only mentions its Independent Police Auditor to ensure that the auditor is one of a handful of people allowed access to unredacted files.
- **San Diego, California.** The agreement entered into by the City of San Diego does not mention its Citizens' Review Board.
- **Eugene, Oregon.** The city utilizes both a Police Auditor and Civilian Review Board to provide oversight of its police department. The police retain primary authority for investigations. The contract between the city and law enforcement union has limited references to the oversight entities, documenting just two restrictions on oversight. First, it states that the Auditor shall not review a file nor make suggestions regarding potential discipline, until all appeals are completed. Second, it provides that no documentation from the Police Auditor or Civilian Review Board shall be placed in an officer's personnel file. It does not dictate the protocols or procedures of the Police Auditor or Civilian Review Board. However, it does state that a violation of any of those protocols impacting the terms or conditions of employment is grievable under the terms of the contract. The contract is silent as to all other operations of the two oversight entities, except that it also expressly gives the Police Auditor access to the database containing records of all officer contacts, inquiries, complaints and commendations.
- **Spokane, Washington** is the only jurisdiction with an agreement with its law enforcement union that is in any way comparable to the King County Agreement. As noted above, the same lawyers represented the officers' union in both negotiations. The Spokane agreement contains a lengthy discussion of how the Office of Police Ombudsman will conduct its business. These provisions are in some ways more specific than those in related terms in the King County Agreement. However, the provisions in the Spokane agreement do not cover nearly as broad a range of subjects or contain as many limitations as the King County Agreement imposes on OLEO.

Oversight Entities with Investigative Authority

For those jurisdictions whose oversight entities have the additional authority to perform investigations, we again found that almost no collectively bargained agreements singled out the oversight entity in imposing restrictions. We also found that to the extent the agreements addressed the procedures to be followed in investigations, these provisions applied equally to investigations by the law enforcement agency itself (through, for example, Internal Affairs), as to investigations by the civilian oversight entity. This is

noteworthy because where restrictions are imposed on both the law enforcement agency and the civilian oversight entity, there is a shared interest in ensuring the restrictions are appropriate. This makes the acceptance of overly-broad restrictions less likely.

For example:

- **Portland, Oregon.** Agreements with Portland police officers set forth basic rules for investigations of misconduct, and expressly makes these same rules applicable to any investigations conducted by the City Auditor's Independent Police Review division (IPR). It does not impose any requirements solely on IPR. The only mention of IPR in the agreement with the Commanding Officers Association is a reference to the fact that the City was in the process of amending its ordinance to change police oversight policies and protocols at the same time it was negotiating the agreement, and states that all collective bargaining requirements have been satisfied with respect to the amended ordinance.
- **Seattle, Washington.** The City of Seattle's agreements set forth basic rights for officers in the investigation and also a number of provisions related to the Office of Professional Accountability (OPA) Auditor and OPA Review Board. These provisions focus primarily on protecting confidentiality, the terms under which additional investigation can be recommended, and selection of OPA Review Board members. One provision restricts the Auditor's ability to request additional investigation when a case is close to the 180-day time limit for completion, but agreement's detailed provisions do not otherwise curtail the activities of the Auditor or Review Board.
- **Richmond, California.** The Citizen's Police Review Commission in Richmond has investigative authority, and the Police Department's internal Office of Police Accountability is also headed by a civilian manager. Nonetheless, the MOU contains no provisions relating to disciplinary investigations, whether conducted internally or by the oversight entity.
- **San Diego County, California.** The County's agreement with their Deputy Sheriff's bargaining unit does not contain any provisions regarding how investigations are to be performed, whether by the Sheriff's Department or by the existing oversight entity – the Citizens' Law Enforcement Review Board.
- **Salt Lake City, Utah.** The City's contract with their police union does not mention civilian oversight. It contains some basic provisions about officers'

rights during an investigation, but does not single out the Civilian Review Board for special limitations on its investigations.

- **Boise, Idaho.** The agreement with the police officers' union in Boise similarly does not mention its civilian oversight agency, the Office of Police Oversight.
- **San Francisco (CA) Bay Area Rapid Transit.** The agreement for the Bay Area Rapid Transit Police addresses, in general, access to personnel files and limited issues about investigations, but does not create separate rules governing its civilian oversight body, the Office of Independent Police Auditor.
- **San Francisco, California.** The agreement with the San Francisco Police Officers' Association contains some provisions related to investigations by the Office of Citizen Complaints (OCC). However, these are not very extensive. It requires that the employee have access to non-confidential information in the file if there is going to be a hearing, and also sets the format for OCC summary reports after conclusion of investigations. None of the provisions limit OCC access to information.
- **Minneapolis, Minnesota.** The Minneapolis agreement has very limited provisions about investigations, with no specific reference to its oversight entity.
- **Riverside, California.** The City's agreement with the police officers' association offers some details on the grievance process but places few restrictions on investigations and does not mention the Community Police Review Commission.
- **New York, New York.** New York has a number of agreements with associations representing New York Police Department Officers. None of these agreements contain provisions regarding the scope or conduct of investigations or its civilian oversight.
- **Chicago, Illinois.** The agreements between the City of Chicago and its police unions do contain extensive provisions about how investigations of misconduct should be conducted. These provisions have been recently criticized in a special review of the Chicago Police Department. It is noteworthy that the provisions that are the subject of this criticism do not single out the independent civilian oversight agency for treatment different than the police department's internal affairs unit. The only rules that are limited to civilian oversight arise in the context of investigations that only the independent oversight agency performs, so that there is no reason for the provisions to be applicable to internal affairs. This

is important because civilian oversight typically has a limited role – if any – in the negotiation of a CBA. When an oversight agency is involved, it negotiates from a weaker position because it cannot make its own agreement, but must rely on the government entity to protect its interests. When limitations are imposed on both civilian oversight and the police internal investigations equally, it gives the civilian oversight and the internal affairs the same incentives to fight against and amend problematic restrictions.

Conclusion

The Agreement between King County and the King County Police Officers Guild is unusual in the degree to which it defines OLEO's role and authority, limits its access, and restricts its ability to monitor the Sheriff's Office. In this way, it is out of step with other collective bargaining across the country and limits oversight more radically. Some of the limitations, such as prohibitions on printing records, are not present in other jurisdictions in any form. To the extent other jurisdictions similarly regulate their oversight entities, those restrictions normally do not arise from collective bargaining, but from legislation passed through open debate and subject to the political process. To the extent there are limitations in CBA's, they typically apply universally to all investigative and review processes, whether conducted internally or by an outside entity. King County, and to a lesser extent Spokane, remain unique in singling out its oversight agency for these types of restrictions.

Appendix

Our analysis included review of the following collective bargaining agreements and memoranda of understanding. While some agreements appear to be past their expiration dates, we either determined them to be the currently applicable agreements pending ongoing negotiations or they are represented as the current agreements on the jurisdiction's website.

Agreement Between the City of Chicago and the Policemen's Benevolent & Protective Association of Illinois, Unit 156 – Sergeants, effective July 1, 2012 through June 30, 2016.

Agreement Between the City of Chicago and the Policemen's Benevolent & Protective Association of Illinois, Unit 156 – Captains, effective July 1, 2012 through June 30, 2016.

Agreement Between the City of Chicago and the Policemen's Benevolent & Protective Association of Illinois, Unit 156 – Lieutenants, effective July 1, 2012 through June 30, 2016.

Agreement Between the City of Chicago Department of Police and Fraternal Order of Police Chicago Lodge No.7, effective July 1, 2012 through June 30, 2017.

Memorandum of Understanding Between the City and County of San Francisco and San Francisco Police Officers' Association, Units P-1 and P-2A, July 1, 2007 - June 30, 2018, Per Amendment #5

Agreement Between San Francisco Bay Area Rapid Transit District and BART Police Officers' Association, July 1, 2013 – June 30, 2018

City of Minneapolis and the Police Officers' Federation of Minneapolis, Labor Agreement, Police Unit, January 1, 2012 through December 31, 2014

“Re-opener” of 2003-2012 Collective Bargaining Agreement Between the City of New York and the Captains' Endowment Association (dated July 30, 2008)

2003-2012 Collective Bargaining Agreement Between the City of New York and the Captains' Endowment Association (dated March 10, 2009)

2008-2012 Memorandum of Understanding Between the City of New York and The Detectives' Endowment Association (dated Sept 27, 2007)

"Re-opener" of 2006-2012 Collective Bargaining Agreement Between the City of New York and The Detectives' Endowment Association (dated December 31, 2008)

NYPD Lieutenants' Benevolent Association Contract – November 1, 2001 to October 31, 2018

Patrolmen's Benevolent Association 2010-2012 Agreement with the City of New York (dated February 26, 2016)

2011-2018 Sergeants' Benevolent Association Memorandum of Agreement with the City of New York (dated February 24, 2015)

Memorandum of Understanding between the City of Richmond (CA) and the Richmond Police Management Association, January 1, 2014 – December 31, 2016

Memorandum of Understanding between the City of Richmond (CA) and the Richmond Police Officers' Association, July 1, 2013 – June 30, 2016

Labor Agreement Between the Portland Police Officers' Association and the City of Portland, July 1, 2013 – June 30, 2017

Labor Agreement Between the City of Portland and the Portland Police Commanding Officers' Association, July 1, 2015 – June 30, 2018

Contract Between City of Eugene and the Eugene Police Employees' Association, July 1, 2016 to June 30, 2019

Memorandum of Agreement Between the County of San Diego and the Deputy Sheriff's Association of San Diego County, Deputy Sheriffs' Unit, June 27, 2014 – June 26, 2018

Memorandum of Understanding for Joint Submission Regarding the Peace Officers by and Between the County of Los Angeles and Association for Los Angeles Deputy Sheriffs, November 3, 2015 to January 31, 2018

Memorandum of Understanding, June 22, 2014 – July 1, 2017, Salt Lake City Corporation and the Salt Lake Police Association

City of Boise and Local Number 486, International Brotherhood of Police Officers (IBPO), Collective Labor Agreement, October 1, 2014 through September 30, 2018

Memorandum of Understanding, 2012-2016, County of Orange and Association of Orange County Deputy Sheriffs for the Peace Officer Unit and Supervising Peace Officer Unit

Collective Bargaining Agreement Between City and County of Denver and Denver Police Protective Association, 2015-2017

Collective Bargaining Agreement Between City and County of Denver and Fraternal Order of Police, Denver Sheriff Lodge 27, January 1, 2016 - December 31, 2017

Memorandum of Understanding Between the City of Riverside and Riverside Police Officers' Association, December 2, 2014 through December 1, 2016

Agreement Between City of Spokane and Spokane Police Guild (2012-2016)

Agreement by and Between the City of Seattle and the Seattle Police Officers' Guild, Effective through December 31, 2014

Memorandum of Understanding by and Between the City of Seattle and the Seattle Police Management Association (effective January 1, 2009 through December 31, 2011)

Tucson Police Officers' Association, Exhibit A to Resolution 21751, City of Tucson Contract No. 17290

Memorandum of Understanding by and Between City of San Diego and San Diego Police Officers Association, entered July 1, 2015