

ATTACHMENT A



Our city. Our safety.
Our police. Better together.

December 8, 2017

Dear Judge Robart,

Your Honor asked the parties, and invited the Community Police Commission (CPC), to comment on whether the Force Review Board's (FRB) reported conclusions with respect to the shooting death of Charleena Lyles, as well as the agreement between the City of Seattle and the Seattle Police Management Association (SPMA), specifically concerning arbitration, should affect the Court's deliberations in ruling on the City's motion to find it in full and effective compliance with the Consent Decree.

We appreciate the opportunity to comment, and we submit the following for your consideration.

FORCE REVIEW BOARD CONCLUSIONS IN THE CHARLEENA LYLES CASE

Ms. Lyles's death has been deeply felt throughout Seattle and beyond. The fact that Ms. Lyles called the police for help but ended killed by police in front of her children is a tragedy.¹ The CPC is determined to fully understand the incident; bring to light any lessons concerning SPD training, policy, and/or tactics; and push for changes in areas that emerge as promising or necessary.

Our view continues to be that Seattle is in full and effective compliance with the Consent Decree. As explained below, we doubt the FRB is the optimal arrangement for the investigation of deadly force by SPD officers. But SPD nonetheless is in full compliance with the Consent Decree, because the FRB was designed under the decree and SPD has implemented the FRB process that this Court approved.²

Although we question whether the FRB as presently constituted should be the way in which instances of deadly force by SPD officers are investigated, this has nothing to do with the skill or dedication of those who comprise that Board. No matter the quality of those investigations or the fairness and integrity of the investigation process, the fact that it is entirely internal to SPD weakens the credibility of the findings. For this reason, after the Seattle Consent Decree was in place, President Obama's 21st Century Policing Task Force

¹ The events of June 18, 2017, when Ms. Lyles was killed, were preceded by another instance in which she called for help on June 5, at which time she was arrested after she reportedly threatened officers with scissors. Though thought by officers to be mentally ill, she then spent nine days in jail before being released on June 14. Many have observed that, even prior to June 5, public officials, social service organizations, and the justice system might have responded differently to a chain of events involving Ms. Lyles and so avoided this tragic outcome. SPD and its officers are not the only entities whose actions with Ms. Lyles should be scrutinized.

² Docket 204, Memorandum Submitting Updated Force-Related Policies, and Docket 225, Order Approving the Parties' Updated Use of Force Policies.

recommended that police departments commit to having deadly force incidents investigated through processes external to the police department.³

Recognizing this, the City included a provision in its accountability reform legislation requiring the CPC to convene a stakeholder group to assess the feasibility of an entirely external incident investigation process. The CPC has identified possible participants, and will soon finalize the composition of that group, which is to begin its work in early 2018. We will invite the Monitoring Team and the U.S. Attorney's Office to observe and participate in these discussions.⁴

Despite our view that an external process should be explored, we are mindful that the FRB process was developed under the Consent Decree, looking to then-existing best practices, and SPD's use of that process is in compliance with the Consent Decree, even as community-led advocacy may call for a different approach. Rather than signifying non-compliance, this situation highlights the ability of the new oversight and accountability structures to respond to evolving events and recommend appropriate changes. That is the hallmark of a healthy and functioning oversight system.

Should the stakeholder group conclude that an external investigation process is both desirable and feasible, the next step would be to submit its recommendations to the City, the United States, and the Monitoring Team for possible changes to the present FRB process. We recognize that changes of this nature would require approval of the Court during the pendency of this case.

SEATTLE POLICE MANAGEMENT ASSOCIATION CONTRACT

While the SPMA contract is not in all respects as we would have wanted it to read, its departures from our recommendations and from provisions of the accountability ordinance do not mean that the City is not in full and effective compliance with the Consent Decree.

The SPMA contract differs in some important respects from the accountability ordinance. However, we were glad to see that it incorporates certain core components of the ordinance, particularly those that touch on SPMA's "body of work," accepting the transfer of all supervisory positions in the Office of Police Accountability (OPA) from sworn officers to civilians.

Importantly, the new SPMA contract accepts all provisions of the accountability ordinance, except where bargained terms in the contract expressly differ from those in the ordinance.⁵ The contract is silent on many points addressed in the ordinance, so in these areas, the ordinance unquestionably controls. On some points, the contract addresses the same content as the ordinance, but uses different wording. Some or all areas of non-alignment may be resolved, in consultation with SPMA, at the point when the ordinance is updated to conform to the contract and an eventual contract with the Seattle Police Officers Guild (SPOG), to eliminate any lack of clarity regarding the "rules of the road."

³ President's Task Force on 21st Century Policing. 2015. *Final Report of The President's Task Force on 21st Century Policing*. Washington, DC: Office of Community Oriented Policing Services. Action Item 2.2.2, page 87.

⁴ The CPC first identified the need for this conversation with the Monitoring Team in the spring of 2016, after the shooting death of Che Taylor. At that time community members expressed mistrust of the FRB findings in the Taylor case because "the police were investigating themselves." We look forward to the Monitoring Team's insights on this topic during the planned stakeholder conversations.

⁵ SPMA contract, effective 1/1/14-12/31/19, Appendix B, page 56. (The CPC understands that the City is submitting the contract to the Court as an appendix to the City's December 8, 2017 filing.)

Alignment via clarification of ordinance language may address a specific question raised by the Court concerning dual appeal routes after the Chief imposes discipline, one being through a reformed Public Safety Civil Service Commission (PSCSC) and the other through arbitration. In this regard, the area that has received the most public attention is whether the arbitration route will be closed to the public (the PSCSC is open by statute). The SPMA contract provides that the rules of the American Arbitration Association (AAA) will apply.⁶ The AAA Manual of Labor Arbitration Rules states that “the arbitrator . . . shall maintain the privacy of the hearing *unless the law provides to the contrary*.”⁷ Public statements indicate the intent of the parties was that these arbitration appeals in discipline and misconduct cases be open to the public, which is consistent with the accountability ordinance requirement that post-disciplinary appeals proceedings be open to the public.⁸ This intent can be reinforced in the updated ordinance.

A more fundamental issue is that the SPMA contract failed to secure one of the objectives of the accountability legislation—the elimination of multiple routes for appeal. Multiple routes of appeal can result in “forum-shopping” to obtain a favorable judgment. We believe City leaders may have overstated how effective a randomized and re-randomized list of arbitrators will be in preventing “forum-shopping.” There will still be pressures on arbitrators to “split the baby” in order to continue to be selected for this work, as each party can veto one arbitrator from the top of the list in each case.⁹ An arbitrator could reasonably believe that, if the arbitrator found for one party in one case, the other party would never again allow that arbitrator to be selected for this body of work. It is also more likely different standards and practices will apply to different cases, whether unintentionally or by design, depending on the appeal route taken.

Although the SPMA contract does not achieve the post-discipline appeal structure the CPC recommended or that the accountability ordinance established, that failure does not take the City out of full and effective compliance with the Consent Decree. The decree did not address the issue of post-disciplinary appeals or, indeed, most aspects of the discipline system. The issue of dual appeal tracks was identified by the OPA Auditor, the CPC, and the Mayor’s special advisor on policing issues, in the winter/spring of 2014, in response to a set of events that did not feature in the Consent Decree or monitoring process.¹⁰

The contract language might be at odds with another accountability ordinance provision that permits the OPA Director to consult with criminal investigators in some of the most serious cases of alleged police misconduct. This was intended to ensure that neither OPA’s administrative investigation nor a criminal investigation that might lead to criminal charges against officers are compromised. A goal of the ordinance was to allow strategic coordination between OPA and criminal investigators, but the contract contains a provision barring OPA from “influencing” a criminal investigation, which might or might not be read to prevent such strategic coordination. Again, however, we believe it possible that an update of the ordinance to align with the SPMA contract and an eventual SPOG contract may reduce or eliminate this concern.

⁶ SPMA contract, effective 1/1/14-12/31/19, Article 15, Item 15.6.D, pages 29-30.

⁷ Labor Arbitration Rules, American Arbitration Association, effective 7/1/13, Section 21, Attendance at Hearing, page 13.

⁸ Dan Nolte, *Mayor Burgess, Councilmember González celebrate Council adoption of SPD leadership labor agreement* (Nov. 13, 2017), <http://mayorburgess.seattle.gov/2017/11/mayor-burgess-councilmember-gonzalez-celebrate-council-adoption-of-spd-leadership-labor-agreement/#sthash.4O23G46z.dpbs>.

⁹ SPMA contract, effective 1/1/14-12/31/19, Article 15, Item 15.3.B, page 28.

¹⁰ Bill Lucia, *Police discipline: The making of a crisis*, Crosscut, Apr. 3, 2014; Bill Lucia, *Police discipline: Trying to quell a crisis*, Crosscut, Apr. 11, 2014; and Steve Miletich, *Big changes urged in SPD discipline cases*, Seattle Times, Apr. 5, 2014.

The SPMA contract negotiation process and the end result it yielded reinforce the importance of having the City's police oversight agencies closely involved in reviewing the City's approach both prior to and during contract negotiations, an involvement the CPC has long recommended. Had the CPC and OPA consulted with the City's bargaining team throughout, wording differences and lack of clarity between the SPMA contract and the accountability ordinance might have been avoided or handled in a way that better served accountability goals. Relying on these technical advisors on accountability issues would also be valuable in informing ongoing negotiations with SPOG. However, again, this issue does not bear on whether the City is in full and effective compliance with the Consent Decree.

The CPC thanks the Court for its consideration of this information.

Respectfully submitted,



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