

The Collective Bargaining Agreement (CBA) for police officers, probationary officers and police officer trainees is a contract between the City of St. Louis and the St. Louis Metropolitan Police (SLMPD) bargaining unit--the St. Louis Police Officers Association (SLPOA). It was last signed in 2017. A new agreement is in the works, and there is an opportunity to influence the outcome.

Below is an analysis by the Coalition Against Police Crimes and Repression (CAPCR). It attempts to look at flaws in the agreement itself, and to analyze the contract within the larger matrix of disciplinary systems governing the police and other city employees. For both the CBA and that larger context, CAPCR makes recommendations that it believes would further racial fairness and accountability within the SLMPD.

Major recommendations include:

- 1) An end to seniority considerations, which have historically resulted in racial bias in promotions and transfers. This change would put SLMPD in line with the St. Louis City Charter's civil service requirements.
- 2) Equal access to information and benefits for the Ethical Society of Police (ESOP), so that the members of that organization, almost exclusively African American, are not disadvantaged in relation to members of the St. Louis Police Officers Association (SLPOA). Along with more specific changes, CAPCR recommends that ESOP become a joint bargaining unit, so that it has fully equal powers.
- 3) The expansion of investigative authority, when related to violations of police policy, to include the Director of Personnel. The Director of Personnel would do joint investigations with the Internal Affairs Division of the SLMPD. This change would result in more balanced investigations since police would no longer simply be policing themselves.
- 4) A more open process that allows for public input concerning CBA negotiations. The recommendations of CAPCR and all other community voices deserve to be heard. This input could take the form of written comments as well as public hearings by the Board of Aldermen, with report-backs regarding the negotiations and outcomes.

### **Seniority issues in CBA**

Overview: Several clauses of SLMPD's Collective Bargaining Agreement favor more senior officers for new positions, transfers, and unit reductions. These rules don't take into account the fact that African-American officers leave SLMPD at high rates--60% loss in their first 7 years (ESOP report p. 18-19), consequently preventing African-American officers from achieving coveted assignments. Further, the Ethical Society of Police has well-documented instances where African-American officers who have the necessary seniority, education and other qualifications, still fail to be promoted (ESOP report p. 18). The following are specific seniority rules that reinforce discrimination against African-American members of the SLMPD.

Problematic language: When making internal transfers, only the past 3 years of sustained complaints against an officer are considered (CBA p. 11).

CAPCR recommends: This time period is too short and unfairly favors officers who have worked at SLMPD for longer periods of time. CAPCR would recommend increasing this window to 10 years.

Problematic language: Internship or detachment skills are not considered in determining the performance, skill or ability of an employee seeking a new position (CBA p. 12).

CAPCR recommends: This is an illogical favoring of seniority, as seniority applies when all skills are equal but added internship skills are not even considered. CAPCR recommends removing this clause.

Problematic language: An employee with 15 years of service or more is automatically considered for any assignment in a specialized unit, regardless of any other minimum qualifications (CBA p. 13).

CAPCR recommends: This clause allows for unqualified officers to achieve positions, simply due to 15 years of seniority. CAPCR recommends removing this clause.

Problematic language: For transfers and unit reductions, skills and ability of two officers being considered need only be “relatively equal.” (CBA p. 11).

CAPCR recommends: This leaves too much room for bias. CAPCR recommends a skills and experience matrix, filled out by several supervisors, to better quantify this evaluation.

Problematic language: Reductions in force are only based on seniority. (CBA p. 30).

CAPCR recommends: This clause ignores priority jobs and quality of service when SLMPD makes layoffs. This is not in the best interest of the public. According to ESOP, “The seniority applied here, coupled with the steady decline of African American officers since 2013, has harmed African American officers’ ability to improve their career status in SLMPD. Most African American officers remain in patrol with little upward mobility.” (ESOP report p. 19) CAPCR recommends reductions in force based on performance and with consideration of the position being removed.

Indeed, CAPCR recommends, along with the ESOP (ESOP 2020 report, p. 59), that all language regarding seniority in Article 7 (and Article 13) be removed from the CBA. To do so, as the ESOP report points out, is necessary to align police policy with the Civil Service rules outlined in the city charter, Section 2 (a):

“Merit and fitness. All appointments and promotions to positions in the service of the City and all measures for the control and regulation of employment in such positions, and separation there from, shall be on the sole basis of merit and fitness, which, so far as practicable, shall be ascertained by means of competitive tests, service ratings, or both.

## **Discrimination favoring SLPOA over ESOP in CBA**

Overview: The Collective Bargaining Agreement blatantly favors SLPOA over ESOP in many places. As the Ethical Society of Police is approximately 97% African American, this leads to racial discrimination within the processes and procedures of the SLMPD. Below are several examples of potential areas of discrimination against ESOP and African-American officers.

Problematic language: "If a new position is created or if there is a vacancy in a unit, it shall be posted by e-mail notice for fourteen (14) days and shall be provided to the Association at the time of posting."(CBA p. 11)

CAPCR recommends: This unduly favors SLPOA over ESOP for notice of new positions. Though in actual practice both organizations do in fact receive notice, the current practice is not a requirement and could be halted at any time. CAPCR recommends that it be a requirement in the CBA that new positions be posted and provided to both SLPOA and ESOP.

Problematic language: The Police Department is required to notify SLPOA of any new job qualifications for internal transfers within the same job class first (CBA p. 13).

CAPCR recommends: Again, all officers should be equally notified of internal transfers. The CBA should require similar notification for ESOP.

Problematic language: SLPOA representatives are given reasonable time while on duty to represent employees in the grievance process without loss of pay (CBA p. 14).

CAPCR recommends: Without a similar allowance for ESOP, this favors SLPOA members. CAPCR recommends that ESOP be allowed to represent officers in the grievance process and that they be given the same right to represent others while on duty.

Problematic language: Police officers who are chosen as delegates for FOP conventions must be approved by SLPOA to receive paid time off work to attend (CBA p. 14-15).

CAPCR recommends: ESOP delegates should be given similar benefits for attending an annual convention of ESOP's choice.

Problematic language: SLPOA has a bulletin board used for notices to members (CBA p. 15).

CAPCR recommends: Though in actual practice ESOP is able to use bulletin boards, this practice should be enshrined in the CBA.

Problematic language: SLPOA is allowed use of the Department's Intra-office mail system for notifying its members of meetings and other notifications (CBA p. 15).

CAPCR recommends: Again, ESOP is in practice allowed similar access to the intra-office mail system, this capability should be included in the CBA so that it can not be taken away in the future.

Problematic language: SLPOA is allowed time to address the trainee class regarding information about SLPOA and the CBA (CBA p. 16).

CAPCR recommends: ESOP should be allowed time to address trainees to inform them of ESOP's organization. Note: ESOP is currently able to address them once hired.

Problematic language: SLPOA may receive access to bargaining unit members to conduct union business at work (CBA p. 16).

CAPCR recommends: ESOP should be allowed similar access.

Problematic language: SLPOA may have newsstands containing their monthly publication in all buildings where collective bargaining unit members work (CBA p. 16).

CAPCR recommends: ESOP should be allowed their own newsstands.

Problematic language: SLPOA may elect to deduct their insurance benefits from payroll (CBA p. 17).

CAPCR recommends: ESOP should be allowed the same option to deduct insurance benefits from payroll.

Problematic language: SLPOA selects the Summary Hearing Board members (CBA p. 21).

CAPCR recommends: As the Summary Hearing Board oversees disciplinary action appeals for all officers for discipline of less than 16 days, it is crucial that ESOP be allowed equal representation and choice for the members of this board. Further, it should be considered whether the SHB should be made entirely of police officers. CAPCR recommends mandating that civilians take part in the SHB.

Problematic language: Employees are entitled to representation only by an SLPOA member in the grievance process (CBA p. 24).

CAPCR recommends: Employees should be allowed to choose their representation by ESOP, not just from SLPOA. ESOP has reported that their members are highly unlikely to accept such representation by SLPOA members, which unfairly negatively impacts them.

Problematic language: SLPOA appoints representatives to the Uniform, Safety and Equipment Committee (CBA p. 44).

CAPCR recommends: ESOP should be allowed to similarly appoint representatives.

Problematic language: The Sergeant Promotions Advisory Committee includes members of SLPOA, which are designated by the SLPOA president (CBA p. 45).

CAPCR recommends: ESOP should be able to sit on this committee.

Problematic language: The union is provided with a weekly copy of the manning table.

CAPCR recommends: ESOP should have equal access to the manning table.

Problematic language: The city of St. Louis only recognizes the SLPOA as the exclusive collective bargaining representative (CBA p. 3).

CAPCR recommends: Behind most of the issues raised in this section of our recommendations is the issue of the SLPOA serving as the sole bargaining unit. These problems would be solved by a new vote certifying ESOP as a joint collective bargaining agent. St. Louis police officers should consider such a vote.

### **Investigative Structure and Disciplinary Process**

Overview: Investigations into employee misconduct in the SLMPD and resulting disciplinary action are structured in such a way that result in unfair consequences for African-American officers, as well as a lack of accountability for the department. The 2020 ESOP report gives many examples of disproportionate discipline along racial lines as “Caucasian officers accused of crimes and alarming misconduct were not fired or severely disciplined as often as numerous African American counterparts after RSMO 84.344 established ‘local control’ of SLMPD” (ESOP report p. 24).

Problematic language: Internal investigation rules are set in Rule 7 of the Police Manual. If the department makes any changes to Rule 7 during the life of the CBA, SLPOA gets to decide whether to incorporate the changes into the new CBA (CBA p. 17).

CAPCR recommends: The result of this provision is that changes to Rule 7 can only be made every three years unless SLPOA agrees. This doesn’t allow for potential necessary changes to investigatory structure outside of every three years, and gives SLPOA undue power to reject or accept any changes. CAPCR recommends allowing changes to Rule 7 in between bargaining agreement renegotiations, and removing the right of SLPOA to reject any changes to Rule 7 in the CBA.

Problematic language: The Missouri state statute granting St. Louis local control of the police in 2013 (RSMO) 84.344) gave “exclusive authority” over police discipline to the Civil Service Commission. It also gave that Civil Service Commission authority to “adopt rules and regulations appropriate for the unique operation of a police department.” The Civil Service Commission [did so](#) on August 13, 2013. The rules grant authority to the Chief of Police to determine discipline, “after receipt of an investigative report from the Internal Affairs Division, for any actions resulting in more than 15 days suspension or termination. The Civil Service Commission then hears any appeals through a hearing process as spelled out in Rule 7 of the Police Manual.

CAPCR recommends: Adding the Director of Personnel as an active participant in investigations relating to violations of police policy. This would allow for more unbiased investigations and discipline rather than “police policing themselves”. This restructuring would require a change in the Civil Service rules that would maintain IAD for investigations of possible criminal violations but require the Director of Personnel to partner with IAD in investigations related to policy violations. The Director of Personnel already has investigative powers spelled out in the City Charter (Article XVIII, Sections 9 and 25), and could take part in these investigations without

further authority. Nevertheless, the Civil Service Commission may want to spell out the requirement that he do so and report findings to the Chief of Police.

A similar recommendation was laid out in a ruling by Judge Robert Diercker in *Farber v. St. Louis Metropolitan Police* (2017):

“Under the City Charter (of which the Court can take judicial notice), the Director of Personnel is authorized to investigate all manner of issues relating to City civil servants and must approve disciplinary actions of appointing authorities, per City Charter, Article XVIII, section (i), and (j). In the Court's opinion, §84.344.8 contemplates that the Civil Service Commission and a fortiori the Director of personnel are to assume the role of investigator of such complaints against police officers, leaving only the decision of what discipline to impose with the Chief of Police, thereby obviating the internal conflicts of interest that can arise when police officers are charged with investigating a citizen complaint as both a crime and a violation of rules and regulations. Moreover, if the Director's investigation unearths evidence of crime, the Director is in a position independently to notify the federal and state prosecuting authorities, thereby ensuring an additional layer of protection for the citizenry from the rare but inevitable instances of criminal misconduct by police. Finally, the removal of investigatory authority for misconduct complaints from the Police Department would largely eliminate future disputes over what investigative records are open or closed. The Police Department's “two track” approach could continue, albeit with one track in charge of the Director of personnel.”

Most of the same advantages noted by Judge Diercker would apply to our recommended joint investigations--it would be easier to distinguish policy-related investigations from criminal ones, the Director of Personnel could monitor for conflicts of interest and could report uncovered criminal actions to state and federal prosecutors. This hybrid model, however, would recognize that policing is substantially different from other city employee jobs, and maintain some police input into the investigations.

### **Other issues with CBA**

Overview: CAPCR found several other miscellaneous issues that potentially lead to ineffective police work, a lack of protections to officers, and undue budgetary spending with the SLMPD's Collective Bargaining Agreement, outlined below.

Problematic language: The St. Louis City whistleblower statute is not cited anywhere in the CBA.

CAPCR recommends: Ordinance 70847 should be included in the CBA and enforced. CAPCR is aware that officers who currently bring up issues within the SLMPD are threatened and harassed by other officers. All city employees must truly be protected under Ordinance 70847.

Problematic language: Employees are allowed up to 32 hours of other employment work in a work week, not including additional hours worked by an officer on a day off (CBA P. 7).

CAPCR recommends: This amount of allowed secondary work is excessive and could easily lead to tired and overworked officers, especially given the realities of potential mandatory overtime. This 32 hours is more than truckers or passenger carriers are allowed to work..

Problematic language: Officers may work secondary employment, in uniform, even while on disciplinary leave (CBA p. 23).

CAPCR recommends: Officers should not be allowed to work secondary employment, in uniform, while on disciplinary leave. Indeed, there are problems regarding approval for officers to wear uniforms while doing secondary work in any circumstance. How can they be taking direction from a third party employer, and therefore performing a different role, but still represent the SLMPD?

Problematic language: An officer placed on suspension may use earned holidays, vacation time, sick time or compensatory time for some or all of their suspension (CBA p. 18).

CAPCR recommends: Suspension is not a mandatory holiday or vacation. Officers should not be allowed to use any form of earned compensatory time while on suspension.

Problematic language: If an officer is suspended and it is found that discipline is warranted, the employee will not be required to return money from any paid leave (CBA p. 18).

CAPCR recommends: If an officer is convicted of a crime or discipline is sustained for a serious offense, it is not appropriate to offer back pay and/or for the officer to keep money acquired during paid leave.

Problematic language: Employees receive a \$500 incentive for referring an applicant who is ultimately hired (CBA p. 44).

CAPCR recommends: The SLMPD already has an enormous budget that takes away from other necessary city needs. CAPCR thinks this \$500 incentive is unnecessary and wasteful.

Problematic language: An employee is only required to undergo psychological testing when there is just cause to believe that the officer suffers from a psychological condition (CBA p. 46).

CAPCR recommends: Psychological testing should not be reserved for diagnosable mental conditions, but rather required after every incidence of an employee firing a weapon or injuring someone, and every five years regardless of circumstance.

Problematic language: The results of substance abuse testing may only be used for internal investigation (CBA p. 47).

CAPCR recommends: There should be a criminal referral if an officer violates the law, unless the testing was mandatory.

Problematic language: All employees who take the Wellness Incentive Test are offered an incentive of \$500, and an additional \$500 if they pass the test (CBA p. 48).

CAPCR recommends: CAPCR is unsure what the Wellness test entails and whether this potential spending of \$1000 per officer is appropriate.

Problematic language: The negotiations of this contract are currently closed to the public.

CAPCR recommends: CAPCR strongly believes that these negotiations should have more public involvement, first by notifying the public when these are occurring, and second by allowing public input through written comments and public hearings.