

WETHEPROTESTERS

Albuquerque Police Department Police Accountability Contract Highlights

Contract Period: 7/16/2014 – 7/16/15

[Full Contract Link](#)

This analysis examines the sections of the Albuquerque Police Department contract that pertain to police accountability. The contract language is noted below along with a translation of the contract language.

While engaging with this document, be mindful of the ways in which the police contracts have guaranteed that the police will police themselves according to a different set of rules.

Highlight #1 – Article 18.1.5 (Employee Records)

Contract Language:

Human Resources Department files are a permanent record of an employee's performance with the City of Albuquerque. Such files will not be purged. However, employees who have been cleared of any charges shall not have reference of these charges included in their permanent personnel file.

Translation:

The content of the police officer's personnel files cannot be removed unless documents include information related to criminal charges of which the officer has been cleared.

Highlight #2 – Article 20.1.1 (Investigation and Discipline)

Contract Language:

The interrogation of any officers shall be at reasonable hours, preferably when the officer is on duty and during the daylight hours unless exigencies of the investigation dictate otherwise as determined by the City.

Translation:

Officers are to be interviewed for investigatory purposes preferably during the officer's workday (i.e. not on a day or during a time when the officer would not otherwise be performing the official duties of a police officer.) Also, this means that officers will be paid for time spent being interviewed as the suspect.

The City (i.e. police department personnel) can ultimately determine when to interview an officer that is a suspect based on the City's determination of need, though is to give preference to the officer's work day/time.

Highlight #3 – Article 20.1.3 (Investigation and Discipline)

Contract Language:

The name of the charging officer, complainant, or citizen making the charge shall be disclosed if this information is known to the officer conducting the investigation. If this information is not known, this shall be disclosed. Disclosure of the complainants name will not be required if revealing his/her name jeopardizes the investigation;

however, once the investigation is completed, the name(s) of the complainants will be revealed at the request of the officer who was under investigation along with a copy of the official complaint, signed or unsigned.

Translation: The name of the officer who officially charges the officer-as-suspect, the person (i.e. other police department staff member) making the claim against the officer, or the citizen filing a complaint's name must be disclosed to the officer unless disclosing the name would jeopardize the investigation. The City retains discretion regarding the disclosure of the name(s) of the complainant, charging officer, or citizen until after the official investigation is completed.

Highlight #4 – Article 20.1.5.1 (Investigation and Discipline)

Contract Language:

The interrogation shall be completed as soon as possible and the actual interrogation shall be limited as follows:

On-duty and off-duty personnel: Maximum of two (2) two-hour sessions within any twenty-four (24) hour period with a one (1) hour break between sessions. In no event shall the officer's tour of duty and interrogation exceed fourteen (14) hours unless both parties agree to continuation of the sessions.

Translation:

Officers can only be interrogated for a maximum of 4 (four) hours within a 24-hour period and the 4 (four) hours cannot be continuous – they can be, at most, in two (2) two-hour sessions. If the officer is interviewed in two (2) two-hour sessions, the officer must receive a one (1) hour break (i.e. time period within which the officer is not subject to interrogation) between the sessions.

The scheduled workday of the officer, combined with the interrogation sessions, cannot be more than fourteen (14) hours unless both the City (i.e. the police department staff) and the suspect agree upon this continuation. *Note: this language is in accordance with the language in Highlight #2 re: the officer being interviewed during the workday, preferably.*

Highlight #5– Article 20.1.5.2 (Investigation and Discipline)

Contract Language:

In all instances, in addition to the one-hour break provided for in section 20.1.5.1 above, time shall be provided for personal necessities, telephone calls, and a rest period as are reasonably necessary.

Translation:

As noted in Highlight #4, officers are to be given a one-hour break in between the maximum two (2) two-hour interrogation sessions. In addition to this one-hour break from interrogation, officers-as-suspects are to be provided breaks for personal necessities (i.e. use of restroom), to make telephone calls and to rest (i.e. sleep) where "reasonably necessary."

Highlight #6– Article 20.1.6 (Investigation and Discipline)

Contract Language:

The officer shall not be subjected to any offensive language, coercion, or promise of reward as an inducement to answering questions. Nothing herein is to be construed to prohibit the investigating officer from informing the officer that his/her conduct can become the subject of disciplinary action.

Translation:

During an interrogation, interrogators cannot use offensive language when speaking to officers-as-suspects, cannot make statements that can be viewed as coercing the officer, and cannot make guarantees to the officer-as-suspect as a condition to gain a response to a question.

Highlight #7– Article 20.1.6 (Investigation and Discipline)

Contract Language:

Only two interrogators, the involved officer and his/her representatives (up to two) will be allowed to participate, observe or monitor the interrogation. Others may be allowed by mutual consent.

Translation:

Only two interrogators are allowed to participate, observe, or monitor an investigation. This is noteworthy in that there is a limit on interrogators able to even observe or monitor an interrogation.

Highlight #8– Article 20.1.7 (Investigation and Discipline)

Contract Language:

The complete interrogation of the member shall be recorded mechanically or by stenographer. There will be no "off-the-record" conversations except by mutual agreement. All recesses called during the investigation shall be noted in the record. Nothing discussed "off-the-record" during the administrative interrogation shall be used as part of the administrative interrogation, investigation, or official file, or shall be submitted for any official action."

Translation:

All parts of the interrogation of an officer-as-suspect will be recorded using a recording device or by a stenographer and there can be no unrecorded (i.e. off-the-record) portions of an official investigation. All breaks (i.e. recesses) from the interrogation will be officially recorded as breaks.

The content of any unrecorded (i.e. off-the-record) conversations cannot be used as a part of any official investigation.

Highlight #9– Article 20.1.10 (Investigation and Discipline)

Contract Language:

An officer must, as a condition of continuing employment, truthfully answer any and all questions relating to the matter under investigation whether the officer is a subject or a witness to the matter. The determination of whether a question is relevant to the matter under investigation shall be made solely by the Internal Affairs officer conducting the investigation. All compelled statements will remain confidential and will only be used for the Independent Review Officer's investigation. Unless the City is ordered to release the documents pursuant to an order issued by a court of competent jurisdiction, the compelled statements will only be released to Internal Affairs, the Chief of Police, the City Attorney, the Independent Review Officer, the involved officer and his/her representative. Information from a compelled statement shall not be made public by the city.

The Independent Review Officer may prepare an investigative summary of discipline administered by the Department. The only information released to the Police Oversight Commission, will consist of the alleged charges, disposition of the case (i.e. findings of sustained/non-sustained), and any discipline imposed.

If a complainant citizen appeals the discipline that has been issued to target officer, the investigative file, minus the compelled statements, may be forwarded to the Police Oversight Commission for its review.

If an appeal is taken, the Independent Review Officer may provide a summary of conclusions to the Police Oversight Commission. The summary would be in his/her own words and would be a synopsis of the investigation. The summary of conclusions shall not contain any direct quotes, statements or actual language as contained within the compelled statement.

Any information released to the Police Oversight Commission shall not contain information that identifies sworn department personnel; this includes any report completed by the Independent Review Officer, and any statements by complainants, witnesses, target officers, suspects, etc. An officer can allow portions of summaries of his/her compelled statements to be released to the Police Oversight Commission if he/she chooses. Should the officer choose not to release summaries or the compelled statements, this shall not be considered lack of cooperation in the process. The Chief of Police will have access to all compelled statements for the purpose of disciplinary decisions.

Nothing contained herein shall be the basis for an individual waiving his/her Fifth Amendment rights under the Constitution of the United States of America.

Translation:

Officers, as a condition of remaining an officer, must answer relevant questions honestly when under investigation. The City (i.e. the interrogator) determines whether or not a question is relevant to the investigation.

When an officer is made to answer a question, it is considered a “compelled statement” for the purposes of the contract. Compelled statements are confidential and can only be released to Internal Affairs, the Chief of Police, the City Attorney, the Independent Review Officer, the officer-as-suspect or the officer-as-suspect’s representative unless directed otherwise by a court of law.

The City (i.e. city leadership or police department personnel) will not make the contents of a compelled statement public.

If a citizen who files a complaint appeals the discipline given to an officer-as-suspect, the contents of the investigative file can be forwarded to the Police Oversight Commission but the compelled statements must be removed from the investigative file.

The Police Oversight Commission can only receive a summary of the contents of the compelled statements contained in the officer-as-suspect’s investigative file and cannot include “any direct quotes, statements or actual language” from the compelled statement. In other words, the Independent Investigator must wholly paraphrase the contents of the compelled statement in order for the Police Oversight Commission to engage it.

The Police Oversight Commission cannot receive any identifying information of any officer of other sworn police department personnel, which includes any statements by complainants, witnesses, suspects, and other officers.

Any officer or sworn personnel that provided compelled testimony can choose summaries of his/her testimony to be given to the Police Oversight Commission. Note: This appears to be in conflict with the language that gives the Independent Investigator authority to wholesale summarize all aspects of compelled testimony.

Highlight #10– Article 20.1.11 (Investigation and Discipline)**Contract Language:**

The Department shall afford an opportunity for an officer, if he/she so requests, to consult with counsel before questioned, provided the interrogation is not delayed for more than two hours. Counsel and another person of his/her choice who is a member of the bargaining unit may be present during the interrogation.

All interviewing shall be limited in scope to activities, circumstances, events, conduct or acts, which pertain to the incident, which is subject of the investigation. Nothing in this section shall prohibit the empower from questioning the employee about information, which is developed during the course of the interview.

The representative may ask for a question to be repeated or restated for clarification purposes.

The representative may also object to any questions they feel is inappropriate and state into the record the reasons why. The interviewer will consider the objection and the question asked.

At the end of the interview, the interviewer will allow the employee or representative the opportunity to make any additional comments or provide any information they deem necessary.

If the officer's representative(s) disrupts the interview process, the representative may be removed. If an officer's representative is removed, the officer may be allowed up to two (2) hour to obtain another representative before the interview is continued.

If a representative is removed, the APOA President or his/her designee will be notified and provided a copy of the audiotape.

Translation:

The officer can consult with legal counsel before being interrogated as long as the scheduled interrogation is not delayed by 2 hours. Legal counsel and another member of the bargaining unit (i.e. not necessarily a staff member from the union, but any union member) may be present during the interrogation.

The City (i.e. interrogator) can ask questions about new information gathered during the interrogation – that is, if during the course of the investigation another issue arises, the interrogator can ask questions about it, too.

The officer-as-suspect can have a lawyer present and another bargaining unit member (i.e. "representative" for the purposes of the contract). The representative can ask for questions from the interrogator to the suspect to be repeated and can object to questions they "feel [are] inappropriate." The representative can be removed but if the representative is removed then the interrogation is immediately stopped for at least two hours while the officer-as-suspect finds another representative to replace him/her.

Highlight #11- Article 20.1.14 (Investigation and Discipline)

Contract Language:

The Chief, and only the Chief, may order or request a polygraph examination. Unless there are extenuating circumstances, deception detection examinations shall be employed only after:

20.1.14.1 The Chief has carefully reviewed the entire case;

20.1.14.2 All investigative leads have been exhausted;

20.1.14.3 The APOA President, or his designated representative, has been briefed on the facts of the case and the reasons for ordering the polygraph examination. The APOA President will receive a copy of the entire case with reasonable review time. The APOA will be given reasonable time to suggest (on the record) any investigative leads that need to be followed.

20.1.14.4 The citizen complainant has submitted to and passed such an examination.

20.1.14.5 A copy of the polygraph examination shall be provided to the accused officer immediately following the examination. A copy of the independent evaluator's report shall be provided to the accused officer immediately upon receipt with the Department. When the polygraph examination is used, the accused officer and the APOA will be advised 24 hours in advance, in writing, prior to the administration of the polygraph test.

Translation:

The Chief of Police, and not representative or other member of the police department included personnel in the Internal Affairs Division, may order or request a polygraph examination.

In order for a polygraph examination to be requested or ordered, the union president (i.e. "APOA President") must have been briefed on the facts of the case and the rationale leading to the ordering or requirement of a polygraph. The APOA President will receive a copy of the entire case file in advance of any polygraph occurring. The APOA will have time to suggest alternative investigative leads that may mitigate the need for an officer to take a polygraph examination.

Before any officer-as-suspect can be requested or ordered to submit to a polygraph examination, the citizen complaint must have already submitted to and passed a polygraph examination.

A copy of the results of the polygraph will be given to the officer-as-suspect immediately once received by the police department.

Highlight #12- Article 20.1.16 (Investigation and Discipline)

Contract Language:

Any administrative investigation will be completed within 90 days. The 90 day period shall not include time for review. An extension of up to 30 days may be granted by will only be obtained in writing and approved by the Chief of Police. A copy of the approval will be sent to APOA. The review process shall be completed within 30 days.

Translation:

The complete administrative investigation must be completed within 90 days and an extension can be approved at the discretion of the Chief of Police which must be granted in writing. A review process of up to 30 days can follow the 90 day investigation period.

Highlight #12- Article 21.1.9.5 (Investigation and Discipline)

Contract Language:

The Chief of Police, the Chief's designee, or in the case of Aviation, the appropriate department director or his designee within the Department has the sole authority to discipline.

Translation:

The Chief of Police is the only person, unless he designates another person, who can discipline officers. This means no civilian review board or other civilian oversight body can have discipline power during the duration of this contract.