

July 20, 2016

Stephanie Rawlings-Blake  
Mayor  
City of Baltimore  
250 City Hall  
Baltimore, MD 21202

Kevin Davis  
Police Commissioner  
Baltimore Police Department  
242 W. 29<sup>th</sup> Street  
Baltimore, MD 21211

Dear Mayor Rawlings-Blake and Commissioner Davis,

We are members of the Campaign for Justice, Safety, and Jobs (“CJSJ”), a coalition of over 30 organizations representing local and national youth leaders, policy advocates, civil rights organizations, law enforcement, and labor unions. CJSJ formed over a year ago in the wake of the Baltimore police in-custody death of Freddie Gray, an unarmed Black man. Since then, we have created and advanced policing reforms and economic solutions to improve the quality of life of Baltimore City residents.

We write to urge you to ensure that the union contract negotiations currently underway between the Baltimore Police Department and the local Fraternal Order of Police incorporate the historic changes to the Law Enforcement Officers Bill of Rights (“amended LEOBR”) passed during the 2016 legislative session.<sup>1</sup> The newly enacted provisions are aimed at increasing civilian oversight and participation in police discipline. Additionally, we strongly recommend removing barriers to police accountability contained in the existing *Memorandum of Understanding between the Baltimore City Police Department and the Baltimore City Lodge No. 3 Fraternal Order of Police Officers, Police Agents, and Flight Officers* (2014-2016) (“current or existing MOU”).

The language in the current MOU duplicates many aspects of the current LEOBR, thereby calcifying those provisions into local policy even when, as happened this year, the LEOBR has changed. It also includes protections for police facing disciplinary charges that go beyond even what the current LEOBR requires. As a general proposition, we believe that the existing LEOBR provides more protections for officers in the disciplinary process than is necessary under the Maryland law or U.S. Constitution, and beyond what is appropriate if we are to promote public confidence in our commitment to police officer accountability. These overly broad protections should not be replicated in contract provisions that bind the City even when the LEOBR is amended. Provisions that establish *additional* barriers to accountability beyond those imposed by the current LEOBR are a particularly counterproductive hindrance to fair and responsible policing practices in Baltimore City, especially in the current climate. These more restrictive provisions should also be removed. Because the current MOU has numerous provisions regarding police discipline, we highlight in greater detail below those we regard as particularly objectionable.

### **Provisions Regarding the Composition of Departmental Hearing Boards**

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<sup>1</sup> On April 11<sup>th</sup>, 2016, the Maryland General Assembly passed the HB 1016, which amended the LEOBR, among other law enforcement reforms. Maryland Governor Larry Hogan signed the bill on May 19<sup>th</sup>, 2016. [http://mgaleg.maryland.gov/2016RS/Chapters\\_noln/CH\\_519\\_hb1016e.pdf](http://mgaleg.maryland.gov/2016RS/Chapters_noln/CH_519_hb1016e.pdf).

As you know, the General Assembly this year amended the LEOBR to permit, for the first time, civilians to sit on the departmental hearing boards that adjudicate whether an officer is guilty of employment misconduct justifying discipline. The amended LEOBR, which becomes effective on October 1, 2016, sends a clear message that state policymakers understand the need for more community involvement in the investigation of police officers accused of misconduct. Most of the undersigned organizations, with others, were instrumental in the passage of that legislation, which members of the Baltimore delegation shepherded through the General Assembly. However, language in the current MOU, if replicated in the new contract being negotiated by police and city officials, will bar this change from taking effect in Baltimore. That result must be avoided. There are multiple provisions in the current MOU that must be changed to ensure that the amended LEOBR provisions relating to the composition of hearing boards are incorporated.

**Article 16.D, p. 22** of the existing contract states “No civilians other than an Administrative Law Judge may serve on a Departmental Hearing Board.” This provision must be deleted to be consistent with the amended LEOBR, which takes effect on October 1, 2016. Language should be added to the contract that provides, pursuant to LEOBR, Md. Code, Pub. Safety § 3-107(c)(3)(ii), that the default hearing board shall, if authorized by local law, include two voting members of the public, appointed by the Chief. Also, current contract references to the “three-person Departmental Hearing Board” such as **Art. 16.C.2, p. 22**, should be changed to reflect the possible change in composition. In addition, the composition of the alternative hearing board in **Art. 16.C.3., p. 22**, headed by a non-voting ALJ, should also be revised to include two voting members of the public to ensure that the alternative board does not become a mechanism of avoiding the critical involvement of the public in the hearing board process (or the alternative hearing board provision should be deleted in its entirety).

The current MOU has additional provisions regarding the hearing board process that provide unfair advantages to officers accused of misconduct, which should be revised. For example, officers who do not elect the alternative hearing board, which is led by a non-voting Administrative Law Judge, may replace three hearing board members chosen at random from a Departmental “trial board pool,” through the use of peremptory challenges. **Art. 16.C.4, p. 22**. Even assuming that hearing boards should be comprised by random selection from a pool, which is not required by the current or amended LEOBR, accused officers should not be able to influence the composition of the hearing board that will adjudicate the charges against them. There is already a process to remove officers who should be disqualified for cause. There is no need for a peremptory challenge process. If one is to exist however, at a bare minimum, it should not be limited to only the accused officer. That right should exist for the Department as well, and the provision should be modified accordingly. The provision should also make clear that no party has a right to peremptorily strike the members of the public selected to serve on the hearing board. And the provision should also be modified to specify that the “trial board pool” created by the Department may not include management or unit members who have sustained or pending disciplinary charges against them, which could introduce bias in the hearing process.

### **Barriers to Effective Discipline**

The current MOU also unnecessarily, and counterproductively, delays disciplinary proceedings when officers are criminally charged. **Art. 16.I, p. 23** provides that “[n]o

Departmental Hearing, except a Suspension Hearing, shall be held on any charges that relate to conduct which is also the subject of a criminal proceeding, until such time as criminal charges are disposed of prior to any appeal, except an appeal de novo to a Maryland Circuit Court.” This provision precludes the Department from disciplining officers even when a rule violation is clear, and indisputable, as long as the rule violation may also be a criminal act. Delaying discipline in these circumstances has the potential of hampering any later disciplinary proceeding due to the passage of time, with the potential loss of witnesses and evidence. The delayed accountability sends a message to the public that even the most flagrant misconduct is not treated expeditiously as an employment matter, further undermining public trust in the Department. The provision is particularly irrational when considered with a separately provision in **Art. 16.A.2, p. 20** which says that if officers are suspended without pay because they are charged with a felony, but are not convicted, they are entitled to back pay for the period of suspension, including all incremental pay raises. The delayed discipline thus means that an officer who was properly suspended gets paid a windfall for doing no work during the period of suspension, even if they are ultimately disciplined for the same conduct. Eliminating the requirement to delay discipline would solve or alleviate both problems.

The existing MOU in **Art. 16.R, p 25** also gives officers under investigation the right to review their own prior statements about an incident under investigation, before being questioned. While there may be times when review of prior statements is warranted, such as when officers state during an investigative interview that they cannot recall certain facts of the incident, there is no reason to give officers a right to review those statements prior to questioning. And, in no other context would police afford the subject of an investigation the *right* to review their own prior statements before answering questions about the incident under investigation. Doing so ensures that investigators have no way to know whether the statements made in response to questioning are genuine and accurate recollections, or are influenced by the prior statements, and thus cannot make accurate or meaningful judgments about the weight to give them. This provision should be removed.

The current MOU offers additional unwarranted protections to officers under investigation. **Art. 16.J, p. 20** allows the Department to consider officers for promotion when there is a pending IAD investigation into off-duty, non-criminal conduct. But, it will not consider for promotion officers who are under investigation for any other reason until the investigation is completed and the officer is cleared. It is not clear why off-duty, non-criminal conduct should be treated any differently than any other alleged police misconduct under investigation, when the Department makes promotion decisions. This provision should be removed.

### **Notice of Disciplinary Actions**

**Art. 16.K, p.23** of the current MOU, which limits who can receive notice of disciplinary actions taken against officers, must be modified to reflect an important change made by the General Assembly this year. HB 1016, enacted as Ch. 519 of the 2016 Laws of Maryland, added Md. Code, Pub. Safety § 3-207(F)(2)(ii) to give complainants a right to be informed of the disposition of their complaint, and what discipline, if any, was imposed. As a result, complainants should be added to the list of persons notified of disciplinary actions.

As you undertake the process of reviewing and negotiating the next police contract between the Baltimore Police Department and the Fraternal Order of Police, we think it critical that there be a process for community input and feedback, particularly as these provisions relate to accountability for officer action or misconduct. Community feedback during this process will lead to better understanding of how the terms of such agreements impact the community, result in community buy-in, and increase public confidence in the strength of internal accountability measures for police officers. We look forward to working with you to help shape a police union contract that benefits the city's law enforcement officers and the residents they serve.

Should you have any questions, please contact: David Rocah, Senior Staff Attorney, ACLU of Maryland at 410-889-8550, x.111; Monique Dixon, Deputy Director of Policy and Senior Counsel, NAACP Legal Defense and Educational Fund, Inc. at 202-682-1300; or Elizabeth Alex, Regional Director, CASA de Maryland at 443-802-2933.

Sincerely,

ACLU of Maryland  
Amnesty International  
Baltimore Algebra Project  
Baltimore United for Change  
Beats, Rhymes, and Relief,  
CASA de Maryland  
Communities United  
Empowerment Temple  
Equity Matters  
Freddie Gray Project  
Fusion Partnerships  
Jews United for Justice  
Justice League  
Law Enforcement Against Prohibition  
Leaders of a Beautiful Struggle  
Making Change  
Maryland Regional Collaborative for Health Equity  
NAACP Legal Defense and Educational Fund, Inc.  
No Boundaries Coalition  
Power Inside  
Southern Elections Foundation  
Showing Up for Racial Justice Baltimore Chapter