

# Contracts can stand in way of police accountability

By MARTHA BELLISLE  
Associated Press



Ted S. Warren/AP Photo

Seattle Mayor Jenny Durkan looks on as Police Chief Carmen Best, right, speaks at a news conference at City Hall in Seattle earlier this month.

***‘WHEN (WE) TALK ABOUT DISCIPLINE, ACCOUNTABILITY AND USE OF FORCE PROTOCOLS, WE SHOULD NOT BE TALKING ABOUT COLLECTIVE BARGAINING RIGHTS BECAUSE THOSE TERMS HAVE NO BUSINESS INSIDE OF THE CONTRACTS IN THE FIRST PLACE.’***

Ayesha Bell Hardaway | Case Western University School of Law

SEATTLE — A stipulation in a Kentucky police contract prohibited officials from initially firing the officers involved in Breonna Taylor’s death in Louisville.

The disciplinary history of a Chicago police officer who fatally shot Laquan McDonald had been deleted under the department’s contract, so officials didn’t know about the officer’s previous bad behavior.

A Seattle officer fired for arresting an elderly Black man who used a golf club as a cane got \$100,000 in back pay, thanks to the union contract that said the investigation missed a deadline.

Collective bargaining agreements for officers provide protections that stand in the way of accountability, even when the federal government is overseeing an agency through a consent decree, experts said. The killing of George Floyd by a Minneapolis officer ignited protests and calls for change, but experts say police contracts threaten to undermine those efforts.

Contracts designed to ensure officers receive fair wages and benefits have spilled over into public policy.

“We’re ignoring the purpose of the bargaining rights and we’re allowing them to step outside of what they were originally supposed to cover,” said Ayesha Bell Hardaway of the Case Western University School of Law.

“When (we) talk about discipline, accountability and use of force protocols, we should not be talking about collective bargaining rights because those terms have no business inside of the contracts in the first place.”

When contracts are written in private negotiations, that means little input from communities.

“Without transparency there can’t be any accountability,” she said.

James Pasco, executive director of the 351,000-member National Fraternal Order of Police, recently said the issue should be better screening and more training for recruits, not limiting contracts.

“We don’t get to decide who our members are,” he said.

Stephen Rushin, a Loyola University Chicago law school professor, has studied police contracts nationally and detailed their problems in an article published in the Duke Law Journal.

“A substantial number of these agreements limit officer interrogations after alleged misconduct, mandate the destruction of disciplinary records, ban civilian oversight, prevent anonymous civilian complaints,

indemnify officers in the event of civil suits, and limit the length of internal investigations,” he said.

Some contracts let an officer see videos of offenses before an officer is interviewed, give an officer a 48-hour delay before they speak to internal affairs and allows an officer to appeal a punishment to arbitrators who can overturn rulings, an Associated Press investigation found.

“These examples bolster the hypothesis that some union contract provisions may impede effective investigations of police misconduct and shield problematic officers from discipline,” Rushin said.

The problem is more than union overreach, he said. “It’s an indictment of the city for granting those concessions. Police unions only have the power that politicians give them,” he said.

Seattle is an example of how elected officials allowed police unions to insert controversial measures during closed negotiations, over the objections of community groups.

“The Seattle story is a microcosm of what’s hap-

pening elsewhere in the country,” Rushin told The Associated Press. “It highlights perfectly this conflict between major reform efforts and the extent to which labor protections can make it hard to engage in real change.”

In 2011, a federal judge found that the Seattle Police Department had engaged in a pattern of excessive force. The city entered into a settlement agreement, or consent decree, the following year and passed an accountability measure for additional oversight.

About 70 law enforcement agencies nationwide have faced consent decrees, according to the U.S. Justice Department.

The police overhaul bill in Congress includes a section that would cut federal funds for a law enforcement agency that “enters into or renews any contractual arrangement, including a collective bargaining agreement with a labor organization, that conflicts with any terms or conditions contained in a consent decree.”

By 2018, the judge in Seattle said the department was in compliance,

but warned that “if collective bargaining results in changes to the accountability ordinance that the court deems to be inconsistent with the consent decree, than the city’s progress ... will be imperiled.”

Seattle Mayor Jenny Durkan said the city was a national model for overhauling the police department. But community members felt duped after she nego-

tiated in private with the union for a contract that violated the accountability measure and the consent decree. One Seattle officer who benefited from the union contract in recent years was Cynthia Whitlatch. She had arrested an elderly Black man, claiming he swung his golf club cane at her. Her dashcam video showed he had not.

After the charges were dismissed, the man filed a federal lawsuit and was awarded \$325,000. A jury found Whitlatch had engaged in racial discrimination.

Whitlatch was fired but the union filed a grievance claiming the investigation was not completed in 180 days, as required by the contract. The city awarded her

\$100,000 in back pay.

Minor stipulations in police contracts like the 180-day rule are common. A stipulation in a Kentucky police contract kept the officers involved in Taylor’s death from immediately getting fired.

Under the Kentucky police bill of rights and the Louisville police contract, an officer cannot be disciplined “without just cause,” said Annale Taylor, the city’s deputy general counsel, who is not related to Breonna Taylor.

In order to establish “just cause,” a thorough investigation must be done, she said. If officers are fired before that work is complete, they could appeal, go back to work and sue, she said.

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## Should I keep the journals?

Note: This column first appeared in 2018.

**Dear Annie:** I need some advice on what to do about my daily journals. I keep a daily journal and have for many years — including during a time when my husband was an alcoholic. He’s been sober for 27 years. (We are in our late 70s.)

In those journals, I wrote about the times he got drunk — of his stumbling around in a drunken stupor, of his passing out in his lounge with our children sitting in the room, of his lying about going to Alcoholics Anonymous meetings and instead going to the club and drinking for hours. I wrote about all these times and more, describing the family’s embarrassment and frustration and adding my own angry comments.

Now that he’s been — so thankfully — sober all these years, I’m wondering what to do about those jour-

nals from the times when he was not. They contain not only comments about the difficulties I went through dealing with his drinking but also information about the family’s normal daily life — for example, children’s sports games. I’d like to save my journals in case my grandchildren or great-grandchildren would like to know, in the future, what their grandmother’s great-grandmother’s life was like, but I wonder about the wisdom of making it possible for them to read about their alcoholic grandfather or great-grandfather. Should I leave the journals unabridged, or should I take only the good excerpts from them to preserve my husband’s sober image? His grandchildren only know him as a loving sober man. I don’t know whether our children have ever enlightened their own children about how their

grandfather used to be before he stopped drinking. I have a hunch they have never said anything about it.

So, what do I do? At my age, I’m thinking that if I’m going to change anything, I’d better start doing it now.

— *Deliberating Diarist*  
**Dear Deliberating Diarist:** Your family’s struggle with alcoholism is not something you or your husband should feel ashamed of, and it might actually be helpful for your grandchildren and great-grandchildren to be made aware of it — when they’re old enough — as they may be genetically predisposed to the disease themselves. Even if they’re not at risk, they will inevitably face some hardships of their own. How special it would be for them to be able to look to the pages of your journal and remember their heritage of perseverance, exasperating, challenging, fulfilling, maddening, awe-inspiring — not always pretty but ultimately still beautiful.

DEAR ANNIE



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