

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

2022 Changes to Fraternal Order of Police, Lodge 4- Lieutenants Unit Collective Bargaining Agreement

Overview

The following memorandum addresses the revisions made to the collective bargaining agreement (“Agreement”) between the L.F.U.C.G. and the Fraternal Order of Police Lodge 4, representing the Police Lieutenants. This Agreement will expire in June of 2025.

Wage Settlement

I. Article 39 – Salary Schedule

- a. Wage increases will be as follows:
 - i. The salary schedule includes an equity adjustment (between 12.9% and 16.1%) in each step of the schedule which will be effective the first pay period after the ratification of the Agreement.
 - ii. First full pay period after July 1, 2022- 3%
 - iii. First full pay period after July 1, 2023- 2%
 - iv. First full pay period after July 1, 2024- 2%
- b. In addition to the wage information above, each member will receive a one-time lump sum payment of \$10,000 in lieu of retroactive pay.

Additional Contract Changes¹

II. Article 1- Recognition

- a. Section 1- All references to the Captain position in this Section, and throughout the entire Agreement, were removed as the Captain position has been eliminated.
- b. Section 3- This Section was amended to clarify that the word “Member” or “Members” throughout the Agreement means sworn employees of the Lexington Police Department holding the rank of Lieutenant.

III. Article 2- Subordination and Definitions

¹ All gendered pronouns were replaced with neutral pronouns throughout the Agreement.

- a. Section 1- Language was added to this Section stating that in the event a portion of the Agreement is invalidated by law (or by a court decision), the remainder of the Agreement will remain in effect, and the parties will bargain to address any invalidated portion of the Agreement that significantly alters the intent of the parties.
- b. Section 2- This is a newly added Section that defines the term “day” to mean “calendar day” throughout the Agreement.

IV. Article 5- Strikes, Work Stoppages, Slowdowns, and Layoffs

- a. Section 6- Language was amended in this Section to increase the layoff recall list period from twenty-four (24) months to thirty (30) months.
- b. Section 10- This Section was amended with language that limits a laid off employee’s option to receive payment for unused leave to vacation and holiday time only.
- c. Section 11- This Section was amended to clarify that a laid off employee’s health and life insurance coverage stops at the end of the next full month after the effective date of the layoff.

V. Article 6- Lodge Security

- a. Section 1- This Section was amended to clarify that membership in the union shall not be compulsory, and the union shall represent all Lexington Police Department employees holding the rank of Lieutenant without discrimination regardless of union membership.
- b. Section 2- All fair share fee language in this Section was removed in accordance with a recent Supreme Court decision². Language was added stating that L.F.U.C.G. will not discourage membership in the union and will not discriminate against employees for engaging in union activity.
- c. Section 3- Language was added stating that members may join or withdraw from union membership via written notice.
- d. Section 4- Language was added that details the process members must take to ensure their union dues are paid.
- e. Section 5- Language was added that details the process L.F.U.C.G. must take with respect to the withholding of union dues.

² All fair share fee language was also removed from the remaining Sections in the Article.

- f. Section 7- This is a newly added Section which states that non-union members may choose to compensate the union for their proportional share of collective bargaining expenses and sets forth the process for doing so.

VI. Article 7- Lodge Business

- a. Section 1- Language was added to this Section stating that anyone who uses the time allotted to negotiate collective bargaining agreements will be paid straight time only, and such time must be properly documented.
- b. Section 2- This Section was amended to clarify the documentation process related to the amount of time union board members spend on grievances.
- c. Section 3- Language was added to this Section increasing the number of representatives permitted to attend regular sessions of the Kentucky General Assembly without loss of compensation from two (2) to four (4). Language was also added to limit the total number of hours spent at such sessions by all members to eighty (80).
- d. Section 4- Language was added to this Section increasing the number of hours the union president (or designee) is permitted to utilize to attend conventions, seminars, meetings, and other union business from four hundred (400) to five hundred (500). Language was also added to limit the total number of hours to five hundred (500) no matter how many FOP contracts with L.F.U.C.G. are in existence.
- e. Section 5- Language was added to this Section to clarify the documentation procedure related to the use of the union president's time.
- f. Section 6- Language was added to increase the number of hours for which union board members are permitted to attend membership meetings (during work hours) without a loss in compensation from four (4) to six (6) per month.
- g. Section 9- This is a newly added Section which details the procedure for documenting time spent under this Article.

VII. Article 8 – Police Department Seniority

- a. Section 4- This Section was amended to remove the requirement that L.F.U.C.G. must provide a finalized promotional ranking list to the union within five (5) days of the certification of the promotional list.

VIII. Article 9 – Assignment

- a. All references to “platoon” were removed from the Article.
- b. Section 2(A):

- i. Subsection 1- Language was amended to provide that vacant Lieutenant positions were to be communicated via email as opposed to posting, and such communication will occur at least ten (10) days before the application deadline.
- ii. Subsection 9- This is a newly added subsection which states that if a member is on an approved leave of more than sixty (60) days, their position may be temporarily filled at the discretion of the Chief for the duration of the leave.
- iii. Subsection 10- This is a newly added subsection which states that in any department section with two (2) or more Lieutenants, a Bureau Assistant Chief may transfer a Lieutenant within that section in order to fill a vacancy without adhering to the requirements of this Article.

IX. Article 10- Promotional Vacancies

- a. Section 1- Language was added to this Section stating that any vacancy in the Lieutenant position will be filled within sixty (60) days of the Chief's notice of intent to fill the vacancy.

X. Article 11- Grievance Procedure

- a. Section 1- Language was added detailing the process by which grievances must be filed, and that incomplete grievances do not constitute adequate notification that a grievance has been filed.
- b. Section 2- Language was added to this Section stating that designated time limits may be extended by mutual agreement of the parties, and language was added to clarify that the phrase "grieved event" means the time when the grievant knew or should have known about the circumstances giving rise to the grievance.
 - i. Step 5(A)- Language was added stating that any arbitrators selected must be from the Kentucky region and the selection must be done within twenty-one (21) days of filing its notice of intent to pursue arbitration.
 - ii. Step 5(D)- Language was added stating that the location for any arbitration will be an L.F.U.C.G. facility or other mutually agreed upon location.
- c. Section 3- Language was added to provide the Department with a seventy-two (72) hour grace period to provide an answer to a grievance if the affected member does not receive an answer within the allotted time provided in Steps 1-4. If the Department still does not provide an answer, the grievance will be deemed confessed.
- d. Section 4- Language was added to clarify that the grievance procedure is the sole means of resolving grievances unless otherwise stated in the collective bargaining agreement.

XI. Article 13- Conditions of Employment

- a. Section 4- This is a newly added Section which states that L.F.U.C.G. may record, store, retain or otherwise store GPS or Automatic Vehicle Locator data gathered from employees' vehicles, computers, radios, and other electronic equipment in accordance with the Kentucky Department of Libraries and Archives retention schedule. L.F.U.C.G. will also redact any data which could be used to identify an employee's home address.

XII. Article 14- Health and Safety

- a. Section 12- This Section was amended to no longer require that physical fitness results be placed in personnel files.

XIII. Article 15- Disciplinary Procedures and Bill of Rights

- a. Section 2- Current contract language was removed and replaced with language requiring that members are to be disciplined only for just cause. This Section further defines the meaning of the term "misconduct" to include acts or omissions in violation of criminal law and L.F.U.C.G. policy.
- b. Section 3- Complaint Procedure: The complaint procedure has been removed and replaced nearly in its entirety as follows:
 - i. Section 3(A)(1)- This Section states that complaints alleging criminal misconduct by a member will be investigated without the need for a signed affidavit from the complainant.
 - ii. Section 3(A)(2)- This Section states that complainants alleging misconduct not rising to the level of criminal activity must provide a signed affidavit.
 - iii. Section 3(A)(3)- This Section states that if the complainant refuses to sign an affidavit related to a complaint, L.F.U.C.G. may still investigate the incident, but may only bring charges if L.F.U.C.G. can independently substantiate the allegations against the member.
 - iv. Section 3(B)- Language was added to clarify that nothing in the Section precludes the Department from investigating and charging members with criminal or administrative misconduct.
 - v. Section 3(C)- Language was added stating that the complaint procedure defined in KRS 15.520 and KRS 95.450 should be explained to the complainant by a supervisor or the Public Integrity Unit ("PIU") investigator.
 - vi. Section 3(D)- Language was added requiring a complainant to sign an affidavit if he/she elects to file a formal complaint. This Section further

states that the PIU shall investigate all allegations of misconduct contained in formal complaints.

vii. Section 3(E)- Language was added stating that if the complainant elects not to file a formal complaint, then an informal complaint or an information only report may be completed, and such complaints must be resolved at the Bureau level further described in this Section.

1. Section 3(E)(1)- This Section states that a member's immediate supervisor must initiate contact with the complainant upon receipt of an informal complaint to conduct further inquiry and investigate as appropriate.

2. Section 3(E)(2)- This Section states an investigating supervisor may take appropriate remedial measures at the Bureau level on informal complaints which are limited to coaching and counseling and remedial training. Coaching and counseling documents do not constitute discipline.

3. Section 3(E)(3)- This Section states that after the investigation, the investigating supervisor must contact the complainant and inform them of the resolution and/or remedial measures taken. If unsatisfied with the result, the complainant must be referred to PIU where they can file a formal complaint.

4. Section 3(E)(4)- This Section states that if the investigating supervisor believes the incident requires a formal complaint, and the complainant declines to do so, the investigating supervisor must file a formal complaint with the PIU.

5. Section 3(E)(5)- This Section requires all informal complaints to be documented accurately and to be provided to the PIU for entry into the Early Indication System.

c. Section 4- Investigation Procedure

i. Section 4(A)- Language was added to require that the member be provided with a written explanation of the reason for an investigation and whether the member is the subject of the investigation. If a member becomes the subject of an investigation, an investigator has no obligation to stop an interrogation to inform the member they are now the subject of an investigation.

ii. Section 4(B)- Language was added stating that a member may be required to submit his/her own written report regarding an investigation.

iii. Section 4(E)- This Section was added stating that L.F.U.C.G. shall conduct administrative investigations of non-criminal conduct within sixty (60) days

of receipt of a signed affidavit from the complainant. The time limit can be extended by the Chief of Police.

- iv. Section 4(F)- This Section was added stating that if a criminal investigation occurs in concurrence with an administrative complaint, the administrative complaint can be held in abeyance until the criminal investigation is resolved.
 - v. Section 4(G)- This Section was added stating that when a complaint alleges criminal misconduct, the member may also be subject to an administrative investigation, and the member will be provided with a copy of the administrative complaint within seven (7) days of the disposition of the criminal investigation. Administrative complaints not related to criminal activity will be provided to the member within twenty-one (21) days of the signing of an affidavit by the complainant.
 - vi. Section 4(H)- This Section was added stating that the PIU investigator will prepare a summary report to the Chief of Police following the completion of the investigation.
 - vii. Section 4(I)- This Section was amended to include language requiring that the Lodge provide L.F.U.C.G. with any written or recorded statements related to disciplinary actions against a member prior to any hearing before the L.F.U.C.G. Urban County Council.
 - viii. Section 4(J)- This Section was added stating that the PIU shall provide a status update in a timely manner upon request from the affected member.
 - ix. Section 4(K)- This Section was added stating that no threats, promises, or coercions shall be used against a member while they are a suspect in a criminal or administrative investigation. Suspensions or reassignment do not constitute coercion. A member must be advised of any suspension in writing either prior to, or within twenty-four (24) hours of the suspension.
 - x. Section 4(L)- This Section was added stating that it is not a condition of continued employment to be compelled to testify by any person or body of a non-governmental nature. The Disciplinary Review Board (“DRB”) is recognized as a governmental body.
- d. Section 5- Discipline Procedures: This is a newly added Section (Critical Incidents was moved to Article 41).
- i. Section 5(A)- This Section requires the PIU investigator to submit a written summary of an investigation to the Chief of Police within seven (7) days of completion.
 - ii. Section 5(B)- This Section requires the Chief of Police to determine whether the investigation revealed one of the following:

1. Proper Conduct- Member's actions did not constitute misconduct.
 2. Improper Conduct- Member's actions did constitute misconduct.
 3. Insufficient Evidence- Not enough evidence to prove or disprove the allegations.
 4. Unfounded Complaint- The allegations were false or no evidence to support them.
 5. Policy Failure- Member's actions fell within the relevant policy, but the policy may need to be reviewed and/or changed.
- iii. Section 5(C)- This Section requires the Chief of Police to communicate to the member his/her intentions to conclude the disciplinary process if there is no misconduct.
- iv. Section 5(D)- This Section states that if there is misconduct, the Chief may recommend discipline, and may meet with the member to present recommended discipline and/or sanctions (the meeting will not be subject to Section 7). The member may accept or reject such recommendations. The Chief may also choose not to recommend discipline (or if the member rejects the recommendation), and if so, the Chief must direct the PIU to prepare a report for the DRB.
- v. Section 5(E)- This Section states that if the member accepts the Chief's disciplinary recommendation, the PIU will prepare an Agreement of Conformity, and after signed by the member, the agreement will be sent to the L.F.U.C.G. Council Clerk to be put on the agenda.
- vi. Section 5(F)- This Section states that if the disciplinary action is referred to the DRB, the member must appear before the board and respond to questions. Failure to appear or respond to questions subjects the member to further discipline, including termination. Prior to the appearance before the Board, the member may obtain the investigative file upon written request. All records in the file are confidential and the member's copy must be destroyed at the conclusion of the disciplinary proceedings.
- vii. Section 5(G)- This Section states that the PIU investigator and the member will have an opportunity to present all relevant information to the DRB, and the DRB may direct questions to the investigator and the member.
- viii. Section 5(H)- The Section states that the DRB shall deliberate at the conclusion of the presentation without the member or Lodge representative present. The DRB shall determine by majority vote whether the member's actions constitute misconduct, and the member shall be informed of the DRB's decision and recommendation.

- ix. Section 5(I)- This Section states that all DRB recommendations shall be reduced to writing and sent to the member and Chief of Police.
 - x. Section 5(J)- This Section states that the Chief may accept, reject, or alter the DRB's recommendations and may meet with the member again before making his/her recommendation (again this meeting is not subject to discipline under Article 7). The member may then reject or accept the Chief's recommendation.
 - xi. Section 5(K)- This Section states that if the member rejects the Chief's recommendation, the Chief must forward the recommendation to the L.F.U.C.G. department of law, who will then prepare charges to be filed with the L.F.U.C.G. Council Clerk. The Clerk will then comply with all necessary provisions of the this Agreement and Kentucky law.
 - xii. Section 5(L)- This Section states that any time limits imposed by statute regarding the notice of disciplinary charges and recommended sanctions are considered satisfied upon service to a member.
 - xiii. Section 5(M)- This Section was amended to require L.F.U.C.G. and the Department to make available any L.F.U.C.G. employees who have information related to potential misconduct as witnesses at any hearing conducted by the L.F.U.C.G. Urban County Council.
 - xiv. Section 5(N)- This Section was amended to require the L.F.U.C.G. Council Clerk to issue subpoenas to witnesses for L.F.U.C.G. Urban County Council hearings.
 - xv. Section 5(O)- This Section states that if Improper Conduct is determined through the investigation process, the Chief of Police, or designee, shall notify the complainant in writing about the final disposition.
- e. Section 6- Disciplinary Review Board ("DRB")
- i. Section 6(A)- This Section requires the DRB to consider founded complaints made against members when the Chief of Police declines to recommend discipline, or when the member rejects the Chief's recommendation.
 - ii. Section 6(C)- This Section describes the requirements of the make up of the DRB: 9 members, 5 of whom are either Assistant Chiefs or Commanders. 2 members of the DRB must be supervisors appointed by the Lodge, and 2 members will be Fayette County residents who are 21 years or older, who have no felonies, and who have not been convicted of a misdemeanor within the last 5 years.
 - iii. Section 6(D)- This Section requires the chairperson of the DRB to be appointed by the Chief, and a member of L.F.U.C.G.'s law department will

serve as a liaison to the DRB. The person who filed the complaint cannot be a member of the DRB.

- iv. Section 6(E)- This Section states that the members of the DRB shall adhere to all confidentiality requirements set forth in federal and state law.
- f. Section 7- Lodge Representation (this is a newly added Section)
 - i. Section 7(A)- This Section states that a member has the right to Lodge representation if the member is questioned by a supervisor regarding an incident or complaint, the member believes the incident may result in discipline, and the member requests representation.
 - ii. Section 7(B)- This Section states that the right to Lodge representation includes a situation during which a supervisor requests a written statement from the member regarding the incident.
 - iii. Section 7(C)- This Section states that the Lodge agrees to have a representative available at all times to provide representation without unreasonable delay. The Lodge must provide the Chief with a list of Lodge representatives at specific times.
 - iv. Section 7(D)- This Section states that L.F.U.C.G. is not required to delay an interview or written statement of a member to wait for a member's preferred representative. So long as there is a qualified representative present, there is no cause for delay.
 - v. Section 7(E)- This Section was amended to define a "Lodge Representative" as a designated member of the Lodge or an FOP attorney.

XIV. Article 16- Personnel Files

- a. Section 1- This Section was amended with language stating that personnel files are the property of L.F.U.C.G. and that this Section is subject to all state and federal law.
- b. Section 6- This Section was amended with language stating that a supervisor may maintain one "Supervisor's file" per member under their supervision, and this file may only contain records reasonably necessary to reference a member's prior work performance when preparing evaluations, and to recommend additional training.
- c. Section 7- This Section was amended with language stating that if no formal complaints are filed during the disciplinary process, then only an informal complaint or information only report may be completed. Such complaints are to be investigated and resolved at the Bureau level, and any action taken must be forwarded to the Public Integrity Unit for storage in the IA/Pro system. Coaching and counseling documents are to be kept in the member's electronic personnel file for a maximum of one (1) year from the date of incident.

XV. Article 22- Hours of Work/Compensatory Time

- a. Section 3- Language was added to this Section stating that RDO changes for special events will be based on seniority or Department need.
- b. Section 4- This Section was amended to clarify that members would be paid at one and a half (1 ½) times their regular rate of pay for events that will be reimbursed to L.F.U.C.G. by grants or by third-party entities.

XVI. Article 23- Paid and unpaid Leaves

- a. Section 1(A)(ii)- Juneteenth and Veterans Day were added as recognized holidays.
- b. Section (1)(B)- This Section was amended to clarify that in the case of a seniority “tie” leave shall be approved based on the promotional eligibility list rank in accordance with Article 8 (Police Department Seniority).
- c. Section (1)(C)- This Section was amended to clarify leave requests during peak months of the year will be based on the promotional eligibility list rank in accordance with Article 8 (Police Department Seniority).

XVII. Article 24- Sick Leave

- a. Section 1- This Section was amended with language decreasing the minimum amount of sick time that must be taken from one (1) hour to thirty (30) minute increments.

XVIII. Article 27- Modified Duty

- a. Section 3³- This Section was amended with language stating that a member who is medically unable to perform their duty as a result of a work-related injury, must submit the applicable paperwork as soon as practical after the medical determination is made that they cannot perform their duties, as opposed to within ten (10) days of the incident. Language was also added stating that the member must submit a written statement (from a medical authority) that indicates that the member is unable to perform their duties.
- b. Section 4- Language was added to this Section stating that leave status can be granted for a period of the equivalent of 2080 work hours (or twelve months).
- c. Section 5- Language was added to this Section to clarify that any member returning to work must provide a written statement from a competent medical authority, as opposed to simply a medical statement.

³ Formerly Section 2.

- d. Section 6- This Section was amended with language stating that a member can remain on modified duty for a period equivalent to 2080 work hours (or twelve months).
- e. Section 7- The amount of days spent on disability leave status which will not count toward a member's vacation accrual rate was increase from ninety (90) to one hundred eighty (180).
- f. Sections 8, 9, & 10- Language was added in these Sections to specify that a competent medical authority must provide specific work limitations, modifications, and restrictions (as opposed to "medical instructions") for members on modified duty.
- g. Section 11- Language was added to this Section to clarify that total modified duty leave shall not exceed the equivalent of 2080 work hours, which may be extended at the discretion of the Chief.

XIX. Article 28- Death in the Line of Duty

- a. The amount increased from \$100,000 to \$250,000.

XX. Article 35- Vehicles

- a. Section 3- Language was added to this Section stating that members residing within forty five (45) miles of the County line may take home fleet vehicles.

XXI. Article 41- Critical Incidents (This is a newly added Article)

- a. Section A- Requires L.F.U.C.G. to notify the Lodge President, or designee, when a member is involved in a "critical incident." This Section defines "critical incident" as an incident resulting in death or serious physical injury to another.
- b. Section B- States that a member does not have the right to refuse or fail to cooperate in providing scene information regarding a critical incident.
- c. Section C- Requires all applicable post-critical incident investigation protocols of the investigating agency to be followed.
- d. Section D- States that a member involved in a critical incident may be subject to a drug test, which will be given in accordance with all constitutional protections upon request.
- e. Section E- Requires that a member be informed of his/her right to counsel if being interviewed by an investigating agency as a result of their involvement in a critical incident. The member must be given sufficient time to have counsel present and be informed when counsel is present.

- f. Section F- States that members are not required to give a statement on a critical incident during a criminal investigation with a Public Integrity Unit representative present.

XXII. Article 43- Term

- a. Section 1- This Agreement shall be effective upon ratification by the Urban County Council until June 30, 2025.