

**Addendum to the Memorandum of Understanding between the  
Baltimore County Administration and the Baltimore County Federation of Public  
Employees, FPE/AFT , AFL-CIO Local 4883**

The undersigned parties agree that the following shall apply when an investigation or interrogation is initiated by the Baltimore County Department of Corrections or a designee of the Baltimore County correctional officers as a result of an allegation that may lead to disciplinary action, demotion, or dismissal. This Addendum to the Memorandum of Understanding is incorporated into the current MOU between the Baltimore County Administration and the Baltimore County Federation of Public Employees, FPE/AFT, AFL-CIO Local 4883.

**Filing of Complaint**

Complaints alleging brutality will require the complainant to attest to the truthfulness of the matter asserted in writing.

**Preliminary Inquiry**

- A preliminary inquiry is a fact-finding process overseen by a correctional supervisor to determine if operational procedure were appropriate and all policies and procedures have been followed.
- Actions that may be included in this process are: the submission of written reports; collection of materials or any other evidence; and informal interviews of staff or others that may assist in the determination as to whether or not a violation occurred.
- An employee who is the subject of a preliminary inquiry that the employee reasonably believes may lead to disciplinary action may request to have a Federation representative present during the interview.
- Management shall allow reasonable time for the federation representative to attend the interview, but in no case less than one (1) hour. Provided, however, that this Section will not apply where an immediate investigatory interview is an operational necessity. Supervisors will be held accountable

by the administrative officer for compliance with this Section; failure by management to comply with this Section is not grievable by the affected employee and will not affect any disciplinary action that may be taken.

At any point during the preliminary inquiry, if the individual conducting the interview reasonably believes that the employee may become a target of an investigation, the employee shall be notified of their right to counsel as if the employee was under a formal interrogation (see "Right to Counsel" section, *infra*). Any employee under administrative investigation by the Police Internal Affairs Unit shall be informed in writing of the nature of the investigation prior to any interrogation or questioning.

**Investigation Procedure:**

- Unless a complaint of brutality by an officer is filed within 90 days after the alleged brutality, an investigation that may lead to disciplinary action for brutality may not be initiated.
- Administrative charges may not be brought unless filed within 1 year after the alleged act. The 1 year limitations period does not apply to charges of criminal activity or excessive force.
- An officer under investigation shall be informed in writing of the name, rank, and command of: (i) the law enforcement or correctional official or other individual in charge of the investigation; (ii) the interrogating official; and (iii) each individual present during an interrogation.
- Before an interrogation, the correctional officer under investigation shall be informed in writing of the nature of the investigation.
- Formal interrogation takes place at the office of the investigating officer or another reasonable location, preferably while the officer is on duty. The correctional officer under interrogation may not be threatened with transfer, dismissal or disciplinary action.
- There shall be no audio or video recording of officer unless complainant is recorded in the same fashion. The department may conduct interviews through written correspondence.
- Upon conclusion of an investigation, the case will be deemed sustained, unsustained, unsustained with Director's note, or inconclusive.

- When an investigation results in a sustained finding, an appointee of the managing official not directly involved with the investigation will notify the officer in writing of the sustained charge(s) and offer disciplinary sanctions or non-punitive actions. The officer shall be provided a summary of the investigatory file and be given reasonable time to review and consult with counsel by conclusion of the officer's shift but not more than 24 hours before being required to accept or decline the recommended sanction.
- Should the officer accept the recommended sanction, the matter will be deemed resolved. If the officer declines the sanction or fails to respond to the sanction within 24 hours, a hearing will be scheduled.

#### **Right to Counsel:**

- Whether conducted by the Internal Affairs Unit of the Baltimore County Police Department or the Department's personnel when conducting an investigation, an interrogation shall be considered a "formal interrogation" in any case when an officer is the subject of an investigation which could lead to discipline.
- An officer under formal interrogation has the right to be represented by counsel or a representative of their choosing who shall be present and available for consultation at all times during the interrogation and hearing phases. The interrogation shall be suspended for a period not exceeding three (3) days until representation is obtained.
- Officer's counsel or representative may request a recess at any time to consult with the officer and may object to any question posed. A recess will be reasonably granted as long as it does not interfere with the interview. Objections do not absolve the officer's obligation to answer the question.
- A correctional officer may be ordered to submit to interrogations.
- Statements compelled from an officer in an administrative investigation may not be used against the officer in a criminal investigation.
- Prior to interrogation, the officer shall be provided a form regarding his/her right to counsel under the MOU and a signed copy shall be made part of the investigatory file.

### **Record-keeping and Availability:**

- A summary of the investigatory file shall be forwarded to the officer no less than ten (10) days before a hearing.
- Investigatory summary shall contain the names of each witness, the nature of each charge, as well as any exculpatory information. All written statements shall be made available for review and copying.
- All documentary, photographic, tape recorded or video-taped evidence must be provided on site for review and preparation, to include any extrinsic evidence to be offered at the hearing.
- In order to allow the accused officer and counsel to review evidence and prepare for a hearing, the Department shall provide private work space and reasonable time for review of the complete investigatory file and any extrinsic evidence to be offered at the hearing.
- Failure to disclose the name of a witness in the investigatory or charging document will preclude the witness' testimony. However, any witnesses that come to the investigator's attention after the investigation stage has concluded may testify at the hearing if the following criteria are met:
  - a. The name(s) of the witness and substance of their testimony is immediately provided to the Department, officer and counsel;
  - b. The Department and counsel are provided an opportunity to interview the witness;
  - c. The hearing, if requested by the Department and/or counsel, shall be postponed no more than ten (10) days from the presentation of the information provided in subsection (a); and,
  - d. The witness is made available for cross-examination at the hearing or in a recorded deposition.
- No charges may be brought or evidence considered based solely upon an anonymous or undisclosed witness account.

### **Hearing Procedure:**

- Officers shall be provided written notice of the time, place and charges to be resolved at a hearing.
- Upon a recommendation of demotion, dismissal, suspension or any similar action which is considered a disciplinary sanction, officers who are not

accused of a felony are entitled to a formal hearing before a hearing officer/panel.

- In cases where the recommendation of a disciplinary sanction includes suspension not exceeding nine (9) days, the hearing officer shall be a Captain recommended by the Department, with a right of the employee to strike the first recommended Captain.
- In cases where the recommendation of punishment includes suspension of ten (10) or more days, demotion or termination, the hearing shall be conducted by a 3 person panel selected by the Director. The panel shall consist of the Deputy Director or Major, an appointee of the Director and an officer of equal rank. The board shall contain at least one member of equal rank to the accused. The Director shall select the Chairperson.
- The charged employee shall be entitled to disqualify one member of the board, excluding the Chairperson. The disqualification must be executed within two (2) days, excluding Saturday and Sunday, of the employee being advised of the Board's appointment. In such an event, the Director will appoint a replacement to the board.
- Neither the hearing officer nor any member of a hearing panel shall have a part in the investigation or interrogation of the correctional officer. Neither the hearing officer nor any member of a hearing panel shall have direct supervisory responsibility over the personnel involved in the interrogation or investigation. This does not mean that such staff is necessarily disqualified given the hierarchy at the Department; it simply means that they cannot have directed an individual to do something with relation to the investigation/interrogation.
- The hearing shall be a full evidentiary hearing. An audio recording of the hearing shall be kept and archived for a period of 60 days after the completion process of the appeal processes or 30 days after the date of the hearing if the officer does not appeal the decision.
- A formal written record shall be introduced. Parties shall be allowed to:
  - (i) call witnesses, (ii) introduce reliable and probative evidence and (iii) request the hearing officer or chairperson to compel the appearance of witnesses. Both parties may be represented by counsel, submit rebuttal evidence, and cross examine witnesses.

- The Department bears the burden of proof and shall present their case first. The Officer shall present their case following the conclusion of the Department's case. The Officer may not be compelled to testify at the hearing, but his/her statements may be introduced by either party.
- At the conclusion of the Department's case, the hearing officer may dismiss any charge in which the Department has presented insufficient evidence to support a guilty finding.
- Evidence which would be deemed both reliable and probative by a reasonably prudent individual is admissible and shall be given probative effect.
- No Statement from a confidential witness or anonymous source may be entered into evidence. Evidence which is probative and reliable and derived from an anonymous or confidential witness may be introduced.
- The hearing officer/panel shall give effect to the rules of privilege recognized by law and shall exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.
- Each relevant record or document that either party desires to use shall be offered and made a part of the record.
- After each side has been given ample opportunity to present evidence and argument about the issues involved the hearing officer/panel shall determine whether the Department proved by preponderance of the evidence any of the charges.
- The hearing officer/panel may consult with a County Attorney and/or a Human Resource Generalist at any point in the hearing for legal advice and/or human resources' rules and regulations, however, that individual shall have no involvement in the investigation or supervision of the attorney presenting the Department's case.
- A decision, order or action taken as a result of a hearing shall be in writing and accompanied by findings of facts.
- The findings of fact shall consist of a concise statement on each charge in the case.
- A finding of not guilty of all charges by the hearing officer/panel terminates the action.
- A panel decision is based on a majority vote.

- If the hearing officer/panel finds by a preponderance of the evidence that a correctional officer is guilty of a charge, the hearing officer/panel shall: (i) allow the accused to present evidence which may mitigate any recommended punishment. Such evidence may be introduced at the hearing prior to providing a sanction, or 1 day after the hearing. (ii) consider the correctional officer's past job performance and other relevant information as factors before making a decision for disciplinary action.
- In the event the hearing panel determines that dismissal is the appropriate sanction, the hearing panel will make such recommendation to the Director;
- A copy of the decision or order, findings of fact, conclusions and written decision for action shall be delivered to the correctional officer or the correctional officer's representative of record and the managing official.
- Upon appeal, the investigatory file from Internal Affairs may be reviewed by the employee and/or his representative no less than seven (7) days prior to the hearing.

### **The Appeal Process:**

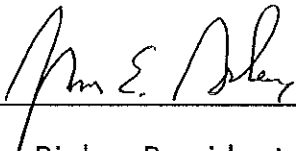
- **1<sup>st</sup> step:** - Appeal to Director- A not guilty finding by the Director terminates the matter and requires that all back pay and benefits be awarded to the employee.
  - Where the officer is found guilty at the hearing stage, an officer may request a mitigation hearing before the director to review the punishment handed down by the hearing officer or panel; or
  - May request a hearing de novo before the Director.
- **2<sup>nd</sup> step:** Appeal to the Administrative Law Judge ("ALJ") – An officer may appeal the Director's decision to the ALJ for a hearing de novo. A final decision of the ALJ may be appealed by either party to the Personnel Salary and Advisory Board ("PSAB"). The ALJ has the authority to award back pay, however the award will be stayed pending the completion of an appeal by the County.

- **3<sup>rd</sup> step:** - Appeal to the PSAB within the scope of its current authority, duties, and responsibilities. A finding by the PSAB which does not result in termination is the final order in the matter.

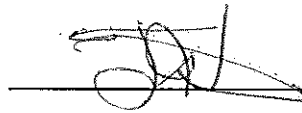
The undersigned agree that the above procedure will be incorporated into the current Memorandum of Understanding and remain in effect until conclusion of that Agreement. It is mutually understood and agreed upon by all parties that the above procedures shall not take effect prior to July 1, 2014. Any changes to this policy shall be mutually agreed upon between the parties.

IN WITNESS WHEREOF, the parties have executed this addendum to the current Memorandum of Understanding this 7 day of April 2014.

Baltimore County Federation of Public Employees Baltimore County Administration



John Ripley, President



Fred Homan, County Administrator

Baltimore County Federation of Public Employees, Local 4883