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DEPARTMENT OF LABOR 1990 MAY 21 AM 9:41
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
ARBITRATION PURSUANT TO ACT 312 OF MICHIGAN
OF PUBLIC ACTS OF 1969 AS AMENDED
DETROIT OFFICE

In the Matter of the
Act 312 Arbitration Between:

CITY OF JACKSON

MERC Case No. L89 B-0063

-and-

LABOR COUNCIL MICHIGAN
FRATERNAL ORDER OF POLICE

ARBITRATION PANEL'S FINDINGS OF FACT,
CONCLUSIONS AND ORDERS

APPEARANCES:

FOR THE CITY OF JACKSON:

Michael Ward, Attorney
Roger D. Wilson, Director,
Personnel & Labor Relations
Audrey E. Richardson, Asst. Dir.
Personnel & Labor Relations
Robert L. Johnson, Police Chief

FOR MICHIGAN FRATERNAL ORDER
OF POLICE:

Kenneth W. Zatkoff, Attorney
James J. Quinn, Field Rep.
Steven A. Shiley, Bargaining
Committee
Howard K. Noppe, Barg. Unit
Duane C. Vinton, Labor Rep.
Thomas R. Hutton, Lodge 70
President
Ricardo Cedillo, Labor Rep

Pursuant to a Petition filed by the Michigan Fraternal Order of Police seeking an appointment of a Chairman of an Act 312 Panel in the above matter on December 11, 1989, George T. Roumell, Jr. was appointed Chairman of this Act 312 Arbitration Panel on January 30, 1990. The City of Jackson, thereafter, on February 14, 1990, filed an Answer to the Petition.

The City's Delegate to the Panel is Michael Ward. The Fraternal Order's Delegate is James Quinn.

A hearing was held on this matter on May 16, 1990 in

the City of Jackson. The parties have waived the taking of a transcribed record. At that time, the parties acknowledged that they had reached impasse on the following issues:

SENIORITY

The Fraternal Order's last best offer was that selection of shifts be in accordance with seniority. The City's last best offer was to keep the contract in the just expiring agreement^{1/}.

SHIFT DIFFERENTIAL

The Fraternal Order's last best offer is that there be a \$.50 per hour for second shift and \$.25 per hour for third shift. The City's last best offer is that there be no shift differential pay.

PLAINCLOTHES ASSIGNMENT UNIFORMS

The Fraternal Order's last best offer is that officers assigned plainclothes will be issued a total of three blazers, three pants, three shirts (long-sleeved), three shirts (short-sleeved), and that shoes would be replaced under the current replacement plan. The blazers, pants and shirts would be replaced as needed. The City's last best offer is to accept the Union's offer and the Order will so provide.

PENSION

There are three pension issues, namely, final average computation, an annual index for cost-of-living increase and a mandatory switch from the old Police and Firemen Pension Plan to the present Act 345 Pension Plan. The Fraternal Order's last

^{1/} The reference to "expiring agreement" is to the July 1, 1986 through June 30, 1989 Agreement.

proposal is to compute averages for pensions on three of the last five years and to have an annual index for cost-of-living increase for pensions at 1% based upon a common index. The Fraternal Order proposes no mandatory switch from the old pension plan to the Act 345 Pension Plan. The City's last best offer is to compute the final average compensation based upon the best three consecutive years of the last ten years; has proposed no annual index for cost-of-living on the Act 345 Pension Plan. The City has also proposed as a last best offer that officers presently, under the old Police and Firemen Pension Plan, be given a one time option to switch to the Act 345 Plan, that option to be exercised by 5:00 p.m. on January 10, 1991, and that officers who fail to exercise the option to switch to the Act 345 Plan will not be able to subsequently switch.

PAY INCREASES

Both parties have agreed that the contract should be a three year contract commencing July 1, 1989 and ending June 30, 1992. The Fraternal Order has made a last best offer of wage increases with 4% the first year, 4-1/2% the second year, and 4-1/2% the third year of the contract. The City's last best offer of wages is a 4% increase the first year, 4% the second year, and 4% the third year of the contract.

DRUG TESTING

The City made a last best offer on drug testing by setting forth a drug testing policy. The Fraternal Order's last best offer is that there be no negotiated drug test policy.

INVESTIGATORS

The City has, as a last best offer, proposed to eliminate the Detective position, but grandfather those in the position and replace the position with the rank of Investigator. The Fraternal Order's last best offer is to make no changes as to the Detective position and not to create an Investigator position.

OPERATIONAL NEEDS

The City has made as a last best offer several proposals concerning the change of assignments based on operational needs of the Department. The Fraternal Order has responded by making as a last best offer the retention of the present contract language as to these issues.

SICK TIME CHANGES

The City has made a last best offer of limiting sick time that may be used for family member illnesses. The Fraternal Order's last best offer is that the language in the just expired contract as to sick time for family member illness continue. The City has proposed that the Chief of Police have discretion in permitting officers, providing the officers are cleared medically, to undertake light duty assignments. The Fraternal Order has agreed to the City's position and the Order will so provide.

SICK TIME PAYOFF UPON RETIREMENT

The City has proposed that any new employee that is employed after the date of this Order shall receive a sick time payoff of 50% of his/her accumulated sick leave credits up to a maximum of 120 days (960 hours) accumulation. The Fraternal

Order's last best offer is that the present sick time payoff language remain.

UNION RELEASE TIME

The City's last best offer as to Union release time is that such release time must be subject to the operational needs of the Department. The Fraternal Order's last best offer is that the language in the current contract remain.

GUN PROFICIENCY PAYMENTS - PHYSICAL AGILITY TEST

The City's last best offer was to eliminate gun proficiency payments for any employees hired after the date of this Order and to replace same with a physical agility test as per a certain schedule of payments. The City also proposes that any employees employed prior to the date of this Order shall have the option on September 1, 1990 and again on September 1, 1991, to elect to no longer receive gun proficiency payments, but to accept the physical agility test payment on the condition that once an employee so elects, the employee can no longer receive gun proficiency payments. This option is only for employees presently employed by the City. The Fraternal Order's last best offer is for no changes in the gun proficiency payments.

HEALTH INSURANCE COVERAGE CHANGES

The City's proposal as to health care is that effective May 19, 1990, or as soon thereafter as the insurance company can implement the change, the medical, surgical and hospitalization plan offered by the City shall be comprehensive semi-private MVF-1 with Option B Master Medical, PRE/100, MSO, ML, FAE-RC, and \$3.00 co-pay prescription drug rider. The Fraternal Order's

last best offer is that the present plan remain as is.

SUMMARY

The Chairman has set forth the above issues between the parties and their respective positions.

DISCUSSION AND CONCLUSIONS

There were approximately 17 issues and sub-issues, as outlined above, that were pending at the time of the arbitration hearing on May 16, 1990. With so many issues, it becomes difficult, in the interest of resolving the impasse, to focus on the parties' respective key concerns. Many of the issues in the view of the Chairman were issues that needed to be eliminated in order that resolution of the impasse could be reached.

The parties, for a substantial period of time, had a seniority system which permitted certain references and have not had shift differentials. In addition, the parties had a Detective rank system without the necessity of developing an Investigator position. In the same category, the Chairman noted that the operational needs language, although perhaps desired by the City, was unnecessary because the Department has basically functioned quite well under the language in the expired contract.

The same comments can be made concerning usage of sick time for family member illnesses, as well as the required approval for Union release time. It is for these reasons that as to the issues of seniority and shift differential, the City's last best offer will be adopted by the majority of the Panel and the Order will so provide. Likewise, the Fraternal Order's offer as to operational needs, development of Investigator

position, and sick time for family member illnesses will be adopted so that the language in the contract as to these items will continue unchanged.

By the elimination of the aforementioned issues, the Panel was then able to concentrate on issues that were of concern to the respective parties. The Fraternal Order wanted changes in the pension plan. The City desired cost containment in health care insurance as well as an introduction of physical agility tests and some change in sick leave payoff. There was also the issue of wages separating the parties.

In the background here is the fact that the City, prior to May 16, 1990, had settled a Collective Bargaining Agreement with its police command officers. This Agreement did provide for the health care cost containment that the City is proposing; did make the pension improvement that the City is proposing; and did provide for a switch from gun proficiency payments to physical agility test payments. With this precedent, not only within the City but within the Department, it seems that this comparison is persuasive and consistent with the criteria set forth in Act 312.

A word about health insurance coverage. Costs have been increasing. The City is not proposing that the employees pay the premiums for health insurance coverage, but instead, participate in a plan that does provide for some deductibles and certain co-pays, but otherwise provides coverage to its employees in a cost containment mode. This seems reasonable in view of the increased cost of insurance coverage that has been solely borne by the City. Since the other police unit has

adopted same, it seems reasonable that this Panel should adopt the City's position.

In the area of pensions, the City has experienced substantial pension costs and needed a method of providing increased pension benefits for its police employees without a concomitant burdensome financial liability. This is the reason why the Chairman would agree that an annual index for cost-of-living or the computation, as proposed by the Fraternal Order, would not be feasible. However, particularly in view of the fact that the command officers did receive a final average computation based upon the best three consecutive years out of ten, it would seem that on the comparison criteria and the City's financial ability, that such an arrangement would be appropriate here and the Order will so provide.

The old Police and Firemen Pension Plan is costly to the City. This is the reason why the City adopted a second plan under Act 345. There are approximately 16 officers who are still under the old Police and Firemen Pension Plan. The recent experience has been that officers retiring have elected to proceed under the Act 345 Plan. However, such an election, if not made earlier than retirement, has been costly to the City because the City has been responsible for funding under the old plan and then has certain responsibilities under the Act 345 Plan in such an arrangement.

Therefore, the City's proposal that the officers be required to make an option during the life of this contract seems feasible. The City's last best offer would mean that the

officers now covered by the old plan must make an option by 5:00 p.m. on January 10, 1991 as to which plan they wished to be covered. If an option is not made by that date, the officer will not be able to elect the transfer from the old plan to the Act 345 Plan. This option, however, is not available to officers now covered by the Act 345 Plan. This option will only apply to those officers under the old plan. The Order will so provide.

There is liability to the City's argument that the sick time payoff should be reduced. However, the present arrangement has existed for some time. It is for this reason that the City's offer will be adopted because it grandfathers current employees and would only apply to individuals employed after the date of this Order. In ordering the City's last best offer on this point, it should be understood that all current officers will continue operating on the current sick leave payoff program; that the new program only applies to officers hired after the date of this Order, namely, 50% of his/her accumulated sick leave credits up to a maximum of 120 days (960) hours accumulation. The Order will so provide.

This same approach is taken to the gun proficiency payments and physical agility payments. Officers who were employed as of the date of this Order will, if they do not exercise the option otherwise provided, continue to be eligible for the gun proficiency payments as set forth in the current Agreement. Officers hired after the date of this Order shall not be eligible for gun proficiency payments, but instead, will be eligible for physical agility test payments. Since there are

certain officers in the Department presently who may, given the opportunity, elect to forego gun proficiency payment in favor of physical agility tests, the City's proposal to give these officers a one-time-only option in two opportunities during the life of the Agreement to exercise that option, namely, on September 1, 1990 and September 1, 1991. The Order will provide that officers may elect the physical agility test payments provided however, that once an officer so elects, the officer is forever bound by said election and may not revert back to gun proficiency payments.

Drug testing was an issue between the parties. The Order has resisted a drug testing policy. The City has insisted on a drug testing policy, and did present a drug testing policy which will be attached hereto. Because of the fact that this bargaining unit is engaged in police enforcement work, the Chairman believes a drug test policy is appropriate and therefore will, along with the City delegate, agree to the attached drug testing policy over the vigorous objection of the Order. This drug testing policy is therefore being adopted by virtue of the authority of the Panel to do so under Act 312. It should be made clear that this drug testing policy is not with the agreement of the Fraternal Order. Yet, this policy will be adopted by this Panel and will be made part of the collective bargaining agreement, again by virtue of Act 345.

As to wages, the City's last best offer of 4% across-the-board for each of the three years of the contract will be adopted because this is the same wage package that was adopted by the command officers. Therefore, the comparison criteria

would dictate that the City's last best offer be accepted.

As to sick leave payoff, the City is attempting to have cost containment because of the high cost of sick leave payoff. There is merit in this position. However, this should be phased in because of the interest of current employees. Since the City's last best offer acknowledges this phase-in aspect, the majority of the Panel will adopt the City's last best offer as to sick leave payoff.

Obviously, any tentative agreements reached prior to the May 16, 1990 hearing shall be part of the Agreement. The Agreement shall be effective July 1, 1989, expiring at midnight, June 30, 1992.

The above discussion explains the rationale for the orders.

O R D E R S

1. The language of the 1986-89 Collective Bargaining Agreement as to seniority, the detective classification, operational needs, sick time usage for family member illness, and union release time shall continue into the 1989-92 Collective Bargaining Agreement.

2. The Collective Bargaining Agreement shall provide that each detective shall be furnished three blazers, three pants, three long-sleeved shirts and three short-sleeved shirts at any one time. The blazers, pants and shirts shall be replaced as needed. Shoes shall be provided to said plainclothes officers as under the 1986-89 agreement, and will be provided under the regular replacement plan.

3. The sick leave language of the Collective Bargaining Agreement shall contain the following statement: "If the injury is of a nature, as determined by a doctor, that the employee can perform available work and if the Chief determines that work is available which the employee can perform, as determined by a doctor, then the employee will report for said available work."

4. The language in the 1986-89 Collective Bargaining Agreement as to use of sick time for family member illness shall continue into the 1989-92 agreement.

5. Attached hereto as Appendix A shall be the provisions in the 1989-92 Collective Bargaining Agreement as to insurance and pensions.

6. There shall be a four (4%) percent increase of wages across the board effective July 1, 1989 through June 30, 1990. Effective July 1, 1990 through June 30, 1991, there shall be another four (4%) percent wage increase across the board. Effective July 1, 1991 through June 30, 1992, there shall be an additional four (4%) percent wage increase across the board.

7. For all current employees present gun proficiency payments shall remain and said employees shall not be eligible for the physical agility test payments. All present employees, however, may exercise an option, either by September 1, 1990 or by September 1, 1991, to elect to forego the gun proficiency payments and instead to be eligible for the physical agility test payments as set forth in Appendix B. But once said employee elects said option, the employee will not have the option to return to the gun proficiency payments. It is further

ordered that for all employees hired after the date of this Order, said employees will be bound by the language set forth in Appendix B and will not be eligible for the gun proficiency payment.

8. The drug policy attached hereto as Appendix C shall be part of the parties' Collective Bargaining Agreement.

9. The sick leave payoff language set forth in Appendix D is hereby ordered to be incorporated into the Collective Bargaining Agreement.

10. All tentative agreements that were reached prior to May 16, 1990 by the parties shall be incorporated into the Collective Bargaining Agreement effective July 1, 1989.

11. The Collective Bargaining Agreement shall be effective July 1, 1989 and shall expire at midnight, June 30, 1992.

12. Panel Members Ward and Quinn, by stipulation of the parties, have waived signature to this Findings of Fact, Conclusions and Orders and the parties have agreed that the signature of the Panel Chairman will be considered as binding on the parties.

13. It is noted that where the Panel Chairman has accepted the last best offer of the City, the Fraternal Order's Delegate, James Quinn, is recorded as dissenting with Panel Member Michael Ward concurring. Where the Panel Chairman has adopted the Fraternal Order's last best offer, it is recorded that the City's Delegate, Michael Ward, is recorded as dissenting with the Fraternal Order's Delegate, James Quinn, being recorded as concurring. Where both parties' last best

offer has been the same and it has been so ordered here, the record shall reflect that as to those items, the Order is unanimous.


GEORGE T. ROUMELL, JR.
Panel Chairman

May 19, 1990

APPENDIX A

ARTICLE 11 - INSURANCE

Section 11.1: Current Employees. Effective May 19, 1990 or as soon thereafter that the insurance carrier can implement the change, the Employer shall provide and pay the cost of a medical, surgical and hospitalization plan, being Blue Cross-Blue Shield Comprehensive Semi-private MVF-I with Option V Master Medical, PRE/100, MSO, ML, FAE-RC and \$3.00 Co-Pay Prescription Drug riders, or comparable policy, for all regular full-time employees, including spouses and dependent children under twenty-five (25) years of age in all cases where full family coverage is not provided and paid for by the spouse's employer; provided, however, that in the event of non-duty disability of an employee with resulting incapacity to work, the Employer will continue to pay premiums for said insurance and on the insurance provided for in Section 11.4 hereof only for the period of time equal to such employee's accrued sick leave or for a period of six (6) months during disability, whichever period is the greater.

Section 11.2: Duty-Disability Retirees. The Employer shall provide and pay the cost of a medical, surgical and hospitalization plan for all employees covered by this Agreement who retire on a duty-disability pension on or after July 1, 1984, and are totally physically disabled to work, or who subsequently becomes totally physically disabled to work as a result of an illness or injury sustained in the course of their duties while employed by the Jackson Police Department. Such

insurance shall also cover the spouse and dependent children under nineteen (19) years of age and shall be comparable to that being carried for other retirees of the City Service. When such a retired employee reaches an age or otherwise becomes eligible for Medicare coverage, he/she shall apply for said coverage and the Employer shall pay the premium for Medicare supplemental insurance. The above specified insurance coverage and the Employer's liability for the premium thereon shall cease if the retired employee accepts employment with another employer who provides health insurance coverage reasonably comparable to that specified above or if the retired employee's spouse is employed and that employer provides health insurance coverage reasonably comparable to that specified above. An employee who retires on a duty-disability pension on or after July 1, 1989 and subsequently ceases to be covered by the Employer's insurance because of his/her employment or his/her spouse's employment and resulting insurance may upon termination of such coverage elsewhere, re-enter the insurance coverage as specified in this section. Insurance coverage for all employees who retire on a duty-disability pension on or after July 1, 1986 shall include a \$3.00 co-pay prescription drug rider for the retiree, his/her spouse and dependent children. If a retiree, whose insurance premium is being paid for by the Employer, should subsequently expire, the insurance coverage as provided for his/her spouse and dependent children may be continued on a payroll deduction basis, if the spouse and/or dependent children are eligible to continue receiving pension benefits.

Section 11.3: Non-Duty Disability and Service

Retirees. The Employer shall provide and pay the cost of a medical, hospital and surgical hospitalization plan, designated Blue Cross-Blue Shield MVF-I, or comparable coverage with another carrier, for all employees covered by this Agreement who retire after July 1, 1979 on a non-duty disability or service retirement. Such policy shall also include their spouse and dependent children under nineteen (19) years of age and be comparable to that being carried for other retirees of the City Service. When such a retired employee or spouse reaches an age where he/she is eligible for Medicare coverage, he/she shall apply for said coverage and the Employer shall pay the premium for Medicare supplemental insurance. The above specified insurance coverage and the Employer's liability for the premium thereon shall cease if the retired employee accepts employment with another employer who provides reasonably comparable health insurance coverage or if the retired employee's spouse is employed and that employer provides health insurance coverage reasonably comparable to that specified above. A retired employee, who ceases to be covered by the Employer's insurance because of his/her employment or his/her spouse's employment and resulting insurance may, upon termination of such coverage elsewhere, re-enter the insurance coverage as specified in this section. Insurance coverage for all employees who retire after July 1, 1986 on a non-duty disability or service retirement, shall include a \$3.00 co-pay prescription drug rider for the retiree, his/her spouse and dependent children. If a retiree who retires after the execution of this Agreement and whose

insurance premium is being paid for by the Employer, should subsequently expire, the insurance coverage as provided for his/her spouse and dependent children may be continued on a payroll deduction basis, if the spouse and/or dependent children are eligible to continue receiving pension benefits.

Section 11.4: Life Insurance. The Employer will provide a thirty thousand dollar (\$30,000) life insurance policy with double indemnity provisions for regular full-time employees at no cost to the employee. The Employer will likewise provide for payment of a five thousand dollar (\$5,000) accidental death benefit for any employee killed in the course of the performance of her or her duties with the City of Jackson.

Section 11.5: Dental/Optical Reimbursement. The Employer will reimburse employees for proven dental and/or optical expenses, not to exceed five hundred fifty dollars (\$550) combined in any given contract year, for the employee, his/her spouse and dependent children. There shall be no carry over of unused benefits from any contract year to another. If the dental and/or optical expenses are eligible for payment from another source, i.e., spouse's dental and/or optical plan, insurance due to vehicle accident or similar type of coverage, that source shall be primary with the payment by the Employer reimbursing only that portion not eligible for payment from the primary source. Reimbursement Request Forms for dental and/or optical expenses shall require the employee's certification that the coverage is not available from any other source.

ARTICLE 12 - PENSION IMPROVEMENTS

Section 12.1: Effective January 1, 1987, an employee covered by the agreement who is eligible for a duty-disability pension as otherwise provided by Act 345 shall receive a pension to age fifty-five (55) calculated as sixty-six and two-thirds ($66\frac{2}{3}\%$) percent of average final compensation. Except as altered by this collective bargaining Agreement and other agreements between the parties, the retirement benefits received in accordance with Public Act 345 (Policemen and Firemen Retirement Act) shall be as provided in Public Act 345.

Section 12.2: Effective January 1, 1987, an employee covered by the Agreement who is eligible for a non-duty disability pension as otherwise provided by Act 345 shall receive a pension to age fifty-five (55) calculated at two and one-half percent ($2\frac{1}{2}\%$) of average final compensation multiplied by years of service. Except as altered by this collective bargaining Agreement and other agreements between the parties, the retirement benefits received in accordance with Public Act 345 (Policemen and Firemen Retirement Act) shall be as provided in Public Act 345.

Section 12.3: For members of the unit the Employer will add an Employees Contribution Withdrawal Option to its Act 345 Pension System. If the employee elects to exercise such Employees Contribution Withdrawal Option at the time of retirement, he or she will withdraw their employee contributions and interest thereon, and the employee's annual or monthly pension benefit shall be reduced by the actuarial equivalent of the amount withdrawn as calculated by the Employer's actuary,

using the rate of assumed investment return for immediate annuities as determined and published by the Pension Benefit Guarantee Corporation (PBGC) in effect on the date of retirement. The election of the Employees Contribution Withdrawal Option may not be rescinded once the pension becomes effective. This option will become effective for employees who retire under the Act 345 Pension System on or after November 20, 1987.

Section 12.4: Members of the unit who retire under provisions of Act 345 Retirement System on or after July 1, 1989, shall have their retirement benefit calculated on an average final compensation based on the average of the highest annual compensation received by the member during a period of three (3) consecutive years of service contained within his/her ten (10) years of service immediately preceding his/her retirement or leaving service. If he/she has less than three (3) years of service, then the average final compensation shall be calculated on the annual average compensation received during his/her total years of service.

Section 12.5: All unit members who are not currently members of the Act 345 Retirement System shall exercise the option to go into the Act 345 Retirement System by 5:00 p.m. January 10, 1991 by so advising of their election to either remain in the old Police and Firemen Retirement Plan or to become a member of the Act 345 Retirement System by so notifying the Director of Labor Relations. Failure to so notify said Director by said date and time shall bar said unit member from subsequently electing said option. All unit members who are

currently members of the Act 345 Retirement System shall remain members of that System. All employees who are hired after the date of this Order shall only be eligible to become members of the Act 345 Retirement System.

APPENDIX B

Section 13.7: Physical Agility Testing.

(a) All employees covered by this Agreement who were hired after May 18, 1990 or, if hired prior to May 18, 1990, and have elected the physical agility option, may take a physical agility test on an annual basis. Such test will be offered twice during a calendar year. Test dates will be scheduled at a minimum of six (6) months apart.

APPENDIX C

DRUG TESTING POLICY

I. PURPOSE

- A. The Police Department has a responsibility and an obligation to provide a safe work environment by ensuring that employees are drug free.
- B. The department and the employee may be liable for failing to address and ensure employees can perform their duties without endangering themselves or the public.
- C. There is sufficient evidence to conclude that use of illegal drugs, drug dependence, and drug abuse seriously impairs an employee's performance and general physical and mental health. The department has adopted this written policy to ensure an employee's fitness for duty as a condition of employment; to ensure drug tests are ordered based on a reasonable objective basis; and to inform the employee that testing is a condition of employment.

II. DEFINITIONS

- A. Employee - All personnel employed by the Jackson Police Department, both sworn and civilian.
- B. Supervisor - Both sworn and civilian employees assigned to a position having day-to-day responsibility for supervising subordinates, or responsible for commanding a work element.
- C. Drug Test - a urinalysis or other test administered under approved conditions and procedures to detect drugs.
- D. Reasonable Objective Basis
 - 1. An apparent state of facts and/or circumstances found to exist upon inquiry by the supervisor, which would induce a reasonably intelligent and prudent person to believe the employee was under the influence or using drugs/narcotics.
 - 2. A reasonable ground for belief in the existence of facts or circumstances warranting an order to submit to a drug test.

DRUG TESTING POLICY
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III. POLICY

- A. Any statutory defined illegal use of drugs by an employee, whether at or outside police employment is strictly prohibited.
- B. For the well-being and safety of all concerned, the manufacture, consumption, possession, ingestion, or reporting for work under any influence of alcohol, illegal substances or illegal drugs such as, but not limited to, marijuana, narcotics, stimulants, depressants, hallucinogens, etc., is strictly prohibited.
 - 1. Such consumption, possession, ingestion or being under the influence shall not occur on the City's time, premises, equipment, or job site in any way or at any other time or place while in the course of employment.
- C. An employee may possess and use a drug or controlled substance, providing such drug or controlled substance is dispensed to said employee pursuant to a current valid medical prescription in the employee's name.
 - 1. Should the employee's prescribing physician indicate that the known side effects of the drug makes it dangerous for the employee to safely work, the employee shall notify the employer/supervisor.

IV. GENERAL

A. HEARING

If the department has a reasonable suspicion to believe employee has violated this policy the following procedure will apply.

- 1. Any employee suspected of violating this policy will be given an immediate hearing with the following persons present:
 - a. Employee;
 - b. Employee Union Representative, if applicable;
 - c. employee's Supervisor;
 - d. Chief of Police or designee;

The facts forming the basis for the reasonable suspicion shall be disclosed to the employee at this hearing and the employee shall, at the same time, be given the opportunity to explain his/her behavior or actions.

If it is determined by the Chief of Police that the reasonable suspicion is substantiated the employee will be placed on administrative leave pending the results of an appropriate test.

3. Said employee shall be required to submit to an immediate blood and/or other appropriate test to determine whether or not the employee is under the influence of alcohol, a controlled substance or illegal drugs.
4. Such test shall be given pursuant to the procedure as outlined in Appendix A or prior arrangement at a site determined by the department.
5. The employee shall submit to such test and release of test results to the City; failure to do so shall be a presumption that the employee has violated the policy. The employee will then be subject to disciplinary action.
6. After the test has been given and the results known:
 - (a) The employee will be put back to work with full pay for time lost, should the test results be negative; or
 - (b) Shall be subject to discipline, including discharge, should the test results be positive.
- B. All property belonging to the department is subject to inspection at any time without notice, as there is no expectation of privacy.
 1. Property includes, but is not limited to, police owned vehicles, desks, containers, files and storage lockers.

2. Employees' assigned lockers (that are locked by the employee) are also subject to inspection by the employee's supervisor after reasonable advance notice (unless waived by the Chief of Police) and in the presence of the employee.
- C. Police employees who have reasonable objective basis to believe that another employee is illegally using drugs or narcotics shall report the facts and circumstances immediately to their supervisor.

V. PROCEDURE

A. DRUG TESTING/URINALYSIS

1. Applicants

- All applicants for employment shall be tested for drug or narcotic usage as a part of their pre-employment medical examination. The testing procedure and safeguards set forth in this order shall be followed by the examining physicians and other involved in the testing procedure.
- a. Refusal to take the test, or test results reporting a presence of illegal drugs or narcotics, or the use of non-prescription drugs, shall be the basis of discontinuing an applicant in the selection process. Any use or possession that constitutes a felony shall preclude any further consideration for employment.
 - b. Applicants found to be involved in the illegal sale, manufacture or distribution of any narcotic/drug will be permanently rejected.
 - c. Applicants demonstrating addiction to any narcotic/drug will be permanently rejected.
 - d. Any improper use of any narcotic/drug by an applicant after application will be grounds for permanent rejection.

- e. After one year from the date of the above drug test, an applicant may reapply for employment if use or possession did not constitute a felony. Applicants who previously refused the test are not eligible for further consideration.
- f. The results of drug tests on applicants shall be confidential and used for official purposes only.

2. Current Employees of the Department

- a. The Chief of Police may order a drug test when there is a reasonable objective basis to believe that an employee is impaired or incapable of performing their assigned duties. The contents of any documentation shall be made available to the employee.
- b. Current employees may be ordered by the Chief of Police to take a drug test:
 - (1) Where there is reasonable objective basis to support allegations involving the use, possession or sale of drugs or narcotics: or
 - (2) Where there has been the use of deadly force involving an injury or death: or
 - (3) Where there has been serious injury to the employee.
- c. A drug test may be a part of any routine physical examination. Such physical examination may be required for promotion or specialized assignment, i.e., drug enforcement unit, evidence management, or an assignment which places the employee in close proximity to drugs that may be abused.

- d. Test results reporting the presence of illegal drugs or narcotics in excess of those specified in Appendix B, or the use of prescription drugs without a prescription or the abuse of any over-the-counter drug will be submitted as a part of a written complaint by the supervisor, consistent with Item c. above, requesting departmental action.

3. Current Sworn Employees Assigned to a Drug Enforcement Unit

Any employee assigned to a unit which has a primary responsibility for drug enforcement shall be required (in addition to Item 2 above) to submit to periodic drug tests at the discretion of the Chief of Police or designee.

- a. Prior to accepting a drug enforcement assignment, an employee shall execute a written agreement and release stating that he/she fully consents to any medical, physical, psychiatric, psychological or other testing, including urine and/or blood for drug or narcotic substances.

- b. The Chief of Police shall select the date and time when each employee assigned will be tested. The test may be administered randomly without advance notice.

4. The procedure for administering the urinalysis program is outlined in Appendix A of this General Order

VI. RESPONSIBILITY

Failure to comply with the provisions of this General Order may be used as grounds for disciplinary action. Refusal by a police employee to take the required drug test or follow this General Order will result in immediate suspension from duty pending final disciplinary action

APPENDIX A

BLOOD AND/OR URINALYSIS PROCEDURES

A. Obtaining Urine Samples

1. The employee designated to give a sample must be positively identified prior to any sample being obtained.
2. The room where the sample is obtained must be private and secure with documentation maintained that the area has been searched and is free of any foreign substance. An observer of the appropriate sex shall be present for direct observation to ensure the sample is from the employee and was actually passed at the time noted on the record. Specimen collection will occur in a medical setting and the procedures should not demean, embarrass, or cause physical discomfort to the employee.
3. An interview with the employee prior to the test will serve to establish use of drugs currently taken under medical supervision.
4. Specimen samples shall be sealed, labeled and checked against the identity of the employee to ensure the results match the testee. Samples shall be stored in a secured and refrigerated atmosphere until tested or delivered to the testing lab representative.

B. Processing Urine Samples

1. The testing or processing phase shall consist of a two-step procedure.
 - a. Initial screening step, and
 - b. Confirmation step.
2. The urine sample is first tested using a screening procedure. A specimen testing positive will undergo an additional confirmatory test. An initial positive report should not be considered positive; rather, it should be classified as confirmation pending.

APPENDIX A (Cont'd)

3. The confirmation procedure should be technologically different than the initial screening test. In those cases where the second test confirms the presence of drug or drugs in the sample, the sample will be retained for six (6) months to allow further testing in case of dispute.
4. The testing method selected shall be capable of identifying marijuana, cocaine, and every major drug abuse including heroin, amphetamines and barbiturates. Laboratories utilized for testing will be certified as qualified to conduct urinalysis or drug testing.
5. The laboratory selected to conduct the analysis shall be certified by the National Institute on Drug Abuse and any State of Michigan Agency that determines certification for police employment. In addition the laboratory selected shall use Smith-Kline laboratories security procedures or equivalent.
6. Any confirmatory test shall be done by chromatograph/mass spectrometer.
7. If the first test is positive, confirming test shall be run by a second laboratory. Employees who have participated in the drug test program where no drugs were found, shall receive a letter stating that no illegal drugs were found. If the employee requests such, a copy of the letter will be placed in the employee's personnel file.

C. Chain of Evidence-Storage

1. Where a positive report is received, urine specimens shall be maintained under secured storage for a period of not less than 60 days.
2. Each step in the collecting and processing of the urine specimens shall be documented to establish procedural integrity and the chain of evidence.

D. Urinalysis Test Available

The following analytical methods for the detection of drugs in the urine are currently available and may be used:

1. Chromatographic Methods

- a. TLC (Thin Layer Chromatography, recommended for initial step), or HPLC (High Performance Thin Layer Chromatography).
- b. GLC (Gas Liquid Chromatography).
- c. GC/MS (Gas Chromatography/Mass Spectrometry, recommend for confirmation step).
- d. HPLC (High Pressure Liquid Chromatography).

2. Immunological Methods

- a. RIA (Radioimmunoassay).
- b. EMIT (Enzyme Multiplied Immunoassay Technique) Recommended for initial screening step.

Appendix B

| <u>Drug/Metabolite</u> | <u>Decision Level</u> |
|------------------------|-----------------------|
| Amphetamines | 1000 ng/ml |
| Barbiturates | 300 ng/ml |
| Cocaine metabolites | 300 ng/ml |
| Marijuana metabolites | 100 ng/ml |
| Opiates | 300 ng/ml |
| Phencyclidine (PCP) | 25 ng/ml |

Confirm using Gas Chromatography/Mass Spectrometry (GC/MS)

APPENDIX D

Section 6.2:

(d) If an employee retires, and is eligible for immediate pension benefits pursuant to the Employer's Retirement Program, the employee shall be entitled to be paid fifty (50%) percent of his accumulated unused sick leave credits, up to a maximum of fourteen hundred forty (1440) hours accumulation. Employees hired after the effective date of this award shall be entitled to be paid fifty (50%) percent of his/her accumulated sick leave credits, up to a maximum of ¹²⁰~~90~~ days ⁹⁶⁰~~(720~~ hours)^{accumulation}. If an employee is discharged, is laid off, or quits, he shall not be entitled to payment of any portion of his accumulated unused sick leave.