

2126

STATE OF MICHIGAN  
MICHIGAN EMPLOYMENT RELATIONS COMMISSION  
ACT 312 ARBITRATION

CITY OF CHARLEVOIX

June 2, 2006

-and-

Case No. L04 A-5008

POLICE OFFICERS LABOR COUNCIL

OPINION AND AWARD

I. INTRODUCTION

The collective bargaining agreement between these parties expired on March 31, 2004. The Union filed a Petition with the Employment Relations Commission for Act 312 Arbitration, dated September 1, 2004. The Chairperson's appointment letter is dated April 5, 2005.

A pre-hearing conference was held by telephone on April 25, 2005. The City and the Union named Jack Clary and Kenneth Nash as their respective Delegates for the Panel. The Advocates are Attorneys Jack Clary, for the City, and Thomas R. Zulch, for the Union. An August 2005 hearing date was adjourned to permit the parties a further opportunity for negotiation. The hearing was held in Pellston, on December 15, 2005. The parties' last offers of settlement were exchanged on January 23, 2006; the parties' post-hearing briefs were exchanged on March 7, 2006. The Union was asked, on March 28, 2006, to clarify its final offer on the health issue, which it did on March 30; the Employer Delegate/Advocate submitted a comment on March 30, 2006 and with that, the record was closed.

The bargaining unit is composed of police and fire fighter officers, nine at the time of the Petition but eight at the time of the hearing. They are identified in Appendix A of the 2001 - 2004 Agreement by the following classifications: Police Sergeant, Police Officer, Fire Officer, Probationary Police Officer and Probationary Fire Officer.

On each issue the Panel has been guided by Section 9 of Act 312 and its recitation of factors to be taken into consideration in

order to resolve this dispute and reach its decision. To implement §9-d, "Comparison of the wages, hours and conditions of employment of [Charlevoix] employees ... with conditions of employment of other employees performing similar services", the parties agreed upon the following six municipalities for use as external comparables: Boyne City, Cheboygan, East Jordan, Harbor Springs, Reed City and St. Ignace. The Panel accepts this stipulated list of comparable municipalities. The two internal comparables are the management-administrative group and employees represented by the Communication Workers of America (CWA).

The City urges the Panel to consider the interest and welfare of the public and the ability to pay for its costs of providing services. The General Fund is the source for funding police and fire operations. It asserts that its expenditures for police and fire absorb a higher proportion of the General Fund per capita than the external comparables. It explains that difference on (1) the circumstance that it employs full-time fire fighters (in addition to volunteers) whereas the comparables have only volunteers and (2) the fully-paid-for health insurance provided to this bargaining unit, in contrast to the comparables, where four of the six require employee contributions and caps on the city share.

## ISSUES

### I. LIFE INSURANCE<sup>1</sup>

The Union demands a benefit of \$25,000.00 life insurance. The City offers \$18,000.00.

The Union notes that the average life insurance payment for all external comparables is \$32,500.00. Eliminating the highest (Reed City, \$100,000.00) and the lowest (Boyne City, none), the average is \$32,500.00. Its demand, the Union urges, leaves this bargaining unit \$7500.00 below the mid-point.

The City emphasizes an internal comparable, namely City employees represented by the Communications Workers of America (CWA). Their life insurance benefit is \$18,000.00.

Finding. An accepted standard for setting a life insurance benefit is that it bear a reasonable relationship to one year's wages. Too, it is appropriate to consider the employees' exposure to risk. These two considerations, together with the benefit level of the external comparable communities, persuade the Panel that the Union's demand will be adopted.

---

<sup>1</sup> The parties have numbered the issues in different sequences.

## II. WAGES

The new Agreement will cover four years: 2004, 2005, 2006, 2007. The parties' offers, by agreement, consider each year's wages as a separate issue. The Union seeks a 3% increase in each of the four contract years. The Employer offers 2.0%, 2.0%, 2.5% and 2.0% in each of the identified contract years, respectively.

The parties further disagree about retroactivity. The Union urges the wage increase be fully retroactive. The Employer would limit the application of the wage increase to only those who are employees on the date of the award.

The Employer emphasizes these statutory factors: (1) internal comparables, that the CWA-represented employees have received 2% increases; (2) substantial dollar savings to the POLC unit in 2004 and 2005 when they have made no payments for health insurance coverage, whereas the other internal units (management and CWA-represented employees) have paid amounts ranging from \$1,638 to \$2,172 toward their medical care premiums; (3) the wages proposed by the Employer are "right in line" with external comparables, contending the base wage rate is an inappropriate measure of these members' compensation, stating the better figure is the base rate plus supplements; (4) considerations of fiscal restraints in the City as well as the State.

The Union insists the duties and responsibilities of its members (policing, fire fighting) are so clearly distinguishable from those of the CWA-represented employees that wage comparisons are not relevant. It notes among the external comparables that in the years 2001, 2002, and 2003 Charlevoix' base wage for patrolman has ranked fourth (2001) or fifth (2002, 2003). The Union demand would place the wage for this group in fifth place in 2004 and 2005, and in fourth place in 2006.<sup>2</sup> The Employer's offer results in the unit ranking 6th in years 2004 and 2005 and fifth in 2006.

Finding. The Panel has examined all of the relevant Section 9 factors in order to reach its decision. It notes the Employer's emphasis on the circumstance that the bargaining unit gained out-of-pocket savings by not contributing toward health care insurance in 2004 and 2005. During this same period, of course, the employees obtained no contract improvements and it can be said the Employer enjoyed the use of any monies that otherwise might have gone to such gains. The Employer further asserts in relation to wage improvements its constrained ability to pay, it cannot be said that the difference in the amounts being awarded over what the Employer offers -- for a bargaining unit of eight or nine employees -- represents an undue economic burden.

---

<sup>2</sup> Base wages in 2007 are available for only three of the six comparable communities, making the ranking somewhat less meaningful.

The Employer disputes the Union's ranking of this unit's pay status in relation to the comparable communities, set forth above. The Employer would have the Panel disregard wage rates in two of the agreed-upon comparable communities as being "out of whack" too high (Harbor Springs) or low (St. Ignace). The Employer also urges this unit's "base rate" should include the "skills and licensing" supplements, payments that are contingent upon acquiring and maintaining an EMT and defibrillator's license. As to the first challenge, the comparable communities were stipulated to by the parties without qualification; the Panel refuses to "cherry-pick" among them depending upon the issue under consideration. As to the second, perfect symmetry in measuring comparable units' compensation is difficult to achieve. Currently, all Charlevoix officers may be entitled to the supplements; at a future date, some may not be. Hence, the use of basic wage rates offers certainty.

After weighing all of the Section 9 factors, the Panel makes the following award for this issue. For each of the expired contract years of 2004 and 2005, the Panel adopts the Union's demand of 3%. That increase is consistent with the percentages provided by the comparable communities (four awarding 2.96, 2.98, 3.00 and 3.02). For the contract year 2006 the Employer's offer of 2.5%, while lower than the 3% average of the comparables, maintains the ranking for the Charlevoix unit relative to the selected comparable communities. The Union's demand of 3% is awarded for 2007. Summarizing, the wage increases awarded are as follows:

<u>April 1, 2004</u>	<u>April 1, 2005</u>	<u>April 1, 2006</u>	<u>April 1, 2007</u>
3.0%	3.0%	2.5%	3.0%

Retroactivity. The wage increase is awarded to all members who are employees as of April 1, 2004, the effective date of the new contract and continues for the period of their employment within the bargaining unit. The Employer's last offer of settlement on this matter (No. 7) is rejected.

### III. EDUCATIONAL INCENTIVE

The Union proposes to add an annual payment to employees who have obtained degrees beyond secondary school, namely: \$300 for an Associate's Degree, \$600 for a Bachelor's Degree and \$900 for a Master's Degree. The Employer rejects this demand in its entirety.

The Union urges that this benefit would reward officers who further their training and education and who, by doing so, provide a better trained and educated work force to the enhancement of the City.

Appendix A of the Agreement provides annual payments to Police Personnel for each of the following attainments: Maintain an EMT license (\$600), a heart defibrillator operator's license (\$200), a

Fireman I license and membership in the CFD (\$400). Similarly annual payments are made to Fire Personnel for maintaining a specialist license (\$600) and for maintaining a Fire Officer (I, II, and/or III) Training License (\$200). Implicitly, these are skills deemed critical to the job duties and responsibilities of the officers. The Union contends the City "provides similar incentives to its other unions for various training and education" but gives no specifics. That benefit may well be geared particularly to job performance as is the case with the above-named Appendix A payments.

The comparable communities' Police Departments do not offer an educational incentive payment for higher education degrees.

It cannot be disputed that continuing one's education is a positive measure. However, absent a showing of job-relatedness, the Panel will not expand the "Additional Annual Salary" payments to include broad educational incentives. The Union's final offer of settlement pertaining to an educational incentive is rejected.

#### IV. HEALTH INSURANCE

The expired Agreement, Section 16.3, Health Insurance, provided fully paid health insurance; it does not specify a carrier. The evidence is that coverage for the POLC unit is through Blue Cross/Blue Shield Community Blue PPO-1. The prescription drug plan and dental care coverage call for an employee co-pay.<sup>3</sup>

The Employer has separated its final offers with respect to health care insurance into five issues: (1) Employee Monthly Premium Contribution; (2) Health Care Insurance Committee; (3) Insurance Plan(s) from Date of Award until Health Care Insurance Committee Selection by July 1, 2006; (4) New Hire Employee Monthly Premium Contribution for Family Subscriber Only; (5) Section 125 (Pre-Tax Treatment of Employee Monthly Premium Contribution) and Opt-Out Reimbursement, contingent upon an award of the Employer's (1) offer.

The Union addresses only two topics within this issue: (A) Health Care Insurance Committee; (B) Monthly Premium Contribution. As to the Health Care Insurance Committee, the Union accepts a single membership for its bargaining unit on the Committee, a status sought by the City. Hence, this issue (Employer 2, Union 5A) is resolved and need not be addressed.

---

<sup>3</sup> The City's Exhibits prepared for the Hearing refer to prescription drugs within the health care issue, but other than its inclusion within the 125 Plan, the parties did not address it as a cost or benefit.

The Monthly Premium Contribution. The Union incorporates into its final offer the Employer's offer presented during the arbitration hearing, specifically the City's Exhibit 17A, with a single proviso, that it contains a cap of fifty dollars on an employee's monthly contribution toward the premium.

Thus City Exhibit 17A with a fifty-dollar cap becomes the Union's final offer of settlement. 17A continues the benefits and coverage provided by the existing Community Blue PPO1 and dental coverage subject to a cap on the Employer's contribution toward the monthly premium of Family (F) \$1,091, 2-Person/Double (D) \$779, Single (S) \$375, effective from the date the Act 312 Award issues until August 1, 2006. The Employer's contribution increases by \$54(F), \$36(D) and \$20(S) on August 1, 2006; for the following year of the contract it increases (on August 1, 2007) by \$55(F), \$35(D), \$20(S). 17A contains a new hire cap that is the same as in §13.1 of the 2004-2006 CWA contract, to be effective with issuance of the Act 312 Award until August 1, 2006.<sup>4</sup>

17A offers an alternative Plan ("MERS Option") for the bargaining unit's election; the City's premium obligations would be the same as for the PPO1 Plan.

The City's final offer differs from 17A. Whereas in 17A the City contributions toward MERS and PPO1 are the same, the City final offer now pays toward MERS premiums of \$1110(F), \$790(D), \$380(S) and for PPO1, the City's final offer contributes \$1020(F), \$850(D), and \$380(S), i.e., less for PPO1 family coverage than for MERS. These payments cover the period from Award date to August 2006. For the year beginning August 1, 2006 the City contribution toward MERS increases by \$55(F), \$40(D) and \$20(S); on August 1, 2007, it increases by \$60(F), \$40(D), and \$20(S). The City contribution toward PPO1 increases by \$50(F), \$40(D), and \$20(S) on August 1, 2006; on August 1, 2007, it increases by \$55(F), \$45(D), and \$20(D).

The City offer introduces a different level of contribution for employees hired on or after April 1, 2004; it limits its contribution for family coverage to the amount it pays for the 2-Person coverage.

Remaining health insurance matters concern: (1) the health insurance plan to be in effect from the date of the Act 312 Award until action by the Health Care Insurance Committee (to be taken in July 2006); (2) a Section 125 plan to have employees' premium contributions receive pre-tax treatment, and (3) Opt-out

---

<sup>4</sup>"For employees hired on or after January 1, 2004, effective [immediately upon issuance of the Act 312 Award], the Employer agrees to pay up to the above 2-person amount for 2-person and family coverages and up to the above single subscriber amount for that coverage."

reimbursement for employees who elect not to participate in the health insurance program. The City conditions award of (2) and (3) upon award of its final offer concerning premium contributions.

Finding. The Union, by its adoption of the Employer's offer (17A) from the hearing, accepts the principle that it will contribute toward health care premiums. The employers in two comparable communities pay the entire cost of health insurance; in three others, the employees contribute toward premium increases. The internal comparables (the CWA unit, the managerial and administrative employees) contribute toward health care premiums. Further, the Union's adoption of 17A accepts the principle of a different level (prospective from the date of the Award) of contributions for employees hired after April 1, 2004).

The City's final offer sets a lower employer contribution toward PPO1 than for MERS. Its contribution toward either plan is the effective 'cap'. Hence, in this regard, the critical difference between the parties pertains to the fifty-dollar cap on employee contributions sought by the Union.

After examining the relevant data concerning health care insurance contributions and further considering the improvement in the dental program (eliminating co-pays) the Panel will award the City's Final Offer regarding Health Insurance. The City's supporting exhibits demonstrate the small likelihood that the employees will be required to pay beyond the fifty dollars, at least within the term of this Agreement. Implementation of a Section 125 Plan offering pretax treatment for employees' health care expenditures will mitigate the cost of the employees' contributions toward the insurance plan.

The Health Care Insurance Committee meets in July to select a plan. The City's offer (§16.3 (b) (2)) contains a provision allowing for a Unit vote on adopting MERS for the period from the date of the Award until August 1, 2006 with the proviso that "should the carriers permit and it can be administratively accomplished." Realistically, the question regarding which health care plan will apply for that short period appears to be moot. It is unlikely a different carrier would write an insurance plan that can be assured to last for a few months. However, the provision is a part of the Employer's final offer and absent consent of the parties, it must be adopted.

## VI. DRUG FREE WORKPLACE

§16.14 of the expired Agreement is a two-paragraph statement concerning the parties' commitment "to maintain a workplace free from drugs and alcohol." The parties in the new Agreement seek to establish a more detailed policy and program to implement their goals and thus ensure a workplace "free from drug and alcohol abuse". Each party's proposed contract language is several pages

long with many specifications. It was stipulated that this issue is economic, thus subject to the rules governing "final offers of settlement", one or the other must be awarded.

Certain provisions in the Employer's offer cause the Panel to conclude that it adopts overly broad sanctions. For example: Employer proposal (III.A.6) lists "look-alike substances" resembling illegal drugs as a "prohibited substance". IV.A states that "Use, consumption, possession, storage... of a prohibited substance" constitutes "prohibited conduct". A violation of the policy (by engaging in prohibited conduct) is said to be "just cause for immediate termination". I agree with the Union that possession of "look-alike substances" provides cause for testing but without scientific proof that the substance is indeed an unlawful or prohibited material, it should not trigger termination.

III.B concerns the use of prescription drugs and "over-the-counter" medications. It prohibits medications known to or that "may alter" an employee's behavior or physical or mental ability relating to work subject to a number of provisos, regulations and requirements. The critical point with respect to the use of such medications is that the employee use the product in the way it is intended for the condition it is intended to treat. If the medication proves to have an adverse impact on the employee's behavior or abilities, absent evidence that the employee knew or should have known (scienter) that the substance could affect behavior, the employee's consumption of the medication should not be deemed a "violation".

Another concern in the Employer offer is found in VI.B which pertains to testing "under the mandatory testing procedures involving accident or injury." The employee is suspended without pay pending testing and any further investigation of the circumstances. It would seem this provision places all accident-related incidents within the purview of the drug policy, another instance of over-reaching.

VII VOLUNTARY ASSISTANCE, after encouraging employees who experience substance abuse problems to seek professional assistance, states: "However, voluntarily sought assistance will not protect an employee who is found to be in violation of this Policy." That implies the principle that an employee should not be able to use assistance as a sword/shield - a principle with which the Panel agrees - but it could be construed to discourage an employee from seeking help. It is imperfectly stated.

The Union proposes some procedural safeguards: documentation of the Employer's 'reasonable suspicion' to be provided to the employee who is ordered to be tested; the presence of a Union representative during the random selection process. It also sets an annual cap on the number of random testings that does not seem unreasonable.



Finally, The Union's Offer entrusts to the Human Resources Department responsibility for "coordination, implementation and enforcement of this policy." The Union's offer, unlike the Employer's, does not spell out in minute detail all the myriad kinds of issues involved in implementation. It might be well for the parties - the Union and Human Resources - to establish a working committee to address many of the matters not fully explicated in the adopted language, but this is a recommendation only.

The Union Offer emphasizes its commitment to a workplace free of drug and substance abuse. In view of the concerns about the foregoing examples of over-reaching contained in the Employer's Final Offer, the Panel will adopt the Union's Offer.

### AWARD

#### ISSUE I - LIFE INSURANCE

The Panel awards the Union's final offer of settlement, a life insurance policy benefit of \$25,000.00.

#### ISSUE II - WAGES

The Panel awards the following increases:

- II (1) For the contract year beginning April 1, 2004 - 3%
- II (2) For the contract year beginning April 1, 2005 - 3%
- II (3) For the contract year beginning April 1, 2006 - 2.5%
- II (4) For the contract year beginning April 1, 2007 - 3%

The wage increase is awarded to all members who are employees as of April 1, 2004, the effective date of the new contract; it continues for the period of their employment within the bargaining unit. The Employer's last offer of settlement on this matter (No. 7) is rejected.

#### ISSUE III - EDUCATIONAL INCENTIVE

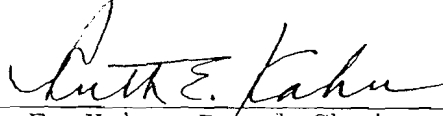
The Union's final offer of settlement is rejected.

#### ISSUE IV - HEALTH INSURANCE

The City's final offer of settlement is adopted. The specific §16.3 contract language governing the terms of the health insurance program is appended to this Opinion and Award as Appendix A.

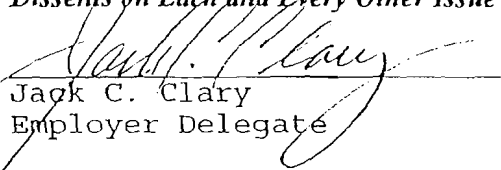
ISSUE VI - DRUG FREE WORKPLACE

The Union's final offer of settlement is adopted. \$16.14 contract language containing the terms of the drug free workplace program and policy is appended to this Opinion and Award as Appendix B.

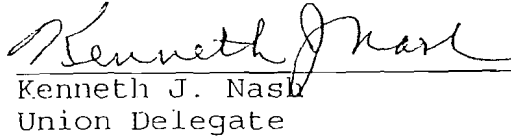


Ruth E. Kahn, Panel Chairperson

*Employer Delegate Concurs with Issues  
II(3) (2006 2.5% only), III and IV, but  
Dissents on Each and Every Other Issue*



Jack C. Clary  
Employer Delegate



Kenneth J. Nash  
Union Delegate

Date Issued: June 2, 2006

ACT 312 ARBITRATION  
POLC –and– CITY OF CHARLEVOIX  
MERC CASE NO. L04-A-5008

EMPLOYER’S LBO’s ## 1-5

Section 16.3. Health Insurance.

(a) Monthly Premiums. For the life of this Agreement, the Employer agrees to pay up to the following monthly premium amounts for health care, including dental, insurance effective as of the following dates for single subscriber, 2-person and family coverage for eligible employees who elect to participate in a group insurance plan, Michigan Employee Retirement System (MERS), Blue Cross/Blue Shield Community Blue PPO, or other provider plan, offered by the Employer under the committee and Employer selection procedures in subsection (b)(1):

<u>MERS</u>	First Full Month After		
	<u>[Act 312 Award Date], 2006</u>	<u>August 1, 2006</u>	<u>August 1, 2007</u>
Family	\$1,110.00	\$1,165.00	\$1,225.00
2-Person	\$790.00	\$830.00	\$870.00
Single	\$380.00	\$400.00	\$420.00

<u>BC/BS PPO Or Other Plan</u>	First Full Month After		
	<u>[Act 312 Award Date], 2006</u>	<u>August 1, 2006</u>	<u>August 1, 2007</u>
Family	\$1,020.00	\$1,070.00	\$1,125.00
2-Person	\$850.00	\$890.00	\$935.00
Single	\$380.00	\$400.00	\$420.00

For employees hired on or after April 1, 2004, the Employer agrees to pay up to the following monthly premium amounts for family subscriber health care, including dental, insurance under the same above conditions:

	First Full Month After		
	<u>[Act 312 Award Date], 2006</u>	<u>August 1, 2006</u>	<u>August 1, 2007</u>
MERS Family	\$950.00	\$995.00	\$1,045.00
BC/BS PPO or Other Plan Family	\$850.00	\$890.00	\$935.00

The Employer’s liability under this Section shall be limited to the above monthly premium payments, and participating employees shall be required to pay, by payroll deduction, all premium amounts in excess of these Employer payments.

(b) Plans and Benefits. (1) A health care insurance committee is established consisting of one POLC unit employee the POLC selects, one non-union administrative employee, and the City Manager or his designee (and two CWA unit employees the CWA selects upon participating). Where any changes to the then existing health care, including dental, insurance plan(s) are requested by a committee member, no more than once annually (August to August), no later than July 1st the committee may meet at and for a reasonable time and may

**APPENDIX A  
EXHIBIT 17B**

select, by majority vote, which of up to two (2) plans shall be offered to unit employees. The Employer retains the right also to offer unit employees other plans and cost containment programs. Provided the plan(s) are available and can be provided by the carrier and otherwise can be administratively accomplished by the Employer, the unit employees individually, in writing, shall have the right to elect coverage under one of the above offered plans so that coverage is effective no later than August 1st that year.

Should the committee not meet the annual July 1 deadline for plan selection, the Employer shall then offer the unit employees up to two (2) of the plans then being provided to the unit employees, provided such plan(s) remain available and can be provided by the carrier and otherwise can be administratively accomplished by the Employer. The Employer retains the right also to offer unit employees other plans and cost containment programs in addition to committee selection. The unit employees individually, in writing, shall have the right to elect coverage under one of these plans so that coverage is effective no later than August 1st that year.

The plan(s) selected by the committee and/or by the Employer as provided above shall be the sole plan(s) under which unit employees may elect coverage. Upon committee and/or Employer selection resulting in any plan or benefits changes, the parties agree to enter into a letter of understanding generally describing the plan(s) and benefits selected and offered, so that coverage can be administratively accomplished no later than August 1st that year.

(2) The unit shall be subject to the committee procedures and provisions in subsection (b)(1) effective in 2006. Until such time as that committee process no later than July 1, 2006 selects a different plan, or plans, for unit employee election, the unit shall continue health insurance coverage and all benefits and provisions, including, without limitation, employee office visit and prescription co-pays under the Community Blue PPO1 plan but excluding dental premium co-pays existing immediately preceding the Act 312 Award, provided that, the Employer monthly premium contributions in subsection (a) shall apply effective the first full month following issuance of the Act 312 Award, and provided further that, should the carriers permit and it can be administratively accomplished by the Employer, the unit by majority vote may elect health insurance coverage under the MERS Premier Health Medical Plan 6 and/or Plan 7, RX Plan 5, Dental Plan A, to which the Employer premium contributions in subsection (a) shall apply. In no event shall such Community Blue PPO1 or MERS Plan(s) election and coverage interfere with or change in any regard the unit employees becoming subject in 2006 to all provisions of the committee process in subsection (b)(1) consistent with the deadlines established therein. Should the committee not meet the annual July 1 deadline for plan selection, the provisions of the second paragraph of subsection (b)(1) shall apply. Further, the Employer reserves the right to change insurance carriers, including self-insurance, provided the benefits remain substantially equal to the then current benefits.

(c) Section 125 Plan. To the extent the Employer provides non-union full-time administrative employees a Section 125 Plan, the Employer shall also provide that plan to unit employees.

(d) Opt-Out Reimbursement. The Employer shall pay an annual cash reimbursement, of forty percent (40%) of the 2-person monthly premium cap above in subsection (a) for the employee who elects not to participate in 2-person or family coverage, under the available plan(s) conditional upon the Employer first receiving the employee's certification of the

**APPENDIX A  
EXHIBIT 17B**

employee's non-City provided health care insurance coverage. Opt out shall occur at the time of open enrollment or otherwise as permitted by the insurance carrier. The reimbursement is to be paid over the year in equal installments in the first pay check each month. These reimbursement amounts are not wages for any purposes, such as overtime, pension, etc., but are taxable income to the employee.

#992826

## APPENDIX B

### DRUG FREE WORKPLACE (Article 16, Section 16.14)

#### I. POLICY STATEMENT

Employees are the City's most valuable resource. Employees' health and safety are of vital concern. The City's and employees' lifeblood is being conscientious, productive and efficient in serving our citizens. The public has a right to expect that those in the safety-sensitive positions of police officers, fire officers and police and fire management who protect the public are at all times both physically and mentally prepared to assume these duties and preserve the public's trust and confidence. Therefore, the city will not tolerate any illegal or unauthorized drug-related conduct or activity or alcohol abuse as prohibited by this policy.

Employees have the right to work in an alcohol and drug free environment and not be subjected to the actual or possible adverse effects of drug and alcohol abuse. To protect the well being of the employees, the public and the City, this policy builds upon the City's longstanding rules prohibiting alcohol and drug abuse associated with City employment. Additionally, this policy provides for assistance in overcoming substance abuse where the employee voluntarily seeks assistance from the City. Consent to and compliance with this policy is a condition of employment. With these fundamental objectives in mind, the City's policy on illegal or unauthorized use of prohibited substances for police officers, fire officers and police and fire management is as follows:

#### II. POLICY APPLICATION

- A. This policy covers all police officers, fire officers, police and fire department management and applicants for employment.
- B. This policy applies to employees when they are on or off duty time or City premises. City time is any time period when an employee is on duty whether or not actively performing work including lunch and break time, and when performing, expected to be performing, or ready to perform work whether or not the employee is at his/her regularly assigned work location, and whether or not the employee is on City premises. City premises includes all property whether owned, leased or used by the City or for City business, including without limitation all facilities, land, buildings, structures, restrooms, lockers, offices, parking lots, as well as City or other motor vehicles or equipment.

### III. PROHIBITED SUBSTANCES

- A. The prohibited substances covered by this policy include:
  - 1. All illegal drugs or controlled substances including inhalants.
  - 2. All legal drugs used in an unauthorized, non-prescribed or illegal manner.
  - 3. Any beverage containing alcohol.

### IV. PROHIBITED CONDUCT

- A. Use, consumption, possession, storage, manufacture, distribution or sale of a prohibited substance on or off City premises or City time, excluding alcohol off the City premises and off City time, that is not abused, or render the employee under the influence.
- B. Reporting to or being at work after taking or being under the influence of a prohibited substance.
  - 1. Under the influence of alcohol is defined as an alcohol test result of 0.02 or greater.
  - 2. Under the influence of an illegal drug or controlled substance is having a positive confirmed test result.
- C. Intentional violation or misuse of a prescription drug or over the counter medication.
- D. Intentional use of a prescription drug belonging to or prescribed for another person.
- E. Failure to consent, submit to, or cooperate in an inspection, search, or testing consistent with this policy including tampering or substitution of substances to be tested.
- F. Failure to inform the City of any arrest or conviction under any criminal drug or controlled substances statute including any guilty plea, plea of nolo contendere, or plea under advisement within five days of the arrest or plea.
- G. Unsuccessful completion or failure to adhere to the requirements of any drug or alcohol treatment or rehabilitation program in which the employee is enrolled.

## APPENDIX B

H. Any other violation or attempted violation of this policy.

### V. ENFORCEMENT OF POLICY

- A. Inspections, surveillance and searches of City premises and employees or others on City premises including personal effects and vehicles are authorized by this policy consistent with the law and the Constitution of the United States.
- B. Screening of applicants by scientific drug and alcohol screening may be carried out by a City approved facility after a conditional offer of employment has been made. The applicant shall be informed of the City's conducting the screening and requested to give his/her written consent to the collection and testing. Refusal to sign a consent form will terminate the employment process. A positive test result will terminate the employment process.
- C. Employee Testing
  - 1. The City shall use state of the art collection and testing laboratory facilities and procedures to conduct scientific drug and alcohol testing. To insure high levels of test reliability and validity, the City shall use scientifically tested techniques and employ as specimens urine, breath, or blood. The testing laboratory shall be a SAMHSA (federal Substance Abuse and Mental Health Services Administration) or FDA (federal Food and Drug Administration) approved. Initial and confirmation testing cutoff levels for illegal drugs and controlled substances shall be consistent with U.S. Department of Transportation concentrations as established by its regulations or proposed regulations as existing at the time of laboratory testing in the individual circumstances, but the City also has the right to know and use test results below cutoff levels showing detectable trace amounts of illegal drugs or controlled substances. Strict adherence to specimen chain of custody and other collection and testing procedures is required. Any violation in the custody chain or testing procedures will render the test results invalid. Initial positive test results for illegal drugs and controlled substances shall be confirmed by testing before a confirmed positive test result is reported to the City's Human Resources Department. A medical review officer shall be utilized in interpreting testing results before the results are released to the City. The MRO shall be a licensed physician with knowledge of substance abuse, prescription drugs, pharmacology and toxicology of alcohol, illegal drugs and controlled substances. Test results shall be reported by the laboratory or MRO to the Human Resources Department in a



## APPENDIX B

sealed envelope marked "Confidential" or other appropriate marking. Further dissemination of test results shall be on a strictly need to know basis in accordance with applicable law. Collection and testing shall be performed with due regard for maintaining the individual's personal privacy and maintaining confidentiality to the extent practicable under the circumstances. Any collection and testing information shall be filed separate from the individual's personnel file, labeled "Confidential" or other appropriate marking and access to this file shall be restricted to the Human Resources Department and management on a strict need to know basis, the employee, or those authorized in writing by the employee.

2. Drug and alcohol testing of any employee for reasonable suspicion is authorized by this policy. Reasonable suspicion is a quantity of proof or evidence that is more than a hunch, but less than probable cause. Reasonable suspicion must be based on specific, objective facts and any rationally derived inferences from those facts about the conduct of an individual that would lead the reasonable person to suspect that the individual is or has been using drugs while on or off duty. Detectable trace amounts of illegal drugs or controlled substances from a prior test constitute reasonable suspicion to re-test the employee. Such reasons or facts of reasonable suspicion shall be documented in writing and provided to the employee prior to testing.
3. Mandatory testing may be done of any employee in the following situations:
  - Following a work related accident;
  - Following a work related injury requiring medical treatment of the employee;
  - Following a leave of absence of 30 or more consecutive days;
  - Following a layoff of 30 or more consecutive days;
  - Following a return to work after successfully completing a treatment or rehabilitation program approved by the City. Such testing will be conducted before the employee actively resumes work, followed by unannounced testing at any time as determined solely by the City for a minimum of 12 months but up to 24 months after the employee returns to active work.

- At any time, including unannounced, during the employee's probationary period.
  - Reasons for mandatory testing shall be documented in writing and provided to the employee prior to testing.
4. The City has the right to randomly test up to two randomly selected employees four times per year. These tests shall be unannounced and all employees shall have an equal chance of being selected based upon objective and anonymous selection procedures conducted in front of a union representative. An employee who has been randomly selected shall be subject to any additional testing, if again randomly selected or pursuant to other types of testing under this policy.
  5. No inspection or search, or collection or testing, consistent with this policy shall be conducted without the employee's written consent except where the employee is not promptly available or immediate concerns such as safety are present. Failure to provide written consent of this nature can be considered the same as a confirmed positive test result for a prohibited substance.
  6. An employee shall be compensated for his time involved with the testing if not on duty.

## VI. VIOLATIONS OF POLICY

- A. Any violation of this policy shall be just cause to discipline the employee up to and including discharge.
- B. An employee who is tested for reasonable suspicion or under the mandatory testing procedures may be placed on administrative leave with pay pending the test results and any further prompt investigation and determination of the employee's employment status.
- C. If an employee is found in violation of this policy or tests positive but is not discharged, mandatory referral to an employee assistance program may be required at the sole discretion of the City. The City shall determine the treatment and counseling program and in consultation with the program's personnel, determine what treatment and counseling shall be required for the employee before being returned to active employment. Time off work for such treatment and/or counseling shall be conducted with accumulated sick time and/or a medical leave of absence

## APPENDIX B

which shall be counted towards the employee's Family and Medical Act entitlement if eligible.

- D. The City cannot allow an employee directed to test for reasonable suspicion or mandatory testing to jeopardize the safety of the employee, fellow employees and the public. Therefore, the City shall transport or arrange for transportation of such employee to and from the collection site and/or testing under these circumstances. After collection and/or testing, where a positive test result is promptly reported or where testing results are not promptly available, the City shall transport or arrange for transport of the employee to the employee's residence. The employee's failure to cooperate fully with transportation procedures shall be considered insubordination for which the employee may be disciplined up to and including discharge.

### VII. VOLUNTARY ASSISTANCE

Early recognition and treatment of chemical dependency is important for successful rehabilitation and reduced personal, family and social disruption. The City supports sound treatment efforts for its employees who are experiencing drug and/or alcohol problems and who voluntarily seek assistance. An Employee Assistance Program (EAP) should be sought which provides help for employees who have drug or alcohol abuse and/or other personal/emotional problems. Any employee experiencing substance abuse problems should seek professional evaluation and assistance from an EAP before the employee risks violating this policy. However, voluntarily sought assistance will not protect an employee who is found to be in violation of this policy. At the same time, no employee will be subject to disciplinary action simply for voluntarily requesting help due to drug and/or alcohol dependency.

An employee who voluntarily seeks the City's assistance and is diagnosed or evaluated as chemically dependent and undergoes treatment and counseling for substance abuse shall be allowed to use his accumulated sick time or be granted a medical leave of absence for such treatment which shall be counted towards the employee's Family and Medical Leave Act entitlement if the employee is eligible. The EAP will monitor the employee's follow through and successful completion of any required treatment and rehabilitation as recommended by the professionals involved and approved by the City. The employee must cooperate fully with the rehabilitation process, including without limitation, signing an authorization for the EAP to receive all directly related and other treatment and counseling information and records. This will be for the purpose of making a timely return to work recommendation when and if appropriate. The employee shall also be required, before returning to active employment, to sign an authorization releasing the staff of the

## APPENDIX B

treatment and rehabilitation program to bear witness to the employee's course of treatment and counseling in the evaluation process to return the employee to work. Should an employee undergo outpatient treatment and rehabilitation and the City, in its sole discretion, permits the employee to continue working during such treatment, the employee shall be expected to maintain satisfactory job performance including, without limitation, attendance. Before an employee is returned to active employment, the treatment and rehabilitation program must first release the employee and present to the Human Resources Department certification that the employee has successfully completed the program and is capable of returning to work. The City reserves the right to have independent medical experts verify that the program was successfully completed and that the employee is fit for work. To the extent insurance does not cover the treatment and EAP, the employee will bear the costs.

The employee must test negative for drugs and alcohol before returning to work and satisfy all requirements under the City's applicable leave policies. The employee shall also be subject to unannounced follow up testing at any time during at least twelve (12) months following the employee's return to active employment subject to being extended to twenty-four (24) months in the City's sole discretion. The employee must comply with this policy upon return to active employment, and any violation of this policy thereafter shall be just cause for immediate termination of employment.

### VIII. POLICY ADMINISTRATION

The Human Resources Department shall be responsible for the coordination, implementation and enforcement of this policy. All questions should be directed to the Human Resources Department. To protect employee privacy and dignity to the extent practicable under the circumstances, particularly where matters regarding medical and personal information are involved, coordination and investigation of suspected drug or alcohol activity prohibited by this policy shall be handled through the Human Resources Department.