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A G R E E M E N T

FRATERNAL ORDER OF POLICE  
JOHN C. POST LODGE NO. 44  
OFFICERS' UNIT

AND

CITY OF DAYTON, OHIO

Effective November 7, 2011  
Through December 31, 2014

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## AGREEMENT

This Agreement is entered into by and between the City of Dayton, Ohio (*hereinafter referred to as Management, City and/or the City of Dayton*) and the Fraternal Order of Police, Captain John C. Post Lodge No. 44 (*hereinafter referred to as the Lodge*). Management and the Lodge agree that they will take whatever actions are necessary to implement this Agreement in accordance with their obligations as set forth in Chapter 4117 of the Ohio Revised Code.

## PURPOSE

This Agreement fulfills the mutual obligations of the City and the Lodge, pursuant to Chapter 4117 of the Ohio Revised Code.

## ARTICLE 1

### AUTHORITY/DURATION

#### Section 1. Legal Reference

This Agreement supersedes and replaces all pertinent statutes, ordinances, civil service rules and other rules and regulations over which it has authority to supersede and replace. Where this Agreement is silent, the provisions of applicable law shall prevail. If a court of competent jurisdiction finds any provisions of this Agreement to be contrary to any applicable statute, such provision shall be of no further force and effect, but the remainder of the Agreement shall remain in full force and effect.

#### Section 2. Severability

The parties agree that should any provision of this Agreement be found to be invalid, they will schedule a meeting at a mutually agreed upon place and time to negotiate alternative language on the same subject matter.

#### Section 3. No Conflict

The City's Personnel Policies and Procedures, Police Department Rules and Regulations and general or specific written orders issued by the Director of Police shall not be interpreted so as to conflict with the terms of this Agreement.

#### Section 4. Modification

Written amendments or modifications of this Agreement shall only be by written agreement signed by the authorized City designee and the Lodge.

#### Section 5. Addenda

All addenda attached hereto are hereby incorporated into this Agreement.

Section 6. Duration

This Agreement shall be effective as of November 7, 2011, and shall remain in effect through December 31, 2014, and shall continue thereafter for successive periods of twelve (12) months, unless either party to this Agreement, on or before sixty (60) days prior to the expiration of such period, notifies the other party in writing of its intention to terminate this Agreement.

**ARTICLE 2**  
**RECOGNITION**

**Section 1. Bargaining Rights**

The City recognizes the Lodge, as the exclusive bargaining agent for all sworn Police Officers who are below the rank of Sergeant.

Should the Police Department create any new classification, the parties shall meet to determine whether such new classification should be included in the unit. In the event the parties are unable to reach an agreement, the dispute shall be submitted to the Grievance Arbitration Provisions set forth in this Agreement.

**Section 2. Subjects For Bargaining**

The following shall be considered as subjects to be negotiated by Management with the Lodge for all bargaining unit employees.

- A. Wages
- B. Hours
- C. Terms and Conditions of Employment

**Section 3. Authorization for Dues Check-Off & Fair Share**

In accordance with the requirements of Section 4117.09 (B)(2) of the Ohio Revised Code, upon presentation of a written deduction authorization by the employee, Management shall deduct from the pay due such employee, and turn over to the proper officers of the Lodge, regular monthly Lodge dues, initiation fees, and assessments payable by him or her to the Lodge, during the period provided for in said authorization.

Management shall automatically deduct, without written authorization, from the payroll check for all employees covered by this Agreement who are not members of the Lodge, and who do not in the future become and remain members of the Lodge after thirty (30) calendar days of employment, or as of the effective date of this Agreement, whichever is later, a fair share fee as a contribution toward the negotiation and administration expenses of this Agreement in an amount equal to the regular monthly dues paid by members of the Lodge.

Upon failure of any non-member employee to pay or tender the above mentioned fair share fee, Management shall discharge such employee when so informed by the Lodge.

If an employee covered by this Agreement is a member of and adheres to established and traditional tenets or teachings of a bonafide religion or religious body which has historically held conscientious objections to joining or financially supporting an employee organization, such employee shall not be required to join or financially support the Lodge as a condition of employment.

An employee desiring to avail himself or herself of the right of non-association with the Lodge, as provided by law, shall submit proper proof of religious conviction to the State Employment Relations Board.

Upon a declaration by the State Employment Relations Board that the employee is exempt from becoming a member of or financially supporting the Lodge, the employee shall be required, in lieu of the fair share fee, to pay an amount of money equal to such fair share to a non-religious charitable fund exempt from taxation under Section 501 (C)(3) of the Internal Revenue Code mutually agreed upon by the employee and the representatives of the Lodge. The employee shall furnish to the Lodge written receipts evidencing such payment.

Upon failure to make such payment or furnish such receipts, the City shall discharge such employee when so informed by the Lodge.

The Lodge shall hold the City harmless for any payments made by Management during the term of the voluntary assignment and for any wrongful discharge by Management under this Section, provided such discharge action is initiated at the request of the Lodge.

#### **Section 4. Non-Discrimination**

The parties hereto agree that neither Management nor the Lodge shall discriminate against an employee because of race, color, creed, religion, sex, age, political affiliation, disability, membership or non-membership in the Lodge or participation in Lodge activities. Words used in this Agreement in the masculine gender will be read and construed in the feminine gender as well, unless otherwise indicated.

#### **Section 5. Probationary Period**

The probationary period for employees covered hereunder consists of nine (9) calendar months from the date of appointment or promotion to the classification of Police Officer. The probationary period may be extended by the written mutual agreement of the parties

for a period an employee is absent for seven (7) or more consecutive work days during the probationary period. If extended, the length of the extension shall be for the same number of days as the absence. During said probationary period, employees covered hereunder may be disciplined, reprimanded, suspended, terminated, or relieved of duty, without a showing of just cause. Probationary employees are entitled to sick leave, injury leave, life insurance, medical insurance, and the accrual of vacation benefits.

Further, the terms and conditions arising out of Article 11, Discipline and Due Process, and Article 12, Grievance Procedure, with regard to disciplinary matters do not apply to probationary employees. All terms and conditions of this Agreement shall apply to probationary employees other than as set forth herein.

#### **Section 6. PAC Fund Deduction**

The City shall provide, at no cost to the Lodge, an additional payroll deduction field for any employee who provides a written deduction authorization to the Lodge with a copy to the City. Such authorization may be revoked by the employee at any time by giving written notice to the Lodge, with a copy to the City. The City shall deduct from the pay due such employee and remit the deduction to the proper officers of the PAC. The expenditure of funds shall be in accordance with Federal, State, and Local laws.

**ARTICLE 3**  
**PROHIBITIONS**

**Section 1. Strike Prohibition**

The services performed by the employees included in this Agreement are essential to the public health, safety and welfare. There shall be no interruption of the work for any cause whatsoever, nor shall there be any work slowdown or other interference with public services.

**Section 2. Denouncement of Violation**

In the event that any employee in the bargaining unit is engaged in any violation of Section 1 the Lodge shall, upon notification by Management, immediately order such employee or employees to resume normal work activities and shall publicly denounce any such violation of Section 1. If the Lodge carries out its obligations under this Section in good faith and has neither authorized nor ratified the action, it shall have no liability for any such action.

**Section 3. No Lockout**

Management shall engage in no lockout of employees in the bargaining unit.

## ARTICLE 4

### MANAGEMENT'S RIGHTS

Unless expressly provided to the contrary by a specific provision of this Agreement, Management reserves and retains solely and exclusively all of its statutory and Common Law rights to manage the operation of the Police Department of the City of Dayton, Ohio.

Such rights shall include but are not necessarily limited to the rights:

- A. To develop, alter or abolish policies, practices, procedures and rules to govern the operation of the Police Department and bring about discipline.
- B. To determine work assignments and establish, alter or eliminate work schedules, locations or functions in accordance with municipal or departmental needs.
- C. To transfer, promote or lay-off employees; or to terminate, demote, suspend or otherwise relieve employees from duty for just cause.
- D. To recruit, select and determine the number, qualifications and characteristics of officers required.
- E. To establish basic and in-service training programs and requirements for upgrading of officers and employees.
- F. To take such measures as Management may determine to be necessary for the orderly and efficient operation of the Police Department for the City of Dayton.

To the extent that the above rights are specifically limited by the provisions of this Agreement, alleged violations are subject to the Grievance Arbitration Procedure.

## ARTICLE 5

### LODGE BUSINESS

#### Section 1. Lodge President

The Lodge will appoint one (1) member to be designated as the Lodge President (*hereinafter referred to as President*).

The authorized functions of the President and an alternate to replace the President when he/she is absent due to authorized leave in excess of five (5) working days or where unanticipated absence of the President may result in the grievance time limits expiring, are the following:

- A. Attendance at Employee Relations Committee meetings;
- B. Posting of Lodge notices on the bulletin boards;
- C. Representing the Lodge in investigating and processing grievances beginning at Step 3 (the Superintendent's level) of the Grievance Procedure;
- D. Replacing a grievance representative who is absent or unavailable;
- E. Notifying Management (as the authorized Lodge representative) of the Lodge's intent to invoke any steps of the Grievance Procedure beyond Step 3 including Grievance Arbitration;
- F. General supervisory review of grievances;
- G. Acting as liaison between Management and the Lodge;
- H. The President will receive copies of all General, Executive and Special Orders sent to other units.

The President shall be released from his/her normal duty hours upon request to participate in meetings and discussions with regard to the aforementioned problem areas without loss of pay or benefits. In no event will the President receive overtime payment to conduct Lodge business or process grievances. The President shall perform his/her assigned duties on substantially a full-time basis.

## Section 2. Grievance Representative

The Lodge may select a minimum of twenty (20) grievance representatives with one (1) grievance representative per shift or platoon in each District and the Safety Building. The representatives' names and assignments shall be furnished to the Employee Relations Division by the Lodge. The list shall be kept current by the Lodge at all times.

If a representative's name is not listed, he/she will not be granted time away from his/her job. Representatives involved will be permitted time off their jobs with pay to be present at Grievance Hearings, and will be permitted reasonable time during duty hours without loss of pay or benefits to investigate and process grievances.

In no event will a grievant or his/her representative receive overtime payment to engage in activities covered by this Section or otherwise to conduct Lodge business, but Grievance Hearings at Steps 1, 2 and 3, as called for in Article 12, shall be scheduled not later than one-half (1/2) hour before the end of the grievant's shift if on the first relief, and not earlier than one-half (1/2) hour before the beginning of his/her shift if on the third relief, where the grievant or his/her representative will be in attendance.

The aggrieved employee may request a representative, and the representative requested must inform his/her immediate supervisor of the grievant's name and location. Where the normal grievance representative is absent, another grievance representative from the same shift or platoon in another district, or from a different shift or platoon in the same district shall process the grievance.

Lodge business other than that listed in this Agreement shall not be conducted by grievance representatives on City time, nor shall it, in fact, interfere with the work assignment of the representatives involved or the work assignment of any other City employee.

## Section 3. Negotiators

Reasonable provisions shall be made by Management so that Lodge bargaining unit members selected by the Lodge as representatives on their negotiating committee and scheduled for duty may be carried on special assignment for the entire assigned shift for the purpose of negotiating during the term of this Agreement.

Upon advance approval by the Director of Police or his/her designee, time off shall be granted for a maximum of ten (10) negotiating committee members and the President, designated in advance, during the last ninety (90) days of this Agreement prior to the termination date specified in under Duration (exclusive of any extensions).

However, in the event the parties agree to joint, multi-unit negotiations, time off shall be granted for a maximum of five (5) negotiating committee members and the President.

#### **Section 4. Delegates**

The Lodge will be authorized an aggregate of thirty-three (33) work days of paid leave per calendar year for employees to use at anytime during the year to attend Lodge functions such as conventions, educational meetings or conferences.

Management shall make other reasonable provisions for authorizing vacation leave or personal allowance credits for employees to attend Lodge functions in addition to the above mentioned thirty-three (33) days. Any authorized but unused Lodge delegate leave may be carried over from an even to an odd numbered calendar year.

Subject to approval by Management, based upon the operational requirements of the Police Department, the Lodge may utilize the aforementioned provisions by having the President notify the Director of Police and the Employee Relations Division as soon as practicable upon learning of the need for such leave, but no less than seven (7) calendar days prior to the commencement of said leave.

#### **Section 5. Lodge Officers**

Sufficient time off shall be granted to any four (4) elected officers of the Lodge who are employees covered hereunder for the purpose of attending and conducting regular or special meetings of the Lodge, provided however, a forty-eight (48) hour notice is given to the Director of Police and such release from duty is subject to the scheduling requirements in the interest of efficient operation of the Police Department.

#### **Section 6. Labor-Management Committee**

In the interest of sound employee relations, a joint committee of no less than six (6) nor more than eight (8) members, half of whom shall be from the Lodge will convene from time to time for the purpose of discussing subjects of mutual concern.

It shall be the express purpose of this committee to build and maintain a climate of mutual understanding and respect in the solution of common problems. Either Management or the Lodge may request that a representative of the Department of Human Resources participate in a scheduled Labor-Management Committee meeting.

Each party shall alternately chair the Labor-Management Committee meeting. Upon the request of either party, any answer will be given (or confirmed) in writing within two (2) weeks of the request that the answer be made written.

#### **Section 7. Office And Telephone**

Management shall provide the President with an office and telephone separate and private from his/her normal assignment in close proximity thereto.

#### **Section 8. Ballot Box**

Management agrees to permit the Lodge to provide ballot boxes and/or suggestion boxes in strategic locations within the Safety Building.

#### **Section 9. Bulletin Boards**

Bulletin boards as presently provided, and as may be installed in the future by Management, may be used by the Lodge for posting notices of the following types:

- A. Recreational and social events;
- B. Elections and election results;
- C. General membership meetings and other related business meetings;
- D. General Lodge business of interest to members.

Notices must be reviewed with the Director of Police and/or the Department of Human Resources and any bulletins or notices considered inflammatory, political or devoted to Lodge organizing and grievance matters will not be permitted on any City bulletin boards, nor will they be permitted to be displayed in City offices, facilities, equipment, etc. If such inflammatory, political or organizing notices appear on said bulletin boards, they shall be removed by Management. The City's current Personnel Policies and Procedures will be followed regarding the Lodge's use of e-mail.

#### **Section 10. Notification Of Reorganization**

Management shall notify the Lodge, in writing seven (7) days in advance of the action, of its intention to reorganize the Police Department, or to substantially modify the functions

of any bargaining unit position. The creation, abolishment, or movement of Bureaus and/or Units from one division to another shall constitute a reorganization.

#### **Section 11. Seniority Defined**

Seniority for employees is determined by final Academy Class rank minus:

1. Suspension days not covered by vacation forfeiture (Article 11);
2. Time between resignation from the Police Department and reinstatement except when resignation is in excess of one (1) year in which case all seniority is lost; and,
3. Leave without pay, except for FMLA leave.

The current seniority list will be maintained by the Police Department. The seniority list shall be revised quarterly, and the revised list will be distributed to the employees.

#### **Section 12. Release Time for FOP President**

A sworn employee of the Dayton Police Department serving as President of the Fraternal Order of Police, Captain John C. Post Lodge No. 44 shall receive the full salary and all benefits to which the employee is normally entitled as a sworn member of the Department of Police working on a forty (40) hour, daytime shift. Such employee shall be relieved of all obligation to work as a sworn member of the Police Department and shall be free to conduct the affairs of the FOP Lodge No. 44 without being subject to the authority of Management of the Police Department, provided the President adheres to the following requirements and maintains certification as a Police Officer:

- A. Respond to emergency recall;
- B. Maintain the uniform;
- C. Fulfill requirements to attend court related proceedings;
- D. Report usual and customary changes for personnel records;
- E. Adhere to Departmental grooming standards;
- F. Attend basic in-service training which all members of the President's rank are required to attend, including firearms training;
- G. Take action in case of law violations;
- H. Maintain a valid Ohio Driver's License;
- I. Adhere to basic laws and the standards of conduct set forth in this Collective Bargaining agreement; and

- J. Adhere to the Manual of Procedure and Personnel Policies and Procedures.

The FOP President will still be permitted to work overtime assignments based upon the employee's seniority.

On January 1, 2012 and on each successive January 1, two and one-half (2 ½) hours of vacation time or compensatory time shall be deducted from each member of the Officers and Supervisors Bargaining Units of the Dayton Police Department in order to fund this full-time position. The members of the Bargaining Units shall determine if vacation or compensatory time is to be deducted from their accounts provided the member has both types of leave.

**ARTICLE 6**  
**HOURS OF WORK**

**Section 1. Hours of Work**

The regular work week shall consist of forty (40) hours, five (5) days of eight (8) hours each. The eight (8) consecutive hours does not include a meal break, where applicable.

**Section 2. Definition of Day**

A day shall be defined as a full twenty-four (24) hour period.

**Section 3. Work Schedules**

Alternate work schedules may be continued or implemented by mutual agreement of Management and the Lodge.

All employees on an alternate work schedule that take off an entire day will be debited for the actual time taken for vacation leave, compensatory leave, sick leave, holiday pay, birthday pay, and/or personal leave credits on that day. All leave for less than an entire day shall be debited on an hour-for-hour basis.

**Section 4. Shift Preference**

The following shift preference procedure shall be applicable to employees assigned to all multiple shift operations.

- A. No later than October 1st of each year, the appropriate Commander shall cause to be posted a list of those employees holding positions by virtue of the employee's seniority. That list shall further reflect those employees holding positions not subject to the bidding procedure. The list shall reflect the name of the employee and the anniversary date. Employees holding positions because of their seniority may be bumped by the more senior employees under the terms of this Section. The list shall remain posted for the bidding year reflecting any changes that occur during the year.

- B. The month of November each year is designated as the period for the exercise of shift preference.
- C. Two-thirds (2/3) of the positions on each shift shall be subject to being filled by employees who desire to exercise their seniority to bid for reassignment to like and similar jobs within the same District, Bureau, or work assignment.
- D. Employees may, by e-mail request to the appropriate Commander, show their preference of shift and days off that are available for that particular shift. Such requests must be submitted no later than 1700 hours on or before November 30<sup>th</sup>. Days off requests may be denied or changed by the Chief or his or her designee, for valid business reasons that are not for arbitrary or capricious reasons.
- E. Notification of shift changes shall occur by December 31st and will become effective on January 15th of the following year.
- F. The exercise of shift preference shall not limit management to or from any work schedule changes or District and Bureau changes at any time. In the event of a general reassignment, the appropriate Commander will within thirty (30) days provide for reassignment within his/her District as necessary to permit shift preference for two-thirds (2/3) of the positions.

#### Section 5. Rotating Shifts

There shall be no overtime paid to employees who worked more than eight (8) hours in a twenty-four (24) hour period while changing from one shift to another.

When an employee is required to change shifts the employee shall not be required to work two (2) consecutive shifts. An employee will receive a minimum of eight (8) hours of off-duty time before returning to the new shift. No officer shall be required to change shifts without advance notification by Management of at least three (3) calendar days. Exceptions to the prior sentences are overtime opportunities, mutual agreement to waive the provisions by the employee and Management, or an emergency being declared by the Director of Police or his designate.

For the purpose of this Section, any change in reporting time of more than two (2) hours shall be considered a shift change.

**Section 6. Tardiness**

For unexcused tardiness in any instance of an employee reporting late for duty (scheduled work day), the employee will be docked in six (6) minute increments.

**Section 7. Unrequested Transfers**

- A. Any unrequested transfer to another District, Bureau, or work assignment, shall be given immediate shift preference (but not days off preference) on the basis of seniority in that District, Bureau, or work assignment. Such employees may exercise shift preference with regard to only those positions which have been filled by the exercise of shift preference pursuant to the provisions of Section 4.
- B. A transfer shall not be unjust and capricious, and if the Lodge believes that such a transfer is unjust and capricious, it may be subject to the Grievance Arbitration Procedure.

## ARTICLE 7

### SICK LEAVE

#### Section 1. Accrual

All employees shall accrue sick leave hourly credits at the rate of ten (10) credit hours per completed month of service, and any sick leave hourly credits accrued, but not used or converted as hereinafter provided in any year, shall be cumulative in succeeding years to a maximum of one thousand one hundred twenty (1,120) hourly credits. Employees who are granted their leave of absence with pay for sick leave or injury purposes only shall continue to accrue sick leave hourly credits at the regularly prescribed rate during such absence, but such accrual shall not be available to employees until return from leave. Sick leave hourly credits shall not accrue during periods of suspension or other types of leave without pay.

#### Section 2. Granting Of Sick Leave

An employee eligible for sick leave may be granted such leave with full normal pay when absent for the following reasons:

- A. Personal illness, pregnancy or physical incapacity.
- B. Illness of a member of an employee's immediate family, requiring the employee's personal care and attendance, may be granted in accordance with Personnel Policies and Procedures, Section 5.01 and guidelines established therein. Additional sick leave time for those purposes may be granted upon written recommendation of the attending physician and upon the approval of the Superintendent.
- C. Enforced quarantine of the employee in accordance with community health regulations.
- D. Where injury leave has expired and the employee must be absent from work for an additional period due to injury.
- E. An employee who becomes ill after reporting to work will be permitted by supervision to go home or to a medical facility. In either instance, the employee will be charged for the hours lost from work in units not less than one (1) hourly credit.

### **Section 3. Employee's Responsibility**

Before the starting time of his/her shift, an employee on sick leave shall inform a Dispatch Sergeant or Supervisor at the SS-10 position of the fact at least one hour (1) before the officer's scheduled work time, except in the case of proven inability to make a phone call and provided further that the call shall be made as soon as possible thereafter. The same procedure outlined for reporting off is to be used when reporting back to duty from sickness.

### **Section 4. Fraction Of A Day**

Absence for a fraction of a day that is chargeable to sick leave in accordance with these provisions shall be charged proportionately in amounts not smaller than one (1) hourly credit.

### **Section 5. Doctor's Certificate**

A Doctor's Certificate may be required before an employee may return to work to substantiate periods of more than three (3) consecutive work days of sick leave usage. A Doctor's Certificate may also be required for sick leave usage in the following cases:

- A. Repeated one (1) or two (2) day absences (three (3) or more such occurrences in a six (6) month period);
- B. Multiple absences on a single day under questionable circumstances;
- C. After an absence related to any on-duty emergency or after the employee received medical services from any emergency service provider as a result of an on-duty incident. In these types of situations, the City may also require the employee to produce a Doctor's Certificate indicating that the employee is fit to return to work;
- D. For probationary employees.

### **Section 6. Reinstatement Credit**

An employee who is laid off will, upon reinstatement to service, have any unused sick leave existing at the time of his/her layoff placed to his/her credit.

## Section 7. Conversion To Vacation or Personal Allowance Credits

In any one year, sick leave hourly credits may be converted to not more than forty (40) hours of vacation or personal allowance credits, except where accumulation above one thousand (1,000) hourly sick leave credits forces conversion of sick leave credits in excess of one thousand (1,000) hourly credits to avoid the loss of those excessive credits. The normal conversion period will be in January of each year. Conversion at any other time during the year will be granted when requested by Special Report.

Only one conversion of sick leave hourly credits to vacation credits is permitted each calendar year. Conversion shall be administered as follows:

- A. An employee who has more than two hundred forty (240) sick leave hourly credits may convert up to seventy-two (72) hours of sick leave credits to vacation credits on the basis of three (3) hours of sick leave credits for one (1) hour of vacation or personal allowance credit, provided a balance of two hundred forty (240) sick leave hourly credits remain.
- B. If an employee has five hundred twenty-eight (528) sick leave hourly credits, he/she may convert up to one hundred twenty (120) hourly credits to vacation hourly credits on the basis of three (3) hours of sick leave credits for one (1) hour of vacation or personal allowance credit, provided a balance of four hundred eight (408) sick leave hourly credits remain.
- C. If an employee has in excess of seven hundred twenty (720) sick leave hourly credits, he/she may convert up to eighty (80) sick leave hourly credits to vacation credits on the basis of two (2) hours of sick leave credits for one (1) hour of vacation or personal allowance credit, provided a balance of seven hundred twenty (720) sick leave hourly credits remain.
- D. Those employees having in excess of one thousand (1,000) sick leave hourly credits must convert those credits in excess of one thousand (1,000) at a rate of two (2) hours of sick leave credits to one (1) hour of vacation or personal allowance credit or the employee will lose those credits. In no case will more than one thousand (1,000) sick leave hourly credits, after conversion, be recognized. In no instance shall any employee be credited with more than one thousand one hundred twenty (1,120) sick leave hourly credits.

Subject to the above limitation, Management shall permit those employees credited with eight hundred (800) or more sick leave hourly credits conversion privilege in January of each year. Such conversion privilege is subject to a maximum of eighty (80) sick leave hourly credits or the number required to

allow one thousand (1,000) accumulated sick leave hourly credits to remain, whichever is greater.

- E. Retirement means the employee has left the service of the City of Dayton after at least twenty-five (25) years of service or is receiving retirement benefits under the Ohio Police and Fire Pension Fund at the termination of said service under general or disability provisions of said fund. At retirement, an employee who has up to one thousand one hundred twenty (1,120) sick leave hourly credits may convert them to regular pay. This conversion shall be two (2) sick leave hourly credits for one (1) hour of regular pay.
- F. If an employee who would otherwise be eligible for retirement benefits dies while still employed or when an officer is killed in the line of duty, then the benefits under Paragraph E will be paid to the deceased employee's estate.
- G. Scheduling of conversion vacation credits off shall be by the Director of Police or Division Superintendent subject to efficient operation of the Police Department.
- H. Personal allowance credits are paid hours off earned through sick leave conversion and shall be recorded separately from vacation. An employee may elect at the time of conversion to convert to vacation or personal allowance credits. Personal allowance credits are not subject to the two hundred forty (240) hour maximum limit on vacation usage, and all personal allowance credits must be used during the calendar year in which earned or the succeeding calendar year. Scheduling of conversion personal allowance credits shall be by the Director of Police or Division Superintendent subject to the efficient operation of the Police Department.

#### **Section 8. Reconversion of Vacation Credits to Sick Leave**

An employee may reconvert vacation credits to sick leave credits at any time during the calendar year in which conversion occurred with the approval of the Division Superintendent, provided the amount of sick leave originally converted is not exceeded and provided further the sick leave maximum of one thousand one hundred twenty (1,120) hours is not exceeded. Such reconversion shall not be unreasonably denied.

**Section 9. Transfer Credits**

Upon transfer from one Division or Department to another, unused sick leave hourly credits shall continue to be available for the transferred employee's use.

**Section 10. False Claim**

Management reserves the right to withhold benefit payment or take disciplinary action up to and including discharge against any employee who is guilty of submitting a false claim for benefits covered in this Article or for working for another employer and/or self employment while on sick leave and is physically capable of performing in his/her assigned classification or is capable and assigned to a light duty position.

**Section 11. Return to Work from Illness or Injury**

When an employee returns to work from an illness, pregnancy, or injury for which he/she received treatment from a physician, the employee may return to work when the attending physician certifies in writing the employee's ability to return to full duty. Such certification must be presented to the employee's immediate supervisor for review.

**Section 12. Sick Leave Policy**

The sick leave provisions in the current Personnel Policies and Procedures that are not expressly covered in this Article shall remain in full force and effect for the duration of this Agreement.

In the event, however, the City of Dayton improves any sick leave policies or procedures with respect to any other bargaining unit of City employees, it is agreed that the Lodge can reopen for negotiation this Article by the giving of a sixty (60) day notice to Management.

Service of the written notice to negotiate pursuant to the provisions of this Section shall invoke the dispute settlement procedures set forth in Chapter 4117.14 of the Ohio Revised Code.

**Section 13. Donation of Sick Leave Credit**

The parties agree to incorporate into this Agreement the terms of Ordinance No. 27362 to allow officers to contribute eight (8) hours of sick leave credits to the account of any City employee afflicted with a terminal illness.

ARTICLE 8  
INJURY LEAVE

Section 1. Service Connected Injury

In the event of service connected occupational illness or injury incurred in the course of and arising out of employment with the City of Dayton, leave of absence with normal pay will be granted by the City Manager for up to ninety (90) calendar days.

The Director of Police may approve injury leave benefits on a conditional basis for a period not to exceed thirty (30) calendar days for the initial injury leave usage for an injury, provided the employee has submitted an Injury Investigation Report, a fully completed Medical Certification form signed by his/her Doctor, and a Release of Medical Information form that enables management to obtain medical records from all medical facilities and professionals who treated the employee for the injury.

If a conditionally approved injury leave claim is subsequently denied by the City Manager, the employee will be required to cover the absence by using sick leave, vacation, or compensatory time. Repayment to the City of Dayton for any injury leave pay received, not offset by paid leave, shall be made within sixty (60) days following a final determination pursuant to the procedures set forth in this Section upholding the denial of injury leave.

Injury leave may be denied where there is evidence of serious breach of discipline on the part of the injured employee after the Injury Leave Review Board has considered the circumstances and recommends denial of the request for injury leave to the City Manager. An employee will be notified in writing by Management if his/her request is denied and the reasons therefore.

Any denial of injury leave is subject to the Grievance Arbitration Procedure upon submission of the grievance by the Lodge at Step 5 (Arbitration). The length of injury leave shall be based upon the advice of the attending physician and the City Doctor.

In the event of a dispute as to the length of leave authorized herein, Management and the Lodge shall mutually agree on a disinterested physician to make the final determination which shall be binding on both parties. The cost of the disinterested physician shall be charged equally between Management and Lodge. Further leave will be granted with the approval of the City Manager as set forth herein.

The City Manager's approval of injury leave in excess of ninety (90) calendar days shall be based upon the medical recommendation provided for above and the recommendation of the Injury Leave Review Board. The Board shall meet as necessary and will be composed of equal representation between the Lodge and Management not to exceed a total of four (4) members.

The Board shall consider the extent and nature of the injury based on available medical records, employment record and history of the employee, prospects for disability retirement and such factors as it deems relevant to the claim.

### **Section 2. Worker's Compensation**

At the expiration of the injury leave granted, if the employee is still unable to return to work, the employee may avail himself or herself of the accumulated sick leave provisions. If the employee is still unable to work, payment of normal wages or salary will be stopped, and the Industrial Commission will be requested to begin weekly payments under the provisions of the Workers' Compensation Act.

### **Section 3. Reinstatement**

An employee absent from work because of any service connected occupational illness or injury as determined by the Industrial Commission shall be entitled to reinstatement at the grade and step of pay received immediately prior to the date of such illness or injury, upon approval of his/her application to return to work.

Such application will be made within one (1) year following the date of the exhaustion of his/her injury leave and sick leave. This period may be extended with the approval of Management and upon the advice of the City Doctor and/or other competent medical authority. Any employee who returns from disability retirement shall be granted his/her previously held seniority minus the time off on disability retirement.

### **Section 4. False Claim**

Management reserves the right to withhold benefit payments or take disciplinary action, up to and including discharge, against any employee who is guilty of submitting a false claim for benefits covered in this Article or for working for another employer while on injury leave and is physically capable of performing in his/her assigned classification.

## ARTICLE 9

### MILITARY LEAVE

#### Section 1. Physical Examination

An employee shall be granted permission to be absent from work in order to receive his/her physical examination for compulsory military service in the Armed Forces of the United States. The employee shall be entitled to paid leave for that purpose during such absence, for a period not to exceed three (3) days. Employees wishing to enlist shall be permitted to take one (1) enlistment physical and shall receive no more than one (1) day leave for that physical. Management may require written evidence of the number of necessary days of absence.

#### Section 2. Short Term Military Leave

- A. This leave is granted in accordance with local ordinance, federal and Ohio State Law where these laws provide a greater benefit than that which is provided pursuant to this Article.
- B. Employees who are members of the Ohio organized militia, or members of other reserve components of the armed forces of the United States, including the Ohio national guard, are entitled to a military leave of absence without loss of pay for the time they are performing service in the uniformed services for a period of up to two hundred twenty-four (224) hours within any calendar year.
- C. To qualify for the benefits provided, the employee must show his/her field order to his/her supervisor prior to reporting for training or duty.
- D. In order for the employee to receive his/her pay, the employee must complete a Military Leave Affidavit. The affidavit will be submitted to the Employee Relations Division in triplicate.
- E. For the purpose of computing vacation or sick leave, Short-Term Military Leave will count as full service with the City of Dayton.

#### Section 3. Extended Military Leave

- A. This leave is granted in accordance with local ordinance, federal and Ohio State Law where these laws provide a greater benefit than that which is provided pursuant to this Article.

- B. Extended Military Leave is given to those employees who are called or ordered to the uniformed services for longer than two hundred twenty-four (224) hours, for each calendar year in which the employee performed service in the uniformed services, because of an executive order issued by the president of the United States or an act of congress. During the military service period designated in the executive order or act of congress, an employee is entitled to a leave of absence and to be paid during the monthly pay period of that leave or absence, the lesser of the following:
1. The difference between the employee's gross monthly wage or salary with the City of Dayton and the sum of the employee's gross uniformed pay and allowances received that month; or,
  2. Five (\$500.00) hundred dollars.
- C. No city employee shall receive payments while on Extended Military Leave if the sum of the employee's gross uniformed pay and allowances received in a pay period exceeds the employee's gross monthly wage or salary with the City of Dayton.
- D. Employees on Extended Military Leave will receive retirement credit for time spent in military service.
- E. Replacement for employees leaving on Extended Military Leave will be hired with permanent status, but are subject to layoff when the employee on leave returns.
- F. When an employee who has been on Extended Military Leave returns, he/she will receive any wage adjustments and step increases that would be due as though he/she had been actively on the payroll.
- G. Vacation and sick leave do not accumulate during Extended Military Leave.
- H. In order to receive the pay, the employee must complete a Military Leave Affidavit. The Military Leave Affidavit shall include a copy of the executive order issued by the president of the United States or an act of congress authorizing the call or order to the uniformed services. The affidavit will be submitted to the Employee Relations Division in triplicate.

#### Section 4. Employment Severance

- A. An employee who leaves the City of Dayton for military service and makes application for re-employment within ninety (90) days after he/she is released from military duty or from hospitalization continuing after discharge for a period of not more than one (1) year, and is physically qualified to perform the duties of such position, shall be restored to such position if it exists and is not held by a person with greater seniority or to a position of like seniority, status and pay.
- B. If he/she is not qualified to perform the duties of such position by reason of disability sustained during such service, he/she shall be placed in such other position, the duties of which he/she is qualified to perform, as would provide him/her like seniority, status, and pay, or the nearest approximation thereof consistent with the circumstances of his/her case.
- C. When an employee is entitled to be restored to a position in accordance with this Section, and the Civil Service Board finds that it is not feasible for the employee to be restored to the Police Department, the Civil Service Board shall determine whether or not, in any other Department or agency of the City of Dayton, there is a position for which such person is qualified and which is either vacant or held by an employee having a temporary appointment. In any case, when the Civil Service Board determines that there is such a position, such person shall be restored to that position.

## ARTICLE 10

### SPECIAL LEAVE/DUTY STATUS

#### Section 1. Funeral Leave

Paid leave to attend the funeral or memorial service of a member of the immediate family shall be granted by the Director of Police for three (3) days. Proof of death and relationship of the deceased may be requested.

- A. The immediate family is defined as: spouse, parent, current parent-in-law, step-parent, child, step-child, brother, sister, grandparent, current grandparent-in-law, grandchild, half-brother, half-sister, step-brother, step-sister and current brother-in-law or current sister-in-law (spouse's sibling or sibling's spouse). Other relatives living in the same household shall be considered as immediate family. In the event of multiple deaths (i.e. traffic accidents) each death shall count as a separate occurrence.
- B. Upon approval of the Director of Police, funeral leave in excess of three (3) days may be charged to the accrued sick leave or vacation balance or will be charged as leave without pay.

#### Section 2. Special Leave without Pay

Leave without pay for personal reasons may be granted by the Director of Police or his/her designee upon request for periods not in excess of ninety (90) calendar days. Employees absent due to illness, pregnancy or other physical incapacity, may be granted such leave after sick leave has expired, provided however, that employees shall have the option of using their vacation time and compensatory time after their sick leave has expired before being placed on leave of absence without pay.

#### Section 3. Restricted Duty

An employee who is absent from duty due to an illness or injury of a temporary nature that prevents him/her from performing his/her normal police duties may be returned to work to perform restricted duty for a temporary period of time. Restricted duty is any job, work assignment, or duty within the Police Department that an employee, unable to perform his/her regular assignment, is capable of performing. Restricted duty assignments are made solely at the discretion of the Director of Police.

An employee's work restrictions will be based upon the advice of the attending physician and the City Doctor. In the event of a dispute as to the employee's ability to perform restricted duty on a temporary basis, Management and the Lodge will mutually agree on a disinterested physician to make the final determination as to the employee's limitations and ability to perform restricted duty. While on restricted duty an employee will earn his/her regular hourly rate of pay.

#### **Section 4. Failure to Report; Voluntary Resignation**

Any employee who fails to report to work for three (3) consecutive days and does not properly notify Management at the beginning of his/her starting time on the third day will be considered as having voluntarily resigned his/her position, unless it is proven by the employee that notification was beyond his/her control.

#### **Section 5. Layoff**

Layoffs shall be made in accordance with Civil Service Rules and Regulations in effect on the date of execution of this Agreement.

#### **Section 6. Jury Duty**

An employee required to serve on a jury during his/her work shift, before a court empowered by law to require such service, shall be excused from duty for the time required for such service and shall be paid his/her regular hourly rate (any check for jury duty fee will be signed to the City if jury duty is on a regular work day), provided he/she notifies his/her Division Manager five (5) days prior to such jury service date if possible. An employee who is on paid leave is entitled to keep the jury pay. An employee performing jury service will call their Division Manager and/or Director on a daily basis to report their service requirements and/or potential release status. If an employee who is notified of potential jury service is not needed on that date, then the employee will report to work. Additionally, if an employee is called to jury service and is released by the Court prior to 12 p.m., then the employee will immediately report to work.

## ARTICLE 11

### DISCIPLINE AND DUE PROCESS

#### Section 1. Investigations By Management

- A. Management may conduct investigations of alleged misconduct by an employee and require a member of the bargaining unit to submit written reports relative to the investigation, either by general or specific order.

If any report shows or tends to show that the employee submitting the report has committed a crime, the use of such report will be subject to the following:

1. The report may not be voluntarily made available by Management for use at any stage (grand jury or trial) in any criminal proceeding against the employee.
  2. The report may be used by Management in taking action and in defending such action with respect to discharge or discipline of the employee.
  3. Failure by an employee to complete the report may result in disciplinary action.
- B. An employee who is under criminal investigation shall be informed that the investigation is criminal in nature, as opposed to administrative, and afforded the applicable Constitutional considerations guaranteed by law.
- C. An on-the-spot interview during or practically contemporaneous to the event in question shall not be restricted by issues of 24-hours notice, representation, or issuance of notice of representation as provided under Section 3.A.

Contemporaneous shall be defined as beginning within three (3) hours of the incident or within one (1) hour of the end of any on-scene criminal investigation.

- D. In the interest of fair and expeditious corrective action, an employee who has allegedly committed a violation of a minor nature relating to his/her performance may be interviewed by Management prior to orally correcting and retraining said employee and is not subject to the provisions under Section 3.A.

## Section 2. Definitions

- A. *Representative:* Under the terms of this Article, a representative shall mean an attorney-at-law or a member of the bargaining unit certified by the Lodge as a grievance representative.
- B. *Interview:* An interview, whether scheduled or not scheduled, is an inquiry by Management with an employee it suspects of misconduct. Management shall afford the employee not less than 24-hours notice prior to the interview and formal notice of the right to representation.

The only exceptions to this provision are outlined in Sections 1.C and 1.D.

- C. *Hearing:* A hearing is a meeting between an employee and supervision at a prescribed time and place to determine whether or not he/she has committed an infraction and, if so, the appropriate disciplinary action of record (Oral Reprimand, Written Reprimand, Suspension, Demotion or Dismissal).

An employee who receives Formal Charges and Specifications of misconduct which may result in Suspension, Demotion, or Dismissal must be given the opportunity for a hearing before the Director of Police, or his/her designee, before disciplinary action is taken unless the employee waives this right to a hearing. This hearing before the Director of Police is known as the Departmental Hearing.

## Section 3. Employee Rights

- A. When an employee, suspected of misconduct, is interviewed as part of an administrative investigation or is scheduled for a hearing:
  - 1. The employee shall be advised of the allegation(s) or the subject of the investigation either verbally when formally notified, or if not verbally notified, the employee may request such information by special report to his/her Division Superintendent.  
  
In the event that a special report request is necessary, no hearing or interview shall be conducted until the information is provided in writing. Advisement shall be in writing when formally notified of an Internal Affairs interview.
  - 2. Notification of not less than 24-hours shall be given to the employee;

3. The employee shall receive formal notice of the right to be represented by a grievance representative or attorney-at-law;
  4. If the interview/hearing is to be tape recorded, the employee shall be apprised.
- B. The employee has the right to waive 24-hours notice and representation. Management shall reserve the right to prohibit from an interview or hearing a representative who has been or will be questioned in connection with the case at hand.
  - C. Employees shall be afforded the right to Discovery subject to Section 6.
  - D. Management shall afford an employee the opportunity to offer mitigation before disciplinary action is taken in all circumstances, including when no subsequent hearing is available to the employee. The mitigating circumstances are to be included in the investigation report or formal written findings.
  - E. As a courtesy, employees will be notified in writing of the disposition of an internal affairs investigation within thirty (30) days of the conclusion of said investigation and/or the disciplinary process. A failure to provide this notification shall not be cause to rescind any discipline, nor shall the failure to provide this notification be subject to the grievance and arbitration process.

#### Section 4. Disciplinary Action/Progression

- A. An Oral Reprimand or Written Reprimand is an official action of record and shall be noted as such by a supervisor. Such Reprimands may be used in subsequent progression of discipline.
- B. After two (2) years from the date of issue, an Oral Reprimand or Written Reprimand shall be removed from the employee's file upon request of the employee and shall not be considered in subsequent determinations of discipline, except where the Reprimand serves as the basis for progressive discipline for which a Suspension has been issued for the same or similar offense.
- C. The principles of progressive disciplinary action will be followed with respect to chargeable minor offenses such as, but not necessarily limited to, tardiness and excessive absenteeism. The progression, where appropriate, will at least

include an Oral Reprimand, a Written Reprimand, and a Suspension for the same or related offense prior to Dismissal.

- D. After three (3) years from the date of suspension, a suspension of five (5) days or less shall not be considered in subsequent disciplinary actions and the Charges and Findings shall be removed from an employee's personnel files (Police Department, Law Department, Human Resources and Civil Service) at his/her written request to Human Resources. After four (4) years from the date of suspension, a suspension greater than five (5) days shall not be considered in subsequent disciplinary actions and the Charges and Findings shall be removed from any employee's personnel file at his/her written request to Human Resources.

If there is litigation, records shall be removed from the personnel files of the above name departments two years after final resolution.

- E. Unsubstantiated or unproven allegations of misconduct made against an employee and appearing in the files of Internal Affairs shall not be used in any disciplinary action nor be voluntarily shared outside the Police Department and shall be retained no longer than the period of time established pursuant to Chapter 149 of the Ohio Revised Code.

#### Section 5. Formal Charges and Specifications

A formal charge of misconduct shall be in written form stating the alleged violations against an employee. When an employee is charged with misconduct which may result in Suspension, Demotion or Dismissal, within a reasonable time, prior to the Departmental Hearing, he/she shall be given a copy of written and signed Charges stating the Charges and Specifications and advising him/her of the right to be represented at the Departmental Hearing. Findings will be issued to the employee after the Departmental Hearing.

A copy of the Charges and notices of the Suspension, Demotion or Dismissal shall be sent to the President. Reasonable efforts will be made to notify the President of all Show Cause Hearings. Such efforts or notification shall be made prior to said hearing.

## Section 6. Discovery

Departmental Hearings for Formal Charges and Specifications shall be scheduled to allow reasonable time for Discovery. The Formal Charges and Specifications will be accompanied by a Request for Discovery Form. A request for Discovery shall be made in writing after the Formal Charges and Specifications have been issued but no less than five (5) work days before the Departmental Hearing. A Discovery request can be made by either Management or the Lodge. Discovery shall be provided in a timely manner prior to the Departmental Hearing and entitles either party to the following information:

- A. The names of all known individuals who witnessed the incident(s) giving rise to the Departmental Charges and who do not request to remain anonymous.
- B. Copies of all reports, transcripts of interviews, written statements, recordings, photographs and any other documentary evidence regarding the incident(s) giving rise to the Departmental Charges. Supervisory findings and recommendations shall not be subject to Discovery unless Management intends to introduce such report at a Departmental Hearing. Supervisory investigative reports shall be subject to Discovery. The testimony of anonymous witnesses shall not be presented at the Departmental Hearing.
- C. Either party also has the right to inspect any physical evidence or reproductions thereof regarding the incident(s) giving rise to the Departmental Charges.

Discovery rights extend to Management or the employee's representative. Should any new evidence develop during the hearing, a continuance shall be granted if requested by either party.

## Section 7. Disciplinary Time Limits

Once an employee is officially notified by the Police Department of an investigation against him/her, the Police Department will have four hundred eighty (480) work hours to serve Formal Charges or initiate disciplinary action.

Once Formal Charges have been served, Management shall have two hundred eighty (280) work hours to hold a Departmental Hearing and issue the Findings to the employee. Work hours mean hours the employee is actually at work, excluding overtime work.

If the time limit expires and Formal Charges are not filed, or no disciplinary action is imposed, or, the employee has not had a Departmental Hearing, no disciplinary action will be taken.

Time limits can be extended by mutual agreement of the Lodge and Management. If criminal charges have been filed against an employee, the time limit will not be in effect until all criminal proceedings are complete.

#### **Section 8. Suspension From Duty**

If an employee is criminally charged and/or indicted based upon alleged conduct of the employee that arose out of the performance of his/her official duties, and/or the exercise of the authority granted the employee under law, and the alleged conduct is such that it would not impair the employee's ability to perform an assignment within the Police Department, then the employee may be assigned to an appropriate position pending the outcome of any criminal proceedings.

In the event the employee is Conditionally Suspended as the result of an indictment or criminal charge, the employee shall continue to participate in all insurance benefits and may draw upon all accrued vacation and earned compensatory time during the pendency of the case.

Any employee relieved from duty pending a hearing on minor Departmental Charges will continue to receive pay if capable of performing duty.

All disciplinary suspensions served on employees will be recorded by the number of hours suspended, not by "days". In the event that discipline is rendered against an employee and results in Suspension of eighty (80) or less hours, the employee shall have the option of forfeiting up to eighty (80) hours of vacation in a twelve (12) month period. If the employee chooses to forfeit vacation, the forfeiture shall be one hour of vacation for each hour of the Suspension. The forfeiture of vacation will constitute discipline of record, shall be accordingly noted in the employees personnel file, and shall constitute the final resolution of the Departmental Charges. No loss of seniority shall occur should the employee choose this option.

#### **Section 9. Use of Polygraph**

Whenever Management administers a polygraph examination as part of a disciplinary investigation, Management must require the complainant to sign an affidavit and complete a polygraph test before the employee is required to take the polygraph examination. Such affidavit shall be delivered to Internal Affairs. An employee may receive a copy of a sworn affidavit upon written request prior to taking the polygraph examination as required by Management. In the case where there is no complainant, Management may request an employee to take a polygraph test when there is cause to believe the employee has committed a criminal violation.

## **Section 10. Personnel Files**

An employee shall be allowed to review the content of his/her personnel files at all reasonable times upon written request. Any unsubstantiated allegations of misconduct shall not be contained in the employee's personnel files. A memorandum explaining any document in his/her files may be added by the respective employee.

If a request is made to inspect and/or copy records within an employee's personnel files by an outside source, Management shall provide written notification to the employee of the request as soon as practicable.

Employee personnel files include Police Department, Human Resources, Law Department and Civil Service files.

Any written request made by an employee for the purging of his/her personnel files will be signed by the Supervisor overseeing or completing the task and routed back to the employee once all files have been purged.

## **Section 11. Performance Evaluations**

Signature of employees shall be required on performance evaluations, and such signing will only mean the employee has read the evaluation. No subsequent evaluation comments may be made on record copies once signed by the employee.

If an employee is not satisfied with his/her performance evaluation rating, he/she may schedule a meeting with his/her supervisor's superior to discuss the rating.

If the results of this meeting are not acceptable to the employee, he/she must document his/her rationale, for appeal, in a Special Report directed to his/her Superintendent, the Deputy Director, or Director of Police, as dictated by the Table of Organization.

If the above options do not result in an outcome acceptable to the employee, the appeal is subject to the Grievance Procedure, but is not subject to Arbitration.

Performance evaluations shall not be conducted in an arbitrary and/or a capricious manner.

## **Section 12. Training Memorandum**

A Training Memo (which is not considered discipline) shall be removed after two (2) years from the date of issue.

### **Section 13. Appeal of Discipline**

In the event that an employee believes any Reprimand (not including Suspension, Demotion or Discharge) is without just cause, such Reprimand may be subject to the Grievance Procedure herein. However, oral or written reprimands may not be appealed to arbitration under Article 12, Section 6, herein.

In the event that an employee believes any Suspension, Demotion or Discharge is without just cause, such action may be subject to the Grievance Arbitration Procedure or an appeal to the Civil Service Board, at the employee's option.

In addition to Discovery rights in Section 6, Discovery rights will also be afforded to employees who appeal a Reprimand through the Grievance Procedure.

## ARTICLE 12

### GRIEVANCE PROCEDURE

#### Section 1. Purpose and Definition

There shall be an earnest, honest effort to settle disputes and controversies promptly. The procedures of this Article shall serve as a means of settlement of all grievances. A grievance is a complaint that Management has violated this Agreement, but does not include any complaint subject to appeal to the Civil Service Board.

In furthering the interest of fair and open resolution of disputes or controversies, if the grievant identifies a supervisor and requests the presence of the supervisor, Management will make a good faith effort to notify the supervisor of the Step 4 hearing. The good faith effort does not require a subpoena or order compelling the attendance of the supervisor.

#### Section 2. Informal Meeting

An employee or group of employees shall have the right at any time to present problems informally to their immediate supervisor and have such grievance adjusted without intervention of the grievance representative, provided that adjustment is not inconsistent with the terms of the Agreement, and further that the grievance representative has been given the opportunity to be present at such adjustment.

If no satisfactory adjustment is reached, the grievance may be put in writing and given to the immediate supervisor in accordance with the time limits specified in Section 4. The grievant may, with the approval of his/her supervisor, request waiver of any steps in order to reach the level of management necessary to have authority to resolve the grievance.

#### Section 3. Grievance Filing

The grieved employee, or group of employees, shall reduce their grievance in writing on forms supplied by the Lodge. In the event any step of the Grievance Procedure does not have the designated supervision in the line of supervisory authority, the grievance may be submitted to the higher appropriate step.

A grievant and appropriate witnesses shall be entitled to be present at any step of the Grievance or Arbitration Procedure and shall not lose pay as a result of necessary

attendance at a meeting during scheduled work hours. If more than one (1) grievant is involved at any meeting, one (1) of their members shall be elected as spokesperson.

The grievance shall be prepared in copies by the grievant or representative and given to the supervisor under the first applicable step. The supervisor shall make distribution of said copies as follows:

Retain one (1) copy and deliver:

- One (1) copy to the Commander [Bureau/District File]
- One (1) copy to the Superintendent [Division File]
- One (1) copy to the Department Advocate [Director's File]
- One (1) copy to the Employee Relations Division [City File]
- Original shall be given to the employee or representative.

#### **Section 4. Time Limits**

Time limits imposed in this Article will be strictly adhered to by both Management and the Lodge.

If Management fails to answer a grievance within the prescribed time limits, the grievance will be heard at the next level of the Grievance Procedure, not including the Arbitration Procedure at Step 5, provided such resolution does not set a precedent on the issue in question and the supervisor has authority to resolve the issue.

If the Lodge fails to file an appeal to the next step of the procedure in the prescribed time limits, the grievance shall be considered resolved. The grievant's fourteen (14) calendar day time limit for filing a grievance, begins at the time of the occurrence complained of, or after such occurrence becomes known by the grievant(s). At no time will a grievance be filed more than thirty (30) days after the occurrence.

When served with a grievance, the Supervisor at Step 1 will reply, electronically, within fourteen (14) calendar days from the date of filing to the grievant and the grievance response list which will be created by the Lodge. After receipt of the Supervisor's reply, the grievance representative has fourteen (14) calendar days to refer the grievance to the next step.

At each subsequent step a Grievance Hearing is held within fourteen (14) calendar days from the date of filing and Management must, within fourteen (14) calendar days from the date of the hearing, reply electronically to the grievant and the grievance response list which will be created by the Lodge. If the grievance is to be appealed to the next step, the Lodge has fourteen (14) calendar days after receiving the answer to the grievance.

The time limits imposed in this Article may be extended at any Step by mutual agreement of the parties in that Step but must be duly noted and signed or initialed on the Grievance Form by both parties.

### Section 5. Grievance Steps

The time limit for filing either individual, or class grievances shall be as specified in Section 4. If a class grievance is filed by a group of employees, a member of the Lodge and a grievance representative shall be appointed to represent them during the steps of the Grievance Procedure. The grievance must be presented personally to the Supervisor affected by the grievant or Lodge representative.

Only the President or a designate, but in no instance the grievant, may appeal to the Superintendent's level or higher. The President must present the grievance personally to the Superintendent or to the Director of Police or their designates.

At the Director's level, both the Lodge and Management may have representatives of their choice at such meetings. The Director of Human Resources or his/her representative shall participate in the meetings.

The steps for the Grievance Procedure are as follows:

<u>Officers</u>	<u>Sergeants</u>	<u>Lieutenants</u>
Step 1 Immediate Supervisor	<i>Not Applicable</i>	<i>Not Applicable</i>
Step 2 District/Bureau Commander	Immediate Supervisor	<i>Not Applicable</i>
Step 3 Superintendent	Superintendent	Immediate Supervisor
Step 4 Director of Police	Director of Police	Director of Police
Step 5 Arbitration	Arbitration	Arbitration

### Section 6. Arbitration

If the Lodge wishes to pursue the grievance through Arbitration, the President has fourteen (14) calendar days from the date of the Director's reply to notify the Director of Human Resources of intent to file under the Arbitration Procedure.

Within ten (10) work days after receipt by the Employee Relations Manager of the written notice of intent to file under the Arbitration Procedure, the Director of Human Resources or his/her authorized representative and not more than two (2) other representatives of management, and the President or his/her authorized representative and not more than

two (2) other representatives of the Lodge, shall meet for the purpose of attempting to resolve the dispute and/or selecting an impartial arbitrator.

If no agreement is reached at this meeting, a joint letter requesting the American Arbitration Association to submit the names of arbitrators will be signed and mailed. A date for Arbitration shall be set as soon as possible in accordance with the wishes of Management, the Lodge and the availability of the arbitrator.

Upon the request of either party, the parties shall exchange a list of witnesses and expected testimony, and a list of exhibits expected to be used at the arbitration at least one (1) business day prior to the arbitration hearing. This will not restrict the parties' ability to use rebuttal witnesses or exhibits.

The arbitrator shall have no power to add to, subtract from or change any of the provisions of this Agreement. The decision rendered by the arbitrator shall be final and binding upon the Lodge, Management, the grievant and all the employees covered by this Agreement.

Each party hereto shall pay the expenses incurred in the presentation of its own case. The expenses incident to the services of the arbitrator shall be shared equally by Management and the Lodge. Only the Lodge, through the President, may authorize an appeal to Arbitration, and its decision, based on the facts presented, shall be binding on the employees covered by this Agreement. Upon request, the Lodge will furnish Management appropriate certification that the appeal has been duly authorized.

Time limits for Arbitration shall be computed from the time stamp marked in the Employee Relations Division.

## ARTICLE 13

### PROMOTIONAL PROCEDURE

#### Section 1. Promotional Criteria

All ranks within the Police Department, with the exception of the Director, Deputy Director and Superintendent (Majors) positions, shall be classified. All promotions to classified positions shall come from within the Police Department. All promotional vacancies shall be filled from eligibility lists established by fair and objective promotional examinations. Promotions shall occur in the following order: Police Officer to Sergeant, Sergeant to Lieutenant, Lieutenant to Captain.

To be eligible for the Sergeant's promotional examination, the applicant must have at least five (5) years of consecutive accredited service in the Dayton Police Department as of the date of the initial examination. An applicant must have at least two (2) years of consecutive accredited service in the next lower supervisor grade immediately prior to the examination date for each successive rank.

Promotional eligibility lists shall be for two (2) years from the certification date of the eligibility list. A new certified eligibility list will be available within two (2) months of the expiration of the old eligibility list unless an extension is mutually agreed upon by the Civil Service Board and the Lodge. Civil Service will maintain a standing list of study materials but will announce any revisions to the list 180 days prior to the expiration of the existing list; however, the examination announcement shall provide the list of study materials. There will be at least four (4) weeks of study preparation prior to the written examination. An eligibility list shall be posted within three (3) weeks from the date of the last examination phase.

#### Section 2. Examination and Scoring Procedures

The Civil Service Board will use a standard percentage grading system, based on a 100-point scale, for determining the total score of a candidate. The test will be a multiple-choice closed book examination worth ninety (90) percentage points. The names of the candidates whose overall score is below seventy percent (70%) will neither appear on the certified promotional list nor will the candidate be eligible for promotion. The overall score will consist of the candidate's percentage test score plus the service and education credit points. The maximum number of percentage points a candidate could receive would be 100. This would be possible if the candidate scores a one hundred percent

(100%) on the written test and receives the maximum of ten (10) percentage points for educational and service credit.

Educational points shall be credited toward exam scores. The candidate will receive one (1) additional percentage point for an Associate's degree from an accredited college or university, three (3) additional percentage points for a Bachelor's degree from an accredited college or university, or five (5) percentage points for a Post Graduate degree from an accredited college or university. Education points will be credited for the highest degree only. Education points are not cumulative. The employee must provide documentation of education to the Director of Police or his designee by the date of examination in order to receive education credit points. Accredited college or university means any college or university that is specifically accredited by the Council for Higher Education Accreditation. *See attached scoring chart.*

Service points shall be credited toward exam scores and shall be awarded as follows:

On promotional exams for the rank of Sergeant, one percentage (1%) point for each year of consecutive accredited service in the Police Department, beginning at year three (3), up to a maximum of eight percentage (8%) points, ten (10) years service;

On promotional exams for ranks above Sergeant, one percentage (1%) point for each year of consecutive accredited service in the Police Department in a supervisory grade, beginning at year two (2), up to a maximum of eight percentage (8%) point, nine (9) years supervisory experience. *See attached scoring chart.*

In no event will combined service and education credit exceed eight (8) total points, unless a Bachelor's degree (nine (9) points maximum) or Post Graduate degree (ten (10) points maximum) has been earned. *See attached scoring chart.*

In the event of a tie, the tie will be broken by seniority as defined in the seniority section of this Agreement.

### **Section 3. Test Development and Administration**

Management understands the Lodge and the Civil Service Board have an agreement as to the development and administration of promotional examinations for members during the term of this Agreement. Management and Lodge support and agree to the goal of the development of content valid objective, job-related promotional examinations which are fair and provide all members an equal promotional opportunity, with recognition for service years and educational accomplishments, and further commit their best efforts to assure this end.

This development of test administration policies and procedures shall be discussed in advance of any promotional examination by a joint committee comprised of two members appointed by the Civil Service Board, two members designated by the Executive Board of the Lodge and one member of Management.

The Civil Service Secretary Chief-Examiner will notify the President whenever a promotional examination has been authorized so that committee members who are not taking the test can be appointed. The joint committee will meet as is necessary. At no time will any individual not designated by the Civil Service Secretary Chief-Examiner receive test materials, questions, content or answers until all tests have been completed by the candidates and the tests have been scored.

Prior to the administration of the tests, any information exchanged or discussed by the committee that may compromise the integrity of the promotional process as it relates to test format, test question security and test question content shall not be disclosed to the Lodge bargaining members.

After all examinations have been administered to the candidates and graded, but before the posting of grades and the certification of the eligibility list, the Civil Service Secretary Chief-Examiner will establish a reasonable examination review period.

During this specified period, candidates will be permitted to review the incorrect answers and corresponding question on their submitted and scored multiple choice tests.

The candidates will be permitted to challenge examination answers for the multiple choice test. The Civil Service Secretary Chief-Examiner will respond to all challenges prior to the posting of grades and the certification of the eligibility list.

The Lodge's committee members will meet with the remainder of the joint committee within three (3) days after the candidates' exam review period but prior to the promulgation and posting of the eligibility list to discuss and review the administration of any tests. In administering this Article, the joint committee may review a representative sampling of tests or test materials.

#### **Section 4. Dispute Resolution**

In the event the Lodge concludes that the promotional examinations, in whole, part, or in modification, are in conflict with any criteria enumerated in this Article and/or violate generally accepted professional testing standards, the Lodge, through the President, may file for an Arbitration Hearing alleging specific breach(es) of the promotional process and remedial action sought.

The Arbitration filing must be within seven (7) work days of either the time of occurrence or the time when the occurrence becomes known. The filing or processing of the Arbitration shall not preclude the Civil Service Board from proceeding with test construction or administration work that is not affected by or related to the alleged violation.

The President's request for Arbitration shall be immediately expedited to a hearing within ten (10) work days after the Employee Relations Manager's receipt of the written notice of the intent to file under the Arbitration Procedure, or as soon thereafter as practicable by mutual agreement.

The arbitrator shall be chosen by Management and the Lodge within five (5) days of the filing. If the parties do not agree on an arbitrator, the American Arbitration Association (AAA) will be requested to appoint one expeditiously without further input by the parties. The arbitrator's award shall be issued no later than ten (10) work days following the hearing date. Unless specified otherwise herein this Article, the provisions for Arbitration and missed time limits will be pursuant to Article 12 of this Agreement.

## SENIORITY and EDUCATION CHART

10% of Total Score

### Table for Examinations for Rank of Sergeant

Educational Level displayed by level of Degree Earned				
POLICE SENIORITY	SERVICE POINTS	ASSOCIATE DEGREE	BACHELOR DEGREE	POST-GRADUATE DEGREE
		1.0	3.0	5.0
2 Years	N/A	N/A	N/A	N/A
3 Years	N/A	N/A	N/A	N/A
4 Years	N/A	N/A	N/A	N/A
5 Years	3.0	4.0	6.0	8.0
6 Years	4.0	5.0	7.0	9.0
7 Years	5.0	6.0	8.0	10.0
8 Years	6.0	7.0	9.0	10.0
9 Years	7.0	8.0	9.0	10.0
10 Years	8.0	8.0	9.0	10.0

Points for time in grade beyond ten (10) years coincides with the schedule for Year Ten (10).

### Table for Examinations for Ranks Above Sergeant

Educational Level displayed by level of Degree Earned				
TIME IN GRADE	SERVICE POINTS	ASSOCIATE DEGREE	BACHELOR DEGREE	POST-GRADUATE DEGREE
		1.0	3.0	5.0
1 Year	N/A	N/A	N/A	N/A
2 Years	1.0	2.0	4.0	6.0
3 Years	2.0	3.0	5.0	7.0
4 Years	3.0	4.0	6.0	8.0
5 Years	4.0	5.0	7.0	9.0
6 Years	5.0	6.0	8.0	10.0
7 Years	6.0	7.0	9.0	10.0
8 Years	7.0	8.0	9.0	10.0
9 Years	8.0	8.0	9.0	10.0

Points for time in grade beyond nine (9) years coincides with the schedule for Year Nine (9).

ARTICLE 14  
JOB OPPORTUNITIES

**Section 1. City Job Announcements**

Management will request the Civil Service Board provide and post in the Safety Building copies of job opportunity announcements in the classified competitive service.

**Section 2. Job Postings/Vacancies**

The following procedures shall apply throughout the Police Department for the posting and filling of job vacancies.

- A. Whenever a vacancy occurs in a permanent assignment, other than routine beat patrol assignments responding to dispatched calls for service, the Director of Police must give notice of the vacancy and have the vacancy posted on the daily bulletin board in each District and Bureau for ten (10) consecutive days. It must also be read at each roll call for three (3) consecutive days.
- B. Applicants must meet the requirements listed when applying for an assignment and must show by a special report how they meet the requirements, or their application will not be considered.
- C. A minimum of six (6) applicants who meet the minimum requirements listed for the vacancy shall be interviewed prior to the vacancy being filled.
- D. Any employee successfully applying for and obtaining any position under the procedures set forth in this article shall not be permitted to apply for any other vacancy for a period of one (1) year from the date of selection of the employee to fill the vacancy.

## ARTICLE 15

### DRUG AND ALCOHOL TESTING

#### Section 1. Policy

For the duration of this Agreement, drug and alcohol testing will be administered in accordance with General Order No. 1.02-2 dated July 2004 (*hereafter referred to as Policy*); however, the Policy may be modified during the term of the Agreement by mutual agreement between the Director of Police and the Lodge.

#### Section 2. Discipline and Due Process

Confirmed positive drug test results are for administrative purposes only and shall not be used against the employee during any phase of any criminal proceeding. Any employee whose drug test result is confirmed as positive, and who is then charged administratively by Management, will receive due process and be afforded representation as prescribed under Articles 11 and 12.

Any attempt on the part of Management to influence any approved drug testing laboratory, the Medical Review Officer, any employee, officer, official or agent of Management, or any other person, firm or corporation, in an effort to circumvent the provisions of this Section, shall be considered a serious breach of this Agreement and shall allow the Lodge to initiate a grievance at Step 4 within thirty (30) days following the date on which employee or the Lodge first became aware of such conduct.

#### Section 3. Education

This Policy will be distributed to all present sworn police employees ninety (90) days prior to the initial implementation of these procedures. New hires will be informed of this Policy during their training period.

#### Section 4. Compensation

The President or his/her designee will receive overtime compensation for off-duty hours spent in facilitating the Policy. He/she shall not be additionally compensated, however, for representation of employees under this Policy which fall within the usual parameters of the duties of the President or representative.

## ARTICLE 16

### WAGES

#### Section 1.A. Wage Rates

Wage rates for employees shall be set forth in Addendum #1 attached to this Agreement.

<u>January 1, 2012 on and through December 31, 2012:</u>	0% increase
<u>January 1, 2013 on and through December 31, 2013:</u>	1.6% increase
<u>January 1, 2014 on and through December 31, 2014:</u>	2.0% increase

#### Section 1.B. Prior City Service

When police recruits, who were City employees prior to assignment to the Police Academy, are appointed to the position of sworn police officer, they will move to the step rate of pay that is closest to, but higher than, their current rate of pay. They will remain at this step for the period of time that it would ordinarily take to progress to the succeeding step had they started at Step 1. Only after the standard time elapses will they then graduate to the next step and continue through the step process in the time table described in Addendum 1 (e.g. a newly appointed officer who is started at Step 4 would not proceed to Step 5 until 3 ½ years had passed).

#### Section 1.C. Reopener

The City Manager, in his sole discretion, may opt to reopen this Agreement on the issues of Wages (increase or decrease) (Article 16, Section 1.A.) in lieu of the rates provided in the third year of this Agreement and Insurance (Article 18). Such notice of reopener must be given by the City at least sixty (60) days prior to January 1, 2014. The reopening of the Agreement as set forth herein shall invoke the dispute settlement procedure set forth in O.R.C. Section 4117.14. The results of the negotiation process or any settlement reached between the parties will become effective January 1, 2014.

#### Section 2. Night Differential

A differential in pay will be accorded to employees who are assigned work on the first or third reliefs. The differential will be paid for each day worked on those shifts. The differential shall be fifty cents (\$.50) per hour.

Employees assigned to reliefs other than one (1) of the three (3) regular reliefs shall be entitled to night differential pay provided they work over one-half (1/2) of their work relief at times other than that covered by the second (day) relief.

Night differential is considered as regular pay for vacation, holiday, sick leave, funeral leave or short-term military leave, only for those employees regularly assigned to a relief entitling them to night differential on a five-day a week basis.

The night shift differential will be treated as a part of the basic rate for computation of overtime and day-off court.

For these purposes, the second relief is considered to be the regular day-time relief.

### Section 3. Longevity

In addition to the salary specified in various Sections of the Code of General Ordinances, as amended to incorporate the terms of this Agreement, every employee covered by this Agreement shall receive a payment for actual time spent as a sworn member of the Dayton Police Department as follows:

Employees who have completed five (5) years, but less than ten (10) years of service, shall receive a payment of one-half percent (0.5%) of their base rate of pay.

Employees who have completed ten (10) years, but less than fifteen (15) years of service, shall receive a payment of one percent (1.0%) of their base rate of pay.

Employees who have completed fifteen (15) years, but less than twenty (20) years of service, shall receive a payment of one and one-half percent (1.5%) of their base rate of pay.

Employees who have completed twenty (20) or more years of service shall receive a payment of two percent (2.0%) of their base rate of pay.

The above payments shall be paid in a lump sum on the first payday of November each year. When an employee's anniversary date occurs prior to November 1st of a payment year, he/she shall receive full payment in accordance with the above payment schedule.

For the purpose of determining eligibility for the payment provided in this Section, an employee shall be credited with a complete month of service if he/she works or is on paid leave one-half (1/2) or more of his/her scheduled work days in one (1) month. In the event that an employee who is eligible for the above payment terminates his/her

employment during the term of this Agreement, the annual payment provided herein shall be pro-rated for the period of his/her employment.

**Section 4. Educational Incentive**

Management will pay an education incentive bonus to those employees who have earned a degree from an accredited college in accordance with the pay scale provided below:

<u>College Degree</u>	<u>Amount</u>
Associate Degree:	\$ 400
Bachelor Degree:	\$ 800
Post Graduate Degree:	\$1200

To be eligible to receive the annual educational incentive bonus, the employee must have twelve (12) months of service with the City of Dayton. The incentive pay bonus shall be paid in the first pay period in November. The employee shall submit proof of an earned degree if not already on file.

**Section 5. Uniform Allowance**

- A. Management shall provide all employees, who have completed not less than one year of continuous service, a clothing allowance for the maintenance of police uniforms and equipment in the amount of one thousand two hundred dollars (\$1,200) per annum for the term of this Agreement.
- B. The total annual amount shall be paid in the first payroll in October. Employees leaving employment prior to October shall receive a pro-rata amount. Employees leaving service after October, but prior to December 31, will have a pro-rata amount automatically deducted from their final payroll check.

Management will furnish the first complete uniform to new employees at no cost to the employees.

- C. Management maintains sole right and responsibility to determine the appropriate uniform for all employees and will pay the initial cost of new uniforms due to mandatory changes in uniform specifications unless the change is made at the request of the Lodge. In the event of a uniform change, employees will receive eighteen (18) months to effect the change of uniform.

**Section 6. FTO Assignment Pay**

An employee certified and appointed as a primary Field Training Officer shall be paid seven hundred fifty dollars (\$750.00) dollars over each assigned fourteen (14) week FTO period. The FTO payment shall be paid on a bi-weekly basis during the FTO period.

An employee certified and acting in the back up capacity as a Field Training Officer shall be paid a payment of two hundred fifty (\$250.00) dollars over each assigned fourteen (14) week FTO period. The FTO payment will be paid on a bi-weekly basis during the FTO period.

**Section 7. Physical Fitness Incentive**

Non-probationary employees who participate in the Voluntary Physical Fitness Training Program and successfully meet the Standards of that program shall receive a physical fitness incentive bonus pursuant to this Article.

Management will pay the physical fitness incentive to each employee who has achieved his/her physical fitness level certification from the Training Bureau by January 1 of each calendar year.

The physical fitness incentive shall be paid according to the following schedule:

Level One	\$ 50
Level Two	\$150
Level Three	\$250

The incentive shall be paid in the first pay period after July 1 of each calendar year.

**Section 8. Long Distance Phone Calls**

Management agrees to pay all long distance phone calls specifically required by Management.

**Section 9. 24 to 40 Hour Deduction**

- A. The City shall deduct a total of 24 hours of regular pay from the paycheck of each bargaining unit member. Deductions shall be made in equal installments on a bi-weekly basis, beginning on January 1, 2012 and ending on December

31, 2012 (i.e., .92 to 1.54 hours for each pay period depending upon the employee's election as set forth below). This deduction shall not impact the required number of hours worked for each employee.

- B. For calendar year 2012, an employee may elect to purchase two (2) additional cost savings days equal to sixteen (16) hours by written notification to Human Resources by December 10, 2011. A partial amount of this sixteen (16) hours may not be elected.
- C. For calendar years 2013 and 2014, employees may elect to purchase forty (40) hours of personal leave time by written notification to Human Resources by December 10 of the previous year. If the forty (40) hour election is made, forty (40) hours of regular pay will be deducted from each paycheck on the same basis as set for in paragraph A, above.
- D. Use of personal leave time purchased pursuant to this Section shall be subject to all conditions set forth in Article 20, Section 10 for Personal Leave Days.

## ARTICLE 17

### OVERTIME

#### Section 1. Overtime Pay

Any employee working in excess of eight (8) hours on his/her assigned shift will be compensated at the rate of one and one-half (1½) of his/her base rate for all such excess time. Employees who are on a straight forty (40) hour per week schedule will receive time and one-half (1½) for all hours worked in excess of forty (40) straight time hours. Employees on multiple-week cycles shall receive time and one-half for all hours in excess of the average of forty (40) hours per week during the cycle.

Any employee who works on his/her normal scheduled day off shall be compensated at the rate of one and one-half (1½) of his/her straight time rate for all such time worked except where the parties agree that the employee will work such day in exchange for another day off. If the parties agree that an employee will exchange his/her normal scheduled day off for another day off, the employee shall inform Management at the time of the exchange which future day off is being exchanged; provided that, the exchanged day must be within the same twenty-eight (28) day Fair Labor Standards Act cycle. Management will post the twenty-eight (28) day work cycle.

#### Section 2. Voluntary Overtime

Overtime assignments for special events such as parades are voluntary, unless declared an emergency by the Director of Police, or, in his absence, the Acting Director. Once an overtime assignment is accepted, it shall be considered part of an employee's normal and regular work assignment except that inability to work based on illness shall not require the employee to use sick leave.

For the duration of this Agreement, equalization of overtime opportunities for special events shall be administered in accordance with General Order 1.02-8 dated June 1997; however, the procedure may be modified during the term of the Agreement by mutual agreement between the Director of Police and the Lodge.

Voluntary overtime does not include holdover assignments; call-in; or late calls near the end of the shift which may require follow-up reports.

Probationary employees will not be permitted to work non-district overtime. Probationary employees will not be permitted to work voluntary overtime in their currently assigned district until being certified as a one person crew.

### Section 3. Compensatory Time

Compensatory time off in lieu of any overtime pay shall be granted at the option of the employee. It shall be given on the basis of time and one-half for actual hours worked and may not hereafter be accumulated in excess of one hundred thirty-six (136) hours. If an employee is transferred to another section, any unused compensatory time which he/she may have accumulated shall continue to be available for his/her use. No accumulation of compensatory time in excess of one hundred and thirty-six (136) hours will be paid.

Use of compensatory time shall not be denied unreasonably. In the event a request is made not less than ninety-six (96) hours prior to the time of usage, action shall be taken on the request not less than forty-eight (48) hours prior to the time of usage. If approved, the compensatory time may not thereafter be denied. In the event a request is made less than ninety-six (96) hours prior to the time of usage, denial of the use of compensatory time because of insufficient staffing shall not constitute an unreasonable denial. The maximum amount of compensatory time used by any employee shall be one hundred and thirty-six (136) hours in any calendar year; provided, however, that compensatory time used during short or long term military leave will not count toward this one hundred and thirty-six (136) hours cap.

#### **Section 4. Pyramiding**

There shall be no pyramiding of overtime for the same hours worked.

#### **Section 5. Court Time**

Whenever it is necessary for an off-duty employee to appear either in Municipal Court or any other official court on matters pertaining to or arising from Police business, to appear before the prosecutor for a pre-trial conference or when testifying on behalf of another employee in a case arising out of police business, providing the employee needing witness testimony is not a defendant or respondent, the employee shall prepare an overtime record form and submit it to the Court Sergeant for approval.

This form shall be filled out completely, wherever possible, and under "Remarks", the employee shall enter any additional details and the type charge, i.e., speeding, petty theft, etc., and the court's disposition, if available.

In addition to payments under Article 17, Section 6 for call-in pay, employees who are scheduled for court on regularly scheduled day(s) off or pre-approved vacation, will receive four (4) hours pay for any court appearance scheduled for the first day off and four (4) hours pay for any court appearance scheduled for the second or any subsequent day off.

In the event an employee is not given twenty-four (24) hours notice of the cancellation of any court appearance scheduled on his/her regularly scheduled day(s) off or pre-approved vacation, the employee shall receive four (4) hours pay for any court appearance scheduled for the first day off and four (4) hours pay for any court appearance scheduled for the second or any subsequent day off.

An employee may, at his/her option, receive compensation pursuant to this Section in the form of compensatory time off.

To receive this pay, the employee must, at the time the employee is notified of the cancellation, inform the court detail that he/she is entitled to pay under this provision and submit an overtime record form to the Court Sergeant for approval within three (3) scheduled duty days (exclusive of leave) from the date of the cancelled appearance.

#### **Section 6. Call-In Pay**

Call-in pay is defined as payment for work assigned by the Director of Police or his/her designated representative, or for court time as defined in Section 5 of this Article, and

performed by an employee at a time the beginning of which is disconnected from his/her normal and pre-scheduled hours of work.

Work done in this manner shall be compensated at the rate of one and one-half (1½) times the normal rate of pay with a minimum of three (3) hours pay (two (2) hours at a pay rate of time and one-half), and shall be paid only during the time the employee is physically performing his/her assignment.

#### **Section 7. Stand-by Pay**

Stand-by pay is defined as payment for an assignment which requires an employee to be available on a continuous basis during his/her normal off duty hours. Stand-by assignments shall be determined exclusively by the Director or Deputy Director of Police.

- A. Employees on stand-by for an off-duty day will be paid a minimum of four (4) hours pay. An off-duty day is defined as the period beginning with the end of the last shift worked by an employee to the beginning of his/her next scheduled shift.
- B. Employees on weekend stand-by or for a period of similar duration will be paid a minimum of eight (8) hours pay.
- C. Employees on stand-by for a sixteen (16) hour period will be paid a minimum of two (2) hours pay.
- D. In those instances where employees are required to remain on stand-by for a seven (7) day period which includes two (2) days off, said employees will be paid a minimum of sixteen (16) hours pay.
- E. An employee who is called to work, having been on stand-by, shall be paid time and one-half for all hours worked, but not less than the applicable minimum stated above.

## ARTICLE 18

### INSURANCE

#### Section 1.A. Health Care Coverage

Employees covered herein may choose to participate in optional plan coverage provided by the City of Dayton during the term of this Agreement. There will be no insurance plan design change from the 2011 plan to the 2012 plan except for the agreed upon increase in deductibles and co-pays.

Thereafter, the level of benefits shall not be changed during the term of this Agreement unless mutually agreed to between Management and the Lodge. Any change in carriers during the term of this Agreement shall be subject to approval by the Lodge.

#### Section 1.B. Employee Contributions

The employees shall pay a total contribution amount of \$62.50 per month for single coverage. Effective January 1, 2012, single coverage will increase to \$70.00 per month. Employees shall pay \$125.00 per month for family coverage provided for in this Section effective through December 31, 2011. Such family coverage employee deductible will increase to \$160.00 per month, effective January 1, 2012, and \$180.00 per month, effective January 1, 2013. The contributions will be administered under IRS pre-tax status.

#### Section 1.C. Employer Partially Funded Health Savings Accounts and Health Reimbursement Accounts

Subject to the requirements of the insurer and terms of the Plan Documents, employee may choose between a Health Savings Account (HSA) or Health Reimbursement Accounts (HRA). If an employee elects an HSA or HRA, this election shall constitute their election under Section 1.A., above.

If an employee elects an HSA and/or HRA, the maximum annual deductible amounts shall be partially funded by the City, beginning in the first plan year, where the City will fund \$1,500 per year for single plans (funded on a single annual payment basis effective January 1, 2008 and each successive year while the employee is currently employed) and \$3,000 per year for family plans (funded on a single annual payment

basis effective January 1, 2008 and each successive year while the employee is currently employed), until December 31, 2011.

If an employee elects an HSA, the City will contribute the full amount of \$1,500/single or \$3,000/family for each plan year, a single annual payment basis effective January 1, 2008 and each successive year.

If an employee elects an HRA, the \$1,500/single or \$3,000/family City funded amounts will be eligible for rollover in an amount not to exceed the annual maximum deductible. In all subsequent years after the 2007-2008 plan year, the City contribution for the HRA will be up to the above-referenced amounts and/or the annual maximum deductible; provided that, the City will not fund any amount exceeding the annual maximum deductible.

The employee will be responsible for any taxes due that result from the City's pre-funding of employee HSA accounts on January 1 of each year.

#### **Section 1.D. Prescription Drug Card**

The employees will be enrolled in a prescription drug card program. With the prescription drug card, costs for prescription drugs will be \$10 for Tier 1 prescriptions, \$20 for Tier 2 prescriptions, and \$30 for Tier 3 prescriptions, as defined by the health insurance carrier. The prescription drug card governs the amounts paid for prescription drugs after an employee has met his or her deductible.

#### **Section 1.E. Dental Care Coverage**

The City shall provide the AFSCME Care Plan for Dental Level II Plus to employees covered herein during the term of this contract.

The level of Dental Benefits shall not be changed during the term of this Agreement unless agreed to between Management and the Lodge. Any changes in carriers during the term of this Agreement shall be subject to approval by the Lodge.

The City of Dayton shall contribute the total cost of the plan per month per employee to the AFSCME Care Plan for Dental Level II Plus for all employees in the bargaining unit. The payment will be due by the 20<sup>th</sup> of the month.

### **Section 1.F. Vision Care Coverage**

The City shall provide the current Vision Care Plan to the employees covered herein during the term of this contract.

The level of vision benefits shall not be changed during the term of this Agreement unless mutually agreed to between Management and the Lodge. Any changes in carriers during the term of this Agreement shall be subject to approval by the Lodge.

The City of Dayton shall contribute the total cost of the plan per month per employee under the AFSCME Care Plan for Vision Care Benefits, for all employees in the bargaining unit. This payment shall be due by the 20<sup>th</sup> of each month.

### **Section 1.G. Incentive to Waive Health Care Coverage**

Full time employees who waive health insurance for a twelve (12) month period during open enrollment will be paid an incentive as explained below, provided that the employee can provide proof of coverage elsewhere. The incentive will be pro-rated if coverage is waived for less than an entire plan year because an employee terminates employment, waives coverage mid-plan year or re-enrolls for City coverage if there is a loss of coverage due to divorce, termination of spouse's job or spouse's death.

A full time employee who waives coverage for an entire twelve (12) months and who is not a dependent on another City of Dayton health insurance plan will be paid an incentive of \$1,216.54. The incentive will be paid out in each paycheck over a 12 month period starting with the first pay in June.

This incentive plan is being offered for the 2007-08 plan year. The incentive plan will be offered in subsequent plan years, provided that the incentive continues to represent a cost savings to the City.

### **Section 2. Lodge Participation in Health Care Committee Meetings**

The President of the Lodge (*or his/her designee*) and up to two members (*as selected by the President of the Lodge*) will be present and participate in all City of Dayton Health Care Committee meetings to review and recommend health care insurance in the upcoming years. The Health Care Committee will meet as often as necessary to facilitate in a timely fashion all information and cost as needed in an effort to maximize the value to employees and cost effectiveness of Health and Dental Plan redesign.

**Section 2.A. Plan Year Effective Dates**

The medical, dental and vision coverage contained in Article 18, Section 1 shall be in effect for two successive plan years beginning May 18, 2010, and ending at the expiration of this Agreement on December 31, 2011, unless otherwise provided.

**Section 3. Coordination of Benefits**

Hospital and surgical benefits herein described shall be subject to coordination of benefits in accordance with stipulation of the carrier.

**Section 4. Subrogation**

If a member incurs covered hospital expenses in connection with the treatment of an illness or injury caused by the negligence or wrongful act of a third party, the carrier shall be subrogated to all of member's rights of recovery against said third party to the extent of any and all payments made hereunder by the carrier with respect to such illness or injury, and the member or his/her appropriate agent shall execute all papers and take all action necessary and proper to secure the carrier such rights of subrogation.

**Section 5. No Additional Payment**

Employees will not receive remuneration over and beyond the hospitalization coverage provided all City employees if they do not avail themselves of the coverage provided by the City of Dayton.

**Section 6. Professional Liability and Life Insurance**

Management shall provide employees covered herein with the following:

- A. Group Life Insurance in the amount of \$20,000.00;
- B. Accidental Death and Dismemberment Insurance in the amount of \$20,000;
- C. The City of Dayton agrees to obtain insurance or provide self-insured coverage for all employees to meet its obligations as set forth in Chapter 2744 of the Ohio Revised Code.

## Section 7. Reopener

The City Manager, in his sole discretion, may opt to reopen this Agreement on the issue of Insurance (Article 18, Section 1) in lieu of the increases and coverages provide for in the third year of this Agreement (together with the subject of Wages as set forth in Article 16, Section 1 hereof). Such notice of reopener must be given by the City at least sixty (60) days prior to January 1, 2014. The reopening of the Agreement as set forth herein shall invoke the dispute settlement procedure set forth in O.R.C. Section 4117.14. The results of the negotiation process or any settlement reached between the parties will become effective January 1, 2014.

## ARTICLE 19

### HOLIDAYS

#### Section 1. Designated Holidays

The following are designated as paid holidays: New Year's Day, Martin Luther King Day, Good Friday, Police Memorial Day (May 15th), Memorial Day (last Monday in May), Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving, Day before Christmas, Christmas Day, and Employee's Birthday.

#### Section 2. Pay For Holidays

Employees who complete their tour for duty for the week in which the holiday falls shall receive an additional eight (8) hours pay at straight time rates.

The Birthday Holiday, which if worked by the employee, shall be compensated for as provided above for a regular holiday.

Employees whose birthday is during the month of December may take a day other than the actual birth date as a paid day off. This day may be taken at any time during the month of December, or carried forward into the next year. If carried forward the day must be taken by March 31st. If the employee chooses not to work the Birthday Holiday, he or she shall receive only eight (8) hours straight time pay for said holiday.

The employee must advise supervision twenty-four (24) hours prior to the start of the work shift on the Birthday Holiday of his or her intention to either take the day off with pay or work the day and receive an additional day's pay. If scheduling difficulties preclude taking the Birthday Holiday off, another day off will be substituted. All time on paid status counts toward completion of their tour of duty.

#### Section 3. Religious Observance

Employees may be granted leave with pay to attend religious observances with the approval of their division head. Religious observances include those which require an employee's attendance at church, synagogue or other place of worship. Leave should be limited to the actual hours necessary to attend services or observances.

**Section 4. Designated Days**

On any day or partial day designated by the Mayor, by Public Proclamation as a day or partial day off for City employees, employees will be given the day or partial day off if scheduling permits, or equal compensatory time at a later date.

**Section 5. Holiday Assignment**

The City reserves the right to assign employees to perform in any assignments, bureaus or divisions based upon the needs of the Employer on that particular holiday.

## ARTICLE 20

### VACATION

#### Section 1. Vacation

Management shall grant permanent employees annual leave with pay (Vacation Leave) for rest and recreation. All permanent employees shall earn vacation leave at the rate of eight (8) credit hours for each completed month of service.

#### Section 2. Supplementary Accrual

In addition to the hourly vacation credits accrued as described in Section 1, employees with consecutive years of service or who have been reinstated within one (1) year from date of resignation or who return from disability retirement will earn supplementary hourly vacation credits on the following schedule:

After 4 years:	32 supplementary hourly credits annually
After 8 years:	40 supplementary hourly credits annually
After 12 years:	64 supplementary hourly credits annually
After 16 years:	80 supplementary hourly credits annually
After 20 years:	96 supplementary hourly credits annually

No employee may use his/her accrued hourly vacation credits until after he/she has been employed with the City of Dayton for six (6) months. Time spent on other than paid status shall not count toward consecutive years of service.

#### Section 3. Maximum Vacation Days

The maximum number of hourly vacation credits that may be used during any vacation year is two hundred fifty-six (256). The maximum number of hourly vacation credits that may be carried over from year to year is two hundred forty (240).

- A. Employees will be permitted to take a vacation of two hundred forty (240) consecutive hourly vacation credits every five (5) years subject to scheduling approval of the Superintendent, provided the employee has sufficient hourly vacation credits accumulated.
- B. An employee's request for a vacation pursuant to Article 20, Section 3(A) should not be unreasonably denied.

#### **Section 4. Over Two Hundred Forty (240) Hourly Vacation Credits**

Vacation credits in excess of two hundred forty (240) hours shall be reduced to two hundred forty (240) hours at the end of the year.

#### **Section 5. Guaranteed Vacation**

All employees wishing to guarantee their vacation must declare their intent and list all days, by date, of their proposed vacation and submit such list in writing to their Superintendent between January 1st and January 31st of the year during which the vacation period will be used.

Allowing for the principle of scheduling needs of the Division, the Superintendent shall, by February 28th, accept or reject each employees application based on seniority in grade by District and shift. An employee shall be guaranteed his/her vacation once declared and ten (10) days have elapsed after acceptance by Management, regardless of transfer, and shall not be changed unless by mutual agreement of both parties.

Emergency situations, as determined by the Director of Police, may require the cancellation of guaranteed vacation. If, due to an emergency, a previously guaranteed vacation period is cancelled by Management, such vacation or any part thereof, may be rescheduled during the vacation year upon the mutual agreement of the parties or be paid in January following the vacation year for those vacation days that cannot be carried forward pursuant to the limit of thirty (30) specified in Section 4, in the event mutual agreement to reschedule is not obtained.

To ensure payment, the supervisor must forward to the Department of Human Resources a copy of the Vacation Leave Request Denial on the appropriate form.

#### **Section 6. Denial of Non-Guaranteed Vacation**

Employees who are required by Management to forfeit vacation time off, other than that subject to the guaranteed period specified in Section 5, will be paid for all vacation credits that cannot be carried forward pursuant to the limit of two hundred forty (240) hours specified in Section 4. Said vacation credits will be paid in January following the vacation year, if Management is not able to reschedule the time during the remainder of the vacation year.

If an employee is denied vacation leave as provided hereinabove, the supervisor must forward to the Department of Human Resources a copy of the Vacation Leave Request Denial on the appropriate form. This form must be signed by the employee and the

supervisor denying such vacation leave request. All vacation requests for use during the last quarter of the calendar year for more than two (2) consecutive work days must be made by October 31st.

Employees who request vacation for a period of time, other than covered by Section 5 above, must request same no less than twenty-four (24) hours in advance of taking such leave, for approval by Management unless otherwise approved by the Division Superintendent or the Director of Police.

#### **Section 7. Vacation Year**

Vacation year, for purpose of accreditation, shall be from January 1st to December 31st. Each employee entitled to vacation will schedule at least one (1) week of vacation on consecutive days. The balance may be taken in increments of not less than one (1) hour unless a half-hour ( $\frac{1}{2}$ ) increment is needed to take a birthday holiday by an employee who is on an alternate work schedule. Scheduling shall be consistent with an efficient work schedule.

#### **Section 8. Complete Month**

An employee shall be credited with a complete month of service if he/she works or is on paid leave one-half ( $\frac{1}{2}$ ) or more of his/her scheduled work days in any one (1) month.

#### **Section 9. Transfer Of Days**

If an employee is transferred within the Police Department, any unused vacation days which he/she may have accumulated shall continue to be available for his/her use. In the case of death, resignation or lay-off of an employee, there shall be paid to him or her, his or her widow or widower or other beneficiary as provided by statute, in addition to back pay then due, an amount that will compensate him/her for vacation leave which has accrued in accordance with this Article.

Section 10. Personal Leave Days

- A. On a one-time basis only, and during the term of this Agreement, employees shall be granted three (3) personal leave days to be used before December 31, 2012. Two (2) of these three (3) personal leave days must be used before October 1, 2012. Any personal leave day not used before December 31, 2012 shall be lost, and the employee shall not receive any compensation for such unused personal leave days. Any employee who retires or resigns from the Department on or before December 31, 2012 shall repay all excess compensation paid on account of personal leave days used by the employee, but not previously paid by the deduction of time from the employee's paycheck. Personal leave days will not be paid out upon separation from the City.
- B. In addition to the above, and in conjunction with Article 16, Section 9, 24 to 40 Hour Deduction, an employee may purchase two (2) additional personal leave days (sixteen (16) hours) in calendar year 2012, subject to the conditions set forth above and five (5) additional personal leave days (forty (40) hours) in each calendar years 2013 and 2014, subject to all conditions above and in Article 16, Section 9. Such voluntary purchase(s) must be in the full amount of sixteen (16) hours in 2012, forty (40) hours in 2013 and forty (40) hours in 2014. Partial purchases are not permitted and use must be in eight (8) hour blocks of time.
- C. The City reserves the right to control scheduling of Section 9 personal days and a change in position mid-year shall not reduce, delay or excuse any employee's obligation under this Section.

## ARTICLE 21

### PENSION OR OTHER REOPENER

- A. If during the term of this contract, the Ohio Police & Fire Pension Fund raises employer contributions, the City may reopen this contract's Article 16, Wages, in order to seek appropriate financial relief commensurate with its increased pension contribution obligation. Such reopener shall be given within sixty (60) days of the employer's notice of the newly required pension obligation and all impasse resolution procedures pursuant to R.C. 4117.14 shall apply to said reopened negotiations.
  
- B. In addition to the pension reopener, or the reopener provisions set forth in Article 18, Insurance and Article 16, Wages (and cost savings days), the Union herein may reopen this contract to exercise a right to select a settlement identical to the terms and conditions agreed to between the City of Dayton and the Dayton Public Service Union ("DPSU") for contract articles on base wage increases (Article 16), health insurance (Article 18) and cost savings days (Article 16). The Union herein must accept the DPSU's economic package on base wage increases, health insurance and cost savings days as a whole, in lieu of the terms for all three items herein, or not at all.

The exercise of this option set forth herein shall be conveyed by the Union, in writing, to the City Manager on or before midnight December 31, 2011, or such option expires.

City of Dayton  
Grade Rate Schedule  
Police Department

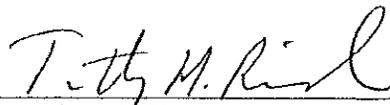
**Police Officer (401)**

		<b>Step 1 @ Appointment</b>	<b>Step 2 @ 6 months</b>	<b>Step 3 @ 18 months</b>	<b>Step 4 @ 30 months</b>	<b>Step 5 @ 42 months</b>	<b>Step 6 @ 54 months</b>	<b>Step 7 @ 66 months</b>	<b>Step 8 @ 78 months</b>
1-Jan-12	<b>Hourly</b>	\$ 23.37	\$ 23.71	\$ 24.43	\$ 25.13	\$ 25.91	\$ 26.68	\$ 27.49	\$ 28.42
	<b>Weekly</b>	\$ 934.80	\$ 948.40	\$ 977.20	\$ 1,005.20	\$ 1,036.40	\$ 1,067.20	\$ 1,099.60	\$ 1,136.80
	<b>Yearly</b>	\$ 48,609.60	\$ 49,316.80	\$ 50,814.40	\$ 52,270.40	\$ 53,892.80	\$ 55,494.40	\$ 57,179.20	\$ 59,113.60
1-Jan-13	<b>Hourly</b>	\$ 23.74	\$ 24.09	\$ 24.82	\$ 25.53	\$ 26.32	\$ 27.11	\$ 27.93	\$ 28.87
	<b>Weekly</b>	\$ 949.60	\$ 963.60	\$ 995.80	\$ 1,021.20	\$ 1,052.80	\$ 1,084.40	\$ 1,117.20	\$ 1,154.80
	<b>Yearly</b>	\$ 49,379.20	\$ 50,107.20	\$ 51,625.60	\$ 53,102.40	\$ 54,745.60	\$ 56,388.80	\$ 58,094.40	\$ 60,049.60
1-Jan-14	<b>Hourly</b>	\$ 24.21	\$ 24.57	\$ 25.32	\$ 26.04	\$ 26.85	\$ 27.65	\$ 28.49	\$ 29.45
	<b>Weekly</b>	\$ 968.40	\$ 982.80	\$ 1,012.80	\$ 1,041.60	\$ 1,074.00	\$ 1,106.00	\$ 1,139.60	\$ 1,178.00
	<b>Yearly</b>	\$ 50,356.80	\$ 51,105.60	\$ 52,665.60	\$ 54,163.20	\$ 55,848.00	\$ 57,512.00	\$ 59,259.20	\$ 61,256.00

The length of time in the Police Officer classification service between Steps 1 and 2 shall be six (6) months; between Steps 2 and 3, twelve (12) months; between steps 3 and 4, twelve (12) months; between Steps 4 and 5, twelve (12) months; between steps 5 and 6, twelve (12) months; between Steps 6 and 7, twelve (12) months; and between Steps 7 and 8, twelve(12) months. The pay schedule shall result in full pay for the Police Officer after seventy-eight (78) months.

IN WITNESS WHEREOF, THE PARTIES HAVE SET THEIR HANDS THIS 2nd DAY OF November, 2011.

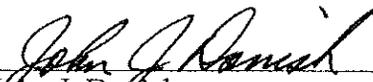
FOR: THE CITY OF DAYTON

  
\_\_\_\_\_  
Timothy H. Riordan

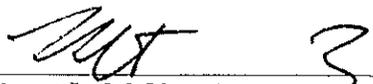
City Manager

  
\_\_\_\_\_  
Richard Biehl

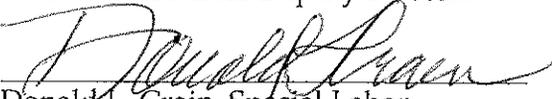
Police Chief

  
\_\_\_\_\_  
John J. Danish

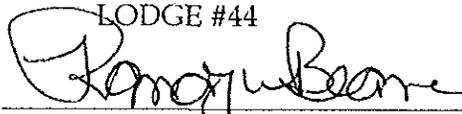
Law Director

  
\_\_\_\_\_  
Brent L. McKenzie

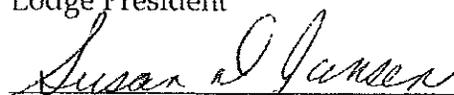
Human Resources Deputy Director

  
\_\_\_\_\_  
Donald L. Crain, Special Labor  
Council

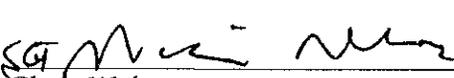
FOR: FRATERNAL ORDER OF POLICE  
CAPTAIN JOHN C. POST,  
LODGE #44

  
\_\_\_\_\_  
Lt. Randy W. Beane

Lodge President

  
\_\_\_\_\_  
Susan D. Jansen

Attorney at Law

 15566/800  
\_\_\_\_\_  
Chris Weber

Committee Member, Supervisors'  
Chairperson

**SETTLEMENT AGREEMENT**

1999 THIS SETTLEMENT AGREEMENT is entered into on this the 28<sup>th</sup> day of January, 1998, by and between THE CITY OF DAYTON, OHIO ("City") and the FRATERNAL ORDER OF POLICE CAPTAIN JOHN C. POST LODGE NO. 44 ("FOP")

WHEREAS, the City has filed an Unfair Labor Practice charge with the State Employment Relations Board ("SERB") Case No. 98-ULP-07-0415 and has filed a Motion to Set Aside Arbitrator Thompson's Award in Case No. 98-1527.

NOW THEREFORE, the parties wish to settle this matter and resolve the outstanding issues between them, they now agree as follows:

- 1) The Chief of Police for the City will issue a new General Order 1.02-2 dated January, 1999, which will contain a drug testing policy without any pre-employment criteria which is attached as Exhibit A.
- 2) The language in Civil Service Board Rule 5, Section 5, adopted January 28, 1999 will govern with respect to pre-employment hiring criteria which is attached as Exhibit B.
- 3) If the City or the Civil Service Board determine that a change in this policy is necessary, the City Commission will officially notify FOP Lodge #44 and give them an opportunity to provide input and alternatives before the City Commission makes the final decision as to whether to approve such a change in the policy.
- 4) The City agrees to file with SERB a Motion for Leave to Withdraw its above-captioned Unfair Labor Practice charge with prejudice simultaneously upon the signing of this Agreement by all parties. Furthermore, the City will also voluntarily dismiss with prejudice the City's Appeal to the Montgomery County Court of Common Pleas from Arbitrator Thompson's Award in Case No. 98-1527.

IN WITNESS, WHEREOF, the parties have hereby executed this Settlement Agreement on the date first noted above.

CITY OF DAYTON

David E. Weisblatt 1/28/99  
John A. Cumming, Esq. Date  
David E. Weisblatt, Esq.  
Counsel of Record for City of Dayton  
COOLIDGE, WALL, WOMSLEY & LOMBARD  
Suite 600, 33 West First Street  
Dayton, Ohio, 45402

FRATERNAL ORDER OF POLICE  
JOHN C. POST LODGE NO. 44

Susan D. Jansen 1/28/99  
Susan D. Jansen, Esq. Date  
Counsel of Record for Fraternal  
Order of Police, John C. Post Lodge No. 44  
LOGOTHETIS, PENCE & DOLL  
111 West First Street, Suite 1100  
Dayton, Ohio 45402

Thomas A. Bennett 2/1/99  
Thomas A. Bennett, President Date

Stephen C. Grismer 1/28/99  
Stephen C. Grismer Date  
Supervisor's Chairman

Proposed Revisions Posted January 12, 1999  
Adopted by Board January 19, 1999

CIVIL SERVICE RULE 5  
RECRUITMENT AND APPLICATION FOR ORIGINAL APPOINTMENT

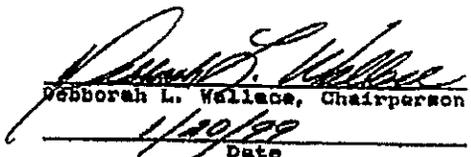
SECTION 5. REJECTION OF APPLICATIONS

The Secretary-Chief Examiner may refuse to accept an application for any of the following reasons:

- A. It was not filed within the prescribed time period;
- B. The applicant does not meet the requirements of the position as set forth in the position description included in the examination announcement;
- C. The application contains a false statement of a material fact;
- D. Any Police Recruit applicant who, eight (8) years or less prior to beginning the background investigation process, has ever illegally possessed, used, sold, or distributed any "controlled substance" or abused, sold or distributed a "dangerous drug" as defined by State of Ohio law, will be disqualified;
- E. Any Police Recruit applicant who, after 25 years of age, has ever illegally possessed, used, sold, or distributed any "controlled substance" or abused, sold or distributed a "dangerous drug" as defined by State of Ohio law, will be disqualified;
- F. Any Police Recruit applicant who has personally used marijuana two (2) years or less prior to the beginning of the background investigation will be disqualified;
- G. Persons convicted of a felony are not eligible for positions in the sworn forces of the Police Department.

The appropriate use of legally prescribed and non-prescription medications will not disqualify a Police Recruit applicant.

APPROVED:

  
Deborah L. Wallace, Chairperson

1/20/99  
Date