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A COLLECTIVE BARGAINING AGREEMENT



BETWEEN

**THE FRATERNAL ORDER OF POLICE,
OHIO LABOR COUNCIL, INC.**

AND



THE CITY OF EAST CLEVELAND

(FULL-TIME PATROL OFFICERS)

**EFFECTIVE: July 1, 2017
EXPIRES: June 30, 2020**

AS PREPARED BY:

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ARTICLE 1
AGREEMENT/PURPOSE

Section 1.1. This Agreement, which may be referred to as the “Blue Contract,” entered into by the City of East Cleveland, hereinafter referred to as the “Employer” or the “City,” and the East Cleveland Police Department Fraternal Order of Police Lodge No. 39/Ohio Labor Council Inc., hereinafter referred to as the “Lodge,” the “FOP,” or the “Union,” has its purpose as the following:

To comply with the requirements of Chapter 4117 of the Ohio Revised Code, and to set forth in its entirety the full and complete understandings and agreements between the parties governing the wages, hours, terms and conditions of employment for those employees included in the bargaining units as defined herein.

Section 1.2. The parties acknowledge that, during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any matter or subject not removed by law or regulation from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of those rights and opportunities are set forth in the Agreement. The provisions of this Agreement constitute the entire Agreement between the parties.

ARTICLE 2
APPLICABILITY OF EXTERNAL LAW AND SEPARABILITY

Section 2.1. Application of External Law. The parties agree that no section of the civil service laws contained in the Ohio Revised Code Sections 9.44, 124.01 through 124.56, nor any local ordinance of the City of East Cleveland or Rules and Regulations of the Civil Service Commission of the City of East Cleveland, pertaining to wages, hours, terms and other conditions of employment, shall apply to bargaining unit employees where such matter has been specifically or generally addressed by this agreement.

Section 2.2. Notwithstanding the above, Sections 124.388 and 124.57 ORC shall continue to apply to bargaining unit employees. Additionally, in accordance with Revised Code 4117.10(A), laws pertaining to civil rights, affirmative action, unemployment compensation, worker’s compensation, the retirement of public employees, residency requirements, and the provisions of 124.34 (A) concerning the disciplining of classified employees convicted of a felony prevail over any conflicting provisions of this collective bargaining agreement.

Section 2.3. In accordance with the provisions of Ohio Revised Code section 4117.10 (A), this agreement covers the wages, hours, and terms and conditions of employment to the extent provided herein. It is therefore the intent of the parties that the terms and conditions of this agreement specifically preempt and/or prevail over the statutory rights of bargaining unit members as set forth below:

Contract Article

Statute/Regulation Preempted (All Statutory References include Corresponding Municipal Ordinances and Municipal Civil Service Rules)

Article 9, Discipline	ORC 124.34
Article 10, Grievance Procedure	ORC 124.34
Article 12, Seniority	ORC 9.44; ORC 124.321-124.328; ORC 124.37
Article 13, Reduction in Force & Recall	ORC 124.321-124.328; ORC 124.37; ORC 124.44
Article 15, Probationary Periods & Promotions	ORC 124.27; ORC 124.44; ORC 124.48
Article 18, Sick Leave	ORC 124.38; ORC 124.39
Article 21, Vacations	ORC 9.44; ORC 325.19
Article 22, Holidays/Personal Days	ORC 325.19

Section 2.4. Separability. If by operation of law or by a court of competent jurisdiction it is found that any provision shall be of no further force and effect, the remainder of the Agreement shall remain in full force and effect for the Agreement term. The parties agree that should any provision of this Agreement be found to be invalid, they will attempt to negotiate replacement language on the same subject matter within sixty (60) calendar days.

ARTICLE 3
RECOGNITION

Section 3.1. Under this Agreement, the Employer hereby recognizes the FOP/Ohio Labor Council, Inc., as the sole and exclusive bargaining agent for all employees listed below:

All regular civil service sworn full-time Patrol Officers

Section 3.2. Said recognition is for the purpose of collective bargaining on any and all matters relating to wages, hours, terms and other conditions of employment for all members of the bargaining unit pursuant to the Ohio Public Employees Collective Bargaining Act.

Section 3.3. Excluded. It is agreed the following classifications and/or employment categories are excluded from the above-referenced bargaining unit: Chief of Police, Police Dispatchers, Corrections Officers, confidential employees, management employees, supervisors, part-time employees, seasonal and casual employees, students whose primary purpose is educational training, and fiduciary employees of the Employer as defined by the Act.

ARTICLE 4
UNION DUES DEDUCTION

Section 4.1. Membership. Within sixty (60) days of the date of this Agreement, employees in the bargaining unit shall become dues paying members of the FOP.

Section 4.2. Dues Deduction. The Employer agrees to deduct from the wages and salaries of the bargaining unit members dues required by the FOP/OLC by payroll deduction.

Section 4.3. Deduction Remittance/Timing. The Employer agrees to deduct from the wages and salaries of the bargaining unit members dues required by the FOP/OLC by payroll deduction. Dues deducted by the Employer shall be remitted to the FOP no later than the fifth (5th) day of the month following the month in which they were deducted. Deductions will be remitted to the FOP/OLC Inc., 222 East Town Street, Columbus, Ohio 43215.

Section 4.4. Termination. The Employer's obligation to make deductions shall terminate automatically upon timely receipt of revocation of authorization or upon termination of employment or transfer to a job classification outside the bargaining unit.

ARTICLE 5 **UNION ACTIVITY/REPRESENTATION**

Section 5.1. Access. Non-employee representatives of the FOP shall be admitted to the Employer's facility for the purpose of processing grievances, attending meetings, or for monitoring the administration of this Agreement, upon approval of the Employer or its designee. The Employer or its designees shall facilitate any necessary contact between the representative and an on duty bargaining unit member employee, provided that arrangement of the contact is not unduly disruptive of the employee's job responsibilities as may be solely determined by the Chief of Police.

Section 5.2. Grievance Meetings/Negotiations. Bargaining unit members shall not suffer a loss in pay for their attendance at grievance meetings or hearings and/or negotiations sessions that occur during the employee's scheduled shift.

Section 5.3. Use of Employer Facilities for Union Meetings. The FOP/OLC may schedule meetings on Police Department property, insofar as those meetings are not disruptive of the duties of the employees or the efficient operation of the Department. Special rank-and-file FOP/OLC meetings may be held at any hour. Insofar as is feasible, all on or off-duty FOP/OLC members shall be afforded the opportunity to attend these meetings.

Section 5.4. Negotiation Preparation Time. Upon advance approval by the Chief of Police or designee, time off may be allowed for up to eight (8) hours per person each week for a maximum of three (3) members of the negotiating committee, designated in advance, during the last sixty (60) days of this Agreement, exclusive of any extensions.

Section 5.5. Annual Union Time. The FOP/OLC shall be authorized an aggregate of ten (10) work days of paid leave per calendar year for delegates to use any time during the year to attend FOP/OLC functions such as, but not limited to, conventions, educational meetings, or conferences. Management shall make other reasonable provisions for authorizing vacation leave or personal allowance credits for employees to attend FOP/OLC functions in addition to the above mentioned ten (10) days.

In addition to the ten (10) delegate days listed in this article, the FOP/OLC shall be authorized a delegate "time bank." Each year of this Agreement bargaining unit members shall be authorized to donate accrued leave time to said bank via a voucher form provided by Management. The FOP/OLC may utilize such time as necessary for FOP/OLC approved activities. The FOP/OLC may utilize all aforementioned provisions of this article by having the President or his designee notify the Chief of Police as soon as practicable upon learning of the need for such leave, but not less than two (2) employees from one (1) detail are designated by the FOP/OLC for said leave at any given time.

Section 5.6. Monthly Release Time. Sufficient time off, not to exceed three (3) hours per man, per month, shall be granted to any three (3) elected Officers of the FOP/OLC, (being President, Vice President, Secretary, Treasurer, or Associate and Alternate Associate), for the purpose of attending and the conducting of regular meetings of the FOP/OLC, provided a forty-eight (48) hour notice is given to the Chief of Police. Such release from duty is subject to the scheduling requirements in the interest of efficient operation of the Police Department.

ARTICLE 6 **NON-DISCRIMINATION**

Section 6.1. Neither the City, its agents, agencies, or officials, nor the FOP or its agents or officers shall discriminate against any employee on the basis of age, sex, race, color, religion, national origin, political affiliation, genetic history, military status, or disability.

Section 6.2. The City and the FOP agree not to interfere with the desire of any person to become or remain a member of the FOP Lodge No. 39.

Section 6.3. All references in this Agreement to the male gender shall be construed to be equally applicable to females.

ARTICLE 7 **MANAGEMENT RIGHTS CLAUSE**

Section 7.1. Except as specifically limited by explicit provision of this Agreement, the City shall have the exclusive right to manage the operations, control the premises, direct the working forces, and maintain efficiency of operations. Specifically, the City's exclusive management rights include, but are not limited to, the sole right to hire, discipline and discharge for just cause; layoff and promote; to promulgate and enforce reasonable employment rules and regulations; to reorganize, discontinue, or enlarge any department or division; to transfer employees (including the assignment and allocation of work) within department or to other departments; to introduce new and/or improved equipment, methods or facilities; to determine work methods; to determine the size and duties of the work force, the numbers of shifts required, and work schedules; to establish, modify, consolidate, or abolish jobs (or classifications); and to determine staffing patterns, including, but not limited to, assignment of employees, numbers employed, duties to be performed, qualifications required, and areas worked, subject only to the restrictions and regulations governing the exercise of these rights as are expressly provided herein.

In addition, unless otherwise restricted by an express term of this Agreement, all rights are exclusively reserved by the City. Further, the exercise of any enumerated or reserved management right shall not be the subject of negotiation during the term of this Agreement, either with respect to the decision or its effects.

ARTICLE 8 **INTERNAL INVESTIGATIONS**

Section 8.1. Internal Investigation Procedures. When a bargaining unit member is under investigation by the Employer for administrative rule violations, the following minimum standards shall apply:

1. **Interview Timing.** Questioning of the bargaining unit member shall be conducted at a reasonable hour, preferably when the bargaining unit member is on duty, unless circumstances otherwise require.
2. **Interview Location.** Questioning of the bargaining unit member will generally take place at the offices of those conducting the investigation or the place where such bargaining unit member reports for duty, subject to operational need.
3. **Breaks/Rest Periods.** Any questioning of a bargaining unit member in connection with an investigation shall be for a reasonable period of time and shall allow for reasonable periods of rest and personal necessities of the bargaining unit member.
4. **Garrity Warnings.** Prior to being charged with insubordination for refusing to answer questions or cooperate in an investigatory interview, a bargaining unit member will be advised that his continued refusal could form the basis for a charge of insubordination and may result in discipline. A member shall not be charged with insubordination in such instances, unless immunity has been granted by the proper legal authority for the statements that are to be made in connection with the interview.
5. **Representation Rights.** Upon the request of the bargaining unit member under investigation, and in circumstances where the results of the investigation could result in discipline of the member, the member shall be entitled to the presence of a Union representative and reasonable time to procure the presence of a representative.
6. **Questioning/Identification of Interviewer.** Questioning of the bargaining unit member shall be conducted in a professional and business-like manner, and the interviewer shall identify himself to the member.
7. **Subject Matter.** Bargaining unit members will be advised of the subject matter of the interview prior to questioning.
8. **Polygraphs.** No polygraph, VSA, or other stress measuring device shall be used during investigatory interviews.

9. Disclosure of Personal Assets. The disclosure of personal assets will not be required without a reasonable basis.

Section 8.2. Notification of Findings/Results. At the conclusion of the investigation, the Employer agrees that all public records under the Ohio Public Records law will be made available to the member or the FOP. The parties agree that any recordings or transcripts made during the course of an internal investigation and meeting the previous definition shall be made available.

ARTICLE 9 **DISCIPLINE**

Section 9.1. The tenure of every employee subject to the terms of this Agreement shall be during good behavior and efficient service. The Employer may take disciplinary action against any employee in the bargaining unit only for just cause. The Employer may take disciplinary action for actions which occur while an employee is on duty, or which occur while an employee is working under the colors of the Employer, or in instances where the employee's conduct violates his oath of office. Examples of disciplinary action are:

1. Written Warning.
2. Written Reprimand.
3. Suspension without pay (at the option of the employee, and the concurrence of the suspension; Record of Suspension will be maintained).
4. Reduction in Rank.
5. Discharge.

Section 9.2. Whenever the Employer determines that an employee may be disciplined for just cause that could result in suspension, reduction, or termination, a disciplinary hearing will be scheduled to give the employee an opportunity to offer an explanation of the alleged misconduct. Prior to the hearing, the employee shall be given a written specification of the charges. Any disciplinary action to be administered must be issued within forty-five (45) calendar days of the receipt of the hearing officer's response.

Disciplinary hearings will be conducted by a neutral hearing officer solely elected by the Employer. The employee may choose to:

1. Appear at the hearing to present oral or written statements in his defense.
2. Appear at the hearing and have an employee or non-employee representative of the FOP present oral or written statements in his defense.
3. Elect in writing to waive the opportunity to have a disciplinary hearing. Failure to elect and pursue one of these three (3) options will be deemed a waiver of the employee's right to a disciplinary hearing.

At the disciplinary hearing, the neutral hearing officer will ask the employee or his representative to respond to the allegations of misconduct which were outlined to the employee. At the hearing, the employee may present any testimony, witnesses, or documents which he feels may be germane to the charges. The employee shall provide a list of witnesses, and the name and occupation of his representative, if any, to the Employer as far in advance as possible, but no later than eight (8) hours prior to the hearing. It is the employee's responsibility to notify his witnesses that he desires their attendance at the hearing.

The employee will be permitted to confront and cross examine witnesses. A written report will be prepared by the neutral hearing officer concluding whether or not the alleged misconduct occurred. The Employer will decide what discipline, if any, is appropriate. A copy of the neutral hearing administrator's report will be provided to the employee within five (5) calendar days following its preparation.

Where the Employer requires attendance during non-working time, the employee shall be compensated at the applicable hourly rate of pay for appearing as a witness in a pre-disciplinary conference.

Section 9.3. Disciplinary action may be appealed through the grievance and arbitration procedure. Appeals of disciplinary actions must be filed at the appropriate level of the grievance procedure within five (5) calendar days from receipt of the notice of discipline by the employee. The imposition of any discipline action, except termination, shall be stayed pending the outcome of the appeal through the grievance and arbitration procedure.

Section 9.4. Any employee under indictment or arrested for a felony shall be placed on leave of absence without pay until resolution of the court proceedings. An employee may use accrued vacation, holiday, or personal time during the leave. An employee found guilty of a felony by the trial court may be discharged. An employee found not guilty of the charges shall be paid for all lost time and shall have any vacation, holiday, or personal time restored to his credit. The Employer shall continue to pay the employee's insurance premiums during the leave of absence.

ARTICLE 10 **GRIEVANCE PROCEDURE**

Section 10.1. Every employee shall have the right to present his grievance in accordance with the procedures provided herein, free from any interference, coercion, restraint, discrimination or reprisal and except at Step 1, the employees shall have the right to be represented by a person of his own choosing at all stages of the Grievance Procedure. It is the intent and purpose of the parties to this Agreement that all grievances shall be settled, if possible, at the first step of this procedure.

Section 10.2. For the purposes of this procedure, the terms listed below are defined as follows:

- A. Grievance - A "grievance" shall be defined as a dispute or controversy arising from the misapplication or misrepresentation of the specific express written provisions of this Agreement.

- B. Grievant - The “grievant” shall be defined as any employee or group of employees within the bargaining unit or the FOP/OLC.
- C. Party in Interest - A “party in interest” shall be defined as any employee of the Employer named in the grievance who is not the grievant.
- D. Days - A “day” as used in this procedure shall mean calendar days, excluding Saturdays, Sundays or holidays as provided for in this Agreement.

Section 10.3. Procedure Generally. Nothing in this procedure shall prohibit an employee from informally attempting to resolve a dispute during the open five (5) day period prior to the initiation of a formal grievance. Where a formal grievance is initiated, the following procedures shall apply to the administration of all grievances filed under this procedure:

- A. All grievances shall include the name and position of the grievant; the identity of the provisions of this Agreement involved in the grievance; the time and place where the alleged events or conditions giving rise to grievance took place; the identity of the party responsible for causing the said grievance, if known to the grievant; and a general statement of the nature of the grievance and the redress sought by the grievant.
- B. Decisions. All decisions shall be rendered in writing at each step of the grievance procedure. Each decision shall be transmitted to the grievant and his representative, if any.
- C. Group Grievances. If a grievance affects a group of employees working in different locations, with different principals, or associated with an employer-wide controversy, the grievance may be submitted at Step 3.
- D. Grievance Settlement. Any informal adjustment to a matter without the intervention of the FOP/OLC shall not be inconsistent with the terms of this Agreement. In the event that the grievance is adjusted without formal determination, pursuant to this procedure, while such adjustment shall be binding upon the grievant and shall, in all respects, be final, said adjustment shall not create a precedent or ruling binding upon the Employer in the future proceedings.
- E. Representation. The grievant may choose whomever he wishes to represent him at any step of the grievance procedure after Step 1.
- F. Time Limits. The time limits provided herein will be strictly adhered to and any grievance not filed initially or appealed within the specified time limits will be deemed waived and void. If the Employer fails to reply within the specified time limit, the grievance may be forwarded to the next step under the Procedure. The time limits specified for either party may be extended only by written mutual agreement.
- G. Grievance Limitations. This procedure shall not be used for the purposes of adding to, subtracting from, or altering in any way, any of the provisions of this Agreement.

Section 10.4. Procedure. All grievances shall be administered in accordance with the following steps of the grievance procedure:

Step 1: An employee who believes he may have a grievance shall file the grievance in writing with his immediate supervisor within five (5) days of the occurrence of the facts giving rise to the grievance. The supervisor will schedule a meeting with the employee within five (5) days of receiving the grievance, if necessary, or issue a decision on the grievance. If a meeting is held, the supervisor shall issue his decision within five (5) calendar days.

Step 2: If the dispute is not resolved at Step 1, it shall be reduced to writing by the grievant and presented as a grievance to the Chief/designee within five (5) days of the Step 1 decision or default rejection, whichever is applicable. The Chief/designee shall schedule a meeting within five (5) days of receiving the Step 1 appeal if necessary or issue a decision on the grievance. If a meeting is held, the Chief/designee shall issue his decision within five (5) days of the meeting.

Step 3: If the grievant is not satisfied with the written decision at the conclusion of Step 2, a written appeal of the decision may be filed with the Mayor/Safety Director within five (5) days from the date of the rendering of the decision or default rejection at Step 2. Copies of the written decisions shall be submitted with the appeal. The Mayor/Safety Director or his designee shall convene a hearing within fifteen (15) days of the receipt of the appeal. The hearing will be held with the grievant, his FOP/OLC representative and any other party necessary to provide the information for the rendering of a proper decision. The Mayor/Safety Director or his designee shall issue a written decision to the employee and his FOP/OLC representative within fifteen (15) days from the date of hearing. If the Union is not satisfied with the decision at Step 3, it may proceed to arbitration pursuant to the Arbitration Procedure herein contained.

Section 10.5. Arbitration. In the event a grievance is unresolved after being processed through all steps of the Grievance Procedure, unless mutually waived, within thirty (30) days after rendering the decision of Step 3, the Union may submit the grievance to arbitration. Within this thirty (30) day period, the parties will meet to attempt to mutually agree upon an arbitrator. If such agreement is not reached, the parties will promptly request the Federal Mediation and Conciliation Service to submit a panel of fifteen (15) Ohio based, national academy certified arbitrators. Once the panel of arbitrators is submitted to the parties, each party shall have fourteen (14) calendar days from the mailing date in which to strike any name to which it objects, number the remaining names to indicate the order of preference, and return the list to the FMCS. Each party shall have the right to reject one (1) panel of arbitrators. The party requesting a second list of arbitrators shall satisfy the required fee for this service.

Section 10.6. The arbitrator shall have no power or authority to add to, subtract from or in any manner, alter the specific terms of this Agreement or to make any award requiring the commission of any act prohibited by law or to make any award that itself is contrary to law or violates any of the terms and conditions of this Agreement.

Section 10.7. The hearing or hearings shall be conducted pursuant to the “Rules of Voluntary Arbitration” of the Federal Mediation and Conciliation Service (FMCS).

Section 10.8. Fees/Expenses. The fees and expenses of the arbitrator and the cost of the hearing room, if any, will be borne equally by the parties. All other expenses shall be borne by the party incurring them. Neither party shall be responsible for any of the attorney fees or expenses incurred by the other party.

Section 10.9. Witnesses. An employee requested to appear at the arbitration hearing by either party shall attend without the necessity of notice of subpoena and shall be compensated at his regular hourly rate for all hours during which his attendance is required by either party. Any request made by either party for the attendance of witnesses shall be made in good faith. Employees shall suffer no loss in pay for appearing as a witness at a pre-disciplinary conference or at an arbitration during their work shift. Where the Employer requires attendance during non-work time, the employee shall be compensated at the applicable hourly rate or pay for appearing as a witness in a pre-disciplinary conference or arbitration.

ARTICLE 11 **LABOR MANAGEMENT AND SAFETY COMMITTEE**

Section 11.1. The Labor Management and Safety Committee shall consist of the Mayor, Safety Director or his designee, the Chief of Police or his designee, and two (2) members of the bargaining unit. It is mutually agreed that this committee may meet on a quarterly basis or as mutually agreed, or after a written request from either party for the following purposes:

1. To disseminate general information of interest to the parties.
2. To give the FOP Representatives the opportunity to share the views of their members and/or suggestions on the subjects of interest to their members.
3. To discuss ways to improve efficiency within the Department.
4. To promote harmonious relations between the City and the FOP in the best interest of the community.
5. To discuss safety and health issues of the Department.

Section 11.2. Occupational safety and health is a mutual concern of the FOP and the Employer. The FOP will cooperate with the Employer in encouraging employees to comply with applicable safety rules, regulations, and common knowledge safety standards of the law enforcement industry. The Employer agrees to operate and maintain a safe working environment for all bargaining unit members.

Section 11.3. The Employer and the FOP shall comply with all applicable federal and state laws, rules, and regulations with regard to safety.

Section 11.4. All bargaining unit members are responsible to report, in writing, all unsafe conditions relating to police operations to the Chief of Police. No bargaining unit member shall be subject to any disciplinary action for such reporting.

Section 11.5. If the unsafe condition remains uncorrected after five (5) calendar days, it may be subject to the Grievance and Arbitration Procedure of this Agreement.

Section 11.6. The Employer shall not instruct any bargaining unit member to operate any equipment, which anyone in the exercise of ordinary care would reasonably know might cause injury. However, if the officer in charge at the time concludes that the equipment is not unsafe, the employee shall operate the equipment. Said officer's decision is subject to the Grievance and Arbitration Procedure.

Section 11.7. The FOP recognizes the right of the Employer to establish and change safety rules. Any new or changed rule(s) will be communicated to the Labor Management and Safety Committee for discussion.

Section 11.8. All bargaining unit members of the Labor Management and Safety Committee shall be paid at their regular rate of pay while performing committee duties on a no loss, no gain basis.

ARTICLE 12 **SENIORITY**

Section 12.1. For the purpose of this Agreement, seniority shall be defined as total continuous service in the City Police Department. Continuous service shall not be considered broken due to absence caused by military, pregnancy, injury, sick, and other City approved leaves of absence as allowed by this Agreement.

Section 12.2. Seniority is established by aggregate time served. Where conflict occurs because of identical service or date of appointment, the member with the highest score on the promotional/hire list from which appointments were made is deemed to be senior.

Section 12.3. For vacation purposes, shift seniority shall be determined by the bargaining unit member's date of service as listed in Section 12.1.

Section 12.4. For shift selection purposes, seniority shall be determined by the bargaining unit member's seniority. The election of shift preferences by seniority shall not result in the creation of vacancies. No bargaining unit member shall change assignment through the exercising of shift preference.

Section 12.5. The Employer shall post a seniority list once every six (6) months on the FOP bulletin board showing the continuous service of each bargaining unit member. One (1) copy of the seniority list shall be furnished to the FOP associate.

ARTICLE 13
REDUCTION IN FORCE AND RECALL

Section 13.1. It is the intent of the parties, through this article, to establish an objective procedure by which a reduction in force (i.e., layoff or job abolishment) may be accomplished, should the need arise, and supersede the provisions of ORC 124.321 to 124.328, 124.37, OAC 123: 1-41-01 to 123: 1-41-22, and all local rules and regulations of the City of East Cleveland Civil Service Commission governing work force reductions.

Section 13.2. Employees may be laid off as a result of lack of work, lack of funds, or abolishment of position. In the event of a layoff, the Employer shall notify the affected employee thirty (30) calendar days in advance of the effective date of layoff. The Employer agrees to discuss with representatives of the FOP the impact of the layoff on the bargaining unit member. Any layoff in the bargaining unit shall be in accordance with departmental seniority, i.e., the most recent employee hired is the first employee laid off.

Any employee laid off from a bargaining unit position may, at his option, displace a permanent part-time or intermittent employee in the same classification. Failure to bump or failure to accept a recall to a part-time or intermittent position shall not jeopardize an employee's recall rights to a full-time position.

Section 13.3. Employees who are laid off shall be placed on a recall list for a period of three (3) years. If there is a recall, employees who are still on the recall list shall be recalled, in the inverse order of their layoff, provided they are presently qualified to perform the work in the work section to which they are recalled. Any recalled employee requiring additional training to meet the position qualifications in existence at the time of recall must satisfactorily complete the additional training required in this section. Such training shall be at the Employer's expense.

Section 13.4. The recalled employee shall have ten (10) calendar days following the date of recall notice to notify the Employer of his intention to return to work and shall have fifteen (15) calendar days following receipt of the recall notice in which to report for duty, unless a different date for return to work has been otherwise agreed upon.

ARTICLE 14
PERSONNEL FILES

Section 14.1. Bargaining unit members shall have access to their records including training, attendance, and payroll records as well as those records maintained as personnel file records.

Section 14.2. Every bargaining unit member shall be allowed to review the contents of their personnel file at all reasonable times upon written request except that any bargaining unit member involved in a grievance or disciplinary matter shall have access at any reasonable time in order to adequately prepare for such process. Memoranda clarifying and explaining alleged inaccuracies of any document in said file may be added to the file by the bargaining unit member.

Section 14.3. All entries of a disciplinary or adverse nature shall be maintained solely in the personnel file which shall be maintained in the Department of Human Resources. The affected bargaining unit member shall be notified of any such entry and shall be afforded a copy of the entry and an opportunity to attach a dissenting statement. No unfounded complaint shall become part of any bargaining unit member's personnel file.

Section 14.4. Records of written warning and reprimands shall cease to have force and effect twelve (12) months from the date of issuance and shall, to the extent possible and consistent with law, be placed within an inactive file, provided no intervening discipline has occurred. Any records relating to any suspension of less than thirty (30) days shall be removed from the file two (2) years after the suspension provided no intervening discipline has occurred. Any records relating to any suspension of more than thirty (30) days shall be removed from the file five (5) years after the suspension providing no intervening discipline has occurred.

ARTICLE 15 **PROBATIONARY PERIODS & PROMOTIONS**

Section 15.1. Initial Hire. Every new employee shall be required to successfully complete a probationary period. The probationary period shall begin on the effective date of hire, and shall continue for a period of one (1) calendar year. A probationary employee may be discharged at any time during his probationary period.

Section 15.2. Promotional Probationary Period. A bargaining unit member who is promoted shall be placed on a promotional probationary period for three (3) months. Should the promoted bargaining unit member fail to satisfactorily complete the promotional probationary period, he shall be returned to his original position with no loss of seniority. Such demotion shall not be eligible for appeal through the grievance and arbitration procedure. However, the Employer shall articulate the reason for the failure of probation, and not act in an arbitrary and capricious manner.

Section 15.3. Permanent Promotional Vacancies. Permanent vacancies above the rank of patrolman shall be filled by promotional examination, unless abolished. Where the Employer determines that a permanent vacancy is to be abolished and not filled, it shall provide the Union with notice of its decision and at the Union's request meet to discuss the impact of such decision. No permanent position in a classification above the rank of patrolman shall remain vacant, unless abolished. Where a permanent vacancy occurs and a valid promotional list does not exist, it may be filled on a temporary basis pending the establishment of a list, but no more than one hundred eighty (180) calendar days. All promotions above the rank of patrolman shall be made pursuant to Section 15.4 of this article.

Section 15.4. Promotional Procedure. Within one hundred eighty (180) days of a permanent vacancy above the rank of patrolman occurring, a permanent vacancy that it not abolished as described above shall be filled according to merit and fitness ascertained through an objective, competitive examination, administered from outside the City as selected by the City of East Cleveland Civil Service Commission.

ARTICLE 16
DRUG/ALCOHOL TESTING

Section 16.1. Policy Statement. Both the Union and the City recognize illegal drug usage and workplace alcohol abuse/misuse as a threat to the public safety and welfare and to the employees of the Division of Police. Thus, the Division will take the necessary steps, including drug and alcohol testing, to maintain a drug/alcohol free workplace. The goal of this policy is education, prevention and rehabilitation rather than termination.

Section 16.2. Definitions.

- A. The term “drug” includes cannabis as well as other controlled substances as defined in the Ohio Revised Code.
- B. The term “illegal drug usage” includes the use of cannabis or any controlled substance which has not been legally prescribed and/or dispensed, or the abusive use of a legally prescribed drug.
- C. The term “drug test” means a urinalysis test consisting of an initial screening step and a confirmation step employing the gas chromatography/mass spectrometry (GC/MS) utilizing urine samples collected according to a chain of custody procedures consistent with the United States Department of Transportation (“D.O.T.”) regulations.
- D. The term “Misuse of Alcohol” means the use or possession of ethyl, methyl or isopropyl alcohol in the workplace, or testing positive (as defined in paragraph (e)) for the presence of alcohol in an employee’s system while at work.
- E. The term “Alcohol Test” means a test selected and certified under federal standards. An initial positive level of .04 grams per 210L of breath shall be considered positive for purposes of authorizing a confirming alcohol test. If initial screen results are negative, i.e., below the positive level, testing shall be discontinued, all samples destroyed, and records of the testing expunged from the member’s personnel file. Only members with screen test results that are positive on the initial screen shall be subject to confirmation testing for alcohol. With respect to confirmation testing, a positive alcohol level shall be .04 grams per 210L of breath. If confirmatory breath testing results are negative, i.e., below the positive level, all records of the testing shall be expunged from the member’s personnel file.
- F. “Voluntary Participation in a Dependency Program” means in the absence of a positive test result or a request to take a drug/alcohol test, an employee seeks the professional assistance of a treatment program under the Employee Assistance Program and/or covered by the employee’s insurance plan.

Section 16.3. Notice and Education of Employees Regarding Drug/Alcohol Testing. There will be an education and information period prior to random testing under this policy for employees, except that prior policies governing the testing of cadets and testing under consent forms shall remain in effect during this period.

All employees will be informed of the Division's drug/alcohol testing policy. Employees will be provided with information concerning the impact of the use of drugs on job performance. In addition, the Employer will inform the employees of the manner in which these tests are conducted, the reliability of the tests performed, under what circumstances employees will be subject to testing, what the tests can determine, and the consequences of testing positive for illegal drug use and alcohol abuse/misuse. All new employees will be provided with this information when initially hired. No employee shall be randomly tested until this information has been provided.

Section 16.4. Basis for Ordering an Employee to be Tested for Drug/Alcohol Abuse.

Employees may be tested for drug/alcohol abuse misuse during working hours under any of the following conditions:

- A. Where there is reasonable suspicion that the employee to be tested is using or abusing illegal drugs or alcohol while on duty. Such reasonable suspicion must be based upon objective facts or specific circumstances found to exist which present a reasonable basis to believe that an employee is using alcohol or illegal drugs in violation of this policy. Two (2) examples of where reasonable suspicion shall be deemed to exist are where there has been a serious on-duty injury to an employee, or another person, the cause of which is otherwise unexplained, and where an employee, while driving a city vehicle, becomes involved in a traffic accident which results in physical harm to persons or property. The listing of these examples is not intended to exclude other situations which may give rise to reasonable suspicion of abuse. If reasonable suspicion of drug/alcohol use is suspected, it shall be reported to the Chief. He shall determine if drug/alcohol testing is warranted, and if so, shall order that the test be taken.
- B. **For Random Testing.** The term "Random Testing" means employees during their normal tour of duty are subject to Random Drug/Alcohol Testing, effective after the employee education process (as stated above) is completed. The annual number of such random tests shall not exceed twenty-five percent (25%) of the members covered by the contract during a calendar year beginning January 1 (if testing commences later than January 31, the number of tests taken shall not exceed a pro-rated amount of 25% of the members). Such test shall be reasonably spread throughout the year. Member(s) notified of their selection for random/drug alcohol testing shall proceed immediately to the collection site. A member who is on a regularly scheduled day off, vacation, already absent due to illness or injury, on Compensatory Time Off (approved before the member was scheduled for testing) or under subpoena from a Court, shall be excused from testing, but will remain subject to future random testing.
- C. Upon return to duty after an absence for an unexplained illness or from a thirty (30) day or more disciplinary suspension, or upon reappointment to the Division.
- D. Prior to a return to duty after participation in a substance abuse rehabilitation program regardless of the duration of the program, and following an employee's return under these circumstances wherein the employee shall be required to undergo three (3) urine tests within the one (1) year period starting with the date of return to duty.

E. During the six (6) month probationary period after leaving the Training Academy.

Prior to obtaining a drug/alcohol test from an employee as set forth in sections (A) through (E) above, the City shall instruct the employee that the results of the drug/alcohol test can result in termination from employment, subject to the conditions set forth below.

Section 16.5. Urine Samples. Specimen collection will occur in a medical setting and conform to D.O.T. regulations. The procedures should not demean, embarrass, or cause physical discomfort to the employee.

- A. Each step in the collecting and processing of the urine specimens shall be documented to establish procedural integrity and the chain of evidence.
- B. The employee will complete a form indicating the use of all drugs currently being taken and identify the prescribing physician.
- C. The employee designated to give a sample must be positively identified prior to any sample being taken.
- D. Specimen samples shall be sealed, labeled and checked against the identity of the employee to ensure that the results match the employees tested. Samples shall be stored in a secure and refrigerated atmosphere until tested or delivered to the testing lab.
- E. Upon request, an employee shall be entitled to the presence of a Union representative before testing is administered unless honoring the request will result in a delay of the testing process.

Section 16.6. Testing Procedure. The laboratory selected by the City to conduct the analysis must be experienced and capable of quality control, documentation, chain of custody, technical expertise, and demonstrated proficiency in urinalysis testing. The testing or processing phase shall consist of a two-step procedure.

- (i) Initial screening step, and
- (ii) Confirmation step.

The urine sample is first tested using a screening procedure (EMIT or an equivalent test). For a specimen testing positive, a confirmatory test employing the gas chromatography/mass spectrometry (GC/MS) test (or an equivalent test) will be used. An initial positive report will not be considered positive, rather it will be classified as confirmation pending. Where a positive report is received, urine specimens shall be maintained under secured storage for a period of not less than one (1) year. Any sample which has been adulterated or is shown to be a substance other than urine shall be reported as such. All test results shall be evaluated by suitable trained medical or scientific personnel prior to being reported. All unconfirmed positive test records shall be destroyed by the laboratory. Test results shall be treated with the same confidentiality as other employee medical records. Test results used as evidence for disciplinary action shall also be entitled to the same confidentiality. An employee who tests positive for drugs and or alcohol will be given the opportunity to review the tests and, if desired, a reasonable opportunity to rebut the results.

Where urine samples have been taken, the two (2) samples will be preserved for a reasonable period of time and tested employees will have the opportunity to take one of these samples to a reputable physician or laboratory of their choosing for retesting.

Section 16.7. Disciplinary Action.

- A. Drugs. Employees who as a result of being drug tested are found to be using illegal drugs shall be subject to dismissal unless the employee agrees to participate in and satisfies the obligations of an approved treatment program supervised by the Medical Director and members of the Employees Assistance Unit.

An employee who agrees to participate and satisfies the obligations of this treatment program will be subject to discipline up to a three (3) day suspension (but is also subject to additional discipline for other rules violations). Any employee testing positive for illegal drugs for a second time shall be subject to termination.

Employees who are found to be abusing drug(s) which have been legally prescribed shall be subject to dismissal unless the employee agrees to participate in and satisfies the obligations of an approved treatment program. Any employee found for a second time to be abusing drugs which have been legally prescribed shall be subject to dismissal.

- B. Alcohol. An employee who tests positive for alcohol shall be subject to dismissal unless the employee agrees to participate in and satisfies the obligations of an approved treatment program supervised by the Medical Director and members of the Employees Assistance Unit.

An employee who agrees to participate and satisfies the obligations of this treatment program will be subject to discipline up to a three (3) day suspension (but is also subject to additional discipline for other rules violations). Any employee testing positive for alcohol for a second time shall be subject to termination.

- C. Refusal to submit to a drug/alcohol test, or adulteration of, or switching a sample shall also be grounds for dismissal.

Section 16.8. Right to Appeal. An employee disciplined as a result of a drug test has the right to challenge such discipline beginning at Step 4 of the grievance procedure.

Section 16.9. Voluntary Participation in a Dependency Program. Employees who may be drug/alcohol dependent are encouraged to voluntarily seek professional assistance through an approved treatment program, the Employee Assistance Program, and/or a program covered by the employee's health insurance plan. Voluntary assistance should be sought BEFORE the drug abuse affects job performance or endangers fellow employees or members of the public. Participation in a dependency program is voluntary and strictly confidential. Neither the City administration, the Division of Police, nor any unit or entity within shall have access to the program's files and records. However, the Chief of Police or his designee shall be advised when an employee is hospitalized or is an outpatient as part of drug dependency rehabilitation. Also, upon written request of the participating employee, efforts at rehabilitation will be divulged on his behalf in cases of disciplinary action.

Section 16.10. Illegal drug use or alcohol misuse or participation in any substance abuse dependency or rehabilitation program will not preclude disciplinary action against employees for any law or rule violation even though such law or rule violation may have been connected in part with drug/alcohol abuse, and/or even if the rehabilitation program is voluntarily undertaken.

ARTICLE 17 **OVERTIME COMPENSATION/DUTY HOURS**

Section 17.1. Overtime shall be defined as any work in excess of eighty (80) hours in any fourteen (14) day work period. For purposes of computing overtime, vacation days, SERT Team pay, the twelve (12) regular holidays, and compensatory time off shall be counted as hours worked.

Section 17.2. Overtime Rotation. The Employer shall determine what classification overtime is to be offered in. Within the affected classification, scheduled overtime shall be offered first by seniority, on a rotation basis, to the full-time members of the bargaining unit. In the event that no full-time member of that classification agrees to work the scheduled overtime, the opportunity for overtime may be filled by other employees.

Section 17.3. Call-In Time. An employee in an off duty status who is ordered to report for work and actually reports for duty shall be paid a minimum of two (2) hours or the actual time worked, whichever time frame is greater.

Section 17.4. Court Time. An employee in an off duty status who must appear in court in reference to his official duties shall be paid a minimum of two (2) hours or the actual time spent, whichever is greater.

Section 17.5. FLSA Overtime. All employees when performing overtime work will be entitled to receive pay at the rate of one and one-half (1 1/2) times their regular hourly rate figured to include longevity, SWAT team pay, and education differential for all hours actually worked in excess of eighty (80) hours in any fourteen (14) day work period according to the Fair Labor Standards Act.

Section 17.6. Compensatory Time/Requests. The employee may take compensatory time (at the overtime rate) in lieu of overtime pay at the employee's option. All requests for compensatory time shall be subject to the approval of the Chief of Police, who may deny or limit such requests based up operational need, which include but are not limited to maintaining adequate manpower, meeting scheduling needs, etc. Compensatory time requests must be submitted at least one (1) week in advance of the date requested, unless mutually agreed otherwise, and denials may not be made for the sole purpose of avoiding overtime. The parties agree that where an employee has been denied the usage of compensatory time, he shall be offered an alternative day for compensatory time usage within the next thirty (30) days for usage, be offered cash payment for the amount of hours denied, or the employee may withdraw his request for usage. The parties specifically agree that thirty (30) days constitutes a reasonable time period for satisfying a request for compensatory time usage under the Act. The parties acknowledge that the Employer retains all its rights to manage the use of and administration of accumulated time under federal law. Compensatory time, sick time, and vacation time balances are to be updated and released every two (2) weeks, when payroll is distributed. If the employee disputes the balance of accumulated time, the Employer shall provide proof as to the validity of the calculation.

Section 17.7. Compensatory Time Payment. Employees with twelve (12) years or more seniority shall be afforded the ability to receive a cash payment or cash out of up to twenty percent (20%) of the employee's accrued compensatory time. Employees with less than twelve (12) years shall be afforded the ability to receive a cash payment or cash out of up to fifteen percent (15%). Such request will only be considered on an annual basis and must be submitted in writing to the office of the Chief of Police by November 1 of the calendar year preceding the request for conversion. Conversion payments shall be distributed in the form of a bi-weekly pay supplement during the year following the payment request.

Section 17.8. Work Period. The regular, standard two-week work period shall be eighty (80) hours, scheduled in increments not less than eight (8) hours per day or more than twelve (12) hours per day. The City has the unilateral right to establish the length of shifts within the above parameters. Schedule to be rotated on a twenty-eight (28) day cycle. Twelve (12) hour shifts will be 7:00 a.m. to 7:00 p.m. and 7:00 p.m. to 7:00 a.m.

Section 17.9. Emergency Call-Out. In the event of an emergency call-out being ordered for over a one (1) hour period, the employee shall be guaranteed a minimum of four (4) hours pay (in compensatory time) at the assigned duty rate which shall be duly recorded on a time sheet and approved by the superior officer. This provision does not include holdover opportunities.

Section 17.10. Breaks/Meal Period. Subject to emergency, employees shall be entitled to two (2) paid fifteen (15) minute breaks and a paid half hour lunch break during each eight (8) hour shift, plus an additional paid half hour break for each additional four (4) hours worked.

ARTICLE 18 **SICK LEAVE**

Section 18.1. Usage. Sick leave shall be defined as an absence with pay necessitated by: 1) illness or injury to the employee or to a member of the employee's immediate family; and/or 2) exposure by the employee to a contagious disease that may be communicable to other employees. Immediate family is defined as spouse, parents, child, step-child or other person for whom the employee is the legal guardian for purposes of this article.

Section 18.2. Accrual. All full-time employees shall earn sick leave at the rate of four and six-tenths (4.6) hours for every eighty (80) hours worked, excluding overtime, and may accumulate such sick leave hours to an unlimited amount.

Section 18.3. Notification. An employee who is to be absent on sick leave shall notify the supervisor of such absence and the reason therefore at least two (2) hours before the start of his work shift each day an absence occurs, unless there is an emergency.

Section 18.4. Documentation. Before an absence may be charged against accumulated sick leave, the Employer may require such proof of illness, injury, or death as may be satisfactory to him, or may require the employee to be examined by a physician designated by the Department Head and paid by the Employer. In any event, an employee absent for more than three (3) consecutive days must supply a physician's report to be eligible for paid sick leave.

Section 18.5. If the employee fails to submit adequate proof of illness, injury, or in the event that such proof as is submitted or upon the report of medical examination, the Employer finds there is not satisfactory evidence of illness, and/or injury sufficient to justify the employee's absence, such leave may be considered an unauthorized unpaid leave.

Section 18.6. Excessive Usage/Patterned Absence. Any abuse of sick leave or any pattern of sick leave use shall be just and sufficient cause for discipline as may be determined by the Chief of Police.

Section 18.7. Employer Required Examinations. The Chief of Police may require an employee who has been absent due to personal illness or injury, prior to return to duty, to be examined by a physician designated and paid by the City. Additionally, if the Employer has a reasonable basis for believing that an employee is no longer mentally or physically capable of performing the essential functions of his position, or poses a threat to himself or others, the Employer may order an examination by an appropriately qualified medical professional, at the Employer's expense. Upon receipt of the medical professional's opinion on fitness for duty, the Employer, the Union, and the employee will meet to discuss possible alternatives and/or accommodations. If no alternative or accommodation is mutually agreeable, then the employee will be placed on sick leave, FMLA, disability leave or disability separation.

Section 18.8. Upon the retirement of Police and Fire Disability Pension Fund of a full time employee who has at least fifteen (15) years of continuous service with the Employer, such employee shall be entitled to receive a cash payment equal to his hourly rate of pay at the time of retirement multiplied by one-fourth (1/4) the total number of accumulated and unused sick leave hours earned by the employee as certified by the City Finance Director, providing that such remaining number of hours to be paid shall not exceed two hundred forty (240) hours. In addition to the above benefit, an employee who has at least 25 years of continuous service with the City and who has at least 2000 hours of accumulated sick leave upon retirement (as certified by the City Finance Director) shall receive an additional pay bonus of 120 hours. In addition to the above benefit, an employee who has at least 25 years of continuous service with the City and 1500 hours of accumulated sick leave upon retirement (as certified by the City Finance Director) shall receive an additional pay bonus of one hundred and sixty (160) hours. Under no circumstances shall the City be required to pay accrued sick leave to any employee who has otherwise resigned or is removed from employment.

Section 18.9. In the case of death of an employee while on the City payroll, if the employee had at least fifteen (15) years of continuous service with the City, accumulated sick leave multiplied by one-fourth (1/4) and not exceeding two hundred forty (240) hours, shall be paid to his personal representative designated by the employee.

Section 18.10. An employee eligible for cash payment pursuant to Section 18.8 above may, at his option, elect to take an early retirement with the monetary value of such cash payment being applied towards said early retirement.

Section 18.11. Sick Leave Bonus. Each employee shall be granted time off with pay for not using sick leave time according to the following schedule:

- (a) Three (3) bonus days if no sick days are used in the preceding calendar year;
- (b) Two (2) bonus days if only one (1) day is used in the preceding calendar year;
- (c) One (1) bonus day if only two (2) sick days are used in the preceding calendar year;
- (d) No bonus days if more than two (2) sick days are used in the preceding.

ARTICLE 19 **ON-DUTY INJURY LEAVE**

Section 19.1. Line of duty is intended to recognize the unusual exposure to dangerous situations experienced by employees of the Police Department. If an employee of the Police Department suffers a serious injury as defined in Section 19.2 below as a result of a duty-related accident, he shall be eligible to be considered for a line-of-duty injury leave as follows:

- A. The injured employee shall make written application for line-of-duty leave on forms to be provided by the Chief. The application shall be reviewed by the Chief and the Mayor.
- B. File for Workers' Compensation benefits with the Ohio Bureau of Workers' Compensation and be approved for the receipt of benefits.

- C. The employee shall be charged sick leave for the first five (5) work days which he misses due to the accident. Beginning with the sixth (6th) work day and continuing for a maximum of one hundred twenty (120) calendar days from the date of the accident, the employee shall be paid his regular salary during the period of line-of-duty injury leave; notwithstanding this limitation, the City reserves the sole right to extend such injury leave on a case by case basis; and
- D. Furnish the City with a signed City of East Cleveland Authorization(s) to Release Medical Information relevant to the claim.
- E. Provide a medical certification and seek treatment from a physician on the list of Employer approved providers opining that the claimant is disabled from employment in excess of five (5) consecutive days as a result of the work-related injury and specifying the injury, recommended treatment, and the employee's inability to return to work as a result of the injury along with an estimated return to work date.
- F. This leave shall terminate no later than one hundred twenty (120) calendar days after the beginning of the leave or at such earlier time as follows:
 - (1) On the date workers' compensation benefits are established pursuant to the Ohio law; however, the Mayor may extend this limit upon receiving a request from the employee to do so.
 - (2) When the employee is able to return to work as evidenced by a doctor's certificate.

Section 19.2. Injury Defined. For the purposes of this article, the term “injury” shall include but is not limited to gunshot wounds, stabbings and other acts or conduct certified by the BWC as resulting in an injury covered by the Bureau of Worker’s Compensation.

Section 19.3. Employer Ordered Examinations. The Employer shall have the right at any time during the process to request medical verification of the employee’s injury from his doctor. In addition, the Employer shall have the right, at its expense, to send the employee to a doctor of its own choosing for medical verification.

Section 19.4. IOD & Vacation Period. In the event said injury leave shall preempt a scheduled vacation period, said vacation may be rescheduled with the prior approval of the Chief. The approval of the Chief shall not be unreasonably withheld.

Section 19.5. Seniority During IOD. Accrual of seniority shall be frozen after a leave of absence exceeding one (1) calendar year, and paid time off will not accrue.

Section 19.6. Light Duty During IOD Period. Any full-time employee recuperating from a serious illness or injury and temporarily unable to perform the assigned duties may be temporarily assigned light duty based on availability of light duty work and ability to perform same. Said assignment will be approved by the City physician and in accordance with the applicable collective bargaining agreement. Light duty should be defined as restricted administrative work (i.e., dispatch, desk duties), and those not associated with physical contact of an inmate or within the medical restrictions associated with the injury or illness.

Section 19.7. Light Duty/Transitional Work after IOD Period. An employee incapable of returning to work beyond the one hundred twenty (120) day IOD period shall use accumulated sick leave or any other accumulated paid leave prior to going on an unpaid leave. Should the employee not have any accumulated paid leave available, the employee may apply for lost wages and benefits through the Bureau of Workers' Compensation. Additionally, the Employer, at its discretion, may require the employee to submit to a fitness for duty exam to ascertain whether or not a light duty/transitional position may be available. Should a fitness for duty exam determine that the employee is capable of performing in a light duty capacity, and the Employer determine that it wishes to offer a light duty position, an offer of light duty may be made to the employee. The light duty assignment will be compensated at one hundred percent (100%) of the employee's regular hourly rate. It is within the employee's sole discretion whether or not he wishes to accept the Employer's offer of light duty. Nothing in this article shall obligate the Employer to offer or create a light duty position for an employee who is unable to return to work after the one hundred twenty (120) day period. This light duty assignment shall end when the employee's physician certifies that he/she is capable of performing the normal duties of the original position.

ARTICLE 20 **LEAVES OF ABSENCE**

Section 20.1. Funeral Leave.

- A. If a death occurs among members of the employee's immediate family (spouse, son, daughter, grandchild or loco parentis status), such employee shall be granted up to ten (10) days funeral leave, consecutive and contiguous to the death without loss of pay, benefits, days off, holidays, or vacation time, provided that such leave may be extended, within the discretion of the Chief of Police, based on individual circumstances.
- B. If a death occurs among members of the employee's family (brother, sister, mother, father, stepparents), such employee shall be granted five (5) days funeral leave, consecutive and contiguous to the death, without loss of pay, benefits, days off, holidays, or vacation time, provided that such leave may be extended, within the discretion of the Chief of Police, based on individual circumstances.
- C. If a death occurs among members of the employee's relatives, such employee shall be granted three (3) days funeral leave, consecutive and contiguous to the death, without loss of pay, benefits, days off, holidays or vacation time.
- D. A relative is defined as brother-in-law, sister-in-law, father-in-law, or mother-in-law.

- E. If a death occurs to a grandfather, grandmother, grandfather-in-law, grandmother-In-law, such employee shall be granted two (2) days funeral leave, consecutive and contiguous to the death, without loss of pay, benefits, days off, holidays or vacation time.

Section 20.2. Petit Jury Duty/Witness Duty Leave. An employee, while serving upon a jury in any court of record, shall be paid at his regular salary rate for each of his work days during the period of time so served. Time so served shall be deemed active and continuous service for all purposes.

Section 20.3. Military Leave. Employees shall be granted a leave of absence for military duty in accordance with state and federal laws and local ordinances upon appropriate verification.

ARTICLE 21
VACATIONS

Section 21.1. Service Credit. All bargaining unit members shall be granted their appropriate vacation leave yearly, with full pay, based upon their length of service with the City of East Cleveland and subject to the terms of this Agreement.

Section 21.2.

- A. **Accrual Schedule.** Vacation time shall be earned in one (1) calendar year and taken in the subsequent calendar year according to the following schedule:

Beginning after 1 year of service	2 weeks vacation
Beginning after 4 years of service	3 weeks vacation
Beginning after 10 years of service	4 weeks vacation
Beginning after 15 years of service	5 weeks vacation
Beginning after 20 years of service	6 weeks vacation

- B. A vacation week shall be five (5) consecutive days off.
- C. **Rate of Pay.** All vacation time shall be paid at the employee’s regular rate of pay in effect at the time the vacation is taken.
- D. Bargaining unit members may take vacation leave to which they are entitled beginning with the first full pay period following the date they complete the required years of service and may be taken at any time during the year with the approval of the Employer/Designee.
- E. **Scheduling/Approval.** Seniority shall govern the scheduling of vacations. Vacation scheduling shall be on an equitable basis consistent with the operation requirements of the East Cleveland Police Department and subject to the approval of the Chief of Police.

Vacation selection by the bargaining unit member shall be submitted with a minimum of (7) seven-day advance notice and shall not be unreasonably denied.

- F. **Schedule Changes.** Once a bargaining unit member has made a vacation selection and is thereafter subject to a modification of work schedule which affects the employee's regular days off, said employee may, at his option, select another vacation period from among those vacation periods remaining and consistent with Section 21.3.

- G. **Usage/Carryover.** If, due to scheduling, an employee's vacation cannot be taken in the year earned and is accumulated and taken in the next subsequent year, the rate of vacation pay shall be at the employee's rate of pay in effect during the year taken. All bargaining unit members whose anniversary date falls prior to May 1 shall be eligible for the next vacation increment. Employees may accumulate and carry over from year to year all accrued and unused vacation time. Departmental seniority shall be the tiebreaker for vacation request for the same period.

- H. A bargaining unit member who is injured in the line of duty, and as a result of said injury is placed on sick leave during any scheduled vacation period, said employee shall be credited with those vacation days so affected, and upon return to full time duty be permitted to reselect his vacation days in accordance with the terms of this Agreement.

Section 21.3. Vacation Pay at Separation. Any unused accumulated vacation time, as noted in Section 21.2 herein, prorated to the date of separation shall be paid at the time of such separation to any employee who leaves the department for any reason or is laid off. Unused accumulated vacation time will be paid to the surviving spouse or estate of the member who dies, prorated to the date of his death.

Section 21.4. Prior Accumulated Vacation. Unused vacation time accumulated prior to November 1, 2014, shall be retained and utilized at such time and in such amounts as provided in this Agreement.

ARTICLE 22
HOLIDAYS/PERSONAL DAYS

Section 22.1. Recognized Holidays. All bargaining unit members not scheduled to work on a holiday shall receive eight (8) hours of pay at his current rate for each of the following paid holidays:

- | | |
|----------------------------|------------------|
| New Year's Day | Independence Day |
| Martin Luther King Jr. Day | Labor Day |
| President's Day | Veteran's Day |
| Good Friday | Thanksgiving Day |
| Easter Day | Christmas Day |
| Memorial Day | |

Section 22.2. Rate of Pay for Holiday Work. When an employee is scheduled to work and actually does work, he shall receive double time for each hour worked on the holiday, up to a maximum of eight (8) hours for personnel assigned to an eight (8) hour shift or a maximum of twelve (12) hours for personnel assigned to a twelve (12) hour shift.

Section 22.3. Retained Holiday/Personal Time Scheduling. The parties recognize that in transitioning from holiday time off to holiday pay and eliminating personal time carryover, members currently have banked and carried over holiday time/personal time on the books. Such time shall be retained and the member shall take the holiday at a later date subject to the written approval of the Employer/Designee, but said approval shall not be unreasonably denied.

Section 22.4. Holiday Pay Eligibility. In order to be eligible to receive holiday pay benefits under section 1, the employee must work his last scheduled shift prior to the recognized holiday and his first regularly scheduled shift following the holiday.

Section 22.5. Personal Days. Each bargaining unit member shall receive six (6) personal days off. These days are to be used in addition to holidays or festive days off, provided notification is given and approval of the days off received in advance from the Employer/Designee based on sufficient manpower or other operational needs. Consecutive personal days can be taken only with approval of the Employer/Designee.

Section 22.6. Up to a total of forty (40) hours of Personal and Vacation time may be carried over into the following year.

ARTICLE 23 **CLOTHING ALLOWANCE**

Section 23.1. Allowance. Each bargaining unit member shall be reimbursed for up to \$1,400.00 per year for clothing (new uniforms, cleaning, replacement and repair), for new shoes, and for cleaning supplies and equipment required to maintain his service weapon.

Section 23.2. Weapon Purchase. Upon retirement of the bargaining unit member, the City agrees to sell the employee his on-duty service weapon at the cost of one dollar (\$1.00), provided the officer is in good standing.

Section 23.3. Payment of Reimbursement. Members shall submit receipts for all items for which reimbursement is sought. Receipts submitted more than thirty (30) days prior to commencement of a calendar quarter shall be paid by the City in the first ten (10) days of the next calendar quarter.

Section 23.4. Leather Goods. All bargaining unit members shall be furnished such on-duty leather goods as may be determined by the Chief of Police at the City's expense.

Section 23.5. Bullet Proof Vests. All bargaining unit members will be provided with a bullet proof vest, as may be required, at the cost of the City. A member's bullet proof vest will be replaced by the City every five (5) years or at the appropriate recommendation of the manufacturer.

ARTICLE 24
WAGES

Section 24.1. Wage increases for bargaining unit members shall be as follows: Effective July 1, 2017:

For the first year of the Agreement:	1.0% increase
For the second year of the Agreement:	1.0% increase
For the third year of the Agreement:	1.0% increase

Classification/Rank	Service Time	Annual Salary	Hourly	Bi-Weekly
Civil Service Patrol Officer	Entry	\$35,214.40	\$16.93	\$1,354.40
Civil Service Patrol Officer	After 1 year FT	\$39,145.60	\$18.82	\$1,505.60
Civil Service Patrol Officer	After 2 years FT	\$43,201.60	\$20.77	\$1,661.60

ARTICLE 25
SHOOTING AND/OR TRAINING TIME

Section 25.1. Employees who are required to attend shooting practice or designated training time when off duty shall receive a minimum of two (2) hours, or the actual time spent, whichever is greater, at the normal overtime rate. Such compensation shall be received in compensatory time only.

Section 25.2. Officers of Uniform Division, designated as Training Officers/Investigators, will be compensated for their services at a rate not to exceed five hundred dollars (\$500.00) in any one (1) year. The Training Officers/Investigators' policy for the Division of Police will serve as guidance for assignment of such officers and for the payment of compensation.

ARTICLE 26
LONGEVITY

Section 26.1. Each bargaining unit member shall receive annually, in addition to salary or other compensation that may be provided by this Agreement or any other ordinance, additional compensation based on the number of continuous full years of service, including interim military service and prorated part time service according to the following schedule:

1 through 4 years of service	\$522.50
5 through 9 years of service	\$1,182.50
10 through 13 years of service	\$1,292.50
14 through 19 years of service	\$1,512.50
20 years or more of service	\$1,732.50

Section 26.2. Longevity shall be added to the employee's base compensation and shall be payable in twenty-six (26) bi-weekly payments. Under no circumstances shall previously accumulated longevity time of an employee who resigned or terminated his employment with the City be placed to his credit upon re-employment.

ARTICLE 27
STAND-BY/ON-CALL STATUS

Section 27.1. A bargaining unit member shall receive two (2) hours pay at his regular straight-time hourly rate if required to be on stand-by duty by the City. The City shall allow a reasonable time in which to reach members on stand-by. This pay shall be paid in addition to any hours that an employee is required to work on that day.

- A. For purposes of this article, the terms “stand-by” and “on-call status” shall be synonymous.
- B. In the event it is necessary to place a bargaining unit member on stand-by, the stand-by assignment shall be offered in order of seniority to all off duty members. The decision to place a member on stand-by shall be made by a superior officer.
- C. In the event no member voluntarily accepts the offer, the stand-by assignment shall be assigned to the least senior off duty member available.
- D. Bargaining unit members on stand-by shall be and remain immediately accessible for telephone contact and ready and able to report for work within one (1) hour of said telephone contact.
- E. A “stand-by” or “on-call” overtime form shall be completed by the officer who notified the member of his stand-by assignment, noting the time and date of same. The member shall sign the form, if he is available.
- F. Stand-by assignments shall not exceed eight (8) continuous hours within a twenty-four (24) hour period, beginning with the start of the stand-by assignment.

Section 27.2. Detectives/Weekend On-Call Status. Members of the bargaining unit who are assigned to the Detective Bureau unit shall receive four (4) hours of compensatory time for regularly scheduled days off or each weekend period spent in on-call status. A weekend period shall be defined as beginning at 2300 hours on Friday and ending at 0700 hours on Monday.

ARTICLE 28
SUPPLEMENTAL COMPENSATION

Section 28.1. Detective Supplement. Members of the bargaining unit who are assigned to the Detective Bureau shall receive an additional forty-five cents (\$0.45) per hour additional compensation.

Section 28.2. S.W.A.T. Team Members Status Compensation. Bargaining unit members serving and assigned as S.W.A.T. team members shall receive additional compensation of two thousand seven hundred fifty dollars (\$2,750.00) payable in twenty-six (26) bi-weekly payroll installments, which shall be added to the employee's base pay.

ARTICLE 29
HEALTH, DENTAL AND LIFE INSURANCE

Section 29.1. The Employer shall make available to all employees comprehensive major medical, hospitalization, and prescription insurance coverage and benefits in the same manner as is offered to non-bargaining unit employees. The Employer shall select appropriate carriers/providers and otherwise determine the method of provision and coverage. The costs and/or terms and conditions of said insurance shall be at the discretion of the Employer and may be subject to change. The Employer will meet with the Union prior to the implementation of a new plan and/or carrier to discuss new plan design. The participating employee may either select single, with spouse, with children, family or other coverage offered under the plan.

Section 29.2. Contribution Rates. Employees shall contribute the following amounts toward the monthly premium for their health care coverage/program beginning with the first full month following the issuance of the conciliation award:

Ten percent (10%) per month

Section 29.3. Deduction Procedure. Bargaining unit employees shall have their monthly premium amount deducted over two (2) paychecks per month.

Section 29.4. Spousal Coverage. Effective the first full month following the implementation of the conciliation award, spousal coverage will be available only upon proof that the spouse does not have other medical insurance coverage available to him/her through the spouse's employer.

Section 29.5. Dental Coverage. Each full-time employee eligible and desiring participation in the City's dental service coverage shall be required to contribute, toward the premium charge, the following: as to single person coverage the sum of fifteen dollars (\$15.00) per month and as to family coverage the sum of forty-two dollars (\$42.00) per month.

Section 29.6. 125 Plan Election. A bargaining unit employee shall have the option of designating his premium contributions and any additional amounts "pre-tax" in accordance with a "Section 125" cafeteria plan, which the City implemented May 1, 2004, and which all bargaining unit employees shall be eligible to participate in.

Section 29.7. Life Insurance. The City at no cost to the employee shall provide a Life Insurance policy for each bargaining unit member in the amount of Fifty Thousand Dollars (\$50,000.00).

ARTICLE 30
LIABILITY COVERAGE

Section 30.1. The City shall indemnify the bargaining unit member and hold him harmless for all acts or decisions carried out in good faith while performing services or official duties for the City. In this regard, the City shall provide legal representation to defend the member against any lawsuit and shall also pay all expenses and the cost of court settlements including those actually and necessarily incurred and authorized by the City's Director of Law in connection with the defense of such act, suit or proceeding including any appeal. No indemnification shall be made in respect to any claim, issue or matter as to which such person is adjudged to be liable in a court of competent jurisdiction for misconduct in the performance of his duty to the City.

ARTICLE 31
EDUCATIONAL BENEFITS

Section 31.1. Any employee who has received a Bachelor's Degree shall receive additional compensation in the amount of five percent (5%) of base pay. The educational incentive compensation shall be added to employee's base pay and shall be payable in twenty-six (26) bi-weekly payroll installments.

Section 31.2. Any employee who has received an Associate's Degree shall receive additional compensation in the amount of two percent (2%) of base pay annually. The educational incentive compensation shall be added to the employee's base pay and shall be payable in twenty-six (26) bi-weekly payroll installments.

ARTICLE 32
OUT-OF-CLASS PAY

Section 32.1. Assignments as the Acting Road Sergeant shall be left to the sole discretion of the Officer-in-Charge. The Acting Road Sergeant shall receive the base rate of pay for a sergeant, per eight (8) hours shift for which he is designated to act in that capacity.

ARTICLE 33
EMPLOYER FACILITIES

Section 33.1. Bulletin Board. The City shall provide the Union with a bulletin board, provided that:

1. Such bulletin board shall be used for posting notices bearing the written approval of the Union associate or an official representative of the FOP, and shall be solely for Union business; and
2. No notice or other writing may contain anything political, controversial or critical of the City or any other institution or of any employee or other person; and

3. Upon request from an appropriate official of the City, the Union will immediately remove any notice or other writing that the City believes violates sub-paragraphs (1) and (2), but the Union shall have the right to grieve such action through the grievance procedure.

Section 33.2. Ballot Boxes. The FOP shall be permitted to place ballot boxes at the facilities for the purpose of collecting members' ballots on approval or disapproval of Union issues and the election of officers and delegates of the Union.

Section 33.3. Locker Rooms. All employees will be provided a locker at the police department for his personal use, plus a clean and sanitary locker room, restrooms, and a lunch room.

ARTICLE 34 **NO STRIKE/NO LOCKOUT**

Section 34.1. The Employer and the FOP agree that the grievance procedures provided herein are adequate to provide a fair and final determination of all grievances arising under this Agreement. It is the desire of the Employer and the FOP to avoid work stoppages and strikes.

Section 34.2. No Strike. Neither the FOP nor any member of the bargaining unit for the duration of this Agreement shall directly or indirectly call, sanction, encourage, finance, participate, or assist in any way in any strike, slowdown, walkout, concerted "sick leave" or mass resignation, work stoppage or slowdown, or other unlawful interference with the normal operations of the Employer for the duration of this Agreement. A breach of this section may be grounds for discipline.

Section 34.3. The FOP shall, at all times, cooperate with the Employer in continuing operations in a normal manner and shall actively discourage and attempt to prevent any violations of the "no strike" clause. In the event of a violation of the "no-strike" clause, the FOP shall promptly notify all employees in a reasonable manner that the strike, work stoppage or slowdown, or other unlawful interference with normal operations of the Employer is in violation of this Agreement, unlawful and not sanctioned or approved of by the FOP. The FOP shall advise the employees to immediately return to work.

Section 34.4. No Lockout. The Employer shall not lock out any employees for the duration of this Agreement pursuant to Section 4117.11 (A) (7) of the Ohio Revised Code.

ARTICLE 35 **RESIDENCY**

Section 35.1. The Employer agrees to comply with the applicable law on the matter.

ARTICLE 36
WORK RULES

Section 36.1. The Union recognizes that the Employer, under this Agreement, has the right to promulgate and implement new and revised work rules, regulations, and policies and procedures that regulate the conduct of employees and the conduct of the Employer's services and programs.

Section 36.2. Prior to implementation or modification of any new or existing rule, regulation, policy or procedure which affects members of the bargaining unit, the Employer will notify the Union at least seven (7) days in advance of the effective date, and if requested, meet with the Union to discuss the matter. In the event that the modification or implementation is being made in connection with an exigent circumstance or potential safety hazard, such shall become effective immediately upon notification to the employee(s).

Section 36.3. No Violation of Contract. The Employer recognizes and agrees that no work rules, regulations, policies, or procedures shall be modified, maintained, or established that are in violation of any expressed terms or provisions of this Agreement. To the extent the Union believes such has occurred, it shall have the ability to file a grievance.

ARTICLE 37
DURATION OF AGREEMENT

This Agreement represents a complete understanding between the City and the Union, and it shall be effective July 1, 2017, through June 30, 2020. No sooner than ninety (90) days prior to said expiration, either party may file a notice to negotiate on any or all of its provisions.

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have set their hands this 3rd day of October, 2019.

For the City of East Cleveland

For the FOP/OLC, Lodge No. 39

Mayor Brandon King

FOP Representative

Willa Hemmons, Director of Law

FOP Representative



Belinda Kyle, Human Resources Director

Lucy DiNardo, FOP Staff Representative

Approved as to Form:

Willa Hemmons, Director of Law

APPENDIX A
COMMUNICABLE DISEASES

Section 1. Upon written request, bargaining unit members shall be provided with information on all communicable diseases to which he may have routine workplace exposure. Information provided to bargaining unit members shall include the symptoms of diseases, modes of transmission, methods of self-protection, proper workplace procedures, special precautions, and recommendations for immunization where appropriate. The City shall develop, within one hundred eighty (180) days of the execution of this Agreement, a written communicable diseases policy and along with any revisions to said policy disseminate to all bargaining unit members a copy of the policy and all revisions.

Section 2. The City recognizes that bargaining unit members come in contact with individuals infected with the hepatitis B virus and that the member may be at increased risk for acquiring hepatitis B infection. All bargaining unit members have the right to be vaccinated for hepatitis B. Such vaccinations shall be made available, at no cost to the bargaining unit member, for those members who desire it. The City shall develop, within ninety (90) days of the execution of this Agreement, a written policy and procedure for administering the vaccination program.

Section 3. If a bargaining unit member sustains a significant exposure to the blood or body fluid of another person being handled or transported, the member may request notification of exposure to a contagious of infectious disease.

The bargaining unit member may submit a written request for notification to the health care facility or coroner who receives the person. The written request must include the name, address and telephone number of the member, the name of the member's supervisor and complete name of the employing organization, and the date, time, location and manner of exposure.

The request for notification is valid for ten (10) calendar days, and may be renewed, if necessary, by resubmitting a second complete request. If, at the end of the ten (10) calendar day period of the request, no test has been performed, no diagnosis has been made, or the results of any applicable tests are negative, the facility or coroner must notify the member accordingly.

If a contagious or infectious disease is diagnosed, or confirmed by a positive test result, the facility or coroner must give oral notification to the member within two (2) calendar days of such findings. A written notification must follow the oral notification within three (3) working days. The oral and written notification of positive results or diagnosis must include the name of the disease, its signs, symptoms, and incubation period, the modes of transmission, the medical precautions necessary to prevent transmission to others, appropriate prophylaxis, treatment, and counseling for the disease.

If the person has been transferred to another facility, the original receiving facility or coroner must assist the member in securing the requested information from the facility now treating the person.

Section 4. Any bargaining unit member who believes he may have been exposed to HIV while dealing with another person in the performance of his duties may bring an action in a probate court for an order compelling another person to undergo HIV testing pursuant to Section 3701.24 of the Ohio Revised Code.

Section 5. All bargaining unit members must report any suspected job-related exposure to their immediate supervisor. This alleged exposure is then to be recorded on the appropriate report form, developed by the City, and permanently maintained in the bargaining unit member's personnel file according to the procedure as outlined by the City.

Section 6. If a bargaining unit member has sustained a significant exposure (puncture wound or splash), to the blood or body fluids of another, a medical workup shall be completed for the member. If, after said workup, it is determined that HIV antibody testing is appropriate for the member by a physician, the following testing guidelines shall be followed:

HIV antibody testing shall be performed at each of the following intervals:

- Within seventy-two (72) hours of the incident;
- Three (3) months after the incident; and
- Six (6) months after the incident.

Testing results shall be strictly confidential. The bargaining unit member shall also be given the option to anonymous testing and may be referred to an Ohio Department of Health Counseling and Testing Site.

Section 7. In the event that the above tests are performed and the results are positive, the member shall be given the Western Blot Test. The City shall pay all costs for testing of the bargaining unit member. There shall be no releasing of the test results prior to the Western Blot Test to anyone other than the physician and the member.

In the event a positive test occurs in the Western Blot Test, the results shall be kept completely confidential between the physician and the member until such time it is finally determined that the member is actually infected.

Section 8. In the event of such a final determination, the results shall be kept completely confidential between the physician, the member, and the City.

Section 9. If, as a result of the above provided physical examination, it is determined that a bargaining unit member is actually afflicted with AIDS, as opposed to just testing positive for AIDS antibodies, the City may:

- a) allow the afflicted member to continue work until he is physically unable to do so; or
- b) relieve the afflicted member from duty and put him on injury leave for up to ninety (90) days, and then sick leave, if necessary, pending the approval of his retirement by the Pension System.

Section 10. The City may grant the member enough additional sick leave to keep the member on full pay status until his retirement is approved.

Section 11. In any instance where the bargaining unit member is receiving pay pursuant to the above provisions and such pay is not the result of the member utilizing accumulated leave credits, the City will be entitled to an offset against wages paid by other received payments.

Section 12. All costs associated with any and all AIDS tests administered pursuant to this article shall be borne by the City.

APPENDIX B
GENERAL DISCIPLINE POLICY

PURPOSE

Discipline is a tool of last resort taken against officers or employees for actions or inactions that result in undesirable conduct or behavior or unproductive work.

Termination is an action taken to eliminate a job or remove an officer or employee from a job. Implicit in a termination decision is a reasonable assumption that the officer's or employee's job cannot or should not be saved.

All discipline and termination actions will be only for cause.

CAUSE DEFINED

Cause is defined as any situation when an officer or employee fails (with or without fault) to comply with or satisfy the legitimate performance expectations of the East Cleveland Division of Police, whether the expectations be written, verbal or established through customs, traditions or practices.

Seven principles provide a functional definition of cause. They are:

1. Officers/employees receive advance notice (expressed verbally or in writing) of what is required or prohibited and the consequences for failure to comply with such expectations.
2. A rational relationship exists between what is required and the efficient, effective and safe operations of the East Cleveland Division of Police. It is to be assumed that all directives of management are reasonable and rational until proven otherwise by the office/employer contesting them.
3. Fact-finding efforts were made to determine the officer's/employee's failure before action is taken against the officer/employee.
4. A fair and objective investigation was held to determine the facts, and the officer/employee was given an opportunity to be heard, represented, present evidence or challenge such facts.
5. Substantial evidence exists to prove the officer/employee is guilty as charged. (Substantial evidence means evidence that would lead a reasonable person to believe that it is true.)
6. Discipline or removal actions are applied without unlawful discrimination.

7. The level of discipline or decision to terminate is reasonably related to the seriousness of the proven offense as well as the officer's/employee's employment and work history.

In relation to the seventh principle listed above, Five Factors of Equity will be taken into consideration in determining what level of disciplinary action will be taken or whether termination will occur. Each decision will be made on a case-by-case basis.

THE FIVE FACTS OF EQUITY

1. The seriousness of the offense as it related to the nature and extent of damages or the potential damage or the potential damage or future liability to the East Cleveland Division of Police.
2. The deterrent effect (i.e. message) that needs to be conveyed to other employees to prevent similar infractions or to ensure that similar infractions will not occur or be tolerated.
3. The degree of officer/employer culpability (i.e., fault), if any, and the officer's/employee's attitude about acknowledging wrong doing and making a commitment to improve; this includes the officer's/employee's cooperation in the investigation and resolution process.
4. The officer's/employee's previous disciplinary and performance records to include, but not limited to, time between other offenses, the nature of other offenses, work productivity, attendance rates, cost of supervision, types of performance errors and the like.
5. The seniority of the officer/employee.

Should employees believe that the level of action taken against them is excessive for the proven offense, they are encourage, or may be directed, to respond in writing to each of the five considerations above stating why, in their opinion, a lesser action is justified.

INCOMPETENT PERFORMANCE AND MISCONDUCT

Incompetent performance is defined as performance that fails to satisfy the standards either set by management or required for the job. Consequently, all performance failures are classified as incompetent performance.

Misconduct is defined as any action or inaction (including violations of verbal and/or written directives as well as customs or practices of the East Cleveland Division of Police) by an officer/employee for which a rational person could reasonably expect to be sanctioned. The term misconduct implies that incompetent performance occurred, at least in part, because of the officer's/employee's negligence or intent. The officer/employee either intended to do the wrong thing or did not care enough to do the right thing. Substantial evidence suggests that the officer/employee made a deliberate choice to work against the standards of the East Cleveland Division of Police. The Five Standards of Equity will work against the employee in these cases.

Incompetent performance occurring as a result of an officer's/employee's lack of knowledge, skills, abilities or fitness to perform is not misconduct. The officer/employee tried to comply but failed to perform to expectations. The Five Standards of Equity will work for the employee in these cases, if possible.

Caution: Certain violations of directives such as fighting, theft, falsifying reports, harassment and the like can lead directly to termination without the benefit of a second change. Management will make every effort to help and officer/employee save a job position when an unreasonable risk of negligent retention is at issue, or when the officer/employee fails to accept the responsibility to bring about an effective and lasting change in an area of deficient conduct, behavior or performance.

CORRECTIVE COUNSELING

At times, personal problems may interfere with an officer's/employee's ability to perform normally. When the results are not serious enough for discipline but call for a more formal type of supervision than consulting with the employee, formal counseling is the proper tool to help the employee.

Corrective counseling is not discipline, but is the last tool management has available to correct a problem prior to discipline.

All corrective counseling must be documented on proper forms and will serve as proof that the employee was formally warned to correct the problem or face progressive disciplinary action up to and including termination.

ADMINISTRATIVE LEAVE

Administrative leave occurs any time the officer/employee must be relieved of normal duties until a proper investigation or other administrative proceedings can be held. Usually the situation involves a care of serious misconduct such as drinking, fighting, endangering another, or excessive use of force. It can involve being mentally or physically unfit for duty. In such cases, leaving the employee in position would create a unreasonable liability, safety or credibility issue for the East Cleveland Division of Police.

Any supervisor can place an employee on administrative leave if deemed necessary. Formal documentation must then be forwarded immediately to the Chief of Police. Then, a decision must be made within 24 hours of receiving such notice about whether the employee will continue on administrative leave and the expected length of time, if possible.

ADMINISTRATIVE FURLOUGHS

The purpose of an administrative furlough will pay (up to 12 weeks) is to help the officer/employee adjust and handle any personal or emotional needs resulting from traumatic events. Administrative furloughs will be considered on an incident-by-incident basis. All records related to the furlough will become part of the officer's/employee's medical records and kept separate from the personnel file.

DEMOTIONS

Demotions occur as the result of the officer's/employee's inability to perform or the loss of confidence in the employee's credibility, decision-making-ability, or ability to perform. These are not considered to be disciplinary actions, but can occur in conjunction with other forms of discipline.

STEP OF PROGRESSIVE DISCIPLINE

Progressive discipline theory holds that the level of disciplinary action taken against an officer/employee should be commensurate with the Five Standards of Equity as expressed above. Discipline can progress incrementally from the lowest to the highest level, be reversed if infractions show improvement over previous infractions, and depending on circumstances, steps can be skipped, particularly if the offense created a serious result of liability for the East Cleveland Division of Police. Each case requires a case-by-case analysis.

The steps comprising the progressive discipline system for the East Cleveland Division of Police consist of the verbal warning, the written reprimands, suspension, demotion and termination. The City may bypass steps at its discretion based upon the seriousness of the offenses and/or appropriateness of the discipline under the circumstances. All steps related to progressive discipline must be documented on prescribed forms.

Verbal Warning

A verbal warning is a documented or undocumented informal notice.

Written Reprimand

A written reprimand is typically the least intrusive step in the progressive discipline system; however, it may be skipped if warranted by the Five Standards of Equity.

Suspensions

Suspensions are serious in nature and occur when an officer/employee fails to respond positively to lesser forms of corrective action, or the nature of the violation is serious enough to justify skipping lower levels of discipline. This means the offense is serious enough that corrective counseling, or a written reprimand would send the wrong message to others or is likely to have little or no affect on the offending officer's/employee's conduct or behavior.

The Chief of Police (in accordance with the Five Standards of Equity) may suspend an employee without pay for any single offense or for multiple offenses arising out of the same incident. The length of the suspension or extensions of such suspension will be in compliance with any current local, state or federal laws, regulations or agreements that may be in effect at the time of the suspension.

DISCIPLINE NOTICE

Whenever disciplinary action occurs, the officer/employee is informed in writing of the following specific elements:

1. The exact offense violated.
2. How the violation affects the East Cleveland Division of Police ability to be an effective, efficient or safe employer.
3. What the officer/employee must do to avoid future disciplinary action.
4. How much time the officer/employee has to demonstrate that the problem has been corrected.
5. What further disciplinary action, possibly including termination, will occur if performance does not improve.
6. Additionally, the officer/employee will be notified of any appeal rights that may currently exist and whom to contact to file an appeal.

DISCIPLINE DEACTIVATION

In the absence of any other specific agreement between the East Cleveland Division of Police and its officers/employees, the following discipline deactivation period is established:

- Verbal Warnings will be in effect for twelve (12) months.
- Written Reprimands will be in effect for eighteen (18) months.
- Suspensions of three days or less will be in effect for twenty-four (24) months.
- Suspensions for more than three days will be in effect for thirty-six (36) months.

If no further performance problems occur during the active period, the discipline procedure will be formally deactivated at the end of the appropriate time period. The Chief of Police will initiate a memo advising officers/employees of the inactive status of discipline. Notice: Deactivating a disciplinary record does not invalidate its use when relevant to a termination decision. In termination decisions, the officer's/employee's employment history will be taken into consideration.

TERMINATION

All employees are subject to termination for cause. Cause can occur with or without fault on the employee's part. Fault and non-fault terminations include, but are not limited to, situations that involve:

- Resignations
- Abandonment of the position
- Failure to maintain job qualifications or competencies

- Death
- Disciplinary reasons Notice of Termination

Notice of Termination

If necessary, pending an investigation of performance evaluation, the officer/employee may be placed on paid administrative leave pending the outcome. If the employee should be terminated (with or without fault), the officer/employee will be informed of the following:

- The reason for the termination
- Whether the termination will be classified as a "termination with fault" or a "termination without fault"
- The effective date of termination
- Whom to contact regarding status of fringe and retirement benefits if applicable
- A statement that the content of the officer's/employee's record relating the termination will be made available to the employee according to law
- To whom to appeal

The East Cleveland Division of Police does not intend to illegally discriminate against current employees, potential employees or employee groups on the basis of sex, ethnic background, race, religion, color, age or physical handicap in any disciplinary or termination proceedings.

CITY OF EAST CLEVELAND DIVISION OF POLICE

Management's Expectations of Its Employees

All employees are expected to give the best work efforts, achieve the standards set for their jobs and to contribute to and improve the quality of services to the community.

Employees are expected to support and affirmatively promote the mission, goals, objectives (written as well as verbal), and other lawful expectations of the department, to affirmatively promote means to actively seek ways to respond to the lawful directives of supervisors and management in a positive manner and to be responsive to the reasonable request of the citizens served.

All decisions concerning an employee's employment status (for example: selection, retention, compensation, advancement, or training) are to take into consideration the employee's proven ability to be productive, behave in a socially-acceptable manner, work in a positive and productive manner, and exhibit professional conduct when identified as an employee. Among an employee's most important work responsibilities is the responsibility to attend work in a regular and predictable manner. Failure to do so is cause for removal with or without fault.

Additionally, employees have the responsibility to know their duties and to perform them efficiently, effectively, safely, correctly, and pleasantly. They are expected to cooperate with management to achieve the legitimate objectives of their positions. To strive to get along with other employees, to treat others with the dignity and respect they deserve as fellow human beings, to maintain a positive work attitude, and to adhere to all organizational directives (verbal and written) as well as customs and practices that are legitimately established.

All employees are expected to adjust to the changes that often occur in their jobs and to advance their knowledge and professional development by keeping abreast of changes in their current jobs as well as new jobs if assigned.

While employees have the right to make their own choices in matters of public concern, they are expected not to let personal conditions or problems unduly affect their responsibilities to the public, their jobs, their supervisors and their peers.

SIDE LETTER
STATUTORY RIGHTS

The parties agree that any statutory right not specifically identified as being preempted by this agreement that is covered by this agreement shall be deemed to be preempted by the agreement. Upon notice to the other side of the existence of a statutory right meeting this definition, the parties agree to amend Article 2 to include that topic. Section 1.2 of the parties' agreement shall not preclude such action.