

RESOLUTION R-66 -09

**A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT
BETWEEN THE CITY OF WHEATON AND
THE FRATERNAL ORDER OF POLICE LABOR COUNCIL**

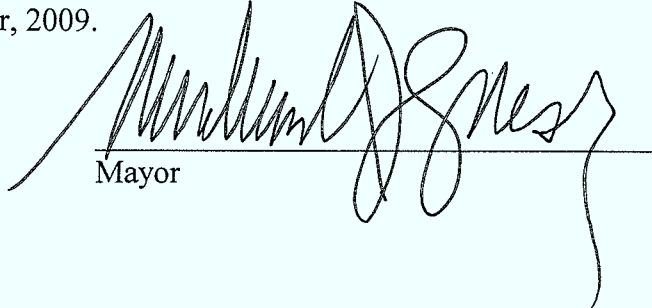
WHEREAS, the Fraternal Order of Police Labor Council is the collective bargaining representative for Wheaton's Police Department full-time and part-time employees in the following classifications: Community Service Officer and Police Services Representative; and

WHEREAS, the City of Wheaton and Fraternal Order of Police Labor Council have a collective bargaining agreement which expired April 30, 2009; and

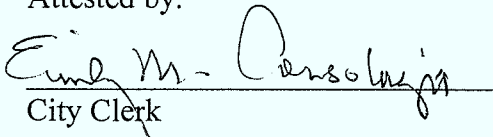
WHEREAS, the negotiating teams for the City of Wheaton and Fraternal Order of Police Labor Council have recommended approval of a proposed extension to the labor contract to the union membership and to the Wheaton City Council.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is authorized to execute an agreement between the City of Wheaton and Fraternal Order of Police Labor Council, said agreement dated May 1, 2009 through April 30, 2010.

ADOPTED this 21st day of September, 2009.


Mayor

Attested by:


City Clerk

Ayes:

Roll Call Vote:

Councilman Mouhelis
Mayor Gresk
Councilman Prendiville
Councilman Scalzo
Councilman Suess
Councilwoman Corry
Councilman Levine

Nays:

None

Absent:

None

Motion Carried Unanimously

Adopted: September 21, 2009

PREAMBLE

This Agreement is entered into by and between the City of Wheaton, an Illinois municipal corporation (hereinafter referred to as the "Employer") and the Fraternal Order of Police Labor Council (hereinafter referred to as the "Union"), pursuant to Illinois Labor Relation Board Certification S-RC-98-17.

The purpose of this Agreement is to provide an orderly collective bargaining relationship between the Employer and the Union representing the Employees in the bargaining unit, and to make clear the basic terms upon which such relationship depends.

In consideration of the mutual promises, covenants and agreements contained herein, the parties hereto, by their duly authorized representatives and/or agents, do mutually covenant as follows:

ARTICLE I RECOGNITION

The Employer hereby recognizes the Union as the exclusive collective bargaining representative for the purpose of collective bargaining on matters relating to wages, hours and all other terms and conditions of employment of all employees in the bargaining unit. The bargaining unit shall include:

All full-time employees of the City of Wheaton Police Department in the following job classifications: Community Service Officer and Police Services Representative.

Positions excluded from the above-described bargaining unit shall include:

All peace officers, all other employees employed by the City of Wheaton, and all supervisors, confidential employees and managerial employees as defined by the Illinois Public Relations Act.

ARTICLE II NON-DISCRIMINATION

Section 1 - Non-Discrimination.

Neither the City nor the Union shall discriminate against any employee in a manner, which would violate any applicable law because of race, creed, color, national origin, age or sex.

Section 2 - Union Membership or Non-Membership.

Neither the City nor the Union shall interfere with the rights of employees to become or refuse to become members of the Union, and there shall be no discrimination against any employee because of lawful Union membership or non-membership activity or status. The Union recognizes its responsibility as a bargaining agent and agrees to represent fairly all employees in the bargaining unit.

Section 3 - Remedy for Alleged Violation.

Employees asserting a violation of this Article of the contract may process their grievance up to but not including binding arbitration. Employees dissatisfied with the disposition of grievances under this article may seek redress before the appropriate administrative agency or in the appropriate court.

ARTICLE III DUES DEDUCTION

Section 1 - Dues Deduction.

Upon receipt of a written authorization form (approved by the City) submitted by a member of the bargaining unit, the City agrees to deduct the dues of any member of the bargaining unit from his/her pay; such dues shall be deducted in equal monthly installments. The Union agrees to advise the Employer of any increase in dues in writing at least 30 days prior to its effective date; such deduction shall be remitted monthly to the Illinois Fraternal Order of Police Union at the address designated by the Union.

Section 2 - Membership and Fair Share.

The Employer shall make monthly payroll deductions for regular Union dues and, if any, initiation fees for each Union member/employee covered by this Agreement upon receipt of a written and signed authorization form. The amounts deducted shall be in accord with the schedule submitted to the City by the Union.

Bargaining unit employees who are not members of the Union shall, as a condition of employment, commencing thirty (30) days after employment or thirty (30) days after the effective date of this Agreement, be required to pay a fair share fee to the Union for collective bargaining and contract administration rendered by the Union. Such fair share fee shall not exceed the full dues amount paid by members of the Union. The fair share fee shall be deducted by the Employer from the earnings of non-members and remitted to an address provided by the Union. The Union shall supply to the Employer a list of non-members and shall certify to the Employer the fair share amounts to be deducted. Fair share amounts shall not include any contributions related to the election or support of any candidate for political office.

The Union agrees to assume full responsibility to insure full compliance with the requirements laid down by the United States Supreme Court in Chicago Teachers Union v. Hudson, 106 U.S. 1066 (1986), with respect to the constitutional rights of fair share payers.

Accordingly, the Union agrees to the following:

- A. Give timely notice to fair share fee payers of the amount of the fee and an explanation of the basis for the fee, including the major categories of expenses, as well as verification of same by an independent auditor.
- B. Advise fair share fee payers of an expeditious and impartial decision-making process whereby fair share payers can object to the amount of the fair share fee.
- C. Place the amount reasonably in dispute into an escrow account pending resolution of any objections raised by fair share fee payers to the amount of the fair share fee.

It is hereby agreed that any dispute concerning the amount of the fair share fee and/or responsibilities of the Union with respect to fair share fee payers as set forth above, shall not be subject to the grievance/arbitration procedure set forth in this Agreement.

Non-members who object to this fair share fee based upon bona fide religious tenets or teachings shall pay an amount equal to such fair share fee to a non-religious charitable organization mutually agreed upon by the employee and the Union. If the affected employee and the Union are unable to reach agreement on the organization, the organization shall be selected by the affected employee from an approved list of charitable organizations established by the Illinois State Labor Relations Board and the payment shall be made to said organization.

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Section 3 - Indemnification.

The Union shall indemnify and hold harmless the Employer, its elected representatives, officers, administrators, agents and employees from and against any and all claims, demands, actions, complaints, suits or other forms of liability (monetary or otherwise) that arise out of or by reason of any action taken or not taken by the Employer for the purpose of complying with the provisions of this Article, or in reliance on any written check-off authorization furnished under any such provisions.

ARTICLE IV MANAGEMENT RIGHTS

Except as specifically limited by the express written provisions of this Agreement, the City retains all traditional rights to manage and direct the affairs of the City in all of its various aspects and to manage and direct its employees, including but not limited to the following: to plan, direct, control and determine the budget and all the operations, services and missions of the City; to supervise and direct the working forces; to establish the qualifications for employment and to employ employees both internally and externally to other police-related assignments or functions; to maintain a capable and efficient police force; to establish specialty positions and select personnel to fill them; to establish work and productivity standards and from time-to-time to change those standards; to assign overtime; to contract out for goods and services; to determine the methods, means, organization and number of personnel by which such operations and services shall be made or purchased; to make, alter and enforce reasonable rules, regulations, orders, policies and procedures; to evaluate employees; to establish performance standards for employees; to discipline, to suspend, and discharge employees for just cause in accordance with applicable law; to change or eliminate existing methods, equipment or facilities or introduce new ones; to determine training needs and assign employees to training; to determine work hours and set schedules; to determine internal investigation procedures; to take any and all actions as may be necessary to carry out the mission of the City and the Police Department in the event of civil emergency, riots, civil disorders, tornado conditions, floods, etc. as may be declared by the Mayor, the City Manager, Police Chief or their authorized designees; and to generally carry out the mission of the City.

ARTICLE V SUBCONTRACTING

The City agrees to provide thirty days notice to the Union prior to any subcontracting of bargaining unit work. In cases of emergency notification will be made as soon as is practicable.

ARTICLE VI ENTIRE AGREEMENT

This Agreement constitutes the complete and entire agreement between the parties and concludes collective bargaining between the parties for the contract's term. This Agreement supersedes and cancels all prior practices and agreements, whether written or oral which conflict with the expressed terms of this Agreement. If a past practice is not addressed in this contract, it may be changed by the employer as provided in the Management Rights clause.

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 subject matter not removed by law or ordinance from the area of collective bargaining and that the understandings and agreements reached by the parties after the exercise of that right and opportunity are set forth in this Agreement. The Union specifically waives any right it might have to impact or effect bargaining for the life of this Agreement.

ARTICLE VII STRIKES PROHIBITED

Section 1 - No Strike.

During the term of this Agreement, neither the Union nor its agents or any employee covered by this Agreement for any reason, will authorize, institute, aid, condone or engage in a slowdown, work stoppage, refusal to cross picket lines, strike, or any other interference with the work and statutory functions or obligations of the City. The City agrees that it will not lockout employees during the term of this Agreement as the result of any labor dispute.

Section 2 - Union Responsibility.

The Union agrees to notify all employees and representatives of their obligation and responsibility for maintaining compliance with this Article, including their responsibility to remain at work during any interruption which may be caused or initiated by others, and to encourage employees violating Section 1 of this Article to return to work.

Section 3 - Discipline of Strikers.

The City may discharge, discipline and deduct pay or withhold other benefits of any employee who violates Section 1 and/or any employee who fails to carry out his/her responsibilities under Section 2, and the Union will not resort to the Grievance Procedure on such employee's behalf.

Section 4 - Employer Rights.

The Union agrees that the City has the right to deal with any such work interruption activity by imposing discipline, including discharge or suspension without pay on any, some or all of the employees participating therein, and/or any, some, or all of the leaders of the Union who so participate, as the City may choose.

Section 5 - Judicial Restraint.

Nothing contained herein shall preclude either party from obtaining judicial restraint and damages in the event of a violation of this Article.

Section 6 - Employee Remedy.

Any grievance filed under this Article is to be limited to the issue of whether the employee violated this Article.

ARTICLE VIII LABOR MANAGEMENT CONFERENCES

The Union and the Employer mutually agree that in the interest of efficient management and harmonious employee relations, it is desirable that meetings are held between Union representatives and responsible administrative representatives of the Employer. Accordingly, the parties agree that such meetings will be held to discuss matters of mutual concern when mutually agreed upon and at such times as are mutually agreed upon. The Union shall designate one local Union Representative. If mutually agreed times for a meeting occur during the local Union Representative's normal work hours, that one local Union representative shall be permitted to attend without loss of pay. If the local Union representative will not be in attendance, another designated local Union official may attend in his/her place; and, if such meeting occurs during that designated official's work hours, he/she shall be permitted to attend without loss of pay or benefits.

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ARTICLE IX SENIORITY

Section 1 - Definition of Seniority.

City Seniority" is defined as an employee's length of continuous full-time service as a City Employee. "Classification Seniority" is defined as an employee's length of continuous service within either the Police Service Representative classification or the Community Service Officer classification.

In the event a City employee transfers from either the Police Service Representative classification into the Community Service Officer classification, from the Community Service Officer classification into the Police Service Representative classification, or into either classification from another position with the City, that employee shall retain his or her City seniority for purposes of determining benefit accruals, but that seniority shall not be used for determining the order of vacation selection, shift bidding or overtime selection.

Section 2 - Application of Seniority.

Seniority as it is defined in Section 1, shall be used in determining vacation preferences and as so specified in any provision of this Agreement.

ARTICLE X SAFETY ISSUES

Section 1 - Safety Committee.

The Chief of Police shall appoint a designee(s) to represent him in meetings with the Union to discuss safety issues.

Any report or recommendation which may be prepared by the Union or designee(s) of the Chief of Police as a direct result of these meetings will be in writing and copies submitted to the Chief of Police and the President of the Union.

Section 2 - Disabling Defects.

Any employee who has reasonable belief that any equipment he/she is required to use is defective shall promptly report the suspected defect to his/her immediate supervisor, and the immediate supervisor will take whatever action he/she deems necessary.

Section 3: Cell Phone Usage.

Cellular telephones may be used during working hours only for City business purposes or in the event of an emergency. Personal cell phones or pagers damaged or destroyed on the job will not be replaced or paid for by the City.

Employees may choose to use their personal cellular telephones in the course of performing their job duties. Such use should be limited to calls that are necessary for the performance of employees' duties.

Use of cell phones while driving has become an increasing safety concern across the country. For this reason, the City prohibits the use of a cell phone while driving. If a cell phone call is required for business purposes while driving, the employee must pull off the road and park his or her vehicle in a safe location in order to conduct the telephone call or make use of a hands-free device.

ARTICLE XI BULLETIN BOARDS

The City will make available space on a bulletin board for the posting of official Union notices of a non-political and non-inflammatory nature. The bulletin board will not be in public view, and the Union will limit the posting of Union notices to said bulletin board.

ARTICLE XII PERSONNEL FILES

Upon an appropriate written request to the Chief of Police, an employee may inspect his/her personnel files, whether that personnel file is located at the City Hall or Police Department files, subject to the following conditions:

- A. The Chief or Director of Human Resources will determine the exact place and time.
- B. One copy of materials in any employee's personnel file shall be provided to the employee upon request if such materials are to be used in conjunction with the processing of a grievance filed by the employee.
- C. Employment information, including reference checks and responses or information provided to the City shall not be subject to inspection or copying.
- D. Employees shall have the right to attach written rebuttals to any adverse materials in their personnel files.
- E. Material pertaining to unfounded, exonerated or not sustained allegations shall not be used in any manner adverse to the employee. Such information may be maintained in a separate investigative file for the sole purpose of conforming with legal requirements, judicial orders or in the defense of the City and/or the employee in litigation.

ARTICLE XIII GENERAL PROVISIONS

Section 1- Document Review.

The Union or a representative of the Union shall have the right to examine time sheets or other records pertaining to the computation of compensation of any employee whose pay is in dispute or any other records of the employee pertaining to a specific grievance, at a time and place of mutual consent during the regular business hours of the administration division of the City, with the employee's consent.

Section 2- Replacement of Personal Property.

The Employer agrees to repair/replace as necessary an employee's eyeglasses, watch, contact lenses and prescription sunglasses if such are damaged or broken while being worn by the employee during the course of the employee's duties while the employee is required to exert physical force or is attacked by another person. Incidents are to be documented, in writing, with the employee's immediate supervisor. The Employer's obligation under this clause is limited to \$100.

Section 3- Exposure to Disease.

The Employer agrees to pay all expenses for inoculation or immunization shots for the employee and for members of the employee's immediate family when such becomes necessary as a result of said employee's exposure to contagious diseases (other than common cold or influenza) where said employee has been exposed to said diseases in the line of duty. The inoculations and shots will be performed by the City's designated physician and only in those instances where the City's designated physician recommends such an inoculation or immunization.

Section 4 - Employee Mail.

The Employer shall not open mail addressed to an employee which is either clearly personal mail or mail addressed to the Union or any of its members.

Section 5 - Union Mailbox.

The local Union Representative(s) shall be permitted to maintain a mailbox within the Police Department for the purpose of receiving mail and/or correspondence directed to the local Union. The City reserves the right to determine the location of the mailbox. The local Union Representative(s) shall be permitted access to bargaining unit mailboxes for the distribution of official Union business, by receiving prior authorization from the on-duty commander.

ARTICLE XIV OUTSIDE EMPLOYMENT

Section 1.

Employees may not be employed in any other capacity without the written approval of the Chief.

- A. Employees wishing to hold outside jobs must first apply in writing to the Chief for approval.
- B. Outside work is defined as any gainful employment other than the performance of official duties including, but not limited to, self-employment, working for another employer in the management, operation or direction of a private business for profit, including, any direct or indirect financial interest in any such business.

Section 2.

The Chief shall permit outside work to the extent that it does not prevent employees from devoting their primary interest to the accomplishment of their work for the City or tend to create a conflict between the private interests of the employee and the employee's official responsibilities:

- A. An employee shall not be permitted to perform outside work:
 - 1. Which requires the wearing of the uniform
 - 2. Which is of such nature that it may be reasonably construed by the public to be an official act of the City or the Police Department thereof;
 - 3. Which involved the use of City facilities, equipment and supplies of whatever kinds;
 - 4. Which requires the use of official information not available to the public;
 - 5. Which might encourage on the part of members of the general public a reasonable belief of a conflict of interest;
 - 6. Which requires more than 20 hours of work per week;
 - 7. Which would tend to influence the exercise of impartial judgment on any matter coming before the employee in the course of the employee's official duties;

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8. Which would involve work which the employee would be expected to do as part of his/her regular duties; or
9. Which involved management of a business closely related to the official work of the employee.

Section 3.

All requests for outside employment, whether approved or disapproved, shall be forwarded to the Director of Human Resources to be placed in the employee's personnel file. Such requests for outside employment will not be unreasonably denied.

Section 4.

Violation of this Article may be cause for disciplinary action up to and including termination.

ARTICLE XV GENERAL EMPLOYMENT PROVISIONS

Section 1 - Just Cause Standard.

No Employee covered by this agreement shall be suspended, relieved from duty, disciplined in any manner, or separated from employment without just cause, and such matters will be subject to the grievance and arbitration procedure set forth herein. These provisions shall not apply to probationary Employees (Employees with less than 12 months of employment in the bargaining unit).

Section 2 - Suspension Before Discharge

While the decision as to whether or not to discharge an employee is pending, the City may suspend the employee with or without pay.

Section 3 - Union Representation

The employee, upon request, and unless there are exigent circumstances, shall be afforded reasonable time to obtain a Union representative for informal inquiries or any investigatory interview which the employee reasonably believes may lead to discipline of the employee, and either a representative or legal counsel for formal interrogations.

Section 4 - Non-Disclosure.

No bargaining unit member shall be required or requested to disclose any item of his property, income, assets, source of income, debts or personal or domestic expenditures (including those of any member of his family or household) except as such disclosure may relate to or concern secondary employment, or obligation of public officials to make financial disclosures, unless such information is necessary in investigation of the performance of the employee's official duties or unless such disclosure is required by applicable law.

Section 5 - Photo Dissemination.

The City shall make no photo of an employee under investigation available to the media prior to a conviction for criminal offense or prior to an administrative decision unless required by law.

Section 6 - Employee Chemical Testing:

- A. **Prohibitions.** Employees are prohibited from:
1. Using, consuming or being under the influence of alcohol or illegal drugs or intentional misuse of legal drugs during the course of the workday;
 2. Failing to report to their supervisor any known adverse side-effects of medication or prescription drugs they are taking; and
 3. Consuming, possessing, selling or purchasing illegal drugs at any time.
- B. **Type of Testing.** Employees may be tested for possible drug or alcohol abuse whenever there is reasonable suspicion of alcohol or drug abuse or following an accident or injury.
- C. **Order to Take Test.** An employee who is ordered to submit to testing must immediately do so. The City shall provide the employee within a reasonable time after any order to submit to testing a written notice of the facts or inferences upon which the City based its conclusion of reasonable suspicion if the test is based upon reasonable suspicion. An employee shall have a reasonable period of time to consult with a Union representative or counsel prior to any questioning. Refusal to comply with the order to submit to testing may subject the employee to discipline, but the taking of the test shall not operate to waive any objections or rights the officer may have. No employee shall be subject to any adverse employment action except temporary assignment or relief from duty with pay until the City has received the results of the test. Such reassignment or relief from duty shall be discontinued immediately in the event of a negative test result, but shall not preclude the City from taking disciplinary action for other legitimate reasons.
- D. **Tests to be Conducted.** The City shall use only a clinical laboratory or hospital facility that is licensed per the Illinois Clinical Laboratory Act, which laboratory shall comply with all SAMHSA standards. A chain of custody procedure shall be used to insure the integrity of samples and test results, and shall not permit the employee or any other member of this bargaining unit to be a part of such chain. A split sample shall be collected so as to permit an initial or a confirmatory test to be arranged at a SAMHSA certified facility of the employee's choosing. Confirmatory testing shall be by gas chromatography, plus mass spectrometry (GCMS) or an equivalent scientifically accurate test.
- E. **Results.** As to drug testing, the City shall be notified in the event that a sample has tested positive or negative for a particular drug on either the initial or confirmatory test, and any other information otherwise coming into the possession or knowledge of the City from the laboratory or hospital facility. As to alcohol testing, test results showing an alcohol concentration of .02 or more (based on grams of alcohol per 100 milliliters of blood), shall be considered positive. The City shall not use any other medical information coming into the possession or knowledge of the City from the laboratory or hospital in any manner or forum adverse to the employee's interests. The employee shall receive a copy of all test results, information, documents and other reports received by the City.
- F. **Right to Contest.** The Union and/or the employee shall have the right to contest and/or grieve any aspect of any testing under this Agreement, including the right to test, the order, the administration of the test, the significance or accuracy of the test. Nothing herein shall waive or limit any rights employees may have concerning such tests that may arise outside this Agreement, which the employee may pursue with or without the Union.
- G. **Voluntary Requests for Assistance.** No adverse employment action shall be taken in any manner or forum against any employee who voluntarily seeks assistance for alcohol related

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problems or problems related to drugs legally prescribed by a physician only (not illegal drugs or other illegal substances) provided that the employee voluntarily seeks assistance prior to being notified to take a test or prior to any action or inaction that would permit the City to order a test and further provided that the employee has not previously taken time off to seek or obtain assistance for alcohol related problems, the Employer may temporarily reassign or place the employee on paid time-off options until such paid time off has been exhausted. All such requests shall be held strictly confidential and not released or used in any manner or forum contrary to the employee's interests. Nothing contained herein requires the City to hold a position open for an employee or to reinstate the employee if it does not have a vacant position for which the employee is qualified. Employment shall terminate if the employee remains unfit for duty after paid leave and/or FMLA leave is exhausted.

ARTICLE XVI GRIEVANCE PROCEDURE

Section 1 - Definition

A grievance is defined as a dispute or difference of opinion raised by an employee or the Union against the City involving an alleged violation of an express provision of this Agreement.

Section 2 - Procedure

A grievance filed against the City shall be processed in the following manner.

Step 1 - Any employee and/or Union representative who has a grievance shall submit the grievance in writing to the employee's immediate supervisor specifically indicating that it is a grievance under this Agreement. The grievance shall contain a complete statement of the facts, the provision(s) of this Agreement that are alleged to have been violated and the relief requested. All grievances must be presented no later than seven (7) calendar days from the date of occurrence of the event giving rise to the grievance or seven (7) days from when the grievant, through normal diligence, should have become aware of the occurrence. The immediate supervisor shall render a written response to the grievant within seven (7) days after the grievance is presented.

Step 2 - If the grievance is not settled in Step 1 and the Union wishes to appeal the grievance to Step 2 of the grievance procedure, it shall be submitted in writing to the Chief of Police within seven (7) calendar days of receipt of the response in Step 1. The grievance in Step 2 shall specifically state the basis upon which the grievant believes that the grievance was improperly denied at the previous step in the grievance procedure. The Chief or his designee(s) shall investigate the grievance and if he deems appropriate during the course of such investigation, shall offer to discuss the grievance with the grievant and an authorized representative of the Union, if one is requested by the grievant, at a time mutually agreeable to the parties. If no settlement of the grievance is reached, the Chief of Police or his designee(s) shall provide a written answer to the grievant or to the Union, if a Union grievance, within seven (7) calendar days of the receipt of the grievance at Step 2. If a settlement is reached it shall be reduced to writing and signed by the parties.

Step 3 - If the grievance is not settled in Step 2 and the grievant desires to appeal, it should be referred in writing to the City Manager within seven (7) calendar days after receipt of the Chief's response in Step 2. Thereafter, the City Manager or his designee(s) shall meet with the grievant and a representative of the Union, if requested by the grievant, within 15 business days, and discuss the grievance. The City Manager shall submit a written answer to the Union or employee within ten (10) calendar days following the meeting.

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Step 4 - Arbitration - If the grievance is not settled in Step 3 and the Union wishes to appeal the grievance, it may refer it to arbitration, as described below, within fifteen (15) calendar days of receipt of the City Manager's written answer provided in Step 3.

- a. The parties shall attempt to agree upon an arbitrator. In the event that the parties are unable to agree upon an arbitrator within seven (7) calendar days after receipt of the notice of referral to arbitrator, they shall jointly request the Federal Mediation and Conciliation Service to submit a panel of seven (7) arbitrators who are members in good standing of the National Academy of Arbitrators. The parties shall alternatively strike names from the list until only one (1) name remains. A coin flip shall be decided to determine who has the first right to strike a name from the list. The arbitrator shall be notified of his/her selection by the parties and requested to set up a time and a place for the hearing subject to the availability of the employer and Union representative. More than one grievance may be submitted to the arbitrator where both parties so mutually agree in writing.
- b. The arbitrator shall have no right to amend, modify, nullify, ignore, add to or subtract from the provisions of this Agreement. The arbitrator shall consider and decide only the question of fact as to whether there has been a violation of a specific provision(s) of this Agreement. The arbitrator shall be empowered to determine the issue(s) raised by the grievance as submitted in writing at the third step. The arbitrator will have no authority to make a decision on any issue not so submitted or raised. The arbitrator shall be without power to make any decision or award that is contrary to or inconsistent with any applicable laws or rules and regulations of administrative bodies that have the force or effect of law. The arbitrator shall not in any way limit or interfere with the powers, duties and responsibilities of the City under law and applicable court decisions. Any decision or award of the arbitrator rendered within the limitations of this Article shall be final and binding upon the City, the Union and the employees covered by the Agreement.
- c. The fees and expenses of the arbitrator and the cost of a court reporter, if any, shall be divided equally between the City and the Union; provided, that each party should be responsible for compensating its own representatives and witnesses, and each party shall pay for any transcript it may order.
- d. The arbitrator shall submit his/her decision in writing within thirty (30) calendar days following the close of the hearing or the submission of briefs by the parties whichever is later.

Section 3 - Miscellaneous

- A. No grievance will be processed or entertained if it is not submitted in writing to the employee's immediate supervisor within seven (7) days of the occurrence of the event giving rise to the grievance or when the employee, through reasonable diligence, should have become aware of such occurrence. Grievances filed by the Union of general applicability shall commence at Step 2.
- B. The time limits for responding to grievances will be extended in the event of the unavailability of the appropriate supervisors; otherwise, if the City, or any of its representatives, fails to respond within the required time limits, the grievance shall automatically be moved to the next step. The City must, however, provide a written response at Step 3. Time limits may be extended by mutual agreement of the City and the Union.
- C. All grievance discussions and investigations shall take place in a manner that does not interfere with the City operations. If mutually agreed upon times occur during an employee's duty shift, the officer shall be allowed to attend such meeting without loss of pay. Employee's attendance at such meetings shall not occasion the payment of overtime.

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ARTICLE XVII LAYOFFS

Section 1 - Layoffs

Where there is an impending lay-off with respect to the employees in the bargaining unit, the Employer shall inform the Union in writing no later than thirty (30) days prior to such layoff, except in cases of emergency where the employer agrees to provide as much advance notice as possible. The employer will provide the Union with the names of all employees to be laid off prior to the layoff, indicating the reasons for the layoff. The City shall agree to meet with the Employee(s) and the Union regarding the reasons if the parties so request. Such meetings shall not delay the layoffs. Layoffs will be based on the employee's skills, abilities, qualifications and work performance in relation to other bargaining unit members. Where such factors are substantially equal, seniority shall control. However, such a determination shall be neither arbitrary nor capricious. All employees shall receive notice in writing of the layoff at least thirty (30) days in advance of the effective date of such layoffs, except in cases of emergency.

No new employee will be hired to perform those duties normally performed by a bargaining unit member while any employee is on layoff status. This does not affect the City's right to sub-contract such work as specified in Articles IV and V, Management Rights and Subcontracting.

Section 2 - Recall

Employees who are laid off shall be placed on a departmental recall list for a period of twenty four (24) months, provided that they notify the City in writing within five (5) business days of their layoff of their desire to be considered for recall. Employees on the recall list shall be recalled in inverse order of their layoffs provided they are qualified to perform the work in the job classification to which they are recalled. Employees who are eligible for recall shall be given fourteen (14) calendar days' notice of recall commencing upon the date of delivery of the recall notice at the employee's last address on file with the City by certified mail, return receipt requested and shall report for duty no later than the end of that fourteen calendar (14) day period.

ARTICLE XVIII INDEMNIFICATION

The City will comply with state law with respect to indemnification of employees.

ARTICLE XIX HOURS OF WORK AND OVERTIME

Section 1 - Purpose of Article.

This Article is intended only as a basis of calculating overtime and overtime payments. Nothing herein shall be construed as a guarantee of hours of work per day, per week or per work period and nothing herein shall preclude the City from restructuring the normal workday, workweek, or work cycle. Except that in the event the City contemplates a change in the shift schedule, the City will notify the Union as far in advance as is practicable. Upon request, the City will meet and confer with the affected employee(s) and the Union to explore alternatives to the proposed schedule change prior to implementation. However, the City retains ultimate authority to determine the schedule.

Section 2 - Hours of Work.

Except as provided elsewhere in this Agreement, an employee's normal work hours shall generally consist of either eight (8) or ten (10) hours of work. Each workday shall be interrupted by a thirty (30) minute paid lunch and two paid fifteen (15) minute coffee breaks. Failure to secure said breaks as a result of workload shall not occasion the payment of overtime.

Section 3 - Changes in Normal Work Day and Work Week.

In the event the City changes the shift schedule, the City will attempt to notify the Employee within 24 hours prior to the change or if shorter as far in advance as is practicable.

Section 4 - Overtime Compensation.

All hours worked in excess of forty (40) hours in a seven (7) day work period shall be paid at the rate of time and a half the employee's regular hourly rate of pay. Overtime shall be paid in 15-minute increments for a major portion thereof.

Section 5 - Required Overtime.

The Chief or his designee(s) shall have the right to require overtime work, and employees may not refuse overtime assignments. In non-emergency situations, the Chief or his designee(s), as a general rule, shall take reasonable steps to obtain volunteers for overtime assignments, by order of classification seniority, before assigning required overtime work. In the event the Chief must assign overtime and has exhausted the seniority order, the least senior employee will be assigned the overtime. However, volunteers will not necessarily be selected for work in progress.

Section 6 - No Pyramiding.

Compensation shall not be paid or compensatory time taken more than once for the same hours under any provision of this Article or Agreement.

Section 7 - Court Time.

Any employee, who would otherwise be off duty, and who then appears in court on behalf of the City, as a result of his/her duties as an employee of the City or when preparing for a case in court while in the presence of a prosecuting attorney, shall be paid for actual time spent on such activity. When the Employee is required to travel in conjunction with this provision on non-work time the Employee will be paid one half (1/2) hour of travel time.

Section 8 - Compensatory Time.

All employees covered by the terms of this Agreement shall have as their option the right to choose compensatory time off at the appropriate overtime rate in lieu of payment. Compensatory time may be accumulated up to forty (40) hours. Compensatory time off shall be granted upon the employee's request at a time which is mutually agreed upon by the employee and the appropriate supervisor.

Section 9 - Overtime Hours.

For purposes of this Article, paid time off other than jury duty, disciplinary leave shall count as hours worked for determining whether an employee has exceeded forty (40) hours in a seven (7) day work period

Section 10 - Call Back.

Employees who are called in to work or held over beyond their normal schedule shall be paid for the actual time worked. When an Employee is called-back to work after returning home, the Employee shall be paid up to a maximum of one-half hour of travel time which shall begin when the Employee is notified to appear.

Section 11 - Field Training Officer

Police Service Representatives and Community Service Officers who are formally designated to provide field training will be provided with one-half hour of compensatory time off (as otherwise provided in this Agreement) for each full work day in which the Employee serves in that capacity.

Section 12 – Shift Bidding

Employees shall bid for their desired work shift by order of classification seniority. The Chief of Police or his designee shall retain the right to determine shift assignment at his discretion, which may override individual employee shift bidding. Such discretion of the Chief shall not be unreasonably applied.

ARTICLE XX LEAVES

Section 1 - Funeral Leave.

Funeral leave up to 24 work hours per incident may be granted with pay due to a death in an employee's immediate family when approved by the Chief and the Director of Human Resources or their designees. Requests for such leave must be submitted to the Chief, in writing, prior to the use of any such leave unless it is impossible to do so. Such requests shall not be unreasonably withheld.

- A. Requests for funeral leave are not granted automatically.
- B. Immediate family is defined as spouse, child, brother, sister, parent, grandparent, aunt, uncle, mother-in-law, father-in-law, grandchildren, daughter-in-law, son-in-law, niece, nephew, brother-in-law or sister-in-law of the employee or any other person dependent upon the employee's care. Employees also have the right to request funeral leave for the death of individuals with other relationships subject to approval of the Chief of Police or his designee.

Section 2 - Jury Duty.

Any full-time employee who is required to appear for or serve on a jury during his/her regularly scheduled work hours shall be granted a leave of absence with pay pursuant to a notice for jury duty. If an employee receives compensation from the Court for jury duty, the employee is not required to return any compensation to the City and will continue to receive his/her regular City paycheck. Employees who are required to serve on jury duty outside of their normal work hours may meet with the Chief of Police or his designee who may at his discretion arrange for relief from their work duties and compensation if necessary.

Section 3 - Military Leave.

The City shall comply with the applicable laws as they relate to military leave.

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ARTICLE XXI SICK LEAVE

Section 1 - Accumulation.

Employees shall be credited with one (1) paid sick leave day for each full month of service. Such days may accumulate to a maximum of one hundred and thirty (130) days; thereafter, sick leave shall be credited at the rate of one-half ($\frac{1}{2}$) day for each full month of service.

Section 2 - Sick Leave Use.

Sick leave shall not be considered a privilege, which an employee may use at the employee's discretion, but shall be allowed only in the event of actual sickness or disability of the employee or as otherwise is permitted by the City's personnel manual.

The Chief or his designee may send an employee home on sick leave if, in the opinion of the department head or designee, the employee appears ill and/or is unable to perform the assigned duties and/or threatens the health of other employees.

Section 3 - Sick Leave Requests.

Immediately upon return to work, employees must submit a Request for Sick Leave form to the appropriate supervisor.

Section 4 - Physician's Certificate/Physical Examinations.

- A. The Chief or his designee(s) may require a physician's certificate as a condition of granting sick leave of any duration. The cost of such shall be the responsibility of the Employee.
- B. The Chief may require an employee who is off on sick leave to submit a physician's certificate, at the Employee's cost. The certification should indicate the specific nature of the illness or injury and a prognosis as to the earliest date when the employee will be able to return to work. In the event the employee does not return to work within the time frame established by the physician, the Chief may require the employee to have the physician's certificate updated. The cost of such shall be the responsibility of the Employee.
- C. The Chief may also require an employee to submit to a complete physical by a physician designated by the City when, in the Chief's judgment, the performance of the Employee has become seriously limited or weakened by virtue of impaired health or in other circumstances deemed appropriate by the Chief. The cost of such an examination shall be the responsibility of the City.

Section 5 - Retirement.

Employees who retire after either: (i) twenty (20) years of service; or, (ii) who have at least five (5) years of service and have attained age 62, are entitled to a cash payment of unused sick days at a rate of one-half ($\frac{1}{2}$) day per accrued day of sick leave.

Section 6 - Family Medical Leave Act.

The City's policy on the FMLA shall be in effect for all employees covered by this agreement as described in City Policy; Chapter 8 as amended from time to time.

Section 7 - Employee Health Leave Bank.

Employees covered by this agreement shall have all the privileges, rights and responsibilities as described in the City's Employee Health Leave Bank as amended from time to time.

**ARTICLE XXII
RESTRICTED DUTY POLICY**

Employees who have a physical or mental disability or have suffered an injury or illness on or off duty and in the determination of the Chief of Police cannot perform their job or any particular duty thereof may be placed on restricted duty.

The City may require an employee who is on sick leave or Worker's Compensation leave to return to work in a restricted duty assignment.

- A. The determination of whether a restricted duty assignment exists or is appropriate shall be made in the sole discretion of the City Manager upon recommendation of the Chief of Police. The Chief may demonstrate the need of such an assignment in writing to the Director of Human Resources, who will then consult with the City Manager.
 - 1. The City Manager may, in his complete discretion, require a written medical opinion stating that the employee is able to return to work and perform restricted duty without significant risk that such return to work will aggravate any pre-existing injury.
 - 2. Under no circumstances will an employee perform restricted duty longer than a ninety-(90) day period unless the City Manager, in his sole discretion, determines that a longer period shall apply.
- B. Nothing in this policy shall be construed to require the City to create restricted duty assignments for an employee. Employees will only be assigned to restricted duty assignments when and as long as the City deems it appropriate.

**ARTICLE XXIII
PERSONAL DAYS**

Section 1 - Personal Day.

Full-time employees are entitled to one (1) personal leave day each fiscal year, subject to the following conditions:

- A. A new employee must work at least six (6) months before taking a personal day; and
- B. An employee who does not use the personal day by the end of the fiscal year will lose it unless the employee has been refused the opportunity to use the day.
- C. An employee must request permission to use a personal day in advance as required by the supervisor. Permission to use a personal day shall not unreasonably be withheld.

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**ARTICLE XXIV
SICK LEAVE BUY BACK**

If any employee desires, a maximum of two (2) sick leave days can be bought back in any calendar year according to the schedule below. Payment shall be at the employee's present rate of pay. The number of days the employee buys back will then be deducted from the unused sick leave earned and any remaining days will accumulate with those of previous years.

<u>Number of Sick Leave Days Used in 12-Month Period</u>	<u>Number of Days Eligible For Buy-Back</u>
0-3	2
3.1-4	1½
4.1-5	1
5.1-6	½
over 6	0

Employees will be required to notify the Chief in writing by the November deadline each year if they wish to participate in the program. The Chief will then process a Personal Action Form requesting the additional compensation. Employees will receive their buy back payment with their paycheck on or around December 10.

For purposes of determining the number of sick leave days used in a year, the 12-month period will run from November 1 to October 31. New employees are required to wait until November 1 after their hiring date before becoming eligible for this program.

**ARTICLE XXV
VACATION PAY**

Members of the bargaining unit shall accrue vacation according to the following conditions:

- A. During the first four (4) calendar years of service, employees are eligible for two weeks (10 workdays) of vacation.
- B. Beginning with the fifth (5th) year of service, employees are eligible for three weeks (15 working days) of vacation per year.
- C. After the fifth year of employment, employees accrue an additional day of vacation for each year of service, but not to exceed ten (10) such additional days.
- D. For the purpose of determining vacation eligibility, the employee's date of employment, not the calendar year, controls.
- E. No employee may use any vacation time until he or she has completed six (6) full months of consecutive full-time employment.
- F. Unless authorized in writing by the City Manager, no employee can accrue more than two years of vacation time.

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- G. The scheduling of all vacation days is subject to the prior approval of the Chief or his designee(s) on the basis of classification seniority, and such schedules are subject to the work requirement of the Department.
- H. Vacations shall normally be scheduled in advance, and shall consist of a minimum of five (5) days; however, an employee may request to use vacation one day at a time, such requests must be approved by the Chief of Police or his designee.

ARTICLE XXVI HOLIDAY PAY AND WORK REQUIREMENTS

The following are recognized as holidays:

- | | |
|---------------------|--------------------------------------------------------|
| 1. New Year's Day | 6. Labor Day |
| 2. President's Day | 7. Thanksgiving Day |
| 3. Good Friday | 8. The Friday following Thanksgiving |
| 4. Memorial Day | 9. Christmas Day |
| 5. Independence Day | 10. Additional Holiday (for Holiday Pay purposes only) |

In the event an employee does not work the scheduled day before, the day after or the day of the holiday itself, the employee may be required to provide satisfactory proof of illness or otherwise excused absence before receiving holiday pay.

Employees shall receive a lump sum equal to four percent (4%) of the annual base salary as holiday pay. Employees shall receive their holiday pay in November of each year. Holiday pay shall be paid out in a check separate from the employee's regular pay check. If an Employee has less than one (1) year of service at the time of the regular holiday payout, the Employee shall receive payment on or about April 30 for those authorized holidays falling during the term of employment. Holiday pay shall be based upon the employee's salary at the time it is paid to the employees.

In the event that an employee ceases to be employed by the City after receiving such pay, the City may deduct from the employee's final salary an amount equal to any pay the employee has received for unearned holidays. In the event the City creates any additional City-wide holidays in addition to the ten listed above, the members of the bargaining unit shall receive an additional eight hours of vacation pay.

Employees shall work all holidays when scheduled as part of the normal monthly departmental working schedule.

ARTICLE XXVII MISCELLANEOUS ECONOMIC BENEFITS

Section 1 - Travel Pay.

Employees will be reimbursed for travel outside of the contiguous communities of the City of Wheaton for assigned training according to the following schedule:

- A. Daily mean expense (commuting) - \$6.50/day;
- B. Daily meal expense (non-commuting with overnight lodging arranged by department) - \$25.00/day;

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- C. Parking fees and tolls;
- D. Use of personal vehicle; current City rate/mile.
- E. In order for an employee to be eligible for reimbursements under this policy, the employee shall provide the City with written receipts for all expenses. Any reimbursement which is not properly documented will result in such money being taxed as income to the employee.

The City may require appropriate documentation to verify such expenses.

Section 2 - Separation Pay.

Upon Separation not for cause, a full-time employee who has fifteen (15) years or more of service will be awarded the equivalent of two (2) months' severance pay. Severance pay shall be paid out only once during an employee's career, and severance pay shall be based on the average monthly salary earned by the employee during the current fiscal year. In addition, any earned and unused vacation time or holiday pay shall be paid as required by this Agreement at the appropriate rate of pay, at time of separation.

Section 3 - Tuition Reimbursement.

Employees shall continue to be afforded the tuition reimbursement benefit as is set forth in the City's personnel manual from time to time.

ARTICLE XXVIII UNIFORMS

Section 1.

Employees shall be credited with an amount per year in a uniform account with a City recognized vendor. This amount will be increased to three hundred and eighty dollars (\$380) beginning May 1, 2008. All purchases must be approved by the Supervisor which shall not be unreasonably denied. All unused uniform allowance in an employee's account shall be rolled over from year to year so long as the sum total does not exceed two (2) full years' allowance.

Section 2.

Employees shall receive the following amounts per year toward a cleaning account from a City recognized vendor.

CSOs – \$200
PSRs – \$175

ARTICLE XXIX HEALTH AND DENTAL PLAN

Section 1 - Health Insurance.

The City will provide medical insurance benefits to active Employees and their eligible dependents on the same basis as is provided to non-bargaining Unit City employees except that beginning on July 1, 2008 employee contributions shall be as follows:

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PPO

	July 1, 2009
Single	10% of City's Cost Not to exceed \$55
Single + 1	10% of City's Cost Not to exceed \$110
Family	10% of City's Cost Not to exceed \$156

HMO

	July 1, 2009
Single	10% of City's Cost Not to exceed \$41
Single + 1	10% of City's Cost Not to exceed \$91
Family	10% of City's Cost Not to exceed \$126

Employee contributions effective July 1, 2009 shall be and shall not exceed the stated amounts.

The City's Cost shall be based on the monthly amount charged to the City for Single, Single + 1, or Family Coverage by the City's provider. If actual Cost turns out to be different than the monthly charge, employees will not be required to make additional contributions and will not be entitled to any refunds. Employees have no right, title or interest in any reserves or assets of the health insurance plan. The amount will be paid through the pre-tax deductions available through the City Plan. The City reserves the right to change any and all terms of such benefits including, but not limited to: insurance carriers, self-insurance or risk pools, PPO networks, medical providers, covered benefits, maximum limits, deductible amounts and co-payments, so long as such changes apply equally to non-bargaining unit employees of the City.

Section 2 - Dental Insurance.

Throughout the term of the Agreement and as long as the City continues to meet any minimum eligibility requirements for any dental plan offered, the City will make available to employees' participation in any such dental plan offered. This shall include participation in any City subsidized dental plan that may be offered to City employees from time to time. If an employee in the bargaining unit desires to participate in any such plan, the employee will have the opportunity to enroll/disenroll only during the same period as other City employees.

ARTICLE XXX LIFE PLAN

Employees will be afforded a twenty thousand dollar (\$20,000.00) life insurance plan.

**ARTICLE XXXI
DEFERRED COMPENSATION**

Throughout the term of this Agreement and so long as the plans continue to be made available, the City will permit all employees in the bargaining unit to participate in the International City Management Association - Retirement Corporation (ICMA-RC) and/or the Public Employees' Benefit Services Corporation (PEBSO) deferred compensation plan(s).

**ARTICLE XXXII
COMPENSATION**

1. Step Plan

The wage matrix shall be as follows.

Step	5/1/2009 4/30/2010
1	37195
2	38218
3	39269
4	40349
5	41459
6	42599
7	43770
8	44974
9	46211
10	47482
11	48787
12	50129
13	51508
14	52530

A. Step Movement

Annual wage adjustments will be made in two components. The first is an annual wage adjustment. The second is a merit adjustment.

1. Annual Wage Adjustment

The Employee's annual wage rate will be adjusted as of May 1st of each year to the annual wage rate for the Employee's current step. For FY2009-2010, there will be no adjustment.

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2. Annual Merit Adjustment

An Employee who receives an overall rating of "meets expectations" will move to the next step (move one row down). Movement to steps 12, 13 or 14 requires an overall rating of "exceeds expectations." An Employee who does not qualify for a merit adjustment in any year shall remain at his or her current step. An Employee may only move one step based on merit in any year (i.e. no catch up is allowed). Employee evaluations shall be made annually. The evaluation method and score are in the sole discretion of the Chief of Police and shall not be subject to the arbitration provisions of this Agreement.

Employees on Step 14 (top step) shall be eligible for a 2% lump sum payment if the employee receives a "meets expectations" on their annual evaluation. This payment will not have a compounding effect, nor shall it be carried over to the next year.

**ARTICLE XXIII
SAVINGS CLAUSE**

If any provision of this Agreement or any application thereof should be rendered or declared unlawful, invalid or unenforceable by virtue of any judicial action, or by any existing or subsequently enacted Federal or State legislation, or by Executive Order or other competent authority, the remaining provisions of this Agreement shall remain in full force and effect.

**ARTICLE XXXIV
DURATION**

This Agreement shall be effective as of the day after the contract is executed by the parties and shall remain in effect until April 30, 2010. The Agreement shall continue in effect after April 30, 2010 unless notice of request to renegotiate is given in writing by either party no earlier than one hundred and twenty (120) days preceding expiration and no later than sixty (60) days preceding expiration.

AGREED AND ACCEPTED:

FOR THE CITY

FOR THE UNION

