

**OFF-THE-RECORD**

**MEMORANDUM OF AGREEMENT**

between

**CITY OF WORCESTER**

and

**LOCAL 911, NEW ENGLAND POLICE BENEVOLENT ASSOCIATION**

This Memorandum of agreement is entered into by and between Local 911, New England Police Benevolent Association (hereinafter the "Union") and the City of Worcester, Massachusetts (hereinafter the "City") pursuant to General Laws Chapter 150E as a successor agreement to the current collective bargaining agreement. Upon bargaining unit ratification of the Memorandum of Agreement, the Union and the City agree to execute a fully integrated collective bargaining agreement for the FY 2008 – FY 2010 period.

This Memorandum of Agreement shall be considered Off-The-Record unless and until the membership of the bargaining unit votes to ratify its terms and the Worcester City council approves the economic items. The Union's negotiating committee agrees to sponsor and support this agreement for ratification. Failing such ratification and approval by the City Council, this Off-The-Record Memorandum shall be admissible in any proceeding and both parties will be free to revert to their on-the-record bargaining positions.

1. Duration. The current collective bargaining agreement will be amended to provide a three-year agreement covering the period July 1, 2007 through June 30, 2010.

2. Wages. Article 23, Section one shall be amended to provide the following increases to Schedule A:

- a. Retroactive to January 1, 2008 ... 2.0%
- b. Retroactive to January 1, 2009 ... 2.0%
- c. Effective beginning in Fiscal Year 2011, for officers who do not qualify for education incentive under M.G.L. c. 41, §108L or under Article 28, Section 3b, the salary schedule shall be amended to include a new maximum step (Step 6) which shall be 3.5% above Step 5. Such officers

will advance to Step 6 on their individual increment date. The paid detail rate shall continue to be calculated on Step 5.

- d. Consistent with the award of the J.L.M.C. in the Worcester Police Officials case (June, 2007), the parties agree there shall be a 3.0% increase effective June 30, 2010, the purpose of which is as follows: (1) to restore the equity adjustment of police salaries in relation to firefighters salaries intended by the interest arbitration award of Michael Boyle; (2) to restore the traditional rank differentials between police officers and Sergeants prior to the award in the Police Officials case; and (3) to rectify any base pay disparity between police and fire compensation resulting from the J.L.M.C. awards for the period July 2003 – June 2007.

3. Education Incentive. Revise Article 28, Section 3 to read:

- a. Notwithstanding the Commonwealth's FY2010 appropriation, under which the City will receive less reimbursement for costs incurred under the §108L program, the City agrees to provide base salary increases, for officers in the program as of October 1, 2009, at the levels and for the degrees set forth in §108L at the time of the City's acceptance, and in accordance with the procedures and standards for qualifying degrees from accredited institutions set forth in §108L as of June, 2009. The parties' intent is that officers who have been receiving benefits under §108L, or who may qualify under this provision in the future, continue to do so in the future regardless of state action.

- b. As of the time the parties' representatives negotiated this agreement, the statute containing the Commonwealth's FY 2010 budget had eliminated education incentive pay under c. 41, §108L for newly hired officers (those who were not sworn full-time members of the Department before July 1, 2009) and for officers not in the §108L program (as of October 1, 2009). The parties agree to adopt the following education incentive program for such officers. The program shall include the same quality guidelines, standards, and review processes for qualifying degrees from accredited institutions as set forth in Section 3a above.

- (1) For an Associate's degree in Criminal Justice, an annual stipend of \$2,500.
- (2) For a Bachelor's or Master's degree in Criminal Justice, an annual stipend of \$5,000.
- (3) Such stipends shall not be included in base salary for any purpose.

By approving any necessary appropriation for the cost items contained in this Agreement, the City Council shall be deemed to have amended its acceptance of M.G.L. c. 41, §108L for officers who became sworn full-time members of the Department after July 1, 2009 and for officers not enrolled in a certified program as of October 1, 2009.

- c. If at any point the Commonwealth restores funding and actually reimburses the City to the levels set forth in M.G.L. c. 41. §108L, as it read on June 29, 2009, for officers in the program as of October 1, 2009, then it is the parties' mutual intent that the officers be paid and the City be reimbursed to the full extent provided in §108L as of that date. Notwithstanding, officers who qualify for education incentive under Section 3a above shall continue to receive their full percentage increases regardless of state action.
- d. If at any point the Commonwealth revises the §108L program, in whole or in part, for officers not in the program as of October 1, 2009, then it is the parties' mutual intent that such officers receive the stipends set forth in Section 3b above as the City's entire share of the costs of any such program, as well as any additional sums which the Commonwealth provides and in fact makes payment of or reimbursement to the City.
- e. In the event that the Commonwealth expands the §108L program by increasing levels of base pay or changing qualifying degrees, whereby the City would incur costs beyond those incurred under the §108L program as accepted in 1988, then the City shall not be bound to pay such increased levels or for other qualifying degrees unless the City Manager approves and the City Council affirmatively votes to do so and to appropriate necessary funds.
- f. In the event a court or agency of competent jurisdiction enters a judgment or order declaring any provision of this Article to be invalid, or restraining enforcement of any such provision, or requiring the City to make additional education incentive payments or incur additional education incentive costs beyond those set forth in this Article, then the parties shall renegotiate the salary or other economic provisions in the collective bargaining agreement to reduce its costs by the excess costs incurred under said judgment or order. In the event the parties are unable to reach agreement within thirty (30) days on how to reduce the City's costs, the parties shall submit to binding interest arbitration the sole issue of how to revise salary or other economic provisions to achieve the cost reduction. In such negotiations and in any such arbitration, only those officers who receive additional education incentive pay or benefits as a result of such litigation, shall be required to reduce salary or other economic provisions in the collective bargaining agreement by the excess costs incurred under said judgment. Equally, in such negotiations and in any such arbitration, officers who have received education incentive payments intended by the parties, and have therefore not received additional education incentive pay or benefits as a result of such litigation, shall suffer no loss of pay or benefits. In the event of a judgment concerning the calculation of the overtime rate under the 28 day work period adopted by the City as permitted by the FLSA, for officers receiving education incentive stipends under Section 3b above, the parties agree as follows: In any negotiation or arbitration to adjust the overall cost of benefits, there shall be no

agreement or award which reduces benefits solely for officers who are deemed to be entitled to additional overtime.

- g. Any current regular full-time member of the Worcester Police Department on active duty in the armed forces of the United States in any theater of operations from July 1, 2008 through September 1, 2009 who enrolls in an education program for the purposes of participating in the career initiative pay program pursuant to said Section 108L of said Chapter 41, no later than four months from the date of his return from active duty, shall be allowed to accumulate the maximum number credit hours for any eligible degree permitted pursuant to said Section 108L of Chapter 41.
- h. In September of each year all police officers seeking police career incentive pay shall be required to provide the Chief of Police with the following information: name, present enrollment, degrees presently held, and expected graduation date for program in which presently enrolled.
- j. For police officers hired before July 1, 2009 and enrolled in a certified program as of October 1, 2009, who become certified for additional degrees, or for police officers newly certified, the City shall pay the police career incentive pay increases to which such police officers are entitled commencing in September of each year.
- j. For police officers subject to Section 3b above, who meet the standards set forth therein, as newly certified or certified for additional degrees, the City shall pay the applicable stipend commencing on either of two dates. Officers who provide evidence of attainment of a degree on or before July 15 of a fiscal year shall receive the full annual payment in September. Officers who provide such evidence after July 15 but before January 15 of a fiscal year will receive one-half of the annual payment in March of that fiscal year.

4. Clothing Allowance. Effective with the July, 2010 payment, the annual clothing allowance will be increased to \$1,100.

5. Health Insurance. The following changes effective in Fiscal Year 2010 shall be made:

- Contribution rate of 25% for all employees as of July 1, 2009; and
- Co-pay changes implemented as soon as practicable after ratification: Inpatient co-pay \$250; Same day surgery co-pay \$150; Emergency Room \$75; Specialist Office Visit co-pay; and Fallon Dental Coverage for dependent children to age 12 only

6. Drug and Alcohol Testing. Effective upon funding of this Agreement, Article 32 will be revised to read as per Attachment "A".

7. Stipend. Effective beginning in Fiscal Year 2011, the annual Civil Process Server stipend shall be increased by fifty dollars (\$50.00). Such increase is in consideration of the Union's agreement to City proposals reflected below in the provisions of FMLA (Attachment "B," Sections 1-3), Injured Leave (Attachment "C"), Arbitration, Administrative Days, and Court Time.

8. FMLA. Effective upon funding of this Agreement, a new article will be added as per Attachment "B".

9. Injured Leave. Effective upon funding of this Agreement, a new article will be added as per Attachment "C".

10. AAA As Arbitrator. The following revisions to Article 12 shall govern all pending and future grievances:

a. Revise Article 12, Section 3, Step 5 to read:

Within thirty (30) days after the City Manager's Answer, the Association but not any individual police officer, shall have the right to invoke arbitration, by advising the City in writing of its intent to do so. The parties may select an arbitrator, by mutual agreement, within fifteen (15) days of the City's receipt of the notice of intent to arbitrate. Failing such a selection, the Association shall forthwith file a demand for arbitration with the American Arbitration Association (AAA), which the City may answer under its rules. Upon the selection of an arbitrator, the Demand for Arbitration and the Answer shall be transmitted to the arbitrator. The arbitration shall in any event be conducted under the Voluntary Labor Arbitration Rules of AAA.

b. Revise Article 12, Section 4 to read:

If there is no appeal to the next authority within the time limits specified herein, the grievance will be conclusively presumed to have been settled. Failure by the City to answer the grievance within the time limits set forth herein shall be considered as a denial of the grievance.

The decision of the impartial arbitrator shall be final and binding upon the City and the Union, provided, however, that the arbitrator shall be without power to alter, amend, add to or subtract from the provisions of this Agreement, or the rules

and regulations of the City and the Charter, Ordinances and statutes concerning the City, as they are part of this Agreement. The arbitrator shall interpret only such cases and determine such issues as may be submitted to him by the written agreement of the parties.

The Arbitrator shall make no award for grievances initiated prior to the effective date of this Article. Grievances may be settled without precedent at any stage of the grievance procedure until issuance of a final award by the arbitrator.

11. Administrative Days. Delete the first paragraph of Article 27, number the second paragraph of Article 27 as 7, and insert the following as Sections 1-6 of Article 27:

1. Administrative days are paid days off from work which a police officer receives due to working a five (5) days on, two (2) days off schedule (5+2), rather than a four (4) days on, two (2) days off (4+2) schedule.
2. Over the course of a year, officers who work a 4+2 schedule will receive seventeen (17) more days off per year than those who work a 5+2 schedule; therefore, the latter receive seventeen (17) Administrative days off per year.
3. Administrative leave days will be scheduled by the Chief, in his sole discretion. The scheduling of Administrative days off will take place in advance of the calendar year of entitlement. At the Chief's discretion, officers will have the option, at the command level and with the unit commander's permission to schedule their Administrative leave days on an as needed basis. Officers must schedule their Administrative leave days prior to earning the next day and under no circumstances will Administrative leave days be carried into the next calendar year.
4. Administrative leave days may be taken only in whole day (eight (8) hour) increments.
5. Officers who wish to work overtime on an Administrative leave day are allowed to do so with the written permission of the Chief of Police. However, absent the express permission of the Chief of Police as described herein, officers are strictly prohibited from scheduling or manipulating Administrative leave days in order to take advantage of overtime opportunities.
6. The parties agree that the policy detailed in paragraph four (4) is in accordance with City Ordinance Chapter 3, Section 26, because Administrative leave days are the equivalent of the extra unpaid days off received by officers on the 4+2 schedule. For purposes of the Ordinance, an officer on a 5+2 schedule who is working overtime on an Administrative leave day as detailed in paragraph four (4) is not in a 'dual pay' status as contemplated by the Ordinance.

12. Off Duty Assignments.

a. The following shall be inserted as Sections 1-5 of the Article titled Off Duty Assignments, and the pre-existing sections 1-4 shall be re-numbered as sections 6-9:

1. Traffic Control, Municipal Entity Projects and Private Utility Work

- a. The Commissioner of Public Works, or through his designee, the Deputy Commissioner, at the Permit Division, shall make the determination concerning the need for police details on public works projects, road openings or closings, where the City of Worcester or one of its agencies is the awarding authority. The parties acknowledge that because the Police Chief and his designees (Deputy Chiefs) determine the appropriate level of police service in the City to ensure public safety, that the Commissioner or Deputy Commissioner of Public Works will work in close conjunction with the Chief or his Deputy Chiefs to review and determine public safety needs on a case by case basis when required due to various factors. Factors to be taken into consideration by the City include, but are not limited to, those listed in 701 CMR 7.00, as follows: traffic patterns (including high/low traffic and high/low speed), roadway design, proximity to security sensitive areas, proximity to schools, hospitals, playgrounds, and other youth activity locations, and areas with a history of traffic accidents, impacts the project will have on vehicular and pedestrian traffic, and any safety impacts outside the project site. If there is disagreement over the need for police details on a municipal project, then as the authorized representative of the City (as that title is defined in the regulations) the Commissioner of Public Works will decide the matter. The Police Chief's and his designees' (Deputy Chiefs) input will be given significant weight by the Commissioner in making his decision.
- b. The parties agree that when the City's designee determines that a police officer paid detail is required for work on the City's public ways, the detail shall be offered only to sworn members of the Worcester Police Department in accordance with existing practice. The City shall have the right to prioritize details, including the authority to require that specific details be filled first and the right to reassign officers to priority work.
- c. The parties acknowledge that when the Commissioner of Public Works determines there is a need for traffic control

on a Municipal entity project or in connection with private utility/construction work that the traffic control will be performed only by a sworn member of the Worcester Police Department.

- d. Nothing in this Agreement is intended to impose additional costs on the City of Worcester.
- e. Nothing in this agreement is intended to restrict the Chief of Police's authority to deal with public safety issues on public ways.

2. Traffic Control, Commonwealth Entity Projects.

The parties acknowledge that the subject of appropriate traffic control measures on projects where the awarding authority is a Commonwealth Entity is regulated by the Commonwealth of Massachusetts pursuant to St. 2008, c. 86 and pertinent regulations and guidelines thereunder. Where the City, through its agents, recommends a staffing level or rate of pay to control traffic on such projects, and the Commonwealth does not approve the assignment of additional police officers or the rate requested, then the City will in no way be bound to provide such additional officers or any additional compensation.

3. Resolution of Disputes.

Disputes concerning Sections 1-5 of this Article shall not be subject to the grievance-arbitration provisions of the parties' collective bargaining agreement, except for disputes involving the City's compliance with the following provisions: the assignment of details under Section 1b, Section 1c and Section 5. In resolving disputes under those sections, an arbitrator shall have the authority to consider other sub-sections of the Police Detail section, as necessary, and shall not substitute his judgment for any determination specifically reserved to the City.

4. Study Committee

The parties agree to participate in a study committee to review the assignment of paid details. The committee shall form on or before December 1, 2009 with a view towards concluding its study on or before June 1, 2010.

- 5. Officers assigned to details shall be compensated for all details in accordance with the applicable provisions of the collective bargaining agreement between the City of Worcester and the Union.

b. "Maximum level pay" in the new Section 6 of Article 36 shall mean Step 5 pay.

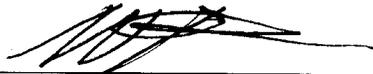
13. Court Time. Amend Article 25, Section 1 to read as follows:

Members of the bargaining unit who are required by the City to attend court proceedings in criminal matters during other than their scheduled tours of duty shall received a minimum of four (4) hours compensation at the rate of time and one-half the member's straight time rate of pay. Court time in excess of four (4) hours shall be rounded off and paid to the next quarter hour. The four hour minimum payment required by this paragraph shall not apply if the covered appearance continues into or over from the regular tour of duty.

LOCAL 911, N.E.P.B.A.,

CITY OF WORCESTER,  
by its City Manager

Edward T. Auer  
Dr. J. D. ...  
Mr. ...  
Robert ...  
...

  
Michael V. O'Brien

Date: 11.11.09

Date: 11/11/09



**ARTICLE 32**

**DRUG AND ALCOHOL POLICY**

Section 1. The purpose of this program is to establish the fact that the City and its employees have the right to expect a drug free environment in the workplace. The main emphasis of the program is not to be punishment but the counseling and rehabilitation of employees with a problem with alcohol or drugs. However, nothing contained herein shall be construed to prevent disciplinary action for any infractions of Department rules, policies or procedure or any misconduct.

Section 2. Except in the case of applicants for employment in the bargaining unit, no drug testing shall be permitted on a random or universal basis, except as hereinafter provided. Testing of employees shall only be permitted when there is reason to suspect drug or alcohol use. Immediate alcohol testing shall be permitted upon the reasonable suspicion standard herein provided.

Section 3. The City shall provide a suspected employee and the union with a written report evidencing reasonable suspicion no later than twenty-four hours after the suspected employee is directed to submit to drug testing.

Section 4. The employee shall be provided with a test sample at the time drug testing is conducted. Drug testing to be performed is to be of the more expensive and accurate nature, so as not to subject the employee to the stress and embarrassment of a possible false positive result from the less expensive test.

Section 5. The parties shall ensure the confidentiality of the testing process and results. Access to information about the tests shall be limited to the employee and only members of management and union officials with a compelling need for this information.

Section 6. The following information shall be provided an employee directed to undergo a drug test:

1. a copy of the testing program procedures;
2. a description of the sample gathering protocol;
3. a list of tests to be used;
4. the name and location of the laboratories to be used;
5. the test results in writing with an explanation of what the results mean .

Section 7. The directive to submit a drug test sample shall be based upon facts sufficient to constitute reasonable suspicion of controlled substance use. Objective facts that shall be used in evaluating an employee's condition include but are not limited to:

1. Balance - sure/unsure/questionable
2. Walking - steady/unsteady/questionable
3. Speech - clear/slurred/questionable
4. Attitude - cooperative/uncooperative/questionable

Section 8. Rehabilitation programs shall be mandatory for employees with confirmed positive results or for any employee admitting drug usage. Employees who successfully complete a rehabilitation program approved by the City shall be guaranteed no disciplinary action and a one time only right to return to their job. Available sick leave may be utilized to accommodate participation in an approved rehabilitation program .

Section 9. It is the intention of this article that an employee who is found to test positive on the drug screening shall be treated within the employer/employee relationship. It is incumbent upon the employee to submit a proposal to the City to be reviewed by the physician designated by the City for approval. It is the intention that such proposal include a drug rehabilitation clinic, whether on an out-patient or in-patient basis. The employee may utilize sick days for such in-patient programs. Leaves of absence without pay for such reasonable periods will be allowed if the employee has no other accrued leave available. The employee shall be expected to comply with all the requirements and regulations of the substance abuse rehabilitation clinic and the failure to abide by all such conditions and requirements shall be a basis for termination of employment.

Section 10. The employee agrees to submit a random urinalysis testing at the discretion of the City for a period of one (1) year after returning to work after commencing said program. If any test during such time yields a positive result, the employee shall be immediately subject to disciplinary action which may be termination of employment.

Section 11. The City shall bear all costs of testing and rehabilitation after any available insurance coverage has been pursued and exhausted.

Section 12. It is agreed that the parties will make every effort to protect privacy and confidentiality.

Article \_\_\_ : FMLA

Section 1. The City Manager shall have the right, in accordance with federal law, to promulgate regulations and policies to implement the provisions of and designate leave under the Federal Family and Medical Leave Act, provided that such regulations or policies do not negate any negotiated leave benefit contained in an express provision of the parties' collective bargaining agreement.

Section 2. An employee who uses leave because of his/her serious medical condition must use accrued sick or vacation leave while on FMLA.

Section 3. An employee who uses leave because of the serious health condition of an immediate family member must first use accrued vacation and then take the remainder of the leave as unpaid leave (as sick leave under the City's sick leave policy is for the illness or off-the-job injury of the employee), except as expressly provided in Article 17 of the collective bargaining agreement.

Section 4. Notwithstanding the City and Federal rules to the contrary, a serious health condition resulting from an approved line of duty injury for which benefits pursuant to M.G.L. c. 41, §111F are granted shall not be designated as FMLA leave, if the employee returns to full duty. An employee who does not return to full duty may have the last twelve (12) weeks of his/her absence on §111F leave designated as FMLA leave.

Section 5. The parties shall continue to observe the practice in effect during the negotiation of the 2007-2010 agreement regarding the relationship between the granting of FMLA leave and benefits or conditions based on seniority.

**Injured Leave**

Add the following article titled Injured Leave:

Section 1. When a Police Officer is incapacitated for duty because of injury or illness sustained in the performance of duty (including paid detail duty) without fault of his/her own, he/she shall be granted leave without loss of pay in accordance with M.G.L. Chapter 41, Section 111 F (and pertinent appellate decisions) and will be indemnified for reasonable and customary expenses in accordance with M.G.L. Chapter 41 Section 100, subject to the provisions outlined below and pursuant to the Department's Injury on Duty Policy.

Section 2. Determination of IOD Status. The determination of eligibility for IOD status in accordance with M.G.L. Chapter 41, Section 111F shall be made by the City Manager or his/her designee. Prior to the approval of eligibility for benefits under this section, the Police Officer may be placed on non-occupational sick leave. If such an officer is later determined to be eligible for injured leave, his/her sick leave shall be restored to the initial date of eligibility.

Section 3. Physical/Psychological Examinations. The City may require a Police Officer who requests benefits under this section to submit to physical or psychological examinations, at the expense of the City, prior to being placed on IOD Status and at reasonable intervals once such status has been granted. Such examinations may include the assessment of incapacity, diagnosis, prognosis and causation.

Section 4. As a condition of receiving benefits under C. 41, § 111F or reimbursement of medical expenses under C. 41, § 100, the employee shall sign a release to the City for all hospital and medical records which are relevant to the determination of eligibility for such benefits. All employee medical information will be kept strictly confidential as provided by all applicable laws.

Section 5. Disputes involving eligibility for benefits under this Article shall be resolved under the grievance - arbitration provisions of this Agreement.