



PUBLIC EMPLOYMENT RELATIONS COMMISSION

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COMPLAINT CHARGING UNFAIR LABOR PRACTICES

Form U-1 (5/2010)

Amended Complaint in Case

Filing instructions: www.perc.wa.gov/Forms/U-1-inst.pdf

Applicable Rules: Chapters 10-08, 391-08 and 391-45 WAC

1. PARTIES The complainant alleges the respondent has committed unfair labor practices in violation of state law.

Form fields for Complainant (Spokane Police Guild), Respondent, and Employer (City of Spokane) including contact person, address, and telephone.

2. ALLEGED VIOLATION Indicate all that apply.

- Against Employer: Employer Interference with Employee Rights, Employer Domination, Employer Discrimination, etc.
Against Union: Union Interference with Employee Rights, Union Inducing Employer to Commit Violation, etc.

3. STATEMENT OF FACTS and REMEDY REQUESTED Attach separate sheets of paper setting forth clear and concise statements of the facts constituting the alleged unfair labor practices...

4. GRIEVANCE PROCEEDINGS Indicate one.

- No grievance has been filed on the dispute involved in this unfair labor practice complaint.
A grievance on the dispute involved in this complaint is being processed under a contractual grievance procedure.
An arbitration award has been issued on a grievance related to this unfair labor practice complaint.

Approx. 269 members

5. AUTHORIZED SIGNATURE FOR COMPLAINANT

Print Name Christopher K. Vick Title Attorney at Law

Signature [Handwritten Signature] Date 8-18-2010

# STATEMENT OF FACTS

## I. PARTIES

1.1 The Spokane Police Guild (“Guild”) is a labor organization which is duly certified under RCW 41.56.080 as the exclusive bargaining representative for all commissioned police employees with the exception of the Chief of Police, Assistant Police Chiefs, Majors, Captains, and Lieutenants employed by the City of Spokane (“City”).

1.2 The City is a public employer within the meaning of RCW 41.56 *et seq.*

1.3 The Guild and the City have been and are signatory to a January 1, 2010 through December 31, 2011 collective bargaining agreement (“Agreement”) setting forth the wages, hours, and other terms and conditions of employment for members of the bargaining unit represented by the Guild. A true and correct copy of the Agreement is attached as **Exhibit A**.

## II. CAUSE OF ACTION EMPLOYER REFUSAL TO BARGAIN RCW 41.56.140(4) and (1)

2.1 The Guild realleges paragraphs 1.1 through 1.3 as if fully rewritten herein.

2.2 The Office of Police Ombudsman (OPO) was established by Ordinance No. C34302 on or about October 6, 2008.

2.3 On or about June 28, 2010, without discharging its duty to bargain with the Guild, the City passed Ordinance No. C34609, which changes the powers of and requirements for the OPO. A true and correct copy of the ordinance is attached as **Exhibit B**.

2.4 Among other amendments, Ordinance No. C34609 makes the following changes to the OPO:

(a) The ordinance permits the OPO, upon receipt of a complaint, to “interview the complainant and any non-member witnesses and determine facts and circumstances as necessary to create a closing report.” Previously, the OPO was limited to receiving complaints and forwarding them to the Police Department’s Internal Affairs Unit.

(b) The ordinance permits the OPO to act upon complaints concerning events that occurred up to one year prior to the filing of a complaint. Previously, no time limit was specified.

(c) The ordinance permits the OPO to attend and observe “interviews” on serious complaints and all complaints originating at the OPO. Previously, the OPO was limited to attending and observing “administrative interviews” on serious complaints and all complaints originating at the OPO.

(d) The ordinance permits the OPO to conduct an independent investigation if the OPO “is not satisfied with the decision of the mayor” regarding the need for additional Internal Affairs investigation. Previously, the decision of the mayor was final and the OPO did not have authority to conduct an independent investigation.

(e) The ordinance extends the deadline for the OPO’s determination as to the thoroughness and objectivity of the Internal Affairs investigation to fifteen business days. Previously, the deadline was five business days.

(f) The ordinance requires the OPO to send a closing letter to “and/or conduct a closing interview with the complainant” to summarize the case findings. Previously, the OPO was limited to sending a closing letter to the complainant to summarize the case findings.

(g) The ordinance requires the OPO to “produce a closing report,” which “shall include a summary of the OPO’s conclusions and any recommendations regarding revision of any applicable law enforcement policy, training protocol and/or law enforcement procedure materially associated with the basis for the complaint”; the content and length of the report will be determined solely by the OPO, and a copy of the closing report will be posted on the OPO’s website. Previously, the OPO was not authorized to produce a closing report or disclose such information to the public.

2.5 On or about June 14, 2010, the Guild demanded to bargain the changes in the ordinance that constituted mandatory subjects of bargaining and that impacted mandatory subjects of bargaining.

2.6 On or about July 21, 2010, the Guild filed a Step 3 grievance with the Chief of Police to grieve “the changes to the Office of Police Ombudsman that was approved by the Spokane City Council and forwarded to the Office of the Mayor on June 30, 2010 for approval.” A true and correct copy of the grievance is attached as **Exhibit C**.

2.7 Disciplinary procedures are a mandatory subject of bargaining

2.8 Disciplinary procedures impact mandatory subjects of bargaining.

2.9 The City made a unilateral change in its disciplinary procedures by expanding the powers of the OPO and changing the requirements to which the OPO was subject, without providing to the Guild an opportunity to bargain the change or the effects of the change, which constitutes a refusal to bargain with the Guild in violation of RCW 41.56.140(4) and (1).

2.10 The City's violation of RCW 41.56.140(4) and (1) as described in paragraph 2.9 has irreparably damaged the Guild and the members of the bargaining unit represented by the Guild.

### REMEDY

WHEREFORE, the Guild requests the following remedies:


- A. Findings of fact consistent with the Guild's allegations.
- B. An order requiring the City to cease and desist from refusing to bargain in violation of RCW 41.56.140(4) and (1).
- C. An order requiring the City to rescind and give no further effect to Ordinance No. C34609 until the City has discharged its duty to bargain.
- D. An order requiring the City to destroy and purge from the public record any documents, reports, or investigations created or issued pursuant to Ordinance No. C34609.
- E. An order requiring the City to make the Guild and all affected members of the bargaining unit whole for all losses sustained by them as a result of the violations of RCW 41.56.140(4) and (1).
- F. An order granting the Guild extraordinary remedies, including payment of the Guild's reasonable attorneys' fees and costs that the Guild incurs in prosecuting this action.
- G. An order requiring the posting of all orders and notices in this matter.
- H. An order granting the Guild any and all other relief to which it is deemed entitled.



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4. Erin Jacobson  
City Attorney's Office  
808 West Spokane Falls Blvd.  
Spokane, WA 99201

Dated this 18th day of August, 2010.

  
\_\_\_\_\_  
Jennie Gaston

OPR 2009-1013

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# AGREEMENT

between

CITY OF SPOKANE

and

SPOKANE POLICE GUILD  
(2010-2011)

EXHIBIT # A

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## **PREAMBLE**

This Agreement entered into by the City of Spokane, Washington, hereinafter referred to as the City and the Spokane Police Guild, hereinafter referred to as the Guild, has as its purpose the promotion of harmonious relations between the City and the Guild and the establishment of an equitable and peaceful procedure for the resolution of differences.

## **EMBODIMENT**

The parties acknowledge that during the negotiations which preceded this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement, each voluntarily and unqualifiedly waive the right, and each agree that the other shall not be obligated to bargain collectively with respect to any known subject or matter not specifically referred to or covered in this Agreement.

## **LABOR MANAGEMENT MEETINGS**

It is mutually agreed that the City Management and the Police Guild shall work together individually and collectively to provide the public with efficient and courteous service, to encourage good attendance of employees and to promote a climate of labor relations that will aid in achieving a high level of efficiency in the Spokane Police Department.

## **ARTICLE 1 – RECOGNITION**

The City recognizes the Guild as the sole and exclusive bargaining agent for the purpose of establishing salaries, wages, hours, and other conditions of employment for all of its commissioned police employees with the exception of the Chief of Police, Assistant Police Chiefs, Majors, Captains, and Lieutenants.

## **ARTICLE 2 - CONDITIONS AND DURATION OF AGREEMENT – TERMINATION**

This Agreement shall be in effect as of the first day of January 2010 and shall remain in full force and effect through the thirty-first day of December 2011.

This Agreement shall remain in full force and be effective during the period of negotiations and until notice of termination of this Agreement is provided to the other party in the manner set forth in the following paragraph. In the event that either party desires to terminate this Agreement, written notice must be given to the other party not less than thirty (30) days prior to the desired termination date, which date shall not be before the expiration of this contract.

## **ARTICLE 3 - EMPLOYER RESPONSIBILITIES**

Management Rights - The Guild recognizes the City's rights concerned with efficient management and operation of the department are exclusively that of the City Police Department Administration unless otherwise provided through the terms of this Agreement or by operation of RCW 41.56. In addition, management has the right to assign work within the bargaining unit and to determine the number of personnel to be assigned at any time and to perform all of the functions not otherwise expressly limited by this Agreement or applicable law.

The Guild recognizes that an area of responsibility must be reserved to management if it is to function effectively. In recognition of this principle, it is agreed that the following responsibilities are not subject to collective bargaining and are management responsibilities of the City. Unless specifically modified by sections in this Agreement, management retains the exclusive right to:

1. Determine the management of the organization, and the selection, retention, and promotion for occupations not within the scope of this Agreement.
2. Direct employees of the bargaining unit in the performance of their official duties.

3. To hire, assign, transfer and evaluate employees in positions in the bargaining unit; provided that disciplinary transfers must be for just cause; and to suspend, demote, discharge, or take other disciplinary action against such employees for just cause.
4. To determine the methods, means and equipment by which departmental operations are to be conducted, provided that this section shall not extend to assigning work outside of the bargaining unit.
5. To take whatever actions may be necessary to carry out police functions in emergency situations.
6. To determine the necessity of overtime and the amount thereof, provided that the City shall pay for all time worked.
7. To maintain efficiency of government operations entrusted to management.
8. To assign employees to specific jobs, determine job content and/or duties and to consolidate jobs within the bargaining unit.
9. To lay off employees in accordance with current Civil Service Rules.

The above listing of specific management rights is not intended nor shall be considered restrictive or, act as a waiver of any rights of the City not listed herein. Such inherent management responsibilities are not subject to arbitration and shall remain exclusively with the City except as they may be shared with the Guild by specific provisions of the Agreement.

#### **ARTICLE 4 – CHECKOFF**

The City agrees to deduct the Guild membership initiation fee, assessments, and, once each month, Guild dues from the pay of those employees who individually request in writing that such deduction be made. The type of deduction cards to be used shall be certified to the City by the Treasurer of the Guild.

#### **ARTICLE 5 - GRIEVANCE PROCEDURE - PERMANENT UMPIRE**

##### **Section A - Grievance Procedure Steps**

1. Any grievance or dispute which may arise between parties concerning the application, meaning, or

interpretation of this Agreement, shall be settled in the manner prescribed by this grievance procedure.

2. A "Grievance" is defined as a claim or dispute by an employee, group of employees, or authorized Guild representatives concerning the interpretation or application of the provisions of this Agreement. Nothing in this procedure shall prohibit an employee from discussing a complaint directly with his supervisor or department head without representation by the Guild as provided by State Law.
3. Should a subject for claim or dispute arise, there shall be no stoppage of work by employees, but an earnest effort shall be made to settle such claims or disputes promptly and in the manner hereinafter outlined. Prior to initiating a written grievance, an employee shall attempt to resolve the matter with his/her supervisor, or in their absence, with the next person in the chain of command.

**Step 1**

A grievance may be presented to the Police Chief or designee by a Guild Representative within twenty one (21) calendar days of the alleged occurrence; in writing, setting forth:

- a. The nature of the grievance;
- b. A statement of the facts upon which the grievance is based;
- c. The provisions of the Agreement allegedly violated, and;
- d. A statement of the relief desired.

**Step 2**

The Police Chief or designee shall attempt to settle the grievance within seven (7) calendar days after it has been presented.

**Step 3**

If the grievance is not settled by the Police Chief within the time allowed, it may be presented to the City Administrator, with a copy to the Human Resources Department, by a Guild Representative within seven (7) calendar days of the Police Chief's response or the expiration of the time limit in step 2.

**Step 4**

The City Administrator shall have fourteen (14) days to review the grievance. If the City

Administrator does not respond or otherwise settle the grievance within the fourteen day period, the grievance may be advanced to step 5 within twenty-one (21) days of the Step 3 response or, if not received within the allotted time period, the date the response was due.

#### **Step 5**

If the grievance is not settled at Step 4, the dispute will be referred to the negotiating committee of both parties. The two committees shall meet within ten (10) calendar days to consider the dispute. At that meeting, all pertinent facts and information will be reviewed in an effort to resolve the matter through conciliation. If no satisfactory solution is reached in this step, the matter may be submitted to arbitration within 21 calendar days of the conciliation meeting.

#### **Section B - Arbitration**

The parties shall attempt to select an arbitrator by mutual agreement. If the parties have been unable to select an arbitrator within ten (10) days, the Arbitrator shall be selected on a rotating basis from the following panel of arbitrators: Janet Gaunt, Mike Cavanaugh, Michael Beck, Alan Krebs, and Howell Lankford. The Arbitrator shall be selected from the list by both the City representative and the Guild's attorney within ten days of the matter being submitted to arbitration. Each party shall alternatively strike or accept the top name on the list. If both parties accept the arbitrator, that person shall hear the case. Once both parties have had two strikes/acceptances, the next arbitrator on the list shall hear the case. The selected arbitrator shall move to the bottom of the list for the next arbitration hearing. The arbitrator shall conduct the arbitration within six months of the appointment unless otherwise agreed by the parties. The decision of the arbitrator shall be final and binding on the parties.

1. The Arbitrator shall make his/her own rules of procedure. The Arbitrator shall have no authority to amend, alter, or modify this Agreement or its terms and shall limit his/her decision solely to the interpretation and application of this Agreement.
2. Each grievance or dispute will be submitted separately except when the City and the Police Guild mutually agree to have more than one grievance or dispute submitted to the Arbitrator.
3. The City and the Police Guild shall bear the expense of the Arbitrator and related stenographic expenses on an equal basis.
4. Each party shall bear the costs of their own attorney(s) unless the City either fails to abide by an Arbitration award thereby requiring the Guild to seek judicial enforcement or appeals the same into

the courts. In such an event, this provision shall have no force and effect retroactive to the initiation of the grievance procedure.

5. The decision of the Arbitrator shall be issued within thirty (30) days of the close of the hearing and scheduled receipt of any post-hearing briefs.

### **Section C - Time Limits**

Time limits may be extended by mutual written agreement. Except as otherwise provided herein, if the City fails to comply with any of the above time limits, the matter will be settled in favor of the Guild's last requested remedy. If the aggrieved/Guild fails to comply with any of the above time limits, the grievance is dropped and the City's position sustained. While forfeiture under this clause will finally resolve the matter in dispute, it will not establish a precedent between the parties on issues of contractual interpretation. There shall be no interruption of work while grievances are being resolved.

## **ARTICLE 6 - CITY SECURITY**

### **Section A**

The Guild and the Police Officers agree that during the life of this Agreement they will not cause, encourage, participate in, or support any strike against management or any slowdown or other interruption of or interference with the normal work routine of any law enforcement activities or agencies.

### **Section B**

Violation of any provision of this Article by the Guild shall be cause for the City terminating this Agreement upon the giving of written notice to this effect to the President of the Guild in addition to whatever other remedies may be available to the City at law or in equity.

### **Section C**

Violation of any of the provisions of this Article by any Police Officer shall be cause for the immediate discharge of that officer. Except as otherwise provided by law, no Police Officer shall receive any portion of his or her salary while engaging in activity in violation of this Article.

### **Section D**

In the event of a strike, work stoppage, or interference with the operation of the Police Department, the



President of the Guild shall within twenty-four (24) hours publicly disavow such strike or work stoppage and request the employees return to work and attempt to bring about prompt resumption of normal operation. Such request shall be made in writing with a copy of such written request supplied to the City. The Guild shall notify the City within twenty-four (24) hours after the commencement of such work interruption as to the measures taken to comply with the provisions of this Article.

**Section E**

In the event the provisions of this Article are not complied with, the City may proceed directly to court in order to obtain any and all possible judicial relief, as well as pursuing whatever remedies are available under this Agreement.

**Section F**

The City agrees that there shall be no lockout of Police Department employees under any circumstances.

**ARTICLE 7 – HOLIDAYS**

**Section A**

The following holidays shall be recognized by permanent employees on the days established by the City for that holiday, except that patrol employees shall observe the actual holiday on New Years, Independence Day, and Christmas Day.

1. New Year's Day
2. Memorial Day
3. Independence Day
4. Labor Day
5. Thanksgiving Day
6. Friday after Thanksgiving Day
7. Christmas Day
8. Forty hours of Floating Holidays
9. Any day that is designated as a legal holiday by the State Legislature or by a state official who has been granted legal authority to declare such a holiday.

The floating holidays shall be taken at a time mutually agreeable by the employee and the Police Chief within

the policy established for this holiday and may be utilized by the hour.

When a holiday falls on an employee's regular day off, the employee will receive compensatory time or pay for that day. An employee on approved paid leave shall be eligible for holiday pay. When a holiday falls during an employee's regular vacation period, that day will not be charged against the employee's vacation. The manner of compensation will be determined by the Chief of Police.

Those members of the bargaining unit who are normally scheduled to work four ten hour shifts per week but are released from work on a normally scheduled work day in observance of any of the eight specifically designated holidays, will be granted 10 hours of holiday pay. In such situations, an eight (8) hour employee shall receive eight (8) hours of holiday pay. Such holiday pay shall not be charged against any other source of paid leave other than the specific holiday that is observed.

#### **Section B - Work on a Non-Floating Holiday**

When an employee takes the day off or is considered non-essential for the holiday, he/she will be paid eight (8), ten (10) or ten and sixty seven hundredths (10.67) hours for the day depending on the employees' work schedule.

When an employee works on any of the holidays listed above, he/she shall be paid eight (8), ten (10) or ten and sixty seven hundredths (10.67) hours of holiday pay depending on the work schedule the employee is assigned to. All employees who work on a designated holiday shall be paid an additional one and one-half (1 ½) times their current regular rate of pay for all hours worked on the holiday. The employee has the option of taking pay or comp for the time worked on the holiday, as provided in Article 9, section C.

Any hours worked that are in excess of the normal shift period will be considered overtime and will be paid at two and one-half (2 ½) times their current regular rate of pay for all overtime hours worked on a holiday. The employee has the option of taking pay or comp for overtime worked on a holiday. The holiday pay (straight time) portion will not be available as compensatory time.

### **ARTICLE 8 - COURT TIME**

#### **Section A**

When an officer is required to appear in court outside the regular duty hours, they shall be paid on a minimum of two (2) hours, except where such appearance is an extension of the regularly scheduled shift. If an

officer is required to appear on the officer's day off or while on vacation, the officer shall be paid a minimum of four (4) hours at the time and one half (1 ½) rate.

Court is defined as any court of law or administrative hearing where the officer is required to appear, including pretrial conferences with the attorneys representing the prosecution in a criminal case or the City in a civil suit.

Employees who have been served a subpoena shall appear in court unless notified otherwise by the prosecutor or a court official. Prosecutors and court officials cannot authorize stand-by pay. If the need to appear cannot be clarified once the subpoena has been served, employees should respond and be available to testify.

If the officer failed to clear with the court, prior to vacation, the above would not apply as vacation court pay.

When an employee is required to provide telephonic testimony on a day off or outside regular duty hours, they shall be paid a minimum of one (1) hour at the rate of time and one-half (1 ½) for the time they are required to be available and to give testimony. This provision applies to administrative hearings and court proceedings in which the employee has been subpoenaed. The employee shall attach a copy of the subpoena to the overtime card upon submission to payroll.

#### **Section B**

The above provision shall not apply when the court time starts during the employee's regular work shift and extends beyond the end of the shift. When the court time commences on the employee's regular shift and extends beyond the work shift, time and one-half (1½) shall be paid for the number of hours beyond the regular shift.

#### **Section C**

Employees shall have the option of selecting court time pay or compensatory time off.

### **ARTICLE 9 – OVERTIME**

#### **Section A - Miscellaneous**

**Temporary Schedule Adjustment** – It is understood that employees in unique assignments such as the Special Investigative Unit, the Targeted Crimes Unit, the School Resource Officer Unit, the Neighborhood Resource Officer Unit, the Traffic Unit and the Support Services Division will be expected to temporarily flex their schedules.

With forty-eight (48) hours notice employees assigned to the Special Investigative Unit and the Targeted

Crimes Unit may be required to temporarily adjust their work shift by up to four (4) hours.

With seven (7) calendar days notice, employees assigned to the School Resource Officer Unit, the Neighborhood Resource Officer Unit, the Traffic Unit, and the Support Services Division may be required to temporarily adjust their work shift by up to four (4) hours. Mandatory schedule adjustments shall not exceed four (4) adjustments within a calendar month. If the required notification is not given as stated above all work done outside of the regularly scheduled shift will be compensated and one and one-half (1 1/2) times the regular hourly rate of pay.

**Availability of Special Overtime Assignments** – Guild members may volunteer for an overtime assignment on their regularly scheduled days off, or outside their regularly scheduled shift consistent with the collective bargaining agreement.

Guild members who wish to volunteer for an overtime assignment that overlaps with their regularly scheduled hours of work may do so only under the following conditions:

Subject to this article and mutual agreement of the parties, Guild members may flex their work hours to avoid an overlap between their hours of work and the voluntary overtime assignment; or

Guild members may request the ability to switch a regularly scheduled work shift for a regularly scheduled day off. Both shifts must be within the same calendar pay period, and for a sister patrol team (if the Guild member is in patrol) during the same work hours as the Guild member's regularly scheduled work hours. All such trade requests must be pre-approved by the Guild member's sergeant, the sergeant supervising the sister patrol team involved in the trade, and the Guild member's lieutenant. The respective team sergeants and lieutenant may approve/deny requests based upon various operational factors, including the following: appropriate staffing levels, efficient use of department resources, and Guild members' fatigue. The lieutenant may approve a different make-up day than requested if it is in the best interest of the Department. Trade requests will not be approved if they result in additional overtime. Once approved, the make-up day will be considered the Guild members' regularly scheduled duty day for all purposes. Approval for trade requests may be cancelled due to an emergency. If a conflict develops between Guild members on the same team who have requested to switch shifts for same overtime opportunity, department seniority shall prevail.

**Mutual Schedule Adjustment** – An employee or the Employer may request a temporary schedule adjustment. Upon request a work shift may start by up to four (4) hours earlier or four (4) hours later than normally scheduled. The request may be initiated by either the employee or the Employer and must be mutually agreed upon.

**Unscheduled Overtime** - When employees are required to return to work outside their normal duty hours and a minimum of 48 hours notice is not given, they will receive a minimum of four (4) hours pay at one and one-half times the employee's regular rate of pay. For those hours worked over four (4), they would be paid at the employee's time and one-half (1 1/2) rate until the overtime overlaps the employee's regular work shift. This section shall not apply to shift extensions at the end of the work shift.

**Exception** - If an employee is required to return to duty to complete work which is incomplete through the fault of the officer--necessary reports, citations, affidavits, etc.--no call back will be paid. Overtime at one and one-half times the employee's regular rate of pay will be paid for actual hours worked.

### **Section B - Overtime Rate**

All overtime other than call-back time shall be compensated at the rate of one and one half (1 ½) times the regular hourly rate of pay.

### **Section C - Compensatory Time Off**

At the employee's request, and with the approval of the Chief of Police, a renewable bank of up to 80 hours of compensatory time off may be accumulated at the rate of time and one half for all overtime hours worked. Accrual over 80 hours will be paid as overtime. Employees shall be allowed to carry over their compensatory time off into the following year. On November 1<sup>st</sup> of each year employees may elect to cash out up to a maximum of 96 hours of accrued compensatory time, floating holiday, and or vacation time. The City will pay for the cashed out time at the officer's straight time regular rate of pay, and shall make the payment with the second payment of November. All of the officer's accrued compensatory time must be cashed out first, and thereafter a maximum of 40 hours (up to the total of 96 hours) can be cashed out of vacation and or floating holiday time. Either party may reopen the compensatory time provisions of this Agreement if there is a change in legal interpretation of the FLSA related to the accrual or use of compensatory time. Any such reopening shall proceed in accordance with Article 18.

In regulating the use of comp time, supervisors will use the following guidelines, which have been agreed by the parties in order to ensure compliance with the FLSA. The parties therefore agree it is unduly disruptive to the operation of the police department if employees:

1. give less than five days written notice of their desire to use compensatory time off, provided that less notice may be given with the mutual agreement of the employee and their supervisor;
2. request the use of compensatory time on any recognized holiday as set forth in this bargaining

agreement or on Christmas Eve or New Years Eve, when the granting of such time off would require the City to bring in another employee to cover the shift; or

3. request the use of compensatory time during any special event (Bloomsday, Lilac Parade, Neighbor days, etc)

The above list is not intended to be all inclusive of situations that are unduly disruptive, but rather is intended to give the parties guidance concerning the unduly disruptive provisions of the FLSA.

#### **Section D - On Call**

Any employee required by a supervisor to remain on-call for a weekend or fixed period of time shall be compensated at the following rate:

1. 1.5 hours of pay at the regular rate of pay for each 8 hours that the employee is required to remain on call.
2. 2.5 hours of pay at the regular rate for each 8 hours that the employee is required to remain on-call during any holiday.
3. If unscheduled call-out occurs during any 8-hour period that the employee is required to remain on-call, the unscheduled overtime provisions of Article 9 shall apply in addition to the on-call pay for that period of time.

### **ARTICLE 10 - CONTRACT PERSONNEL**

The City and the Guild mutually agree that circumstances arise from time to time that call for the presence of more law enforcement personnel that are regularly on duty at that time. In order to meet the law enforcement needs of these circumstances, the City and the Guild agree that the City has the right to contract with other law enforcement agencies to supply law enforcement personnel and equipment.

In the event the City elects to so contract with other law enforcement agencies and sufficient time exists for proper planning, the City will first allow Guild members, not on regular duty during the time of need, to volunteer for the assignment. If the need is not filled by the volunteers, then the City may elect to implement contracts with other law enforcement agencies.

In an emergency or in the event the need for personnel is not filled by volunteers from the Guild, it is understood the City retains the right to require Guild members to report for duty under the terms and conditions of the

general contract between the City and the Spokane Guild as amended.

State law (e.g. 10.93 RCW, Mutual Aid Peace Officers Powers) and provisions of the individual contracts with agencies supplying personnel shall govern the relationship between the City of Spokane, those agencies, and their personnel. No rights, duties, or provisions of the contract between the Guild and the City shall apply to those agencies.

## **ARTICLE 11 – WAGES**

Upon approval by the Guild and the City Council of the tentative agreement agreed upon by the Guild Negotiating Committee and the City Negotiating Committee, the agreement shall be made a part of the City Employees Pay Plan and administered in accordance with the City Employees Pay Plan Rules.

Effective December 26, 2010, wages of all classifications covered by the Guild will be increased by 4%.

### **Service Advancement –**

All police officers with five (5) or more years of service as commissioned officers in the department will be moved to 902 – Senior Police Officer, Range 29 at their respective longevity levels. This movement will be described as a “Service Advancement” and will be on a qualifying basis with no probationary period.

Henceforth, when a police officer reaches five (5) years of commissioned service with the department, they will be entitled to advance to Senior Police Officer at the beginning of the next quarter.

When they reach five (5) years longevity as a police officer, they will have their normal longevity increase during the affected pay period. At the beginning of the next quarter, they will advance to Senior Police Officer. In the interim, they will be paid out of grade at the Senior Police Officer pay range, five (5) year longevity level.

Lateral police officers will advance at a different rate than entry-level police officers. No later than completion of three (3) years of service in the department, their Service Advancement will occur. They will advance to Senior Police Officer at the entry level of Range 29 at the beginning of the next quarter, being paid out of grade until the paperwork is completed. They will remain at the entry level until they have completed five (5) years longevity in the department. At that time, they will progress through the normal longevity increase process in the Senior Police Officer pay range.

The quarterly changes are to be initiated by the department who will be keeping track of the next group of

employees eligible for the Service Advancement. The parties will work with the Spokane Civil Service Commission to ensure a smooth transition.

**Acting Sergeant**

Patrol Corporals when filling a vacant Sergeant position for four (4) hours or more shall receive an additional three (3%) percent of Corporal base pay for that shift.

**Specialty Pay**

When assigned, employees will be paid the following monthly pay in addition to their normal compensation based on the top step of the officers pay:

Hostage Negotiator	3%
S.W.A.T Team	3%
K-9 Handlers	3%
Field Training Officers	3%
Motorcycle Officer	3%
Tactical Team	3%
Bomb Squad	6%
Meth Team	4%

An additional \$30.00 per month will be paid if an officer is assigned to a second specialty. The Chief of Police must approve any multiple specialty assignment. Any overtime required to complete the duties associated with being a FTO will be pre-authorized by the Sergeant in charge of the FTO and paid in accord with contract provisions.

**Longevity**

<b><u>Years of Service</u></b>	<b><u>Percent</u></b>
After 5 Years	2%
After 10 Years	4%
After 15 Years	6%
After 20 Years	8%
After 25 years	10%



**Shift Premium**

When a member is assigned a shift, the City agrees to pay the following monthly amounts based on the top step of the Senior Police Officer:

Second Shift	0.75%
Third Shift	1.5%
Fourth Shift	2.25%

**Extra Duty Wages**

Extra duty employment is defined as work that is voluntarily performed for a separate and independent employer from the City. Extra duty pay and procedures shall be subject to renegotiation between the parties and recorded in a Memorandum of Understanding. The parties agree to meet during the month of July each year of the life of this agreement to determine the wages for extra duty employment for the following year.

**Basic Law Enforcement Training (BLET)**

- A. Members instructing at the BLET and Reserve BLET sessions will be paid the then current hourly rate for instructors at the Burien, Washington WSCJTA, whichever is higher.
- B. Members who instruct during BLET sessions will be given first consideration for other instruction opportunities sponsored by the department. Instruction outside BLET sessions will follow current contract provisions with the overtime rate applying when applicable. BLET instructors gain more experience in classroom settings and will therefore be in higher demand as instructors in other than BLET training sponsored by the department.

For purposes of pay rates, FLSA requires that any member who works over 171 hours in a 28 day work period will be paid at their regular rate at time and one half for each hour over the 171 hour threshold. These are for hours worked not hours paid (physically on duty, not including discretionary paid time off). The current 10/40 patrol schedule has established 13 individual 28 day work periods in each calendar year that can be used to identify any work period under consideration.

**ARTICLE 12 – VACATION**

Each employee within the bargaining unit shall have a one-time deposit of 52 hours of vacation leave added to their vacation balances effective January 1, 2010. New hires employed during 2010 shall receive this additional

vacation deposit in the same manner as floating holidays are allocated for new hires.

In addition to the one-time 52 hour deposit, vacation shall accrue in 2010 on a bi-weekly basis as follows:

<u>Years of Service</u>	<u>Bi-Weekly</u>	<u>Hours of Vacation</u>
At the beginning of 1 <sup>st</sup> year through completion of the 4 <sup>th</sup> year	3.69 hours	96 hours
At the beginning of the 5 <sup>th</sup> year through completion of the 10 <sup>th</sup> year	5.23 hours	136 hours
At the beginning of the 11 <sup>th</sup> year through completion of the 17 <sup>th</sup> year	6.76 hours	176 hours
At the beginning of the 18 <sup>th</sup> year and over	8.30 hours	216 hours

Effective January 1, 2011, vacation shall accrue on a bi-weekly basis as follows:

<u>Years of Service</u>	<u>Bi-Weekly</u>	<u>Hours of Vacation</u>
At the beginning of the 1 <sup>st</sup> year through completion of the 4 <sup>th</sup> year	5.69 hours	148 hours
At the beginning of the 5 <sup>th</sup> year through completion of the 10 <sup>th</sup> year	7.23 hours	188 hours
At the beginning of the 11 <sup>th</sup> year through completion of the 17 <sup>th</sup> year	8.76 hours	228 hours
At the beginning of the 18 <sup>th</sup> year and over	10.30 hours	268 hours

On December 31 of any year, the City may reduce the above-referenced accrual rates to their 2010 levels by permanently increasing all pay steps by 2.5% across the board.

Maximum accrual will not exceed two times the annual allowance plus forty (40) hours. Maximum vacation cash-out at retirement is the same as the maximum accrual. Annual vacation bids will be granted on the basis of department seniority, within work unit/team.

With the approval of their supervisor, and after completion of six (6) months of service employees may use vacation up to and including the amount accrued. Employees will be allowed to take vacation in hourly increments.

An employee shall not be credited with any vacation leave in a particular pay period unless that employee has been in a paid status for eighty percent (80%) or more of the hours in that pay period

For the purposes of application, maximum accrual and maximum carryover are interchangeable terms.

If the Employer cancels vacation once vacation has been approved and the affected employee has incurred non-refundable expenses in planning for the same, the employee shall be reimbursed by the City for those expenses. Any employee called back to duty by the City for any reason once the vacation has begun shall be reimbursed for required round trip transportation costs involved in returning for duty if the employee is out of the area.

## **ARTICLE 13 – UNIFORMS**

New hires will be furnished with uniforms as provided below. Existing employees shall have their uniform and equipment allotment maintained in accordance with this list. Said uniforms shall remain the property of the City. The City reserves the right to make changes in the color, material, and quality of the uniforms it provides, provided that it issues the full complement of uniform items enumerated below.

The City shall provide contract uniform cleaning, on the basis of a maximum of eight (8) items per two calendar week period (non-cumulative) per officer; provided that jumpsuits are to be laundered at home by the employee and not submitted for cleaning at City expense. Motorcycle Officers shall, during the months of May through September, be entitled to have ten items cleaned during a two calendar week period (non-cumulative) per officer. Plain-clothes employees may substitute eight items of business attire in lieu of uniform items. Business dress attire may include dress shirts/blouses, slacks, sport coats, suits, ties, dresses and/or skirts. Additional items in excess of the eight (8) items per two calendar week per officer will be at the expense of the individual. Casual sports wear such as polo shirts and cotton twill pants are not covered under this agreement.

The following items shall be provided by the Department to all new hires and/or replaced to all sworn personnel should the item be deemed by the employee's supervisor to no longer be in a serviceable condition.

- 3 pairs of trousers (1 pair for det. & special units)
- 3 winter shirts (1 winter shirt for det. & special units)
- 2 winter jumpsuits
- 3 summer shirts (1 summer shirt for det. & special units)
- 2 summer jumpsuits
- 3 white shirts if required (motors, bike unit, etc.)
- 1 Uniform Tie
- 1 water resistant coat
- 1 badge
- 1 service weapon with 3 magazines
- 1 duty belt with 4 keepers
- 1 holster

- 1 set of handcuffs with case and key
- 1 OC 10 canister and holder
- 1 approved baton and holder
- 1 department radio and holder
- 1 rubber glove holder
- 1 protective vest
- 1 flashlight and holder

The City shall continue to provide special items to units with special requirements (motors, bike patrol, etc.). These special items will remain the property of the City. Probationary officers will receive one (1) uniform (summer/winter) at the time of hire and two (2) more upon completion of the Academy.

The items listed are the approved quartermaster issue items or replacement items. There are other items that are deemed approved and optional items that the employee is authorized to wear. Refer to applicable department uniform policy.

#### **ARTICLE 14 - SPECIAL EQUIPMENT**

The City shall provide motorcycle helmets, handcuffs, leather and all other items that are presently being furnished. These special items shall remain the property of the City. When the employer mandates a change in equipment, the employer shall provide the initial issue, unless the employee is allowed to continue using the obsolete article until no longer serviceable.

#### **ARTICLE 15 - REPAIR OR REPLACEMENT OF PERSONAL PROPERTY**

The City agrees to repair or replace items of personal property damaged or lost while in the line of duty as specified in the guidelines established by the Guild and the City. The specific guidelines established by the Guild and the City to determine claims and the procedure for filing claims shall be posted.

## **ARTICLE 16 - LEAVES OF ABSENCE**

The normal procedure for processing requests for leave of absence shall follow those procedures generally set forth by the Civil Service Rules and Charter of the Civil Service Commission. In addition, however, the following items are made by a part of the agreement:

### **Section A - Family Emergency Leave (LEOFF I and LEOFF II)**

1. In the event of a serious sickness in the employee's family of any spouse, parent, child, brother, sister, grandparent, father-in-law, mother-in-law, brother-in-law, sister-in-law, or grandchild, the employee may on request be granted up to three (3) days leave of absence with full pay to make household adjustments and arrange for medical service. In unusual situations, a LEOFF I officer may request a short extension of this leave. If any question arises, the President of the Guild and the Chief of Police, or their designee, will negotiate the matter and their decision will be final.
2. In the event of a natural disaster, fire, or event creating an emergency beyond the employee's control, the employee may on request be granted up to three (3) days leave of absence with full pay to make household adjustments or to make temporary arrangements to resolve the problem. If any question arises, the President of the Police Guild and the Chief of Police, or their designees, will negotiate the matter and their decision will be final.

### **Section B - Family Leave**

The Federal Family and Medical Leave Act requires employers to provide up to a total of twelve (12) weeks (480-hours) of unpaid leave during any 12 month period for eligible employees at the time of birth or adoption of a child or at the time of a serious health condition affecting the employee or family member. Additionally, employees shall be allowed to use any accumulated leave to continue pay during a lawful period of family leave; provided that, no more than 80 hours of sick leave may be used for maternity/paternity leave issues not related to a serious health condition or a period of temporary disability.

If any question arises regarding the interpretation of this article, the President of the Guild and the Chief of Police, or their designees, will negotiate the matter and their decision will be final.

### **Section C - Funeral Leave (LEOFF I and LEOFF II)**

In the event of a death in the family of any employee-spouse, parents, children, brother, sister, grandparents,

father-in-law, mother-in-law, brother-in-law, sister-in-law, or grandchildren, the employee may on request be granted up to three (3) days leave of absence with full pay to make household adjustments or to attend funeral services. If any question arises, the President of the Guild and the Chief of Police, or their designees, will negotiate the matter and their decision will be final.

#### **Section D - Illness Leave (LEOFF II)**

1. **Accrual** - Cumulative illness leave with pay shall accrue to each new Police Officer at the rate of six (6) hours for each bi-weekly pay period. An employee shall not be credited with any illness leave in a particular pay period unless that employee has been in a pay status for eighty (80) percent or more of the hours in that pay period.
2. **Use of Illness Leave** - Illness leave may be used after six (6) months of continuous service by the employee when that employee is incapable of reporting to duty due to an illness or injury to that employee.
3. **Waiver of Six Months Waiting Period** - The six months waiting period may be waived if the employee is hospitalized. An employee shall be required to furnish evidence supporting the need for the use of illness leave when such evidence is requested by the employee's supervisor.
4. **Duplication of Illness Leave & Industrial Insurance** - When an employee uses illness leave that is duplicated by Industrial Insurance Compensation, the total amount of compensation paid by Industrial Insurance must be turned in to the Personnel Department. The employee's illness leave account shall then be credited by the amount of compensation returned.
5. **Sick Leave Buy Back**

LEOFF II employees retiring from service in the Spokane Police Department will be allowed to cash in unused sick leave at a ratio of forty percent (40%). The maximum allowed for buy out will be three hundred and eighty four (384) hours of pay which is 40% of 960 hours. If possible, all such amounts will be placed into a tax deferred account.

#### **Section E - Disability Leave (LEOFF II Officers Only)**

When an employee becomes entitled to coverage under RCW 51.32.090 due to a temporary total disability, the City shall compensate the employee for the difference between his Worker's Compensation entitlement and the employee's regular net salary for a period not to exceed six (6) months or the termination of the Workers'

Compensation payments, whichever comes first. To accomplish this, the City shall pay the employee his/her regular net salary for said period in lieu of any time-loss payments or disability leave supplement payments to which the employee would otherwise be entitled. In no event will the City pay for more than a total of six (6) months for any particular temporary total disability. If an employee is returned to work on a conditional basis and the disability reoccurs, any additional payments under this section shall be limited to the remaining, unused portion of the original six (6) months.

#### **Section F - Application for Leave**

Any request for leave of absence shall be submitted in writing by the employee to his immediate supervisor. The request shall state the reason the leave of absence is being requested and the length of time off the employee desires. Authorization of a leave of absence shall be furnished to the employee by his immediate supervisor and it shall be in writing, provided that approval of such authorization shall reside in the Police Chief or designee and the Human Resources Department. Any request for a leave of absence shall be answered promptly. Requests for immediate leave (for example, family sickness or death) shall be answered before the end of the shift on which the request is submitted. Other requests for leave shall be answered within ten (10) days.

#### **Section G – Maternity Leave**

Maternity leave is defined as a temporary medical disability due to pregnancy and/or childbirth or complications resulting from childbirth and will be administered in compliance with state and federal laws and regulations for granting maternity leave. An employee who is on an authorized maternity leave shall first use accrued illness leave to maintain paid status while on maternity leave. "Authorized maternity leave" means maternity leave granted pursuant to a medical certification provided by the employee to the office of the Chief of Police.

#### **Section H – Active Duty Call Up**

A. Members ordered to active military duty by the President of the United States or the Governor of the State of Washington are entitled to pay and benefits as outlined in Paragraph B and C of this section. This leave is separate from any leave required by State or Federal law for training for any branch of the United States Reserve Forces or the National Guard.

B. Commencing on the first day of active duty and ending on the last day of active duty, each member's military pay will be supplemented by an amount necessary to equal what the member's pay would be if they were not on active duty. However, in no event may the combined pay exceed their regular City pay. All other employee

benefits will continue as if the member had not been called to active duty.

C. Whether and to what extent a member called to active duty is covered by City sponsored medical, dental, life and long-term disability insurance is governed by the terms of the collective bargaining agreement and insurance contracts.

### **Section I - Care for Minor Children**

Employees may use accrued leave (vacation, etc.) to care for a minor child under the age of 18 that requires treatment or supervision. Additionally, LEOFF II members may use accrued sick leave in addition to other leaves available to them.

#### **Limits on Leave for Minor Children**

1. Sick leave must be previously accrued.
2. The leave must be used to care for the employees child under the age of 18; and
3. The child must have a health condition that requires treatment or supervision. Employees may be required to provide documentation from a physician that a child has a health condition.
4. A LEOFF II officer may use sick leave to stay home and supervise children under the age of 16 if the officer's spouse is so ill that he/she is unable to care for the children. Employees may be required to provide documentation from a physician verifying the spouse's health condition. Since the parties recognize that sick leave abuse is misconduct, the City retains the right to reopen this section if the City perceives an abuse problem.

## **ARTICLE 17 - GENERAL PROVISIONS**

### **Section A - Pledge Against Discrimination**

The City and the Police Guild are mutually committed to a workplace free from discrimination. Any claim of unlawful discrimination must be processed privately by the employee to the appropriate local, state or federal agency or through the courts and shall not be subject to the grievance procedure. Employees believing they may have been discriminated against should comply with City policies concerning the notification to the City. All references to employees in the Agreement designate both sexes and wherever the male gender is used it shall be construed to include male and female employees.



### **Section B - Guild Bulletin Board**

The City agrees to allow suitable bulletin boards in convenient places in each work area to be used by the Guild. The Guild shall limit its posting of notices and bulletins to such bulletin boards.

### **Section C - Guild Activities on City's Time and Premises**

The City agrees that during working hours, on the employer's premises, or elsewhere, and without loss of pay, Guild officials shall be allowed to:

1. Post Guild notices and distribute Guild literature.
2. Attend meetings with the approval of the Police Chief or designee and solicit Guild membership without hindering normal operations.
3. Transmit communications authorized by the local Guild or its officers to the City or its representative.
4. Consult with the City, his representative, local Guild officers, or other Guild representatives concerning the enforcement of this Agreement.

### **Section D - Guild Business - Paid Leaves**

Upon the approval of the Chief of Police and the City Administrator, two (2) Guild officials, and such Guild legislative officials as agreed upon by the Guild, the Chief of Police, and the City Administrator shall be allowed the required time without loss of pay to attend official Guild conferences, Guild legislative conventions, and state or national conferences, not to exceed five (5) days, each official, for each conference or convention. If any section of this Agreement is determined to be unlawful as a result of a final decision of the Washington courts or is rendered unlawful by an action of the Legislature, either party may reopen that section for renegotiation.

### **Section E - Seniority -**

- 1) Definitions

**Department Seniority** - The total length of unbroken service within the Police Department.

**Job Classification Seniority** - Based on the date of appointment to that classification and shall apply throughout the department.

**Non-Supervisory Personnel** - All personnel below the rank of Sergeant.

**Bureaus** - There are two bureaus in the Police Department structure, which are:  
Operations Bureau and Operations Support Bureau

**Transfer** - The reassignment from one bureau to another.

2) **Shifts** -

- a. The Chief of Police retains the exclusive right to determine the starting time of the work shifts and the number of shifts in a work day; provided that in the event the shift starting times are reset during the year by the Chief, sufficient notice will be given to the Guild to allow for a re-bid process as set forth under "Annual Bid for Shift". A re-bid shall not be required for seasonal shift changes of less than two hours. This section shall be interpreted as a waiver of the Guild's right to bargain changes in the starting times of work shifts in accordance with its terms but it shall not be considered a waiver of the Guild's right to require the Employer to bargain over changes in the length of the work shifts. Examples: 5/8, 4/10, 10/40's etc.
- b. Shift assignment within a bureau will be based on job classification seniority; provided, however, if the total police experience level of Police Officers and PFC's/Senior Police Officers on any shift falls below 4.5 years, the Chief of Police shall have the right to assign personnel to raise the level to a minimum of 4.5 years. The experience level shall be determined by adding together the years of experience (rounded to the nearest year) of Police Officers and PFC's/Senior Police Officers assigned to the shift, divided by the number of Police Officers and PFC's/Senior Police Officers so assigned. Assignment in this case shall first be a call for volunteers. In the event insufficient volunteers come forward, then personnel will be selected starting with the Police Officer or PFC/Senior Police Officer with the least seniority of 4.5 years or over not assigned to the shift needing the higher

experience and proceeding upward temporarily until such time as the 4.5 year level is attained.

Probationary officers will not be counted into shift staffing until they have completed at least their ninth (9th) month of service.

- c. Each K-9 Officer will work a 4/10 hour work schedule. Each K-9 Officer will check into and out of service at their residence. One and one-half (1 ½) hour each work day will be allowed for maintenance, care, and training. Officers will log on for a minimum of 8.5 hours each workday. When a member is using vacation, compensatory time, floating holidays, or sick leave, and in care of the Department's K-9 it shall be shown as 1.5 hours worked and 8.5 hours of leave. When the K-9 is not in the care of the officer, then use of any type of leave will be shown as 10 hours of leave used.

#### **Section F - Seniority Lists**

Each bureau shall have its seniority lists according to department seniority and job classification seniority. The member with the least department and job classification seniority shall be placed at the bottom of that respective seniority list.

The established seniority lists of the Spokane Police Department shall be brought up to date January 1st of each year, and a copy of this list will be delivered to the Guild ten (10) days prior to the effective date of this contract. Any objection to these lists shall be made during this ten (10) day period to the Executive Board of the Guild.

#### **Section G - Annual Bid for Shifts**

Prior to the first of each calendar year, in sufficient time for the development of the first mark-up of the year, non-supervisory personnel shall submit in writing to their immediate supervisor a bid for shift assignment. Shift assignment within a bureau shall be based on job classification seniority; except Police Officer, Police Officer First Class and Senior Police Officer shift assignment will be based on departmental seniority.

1. **Patrol Supervisor Shift Assignment** - By December 1st of each year, sergeants shall submit to their immediate supervisor a written request for patrol shift assignment for the following year.

Seniority shall be given primary but not exclusive consideration in assigning such shifts. The City may make shift assignments without regard to seniority for reasonable cause.

Reassignments shall only be made when a vacancy exists or the City has reasonable cause to make a change. When a vacancy exists and the most senior sergeant's request is unable to be granted, the bureau commander, upon request, shall explain the reasons to the employee concerned in writing.

2. **Mid-Year Shift Assignment** - When a vacancy within a bureau in a non-supervisory job classification position occurs on a shift during the calendar year, assignment to that shift will be based on job classification seniority. Police Officer, Police Officer First Class and Senior Police Officer shift assignment will be based on departmental seniority.

Vacancy means a position available in the total complement of personnel assigned and not to a particular job assignment. Exceptions may be made for reasonable cause.

Short-term exceptions for extreme hardship, not to exceed sixty (60) days, may be made when mutually agreed upon by the Chief of Police and the Guild President.

#### **Section H - Transfers**

In determining transfers of non-supervisory personnel, seniority shall be the determining factor. Exceptions may be made for reasonable cause.

#### **Section I - Special Assignments**

Management has the right to assign a member to a special assignment without regard to seniority. Special assignments include the following assignments and any other assignments mutually agreed to in writing:

1. Probationary Officer (newly hired)
2. Special Investigative Unit
3. Administrative Services Division
4. K-9 Officer
5. Traffic Unit
6. Neighborhood Resource Officer
7. Field Training Officer
8. Special Weapons & Tactics Officer

9. Truancy Officer
10. Hostage Negotiator
11. Bomb Squad
12. School Resource Officer
13. Tactical Team
14. Dignitary Protection Team
15. Meth Team
16. Other assignments as agreed to by the Police Guild President and the Office of the Chief.

For those special assignments where more than one (1) person is assigned and more than one (1) shift is involved, shift assignment will be by seniority as per the annual shift bid process. Any person so attached will not displace any other person regularly assigned to the bureau.

When an employee is assigned or removed from a special assignment, a letter of notice will be sent from the Chief notifying the employee of their official change of status. This form will serve as formal notice for payroll to begin or suspend specialty pay.

#### **Section J - VEBA Medical Savings Trust**

The City will contribute to the employees' deferred compensation accounts in accordance with specific provisions in Article 23 in lieu of contributing to a VEBA Account.

#### **Section K - Duplication of Benefits**

Should Legislature improve or add new benefits to LEOFF II members that duplicate benefits provided by the City, the legislative benefits shall prevail. At such time that this should occur, the City will discontinue the duplicated benefits to the members. Members shall receive the greater of the benefits provided by the City and legislative action but shall not receive benefits from the City that are duplicated by legislative action.

#### **Section L - LEOFF II Light Duty**

If an employee is disabled from performing his/her regular duties, but is released by his/her physician for light duty, the following procedures shall apply:

##### **Non-duty related temporary disability**

1. The employee shall provide the Office of the Chief with the physician's release in which the physical limitations of the employee shall be stated.

2. When work is available, the Chief of Police shall offer the employee the opportunity to perform work, which is within the employee's ability to perform within the department.
3. The light duty assignment shall continue for such period of time as there is a need for the duty or until the employee is released by the physician for full-duty but not to exceed six months (cumulative).
4. The Chief of Police shall have the right to have an independent medical examination of the employee conducted to determine the extent of the employee's disability.
5. The employee shall suffer no loss of wages or benefits during the light duty assignment. This provision shall apply only to temporarily disabled LEOFF II employees.
6. If any question arises as to the application of this section, the President of the Guild and the Chief of Police, or their designee, will negotiate the matter and their decision will be final.

Duty related temporary disability

This section (L) shall not apply to LEOFF II employees covered by worker compensation. The employer reserves all rights it has under the law to administer such claims, including requiring light duty, consistent with state law. The parties are bound by state, federal and applicable laws/regulations with respect to permanently disabled employees.

**ARTICLE 18 – SUPPLEMENTAL AGREEMENTS**

The parties recognize that circumstances change from time to time during the term of labor agreements that give rise to a need discuss changes in hours or working conditions (including the scope of bargaining unit work). In order to provide a convenient forum to discuss these issues, the parties agree to the following procedure.

This Agreement may be amended within the scope of this Article provided both parties concur. Supplemental agreements may be completed through negotiations between the parties at any time during the life of this Agreement. A joint committee comprised of the negotiating teams of the two parties will meet upon the request of either party to discuss proposals related to work hours or changes in working conditions, including the scope of bargaining unit work. Should either party desire to negotiate a matter of this kind, it shall notify the other party in writing of its desire to negotiate. Supplemental agreements thus completed will be signed by the Guild President or designee and the Mayor or designee.

Should either party, having been notified of the proposed supplemental language, not respond by requesting a meeting of the joint committee within thirty (30) days, the proposed language shall be considered acceptable and shall be forwarded to the other party for signature. Supplemental agreements thus completed shall become a part of this Agreement.

The City reserves the right to implement changes that are not mandatory subjects of bargaining, or those which have otherwise been reserved to the City by the express terms of this Agreement.

### **ARTICLE 19 - SAVING CLAUSE**

If any section of this Agreement is declared invalid or unconstitutional for any reason, such declaration of invalidity or unconstitutionality shall not affect the other sections or portions thereof which shall be valid.

### **ARTICLE 20 - JURY DUTY**

City Employees shall be encouraged to serve jury duty at times when they are called. Employees so called and asked to serve during working hours will suffer no loss of pay. Employees called during the working day, or excused during the day, shall report immediately by phone to the shift supervisor for instructions as to whether to report for work during the remainder of the work date.

### **ARTICLE 21 – MISCELLANEOUS**

#### **Section A - Negotiations**

Police Guild members selected to negotiate with the City shall be paid for their time during negotiations if those meetings are held during the regular scheduled duty hours.

#### **Section B - Mileage Allowance**

The City agrees to pay the rate established by City policy to all Guild employees who use their personal vehicles to conduct approved City business.

#### **Section C - Tuition Reimbursement**

The City agrees to reimburse the employee for 100 percent of the tuition fee for any approved job related course upon satisfactory completion of the said course up to the applicable tuition level established at Washington

State University. In order to qualify for tuition reimbursement, the course must be approved by the Police Chief or designee and the Human Resources Department before the course is taken. The cost for books, laboratory and other related expenses shall not be paid by the City. Satisfactory completion of any course shall mean a grade of "C" or better.

**Section D - Joint Committee**

The Chief of Police (or designee) and the President of the Guild (or designee) will meet for the purpose of developing recommendations for the Civil Service Commission concerning the sources, structure, and general components of promotional examinations within the bargaining unit. In the event that the joint recommendations are rejected by the Civil Service Commission, either party may reopen this section of the Agreement for the limited purpose of negotiating the possible implementation of the recommended changes in the promotional process.

**Section E – SWAT Team**

A. Each SWAT team member will receive two hours per week during duty hours for physical fitness training. The training will occur at the beginning or end of a work shift and must be done at the Public Safety Building. Training time will be pre-approved by the member's unit supervisor. SWAT team members will submit a signature card to the unit supervisor for approval. The unit supervisor will forward the signature card to the SWAT Training Coordinator and it will be entered into a training log. The training log will be submitted quarterly to the Office of the Chief.

B. The training time will be scheduled by mutual agreement between the officer and their supervisor. The training may be denied where shift staffing levels or work of the department so requires.

C. Training time may not be carried over if not used during a given week.

D. No overtime will be permitted to complete shift or assigned duties, or for working out if the officer continues to work out following the end of their shift. All other time that an officer may spend working out (unless specifically ordered to work out by the responsible supervisor), including time immediately before or after their shift, is not compensable.

E. Officers will be subject to call at all times while they are being compensated for working out (physical fitness training).

F. The Guild and the City agree that they will work together to minimize the operational impact on the department of the physical fitness release time.



G. The parties recognize the importance of having some balance in shift assignments for SWAT team members. Should the shift selection process result in an imbalance, the City may reassign SWAT team members, by seniority, to restore such balance.

#### **Section F – On Duty Physical Fitness Training**

1. Each employee assigned to uniformed field assignment may use two hours per week during duty hours for physical fitness training. The training will occur at the beginning or end of a work shift and must be done at the Public Safety Building. Employees assigned to all other assignments will be allowed to convert lunch breaks (30 minutes) and the two daily rest periods (15 minutes each) for physical training. Detectives only may leave the Public Safety Building to jog as long as they carry their pagers or cell phones for emergency contact.

2. The training time will be scheduled by mutual agreement between the employee and their supervisor. The training may be denied where shift staffing levels or work of the department so requires, however, reasonable requests for physical fitness training shall not be denied.

3. Training time may not be carried over if not used during a given week.

4. No overtime will be permitted to complete shift or assigned duties or for working out if the employee continues to work out following the end of their shift. All other times that an employee may spend working out, including time immediately before or after their shift, is not compensable.

5. Employees will be subject to call at all times while they are being compensated for working out (physical fitness training).

6. The Guild and the City agree that they will work together to minimize the operational impact on the department of the physical fitness release time.

#### **Section G – Leave Sharing**

Occasionally Guild employees suffer from a severe or extraordinary illness or sustain an injury, or have an immediate family member suffering from a severe or extraordinary illness or injury and exhaust their leave balances. Often co-workers who have substantial leave balances wish to donate some of their leave to those employees. Leave sharing is the mechanism to accommodate both groups.

This agreement will permit employees of the Police Guild to donate vacation time, illness leave and/or compensatory time to a co-worker, who is suffering from, or has an immediate family member suffering from, a severe or extraordinary non-job-related illness, injury, or other impairment, is out of vacation time, illness leave,

compensatory time, floating holidays, and personal leave (if applicable) and who will imminently go on leave without pay or terminate City employment.

1. Eligibility to Receive Shared Leave

- a. The employee must not be receiving time-loss payments as a result of an on-the-job injury or illness.
- b. The employee's position must be one in which vacation and illness leave can be accrued and used.
- c. All Police Guild employees may receive leave under this program if the employee suffers from a severe or extraordinary non-job-related illness, injury, or impairment which has caused, or is likely to cause, the employee to go on leave without pay or which may cause the employee to be terminated from City employment.
- d. An employee may also receive leave under this program if an immediate family member of the employee suffers from a severe or extraordinary illness or injury.
- e. Requests to receive the leave-sharing benefit shall be submitted to a committee composed of one person from Human Resources, one person from the Police Department and one person representing the Police Guild. The decision of the committee shall be final; however, if the decision of the committee is to deny the request, the requester has the right to petition the committee for reconsideration. The decision of the committee shall not be subject to the grievance procedure.
- f. An employee must have exhausted his/her illness leave, vacation time, compensatory time, floating holidays, and personal leave (if applicable) before receiving shared leave.
- g. An employee receiving the leave sharing benefit must have abided by the City's policies respecting illness leave. It is the responsibility of the supervisor to ensure that the employee has not abused illness leave before submitting the request.
- h. For the purpose of this policy, immediate family is defined as spouse, child, parents, or other more distant relative living in the home of the employee.

2. Lifetime Maximums

- a. Employees receiving the leave-sharing benefit shall receive not more than a total of one hundred and twenty (120) days (960 hours) of such leave every ten (10) years of his/her employment with the City of Spokane, provided, however, the received leave after the first one hundred and twenty (120) days may only be direct donations of accrued leave from other Guild members.

- b. The employee's position must be one in which vacation and illness leave can be accrued and used.
- c. The employee must not be receiving time-loss payments as a result of an on-the-job injury or illness.

### 3. Leave Transference Process

- a. An employee wishing to receive shared leave shall submit a written request to the Human Resources Director and attach a detailed statement from his/her physician verifying the severe or extraordinary nature of the condition and expected duration of time off from work. A Guild representative or other person may submit the request on behalf of the employee.
- b. After receiving the request, a committee composed of one person from Human Resources, one person from the department and one person from the Police Guild will review the request and if approved, the Human Resources Department will notify the Police Chief, or designee, who will communicate the employee's eligibility for leave-sharing to the other employees in the department.
- c. If the employee does not supply adequate documentation from his/her physician, the Human Resources Department will contact the employee or Guild representative and require additional information be supplied. A decision will not be rendered until adequate documentation is supplied.
- d. The decision of the committee shall be final; however, if the decision of the committee is to deny the request, the requester has the right to petition the committee for reconsideration. The decision of the committee shall not be subject to the grievance procedure.
- e. There shall be no retroactive applications of donated leave.

### 4. Donating Leave

- a. Guild members wishing to donate leave shall send the Leave-Sharing Donation form to the Payroll Division for processing.
- b. All donated leave shall be in full days. A day shall be considered eight (8) hours regardless of whether the employee is on a flex schedule or compressed workweek. No differentiation will be made between the salary level of the donor and the recipient.
- c. An employee may donate a total of ten (10) days of vacation time, illness leave, or compensatory time, or any combination that does not exceed ten (10) days, in any calendar year. All donations shall be entered as illness leave in the recipient's account.
- d. Donations of vacation time or illness leave may not bring the donor's balances below thirteen (13)

days each.

- e. All donations of leave shall be strictly voluntary and confidential and shall be done on the Leave-Sharing Donation form. The donor shall designate the recipient.
- f. No employee shall be coerced, threatened, intimidated, or financially induced into donating leave.
- g. Once leave has been donated, it becomes the recipient's leave regardless of any changes in his/her employment status, subject to the maximum stated in section 5(d) below.
- h. If the employee receiving the leave sharing donations passes away before using all donated hours, the employee's beneficiary will receive a maximum payout of up to ten (10) days in accordance with the City policy on payouts. The remaining hours will be deleted from the system.

#### 5. Leave-Sharing Bank

- a. The employees of the Police Guild will have access to the leave-sharing bank. All donations shall be made by completing the Leave-Sharing Donation form. All donations will be applied to the recipient's illness leave bank.
- b. Except as provided in section 5(f) below, the total of any one employee's donations to the bank may not exceed ten (10) days in any calendar year. Donating to the bank shall not affect an employee's right to donate up to ten (10) days to an individual(s).
- c. Only employees who have been approved to receive shared leave and who have exhausted their recipient-specific leave may, with the approval of the committee that approved their leave-sharing request, draw leave from the leave sharing bank with up-to-date supporting documentation from their physician. The amount of leave drawn from the bank shall be the lesser of: (i) the amount needed to cover the balance of their illness; (ii) the amount needed to make up their lifetime maximum of one hundred and twenty (120) days; (iii) half the number of days in the leave sharing bank; or (iv) thirty (30) days.
- d. Employees who have been approved to receive shared leave and receive more recipient-specific leave than they need may keep up to ten (10) days of the excess. Donated leave above ten (10) excess days shall be transferred to the leave-sharing bank. Employees may not keep any part of the excess leave that would put them over their one hundred and twenty (120) day lifetime maximum.
- e. Police Guild members who have more than nine hundred and sixty (960) hours of sick leave, have

surplus compensatory time, or have vacation time they are on the verge of forfeiting may donate their surplus leave to the bank in units of a day.

- f. Police Guild employees who terminate with five (5) or more years of service may donate all accrued illness leave hours in excess of nine hundred and sixty (960) hours to the leave-sharing bank. Employees who retire from City employment may donate all accrued illness leave hours in excess of nine hundred and sixty (960) hours to the leave-sharing bank.

6. Administration

- a. The Human Resources Department shall administer the leave-sharing program.

**Section H – Swing Shift Parking**

Swing shift officers will have twenty spaces provided on or near the Spokane County campus. The cost of the monthly parking will be the same as the Spokane County parking committee established rate for parking (currently \$10), using permits issued by the County. Employees using these spots are expected to comply with the County's requirements, and will be responsible for any tickets or fines. Failure to pay the fee or otherwise comply may result in loss of the permit.

**Section I – 2010-2011 Staffing**

Twelve (12) of the twenty-two (22) positions that were slated for elimination as part of the 2010 budget will be restored by the City and the City will immediately rehire probationary officers Scott Lesser and Sam Chimenti at the earliest academy acceptance date after ratification of this agreement as well as hire and send the remaining unfilled positions to the Washington State Criminal Justice Training Academy (or hire lateral officers) on or before July 1, 2010, absent delays that are not the fault of the City. The Guild's wage concessions embedded within this agreement are recognized to be in consideration for no further reductions in bargaining unit personnel during the life of this agreement. In the event the City does not fill the positions or otherwise permanently reduces staffing within the bargaining unit at any time during the life of this agreement, the Guild may reopen on economics for 2011.

**ARTICLE 22 - SALARY COMPUTATIONS**

**Section A - Regular Hourly Rate**

Regular rate of pay shall mean base salary together with any shift differential pay, longevity, specialty pay, educational or other incentive pays.

**Section B - Pay Periods and Pay Checks**

Pay periods shall be established on a bi-weekly basis. Pay checks shall be issued on a bi-weekly basis on alternate Fridays. Employees who do not work on Friday and those employees working the Thursday evening shift shall have their pay checks distributed, whenever possible, on the Thursday before pay day.

**ARTICLE 23 - DEFERRED COMPENSATION**

**Section A - Deferred comp match.**

The City agrees to make a deferred compensation plan available to Guild members. For the term of this agreement, the City's match will be 4% of the employee's base monthly pay including longevity.

**Section B - Deferred comp Employer contributions.**

In addition to the foregoing, the Employer will adjust its rate of contribution to the deferred compensation program without regard to employee contributions in accordance with the following formula:

In the event of an increase in regularly embedded general fund tax revenues (excluding the impact of reducing authorized property tax increases or not renewing previously passed discretionary property taxes) between tax year 2005 and 2006, and in subsequent years (applying the same analytical standard from year to year) the City shall make additional contributions to employee deferred compensation accounts, in the following year and on the same basis as the basic match (excluding the requirement for employee matching) as follows:

Increase in tax collection	Additional City contribution
3% - 4%	1%
4% - 6%	2%
6% or more	3%

**Section C - VEBA Alternative.**

The City will contribute \$50.00 per employee per month to the employee's deferred compensation account without requiring a match in lieu of a VEBA contribution.

## **ARTICLE 24 – DISCIPLINE**

### **Section A - General**

Both parties recognize that Police Officers have certain rights and responsibilities. Some of these rights and responsibilities are included in the departmental policy manual, under the title Complaint and Disciplinary Procedures.

Both parties agree that the carrying out of departmental Policy and Procedures is exclusively the province of the Chief of Police.

An employee shall be allowed to inspect his/her personnel file with the exception of materials that are exempt from disclosure pursuant to Washington law and may obtain a copy of such file at any reasonable time. The employee may request removal of material which he/she believes erroneous or irrelevant. This request will be reviewed by the Chief of Police. If the employee does not agree with the Chief's decision, he/she may prepare a statement of dissent which will be placed in the file. Employees may request that written reprimands be expunged from personnel files after a minimum period of three years if there is no reoccurrence of similar misconduct for which the employee was disciplined during that period. Employees may request that records of serious discipline be expunged from personnel files after a minimum period of five years if there is no recurrence of similar misconduct for which the employee was disciplined during that period. Requests for the expungement of disciplinary references in personnel files, pursuant to this section, shall not be unreasonably denied. Nothing in this section shall be construed as requiring the City to destroy any employment records necessary to the City's case if it is engaged in litigation in any way related to that employee's employment at the time those records would otherwise be destroyed.

### **Section B - Forms of Discipline**

The following disciplinary procedures apply to Guild members who are permanent employees, that is, have completed their probationary period. The City will continue to administer disciplinary actions in accordance with the "Just Cause" concept. Disciplinary actions may include, but are not limited to, the following actions: oral reprimand, written reprimand, denial of promotion, demotion, suspension, and discharge for cause.

### **Section C - Right of Appeal**

Permanent employees (completed probation) shall have the right to take up discipline as a grievance, as set forth in Article 5 or as an appeal through the Civil Service Rules and Regulations, but the employee is limited to one or the other.

### **Section D(1) - Probationary Periods**

Probationary periods upon initial appointment shall not exceed eighteen (18) months for entry level and twelve (12) months for laterals and may not be extended without the written agreement of the Guild. During an employee's initial probationary period, he/she may be discharged by the employer at-will and such discharge shall not be subject to the grievance procedure. Probationary periods upon promotion shall not exceed six months and shall not be extended without the written agreement of the Guild. During a promotional probationary period, an employee may be reverted to his/her former classification and such reversion shall not be subject to the grievance procedure.

### **Section D(2) - Right of Petition**

Any probationary Guild employee who reverted or discharged pursuant to section D(1) above shall have the opportunity, upon request, for hearing with the Chief of Police or his designated representative. However, this opportunity shall not be subject to the grievance procedure. The Guild may provide representation at this hearing.

### **Section E - Police Officer Rights in Discipline**

It is agreed that the Employer has the right to discipline, suspend, or discharge any employee for just cause. The City must meet the just cause requirements for disciplining employees for off-duty conduct. Examples of off-duty conduct that may be subject to discipline include: 1) the off-duty misconduct materially effects the employer's business operation; or 2) the conduct is inconsistent with the office that the police officer holds.

1. In an effort to ensure that investigations are conducted in a manner which is conducive to good order and discipline, bargaining unit employees shall be entitled to the following protections which shall hereafter be termed as the "Police Officers' Rights in Discipline". Every employee who becomes the subject of an internal investigation shall be afforded the rights contained in the rest of this Section. This Section shall not apply to routine supervisory inquiries.
2. Every employee who becomes the subject of a formal internal investigation shall be advised at the time of their interview that he/she is accused of:
  - a. Committing a criminal offense; and/or
  - b. Conduct that would be grounds for termination, suspension, or other disciplinary actions.
  - c. Of their right to Guild representation



3. Any employee who becomes the subject of a criminal investigation shall, prior to their interview, be notified that he/she is the subject of a criminal investigation and, further, that he/she is under no obligation to answer any questions or to remain in an interview setting involuntarily, except as provided herein. So long as the matter remains a criminal investigation, the remainder of this article shall not apply until or unless the Department determines to compel the subject employee to answer questions. A criminal investigation as used herein shall be interpreted as any investigation which could result in the filing of a criminal charge against the officer. In any non-criminal investigation, the balance of this article shall apply.
4. Any interview shall take place at the Spokane Police Department, except when impractical. The employee shall be advised of his/her right to and allowed that Guild representation to the extent required by law. If the employee is a suspect, they shall be given a general overview of the factual allegations in writing before the interview commences
5. The interview of any employee shall be at a reasonable hour, when the employee is on duty, unless the exigency of the interview dictates otherwise. If the employee is suspected of misconduct, the interview generally shall be conducted in person, except that for limited follow-up questions or where there are other unusual situations, questioning may be telephonic so long as a Guild representative is given the opportunity to participate in the call.
6. The employee or Employer may request that an internal investigation interview be recorded, either mechanically or by a stenographer. There can be no "off the record" questions. Upon request, the employee under internal investigation shall be provided an exact copy of any written statement he/she has signed or of a verbatim transcript of any interview if one is created.
7. Interviewing shall be completed within a reasonable time and, in all internal investigation interviews, the employee shall be afforded such intermissions as he/she shall reasonably request for personal necessities, meals, telephone calls and rest periods.
8. All interviewing shall be limited in scope to activities, circumstances, or events which pertain to an employee's conduct or fitness to hold office.
9. The employee will not be threatened with dismissal or other disciplinary punishment as a guise to attempt to obtain his/her resignation, nor shall he/she be subject to abusive or offensive language

or intimidation in any other manner. No promises or rewards shall be made as an inducement for the accused officer to answer questions.

10. No employee shall be required to unwillingly submit to a polygraph test, nor will employees be required to answer questions without a direct order to do so.
11. Internal Investigation Files - Employees and/or their Guild Representative (if representing the employee) shall have access to complete copies of completed Internal Investigation files at any reasonable time once a Loudermill hearing has been scheduled, or after discipline has been imposed if no Loudermill hearing is held. Internal investigation files that do not result in an adverse finding shall not, in any way, be notated in that employee's personnel file and shall not be considered in determining the level of discipline which is appropriate.
12. Administrative investigations must be completed within 180 days of the matter coming to the attention of the Department (Bureau Command Staff or above) In the event the Office of the Chief believes an extension beyond 180 days is necessary, and the City can show that it has acted with due diligence and the investigation could not be reasonably be completed due to factors beyond the control of the Department (including, but not limited to, for example, extended illness or other unavailability of a critical witness (i.e. - the complainant, the officer being investigated), or necessary delays in the processing of forensic evidence by other agencies,) the Chief must contact the Guild prior to the expiration of the 180 days seeking to extend the time period. Any request for extension based on the unavailability of witnesses shall include a showing that the witness is expected to become available in a reasonable period of time. A request for extension based upon the above criteria will not be unreasonably denied. The period of investigation may also be extended by mutual agreement between the Guild President and the Chief.

The 180 day period shall be suspended when a complaint involving alleged criminal conduct is being reviewed by a prosecuting authority or is being prosecuted at the city, state or federal level, or if the alleged conduct occurred in another jurisdiction and is being criminally investigated or prosecuted in that jurisdiction. In cases of an officer involved fatal incident, the 180 day period will commence when the completed criminal file is provided to the Prosecuting Attorney, and will only be tolled in the event criminal charges are filed.

In the event an outside agency conducts a criminal investigation of a matter within the jurisdiction of the City, and the Department receives the completed criminal file with less than sixty (60) days remaining for the administrative investigation, the Department will have up to an additional sixty (60) days to complete its administrative investigation; in no event, shall the investigation last more than 240 days.

Compliance with this provision is required if findings are to be entered or discipline is to be imposed. Issuance of a Loudermill notice of intent to discipline will constitute conclusion of the administrative investigation for purposes of this section.

Nothing in this article prohibits the City from disciplining (provided just cause exists) an officer convicted of a crime, or laying off an employee pursuant to Civil Service Rule IX, Section 6 (d).

## **ARTICLE 25 - DRUG TESTING**

### **Section A**

Reporting to work under the influence of alcohol and/or illegal drugs, or the use, sale, or possession by an employee of illegal drugs is strictly prohibited and will result in disciplinary action (unless otherwise required by law), including immediate termination. For the purpose of this policy, substances that require a prescription or other written approval from a licensed physician or dentist for their use shall also be included when used other than as prescribed. Each employee must advise the Employer if they are using prescription or other over-the-counter drugs they know or reasonably should know may impair their ability to perform job functions and/or operate machinery such as automobiles. Under appropriate circumstances the Employer may request the employee provide written medical authorization to perform various essential job functions from a physician while using such drugs.

Any voluntary request by an employee for assistance with his/her own alcohol abuse problem will remain confidential and shall not be used as the basis for any disciplinary action provided that the request for assistance is initiated prior to being identified as impaired through the procedures herein.

The parties recognize the essential purpose of any law enforcement agency is to enforce the criminal laws. Moreover, the parties recognize the courts have held it would substantially impair law enforcement agencies if they

were required to employ individuals within their ranks who have violated the very laws said agencies are charged with enforcing. Therefore, the Employer reserves the right to refuse to employ or continue the employment of individuals who are or have been engaged in serious criminal conduct, whether drug related or not.

**Section B**

Where a supervisory employee of the City has a reasonable suspicion to believe an employee is under the influence of alcohol or illegal drugs or is abusing the use of prescription or over-the-counter drugs, or is using illegal drugs, the employee in question will be ordered to immediately submit to discovery testing. Such tests include breath tests, urinalysis and blood screens to identify any involvement with alcohol or such drugs. An employee who refuses to submit to discovery testing shall be conclusively presumed to be under the influence of alcohol or an illegal drug for the purpose of administering this Article and therefore will be subject to discipline, including immediate discharge.

**Section C**

For the purpose of administering this Article the following definition of terms is provided:

1. Reasonable Suspicion - Reasonable suspicion is based on objective facts and reasonable inferences from those facts, that discovery testing will produce evidence of a violation of this policy;
2. Under the Influence – In determining whether an employee is under the influence or using illegal drugs, the following cutoff levels shall be used for the initial screening of specimens to determine whether they are negative for these drugs or classes of drugs:

	Nanograms per milliliter (ng/ml)
	Test Level
Amphetamines .....	1000
Barbiturates .....	300
Benzodiazepines .....	300
Cannabinoids .....	100
Cocaine metabolites .....	300
Methadone	300
Methaqualone	300
Opiates (Codeine)	300

Opiates (Morphine) .....	300
Phencyclidine (PCP) .....	25
Propoxyphene .....	300

Level of the positive result for alcohol ..... 0.04 blood alcohol

3. Illegal Drugs - All forms of narcotics, depressants, stimulants, hallucinogens, and cannabis, which sale, purchase, transfer, or unauthorized use or possession is prohibited or restricted by law.
4. Over-the-Counter Drugs - Are those drugs which are generally available without a prescription and are limited to those drugs which are capable of impairing the judgment of an employee to safely perform the employee's duties.
5. Prescription Drugs - All drugs which are used in the course of medical treatment and have been prescribed and authorized for use by a licensed practitioner/physician or dentist.

**Section D**

If an employee is required to submit to a drug test, the following procedure shall be followed:

1. The employee shall be given notice of an opportunity to confer with a Guild representative if one is readily available.
2. The employee shall be given an opportunity to explain the reasons for the employee's condition, such as reaction to a prescribed drug, fatigue, exposure to toxic substances, or any other reasons known to employee, to the test administrator. The Guild representative may be present during this discussion.
3. The Employer may request urine and/or blood samples.
4. Urine and blood samples shall be collected at a local laboratory, hospital or medical facility. The Employer shall transport the employee to the collection site. The Employer and/or Guild representative may be allowed to accompany the employee to the collection site and observe the bottling and sealing of the specimen. The employee shall not be observed by the Employer when the urine specimen is given.
5. All specimen containers, vials, and bags used to transport the specimen, shall be sealed to safeguard their integrity, (upon request in the presence of the Employer,

employee and Guild representative) and proper chain-of-custody procedures shall be followed.

6. The collection and testing of the samples shall be performed only at Occupational Medicine Associates or at another laboratory mutually agreed to by the parties. The results of such tests shall be made available to the Employer and the Guild.
7. If a specimen tests positive in an immunoassay screen test, the results must be confirmed by a gas chromatography/mass spectrometry tests. The specimen must show positive results at/within the following limits on the GC/MS (gas chromatography/mass spectrometry) confirmatory test to be considered positive. If immunoassay is specific for free morphine the initial test level is 25 ng/ml.

Confirmatory Test

Marijuana metabolites	15 ng/ml
Cocaine metabolites	150 ng/ml

Opiates:

Morphine	300 ng/ml
Codeine	300 ng/ml
Phencyclidine	25 ng/ml

Amphetamines:

Amphetamine	500 ng/ml
Methamphetamine	500 ng/ml

8. At the employee's or the Guild's option, a sample of the specimen may be requisitioned and sent to a laboratory chosen by the Guild for testing. The cost of this test will be paid by the Guild or the employee. Failure to exercise this option may not be considered as evidence in arbitration or other proceeding concerning the drug test or its consequences. The results of this second test shall be provided to the City.
9. The employee (and the Guild, upon approval of the employee) shall be informed of the results of all tests, and provided with all documentation regarding the tests as soon as the test results are available. Such disclosure shall be in conformance with the Americans with Disabilities Act.

## **Section E**

The parties shall designate a Medical Review Officer (MRO) to review all confirmed positive test results and communicate those results to the Employer. The MRO shall have the responsibility to determine when an individual has failed a drug test in accordance with the standards enumerated herein. The MRO shall retain all records of all positive tests for at least five years and records of all negative tests for at least one year.

## **Section F**

If the results of the drug test are positive, and support a conclusion that the employee used an illegal drug, abused the use of a prescription or over-the-counter drug, or reported to work while under the influence of alcohol, the employee will be subject to discipline, including immediate discharge, unless otherwise required by law.

# **ARTICLE 26 – HEALTH AND WELFARE**

## **Section A - Insurance**

1. **Family Dental Insurance** - The City agrees to provide the current PPO Dental Insurance plan at no cost to the employee, including orthodontia at a 50% benefit level.
2. **Family Medical Insurance (LEOFF I)** - The City will pay for employee medical coverage as is required by law and will pay for 90% of dependent coverage and the employee will be responsible for 10% of the dependent premium. Medical plans offered will be City Plan III and Group Health. Prescription drugs under the city plans shall be subject to the following co-pays; generic medications \$10.00, all other medications \$20.00. Group Health participants shall be required to pay the following co-pays; generic medications \$10.00, all other medications \$30.00. All other medical benefits will be maintained at current levels. The City program for domestic partner benefits is available for bargaining unit employees.
3. **Family Medical Insurance (LEOFF II)** - Police Officers hired after September 30, 1977, and their dependents, shall be covered under a City sponsored plan for non-duty related medical care. Medical plans offered will be City Plan III and Group Health. The City agrees to pay 100% of the employee premium for all plans and all tiers. The City will pay for 90% of dependent coverage and the employee will be responsible for 10% of the dependent premium. LEOFF II employees shall pay 6% of the composite cost of that

employee's selected medical plan and the City will pay the balance. Prescription drugs under the City plans shall be subject to the following co-pays; generic medications \$10.00, all other medications \$20.00. Group Health participants shall be required to pay the following co-pays; generic medications \$10.00, all other medications \$30.00. All other medical benefits will be maintained at current levels. The City program for domestic partner benefits will be made available for bargaining unit employees.

4. **Retiree Medical** – The Guild has agreed to work with the City on redesigning the current medical plans and creating a Retirees Medical Plan. The Guild has indicated that it would work towards development of a retirees plan similar to the current Plan III with the costs assumed in total by the retiree. The Guild would also like to develop a plan where contributions could be made by existing employees prior to retirement to help offset the costs. The Guild has also requested that employees who have retired since January 2002 be allowed to access the retirees plan. The parties have agreed that they will work in concert during 2004 with a goal to implement the plan in 2005. The goal date may be extended by the parties.
5. **Life Insurance**
  - (a) For Police Officers: The City shall provide \$10,000 life insurance coverage to be paid in full by the City.
  - (b) For Dependents: The City shall make a life insurance plan available at the employee's option and expense
  - (c) Bomb Squad and Swat Team Members will be provided 1½ times their annual salary in life insurance coverage to a maximum of \$60,000. K-9 Handlers and Hostage Negotiators will be provided \$50,000 in life insurance coverage.
6. **Long-Term Disability Insurance** - The City shall make payroll deduction available for Guild members to purchase the group disability insurance plan, which the Guild sponsors. LEOFF II employees shall be required to purchase this insurance as a condition of employment. The City shall contribute \$30.50 per month, as wages, for LEOFF II officers.
7. **Vision Care** - The City agrees to provide vision care coverage for LEOFF II employees at the same level as LEOFF I in a manner determined by the City.
8. **Health Plan Redesign**. The Guild will participate in City Health plan redesign discussions along with other employee groups provided that this section shall not be construed as either a reopener on employee benefits or as evidence that the Guild agrees to change any health care provision of this agreement by their participation.



## **ARTICLE 27 - CIVILIAN REVIEW**

The Office of Police Ombudsman (OPO) will provide a professional presence to help ensure a quality investigation in real time, and visible, independent oversight to reassure the public.

(a) The OPO will actively monitor all police department internal investigations.

(b) The OPO may receive complaints from any complaining party, including, without limitation citizens or employees of the police department. The OPO will forward all complaints to IA within three business days for processing and, when appropriate, investigation. The OPO will not conduct independent disciplinary investigations, but may participate in interviews as provided herein.

(c) In addition to complaints received by the OPO, Internal Affairs will provide copies of all other complaints to the OPO within three business days. Once the case is closed, the OPO will return all case file materials to IA for retention, but will have subsequent access to closed cases.

(d) The OPO will have the opportunity to make a recommendation for mediation to the Chief of Police, prior to investigation. In the event the Department, the complainant and the officer all agree to mediation, that process will be utilized rather than sending the matter on for investigation. Assuming the officer participates in good faith during the mediation process, the officer will not be subject to discipline and no disciplinary finding will be entered against the officer. Good faith means that the officer listens and considers the issues raised by the complainant, and acts and responds appropriately. Agreement with either the complainant or the mediator is not a requirement of good faith. In the event an agreement to mediate is reached and the complainant thereafter refuses to participate, the officer will be considered to have participated in good faith.

(e) Once any complaint is received by the Internal Affairs unit, it shall be submitted to the chain of command for review per existing policy. When either the Chief or her/his designee determines that the allegations warrant investigation, such investigation shall be approved, and IA will initiate the investigative process.

(f) Internal Affairs will notify the OPO of all administrative interviews on all complaints of a serious matter (complaints that could lead to suspension, demotion or discharge) and all complaints originating at the OPO. The OPO may attend and observe interviews, and will be given the opportunity to ask questions after the completion of questioning by the Department. The OPO will not participate in criminal investigations of Department employees but will be notified when the criminal case is concluded.

(g) Upon completion of investigations, IA will forward a complete copy of the case file to the OPO for review. The OPO will determine whether the investigation was thorough and objective.

(h) As a part of the review process, the OPO may conclude that additional investigation is needed on issues deemed material to the outcome. If there is any dispute between the assigned investigator(s) and the OPO regarding the necessity, practicality or materiality of the requested additional investigation, the Chief (or designee) will determine whether additional investigation will be undertaken. If the OPO is not satisfied with the determination of the Chief, the matter will be resolved by the Mayor, who's decision will be final. Once the matter has been referred to and resolved by the Mayor, the investigation will be completed consistent with the determination by the Mayor. After completion of the additional investigation, or the conclusion that no further investigation will be undertaken, the OPO will then certify whether or not, in the opinion of the OPO, the internal investigation was thorough and objective. This determination will be made within five business days. Once the above finding is entered in the investigation, the OPO will not be involved further in the disciplinary process in that case.

(i) All disciplinary decisions will be made by the Chief (or designee).

(j) The OPO will be provided a copy of any letter or other notification to an officer informing them of actual discipline imposed as a result of an internal affairs investigation or any Notice of Finding in the event that the complaint is not sustained.

(k) The OPO will be notified by IA within five business days of case closure of all complaints of a Serious Matter and all complaints originated by the OPO. The OPO, in addition to the Department's written Notice of Finding letter to the complainant, may send a closing letter to the complainant. The letter may summarize the case findings.

(l) Any complaining party who is not satisfied with the findings of the Department concerning their complaint may contact the Office of Police Ombudsman to discuss the matter further. However, unless persuasive and probative new information is provided, the investigation will remain closed. In accordance with established arbitral case law, employees may not be disciplined twice for the same incident. In the event the investigation is re-opened and discipline imposed, the appropriate burden of establishing compliance with this section rests with the City in any subsequent challenge to the discipline.

(m) In addition to the investigative process, the OPO will have unimpeded access to all complaint and investigative files for auditing and reporting purposes. The OPO shall not retain investigative files beyond one year and will return the same to Internal Affairs for safekeeping. At all times and including, without limitation, issuing written reports, the

OPO will not release the name(s) of employees or other individuals involved in incidents or investigations nor any other personally identifying information. The OPO may make statistical observations regarding the disciplinary results of sustained internal investigations, but shall not take issue with discipline imposed by the Chief of Police in specific cases.

(n) The OPO may recommend policies and procedures for the review and/or audit of the complaint resolution process, and review and recommend changes in departmental policies to improve the quality of police investigations and practices. Nothing herein shall be construed as a waiver of the Guilds right to require the City to engage in collective bargaining as authorized by law.

(o) A committee of five (5) members (Committee) will be formed that will recommend three (3) candidates for the OPO position to the Mayor (one of which must be selected). The Committee shall be composed of one member appointed by the Spokane Police Officers Guild; one member appointed by the Lieutenants and Captains Association; one member appointed by the President of the City Council, one member appointed by the Mayor, and a fifth member selected by the other four members.

(p) In addition to whatever job requirements may be established by the City, one of the minimum job requirements for the OPO will be to have a history that includes the establishment of a reputation for even-handedness in dealing with both complainants and the regulated parties. The City also agrees that compliance with the confidentiality provisions of this agreement will be a condition of employment for the OPO. Inadvertent, de minimus disclosures shall not be considered a violation of this section.

(q) This agreement shall become a new article within the collective bargaining agreement upon ratification by both signatory parties. Alleged violations of this agreement are subject to the grievance and arbitration provisions of the bargaining agreement. In the event the Guild believes a candidate recommended by the Committee for OPO does not meet the minimum job requirement established in Section (p) above, the Guild must within three (3) days of the recommendation present information to the Mayor about their concern. If that person is ultimately selected by the Mayor, the Guild may file a grievance within five (5) days of the appointment and an expedited arbitration process will be utilized to resolve the matter. The Arbitrator will conduct an arbitration within twenty one (21) days, and issue a bench decision. The decision will be final and binding upon the parties. Upon the filing of a grievance, the appointment shall be held in abeyance pending completion of the arbitration. As a part of the ratification of this agreement, the City agrees to repeal Section 04.26.010 of the Spokane Municipal Code in its entirety within 60 days

of the agreement's execution.

## ARTICLE 28 – SALARY SAVINGS PLAN

The parties agree to adopt the Guild Salary Savings Plan under the following terms:

### A. Eligibility and Payment Terms

	Minimum Age	Age + Years of Service	Monthly Payment	Duration
LEOFF II	53	78	\$500	8 years (96 months)
LEOFF I	53	78	\$300	5 years (60 months)

The monthly payment will be made into an HRA account. The individual accounts are subject to deduction for administration costs. The HRA will be an inheritable asset, if allowed by law.

### B. Limits and Deadlines

	2010	Subsequent years
Number eligible	10	10
Deadline to apply for the incentive	March 1, 2010	Dec. 31 of the prior year
Deadline to retire	August 30, 2010	Between January 1 and June 30

Employees must complete and turn in an application form by the above deadline in order to be eligible for the incentive. Applicants must meet retirement eligibility requirements under their LEOFF pension plan.

If the City receives applications from more than 10 employees in one year, the incentive will be given to the eligible employees highest on the seniority list. If an employee does not receive the benefit based on seniority, that employee may be eligible for the incentive in future years.

### C. Disqualifications

The intent of this program is for service retirements only. Employees who are receiving L&I or long term disability or are on medical layoff/retirement are disqualified from the incentive. If at any time during the incentive payment

term the recipient of the incentive begins receiving L&I or long term disability, incentive payments under this program will cease.

Employees who have already applied and been approved for the City's Voluntary Retirement Incentive Program (VRIP) are disqualified from the incentive. Under no circumstance can an employee receive benefits from both the VRIP and the incentive program outlined by this Salary Savings Plan.

If an employee applies for the incentive but does not retire by the established deadline, the employee will not be eligible for the incentive in that year or any future year. If an employee is approved for the benefit but does not retire, then the next eligible applicant on the seniority list will receive the incentive.

**D. COLA**

The agreed monthly payment amounts will not be subject to any cost of living adjustment.

**E. Discontinuance of Plan**

The City has the right to discontinue this incentive plan at any time.

If at any point the incentive is modified or discontinued, employees who have already been approved to receive the incentive will continue to receive payments under the terms that were in place at the time that they were approved for the incentive.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2010.

FOR THE CITY OF SPOKANE:

FOR THE SPOKANE POLICE GUILD:

Mary B. Verner

Mary Verner  
Mayor

Ernie Wuthrich 04-20-10

Ernie Wuthrich  
President

Thomas E. Danek, Jr.

Thomas E. Danek, Jr.  
City Administrator

Jeff Harvey 4/20/10 -

Jeff Harvey  
Vice-President

Annie Kirkpatrick

Annie Kirkpatrick  
Police Chief

Ray Harding

Ray Harding  
Vice-President

Jim Nicks

Jim Nicks  
Assistant Police Chief

Ty Snider

Ty Snider  
Secretary

David W. Chandler

David W. Chandler  
Human Resources Director

John Griffin 4-20-10

John Griffin  
Treasurer

Attest:

Terr Pfister

Terr Pfister  
City Clerk



Approved as to form:

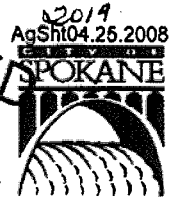
Erin A. Jacobson 4/20/10

Erin A. Jacobson  
Assistant City Attorney

01/10/10  
203

# AGENDA SHEET FOR COUNCIL MEETING OF: December 14, 2009

RECEIVED  
DEC 03 2009  
CITY CLERK'S OFFICE  
SPOKANE, WA



Submitting Dept.  
Human Resources

Contact Person/Phone No.  
Dave Chandler/6233

Council Sponsor

### ADMINISTRATIVE SESSION

- o Contract
- o Report
- o Claims

### LEGISLATIVE SESSION

- o Emergency Ord
- o Resolution
- o Final Reading Ord
- o First Reading Ord
- o Special Consideration
- o Hearing

### CITY PRIORITY

- o Communications
- o Economic Development
- o Growth Management
- o Human Services
- o Neighborhoods
- o Public Safety
- o Quality Service Delivery
- o Racial Equity/Cultural Diversity
- o Rebuild/Maintain Infrastructure

- CLERK'S FILE
- RENEWS
- CROSS REF
- ENG
- BID
- REQUISITION

OPR 2009-1013

### STANDING COMMITTEES

(Date of Notification)

- o Finance \_\_\_\_\_
- o Neighborhoods \_\_\_\_\_
- o Planning/Community & Econ Dev \_\_\_\_\_

- o Public Safety \_\_\_\_\_
- o Public Works \_\_\_\_\_

Neighborhood/Commission/Committee Notified: \_\_\_\_\_  
 Action Taken: \_\_\_\_\_

### AGENDA

#### WORDING:

(If contract, include the term.)

Authorization to enter into a contract for wages and benefits between the City of Spokane and Spokane Police Guild. The term of the collective bargaining agreement is for two years from January 1, 2010 and ending December 31, 2011.

#### BACKGROUND:

(Attach additional sheet if necessary)

The City of Spokane and Spokane Police Guild have concluded negotiations covering wages and benefits for 2010-2012. The average annual increase in Total Cost of Compensation for the two year period is estimated to be 3.51% per year. The average annual increase for wages only 2010-2011 is 2.00% per year. The City and Guild contract discussions focused on the City's known 2010 and anticipated 2011 general fund budget shortfall. The negotiations teams agreed to the following contract modifications to address the Guild's proportionate share of the shortfall.

#### RECOMMENDATION:

Staff recommends Council approval of the supplemental labor contract and extension.

<b>Fiscal Impact:</b> o N/A	<b>Budget Account:</b> o N/A
o Expenditure:	#
2010-\$ 450,000	#
2011-\$1,500,000	
o Revenue: \$	
o Budget Neutral	

#### ATTACHMENTS: Include in Packets:

On file for Review in Office of City Clerk: Final contract will be filed with City Clerk's Office when signed by all parties

#### SIGNATURES:

Department Head

Legal

Division Director

For the Mayor

Finance

Council President

#### DISTRIBUTION:

- Finance-Tim D.
- HR - Diane
- Payroll
- Police Guild

#### COUNCIL ACTION:

APPROVED AND  
CONTRACT AUTHORIZED  
BY SPOKANE CITY COUNCIL:

December 14, 2009  
  
 CITY CLERK

**CITY COUNCIL AGENDA – December 14, 2009**

Page 2

**Background (Continued):****Position Restorations**

Twelve of the 22 positions proposed in the Mayor's 2010 budget will be restored by the City. The City will immediately rehire the two probationary officers that were laid off earlier in 2009 at the earliest academy acceptance date after ratification of this agreement as well as hiring and sending the remaining ten unfilled positions to the Washington State Criminal Justice Training Academy (or hire lateral officers) on or before July 1, 2010, absent delays that are not within the control of the City.

**Wages**

2010 – 0%

2011 – 4% increase effective December 26, 2010

The Guild's wage concessions embedded in the agreement is recognized to be in consideration for no further reductions in bargaining unit personnel during the life of the agreement. In the event the City does not fill the positions or otherwise permanently reduces staffing within the bargaining unit at any time during the life of the agreement, the Guild may reopen on economic issues for 2011.

**Vacation**

Fifty-two (52) hours of vacation leave will be added to each Guild members vacation balance effective January 1, 2010. New hires employed during 2010 shall receive this additional vacation deposit in the same manner as floating holidays are allocated for new hires. On December 31 of any year, the City may reduce all the above referenced accrual rates to their prior levels by permanently increasing all pay steps by an equivalent amount. The contract shall be amended to provide that vacation cash-out on retirement is increased to two years accrual plus forty hours of vacation leave. Effective January 2, 2011, all vacation accrual levels shall be adjusted so as to reflect an increase of 52 hours of additional vacation per year.

**Lexipol Policies**

The parties agree to negotiate separately proposed Lexipol policies. The parties agree that these discussions have already spanned more than 60 days and the City and Guild agree to meet on at least two more occasions to resolve the remaining issues. If there is no agreement, either party may petition the PERC for the assignment of a mediator pursuant to the process established under RCW 41.56.

**Salary Saving Plan (Retirement Incentive) Plan**

The parties agree to adopt the Guild Salary Savings Plan. For the 2010 year only, the deadline to apply for the incentive is March 1, 2010 and the deadline to retire is August 30, 2010. All Guild members that have been approved for the 2009 City-wide Voluntary Retirement Incentive Program may not participate as they will retire prior to December 14, 2009.



ORDINANCE NO. C- \_\_\_\_\_

An ordinance relating to the Office of Police Ombudsman, amending sections 4.32.020 and 4.32.030 of Spokane Municipal Code.

WHEREAS, the City of Spokane has enacted chapter 4.32 of the Spokane Municipal Code establishing an independent Office of Police Ombudsman (hereinafter "OPO"); and

WHEREAS, the OPO has been in existence for approximately one year and has filed quarterly reports with the City as called for in the ordinance; and

WHEREAS, after implementation of the ordinance for the past several months, it has become apparent that the Municipal Code needs to be amended to provide additional provisions necessary to carry out the intent of the ordinance;

NOW, THEREFORE, the City of Spokane does ordain:

Section 1. That SMC section 4.32.020 is amended to read as follows:

**4.32.020 Definitions**

- A. "Chief" means the chief of the Spokane police department.
- B. "Complainant" means any person who files a complaint against any commissioned member of the Spokane police department.
- C. "Complaint" means a complaint filed with IA or with the OPO by any person of alleged police misconduct
- D. "Finding" means a conclusion reached after investigation.
- E. "IA" or "internal affairs" means the Spokane police department's investigative unit, whose responsibilities and procedures are described in the Spokane police department's Policy and Procedure Manual, as amended from time to time, to receive and investigate allegations of misconduct by Spokane police department employees.
- F. "Material to the outcome," "material statement," and "material fact" are those facts, evidence, or statements which tend to influence the trier of fact because of its logical connection with the issue. It is a fact which tends to establish any of the issues raised by the complaint or the defenses to the complaint.

- G. "Mediation" means a private, informal dispute resolution process in which a neutral third person, the mediator, helps disputing parties to reach an agreement. The mediator has no power to impose a decision on the parties.
- H. "Member" means a sworn employee of the Spokane police department about whom a complaint has been submitted to the Spokane police department or the OPO.
- I. "Misconduct" means conduct by a member during an encounter with a citizen, which conduct violates Spokane police department regulations or orders, or other standards of conduct required of City employees.
- J. "Policy-related issue" means a topic pertaining to the Spokane police department's hiring and training practices, the Spokane police department's policies and procedures, equipment, and general supervision and management practices, but not pertaining specifically to the propriety or impropriety of a particular officer's conduct.
- K. "Serious matter" means any complaint that could lead to suspension, demotion, or discharge.

Section 2. That SMC section 4.32.030 is amended to read as follows:

**4.32.030                    Functions and Duties**

The functions and duties of the OPO are as follows:

- A. The OPO will actively monitor all police department internal investigations.
- B. The OPO may receive complaints from any complaining party, including, without limitation, citizens or employees of the police department. Upon receipt of a complaint, the OPO may interview the complainant and any non-member witnesses and determine facts and circumstances as necessary to create a closing report, subject to section N of this ordinance. The OPO will forward all complaints to the police department's internal affairs (IA) unit within three business days for processing and, when appropriate, investigation. The OPO will not conduct independent disciplinary or criminal investigations, but may participate in interviews as provided herein. The OPO will not act upon complaints concerning events that occurred more than one year prior to the filing of a complaint.
- C. In addition to complaints received by the OPO, IA will provide copies of all other complaints received by the Spokane police department to the OPO within three business days of receipt. Once the case is closed, the OPO will return all case file materials to IA for retention but will have subsequent access to closed cases.

- D. The OPO will have the opportunity to make a recommendation for mediation to the chief of police prior to investigation. In the event the department, the complainant, and the officer all agree to mediation, that process will be utilized rather than sending the matter on for investigation. The OPO shall provide the complainant a copy of this subsection (D.) and obtain a signed statement from the complainant attesting that he or she has read and understood its content. The complainant will be promptly notified of the final decision regarding mediation. Assuming the officer participates in good faith during the mediation process, the officer will not be subject to discipline, and no disciplinary finding will be entered against the officer. Good faith means that the officer listens to all information presented and considers the issues raised by the complainant, and acts and responds appropriately. Agreement with either the complainant or the mediator is not a requirement of good faith. In the event an agreement to mediate is reached and the complainant thereafter refuses to participate, the officer will be considered to have participated in good faith.
- E. Once any complaint is received by the internal affairs unit either directly from a citizen or forwarded by the OPO to IA, it shall be submitted to the chain of command for review per existing police department policy. When either the chief or the chief's designee determines that the allegations warrant investigation, such investigation shall be approved, and IA will initiate the investigative process.
- F. Internal affairs ~~((will))~~ shall notify the OPO in a timely manner of all ~~((administrative))~~ interviews on all complaints of a serious matter (complaints that could lead to suspension, demotion, or discharge) and all complaints originating at the OPO. The OPO ~~((may))~~ shall attend and observe interviews and ~~((will))~~ shall be given the opportunity to ask questions after the completion of questioning by the department.
- G. The OPO will not participate in criminal investigations of ~~((department employees))~~ a member, but ~~((will))~~ shall be notified when the criminal investigation is concluded. Other than actions necessary to receive a complaint as outlined in section B, the OPO will not undertake any action or investigation during the pendency of a criminal investigation and /or prosecution of a member. At such time as the criminal investigation and / or prosecution of a member is complete, the OPO may take action on such complaint as is authorized under any provision of this ordinance.
- H. Upon completion of each administrative investigation, IA will forward a complete copy of the case file to the OPO for review. The OPO will determine whether the investigation was thorough and objective.
- I. As a part of the review process, the OPO may conclude that additional investigation is needed on issues deemed material to the outcome. If there is any dispute between the assigned investigator(s) and the OPO regarding the necessity, practicality, or materiality of the requested additional IA investigation,

the chief (or designee) will determine whether additional investigation will be undertaken. If the OPO is not satisfied with the determination of the chief regarding the recommendation for additional IA investigation, the matter will be resolved by the mayor, whose decision will be final. Once the matter has been referred to and resolved by the mayor, the IA investigation will be completed consistent with the determination by the mayor. If the OPO is not satisfied with the decision of the mayor, the OPO may interview the complainant and any non-member witnesses and conduct any other investigation the OPO deems necessary, subject to section N of this ordinance. Any additional information obtained by the OPO pursuant to his or her own interviews or investigation shall not be delivered to IA and shall not be made a part of the IA investigative record. After completion of the additional investigation, or the conclusion that no further investigation will be undertaken, the OPO will then certify whether or not, in the opinion of the OPO, the internal investigation was thorough and objective. This determination will be made within ~~((five))~~ fifteen business days. Once the above finding is entered in the ~~((investigation))~~ investigative record, the OPO will not be involved further in the disciplinary process in that case.

- J. The OPO shall not have a role in any disciplinary matter. All disciplinary decisions will be made by the chief (or designee).
- K. The OPO will be provided a copy of any letter or other notification to an officer informing the officer of actual discipline imposed as a result of an internal affairs investigation, or any notice of finding in the event that the complaint is not sustained.
- L. The OPO will be notified by IA within five business days of case closure of all complaints of a serious matter and all complaints originated by the OPO. The OPO ~~((may))~~ shall send a closing letter to and/or conduct a closing interview with the complainant to summarize the case findings.
- M. Any complaining party who is not satisfied with the findings of the department concerning their complaint may contact the office of police ombudsman to discuss the matter further. However, unless persuasive and probative new information is provided, the investigation will remain closed. In accordance with established arbitral case law, ~~((employees))~~ members may not be disciplined twice for the same incident. In the event the investigation is re-opened and discipline imposed, the appropriate burden of establishing compliance with this section rests with the City in any subsequent challenge to the discipline.
- N. In addition to the investigative process, the OPO will have unimpeded access to all IA complaint and investigative files for auditing and reporting purposes. The OPO shall not retain investigative files beyond one year and will return the same to Internal Affairs for safekeeping. At all times and including, without limitation, issuing written reports, the OPO will not release the name(s) of ~~((employees))~~ members or other individuals involved in incidents or investigations nor any other

personally identifying information. The OPO may make statistical observations regarding the disciplinary results of sustained internal investigations, but shall not take issue with discipline imposed by the chief of police in specific cases.

- O. The OPO may recommend policies and procedures for the review and/or audit of the complaint resolution process and review and recommend changes in departmental policies to improve the quality of police investigations, training and practices. Nothing in this chapter shall be construed as a waiver of the officers' collective bargaining right to require the City to engage in collective bargaining as authorized by law.
- P. The OPO shall produce a closing report, in accordance with the provisions of sub-paragraph N above, upon completion of the IA investigation and the resolution of the complaint by the police department and the chief of police. The closing report shall include a summary of the OPO's conclusions and any recommendations regarding revision of any applicable law enforcement policy, training protocol and/or law enforcement procedure materially associated with the basis for the complaint. A copy of the closing report shall be sent to IA and the complainant and shall be posted on the OPO's website. Except as specifically directed in this chapter, the content and length of the report shall be determined solely by the Office of Police Ombudsman subject to the Office's prioritization of its resources.
- Q. The OPO shall not have access to legally privileged documents held by the city attorney or attorney-client communications held by the city attorney's clients. The OPO shall not disclose confidential records and shall be subject to the same penalties as the legal custodian of the records for any unlawful or unauthorized disclosure.
- R. ((Q.)) The police ombudsman may adopt, promulgate, amend, and rescind rules and procedures required for the discharge of the police ombudsman's duties, including policies and procedures for receiving and processing complaints, monitoring investigations, and reporting findings, conclusions and recommendations. The OPO may not levy any fees for the handling of complaints or any other duties identified in this chapter.

### Section 3. Severability

Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

PASSED BY THE CITY COUNCIL ON \_\_\_\_\_, 2010.

\_\_\_\_\_  
Council President

Attest:

Approved as to form:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Effective Date

RECEIVED

JUL 21 2010



P.O. Box 2064  
Spokane, WA 99210

To: Chief Anne Kirkpatrick  
From: Ernie Wuthrich  
Date: July 21, 2010  
Re: Grievance

Chief Kirkpatrick,

By this letter, the Spokane Police Guild is grieving the changes to the Office of Police Ombudsman that was approved by the Spokane City Council and forwarded to the Office of the Mayor on June 30, 2010 for approval. The changes violate Article 27 – Civilian Review as agreed to in the current collective bargaining agreement.

The remedy requested is that the City immediately rescind and give no further effect to the changes imposed by the City Council. Further the Guild requests that any documents, reports, or investigations created or issued pursuant to the changes to the Office of the Police Ombudsman be destroyed and purged from the public record.

Sincerely,

Ernie Wuthrich  
President, Spokane Police Guild

Cc: Jim Nicks, Assistant Chief  
Erin Jacobson, Acting HR Director  
Thomas Danek, City Administrator

EXHIBIT # C