

hourly rate calculated by dividing the annual salary by 2210 hours. Post January 1, 2007 time shall be paid out on the basis of 2080 annual hours.

## **ARTICLE XIV**

### **INVESTIGATIONS CONCERNING OFFICERS AND DISCIPLINE**

#### **14.1 Standards of Discipline**

(A) All disciplinary action against officers covered by this Agreement shall be carried out in accordance with Department rules, regulations, orders, policies, procedures, City ordinances and State laws governing the discipline of law enforcement officers.

(B) Discipline shall be progressive and corrective in cases of remediable offenses and shall be designed to improve behavior and not merely punish it. No officer covered by this Agreement shall be suspended, relieved from duty or disciplined in any manner without just cause.

#### **14.2 Jurisdiction of Civil Service Commission & Disciplinary Review Board**

(A) Disciplinary charges seeking an officer's termination or suspension in excess of five (5) days shall be subject to the jurisdiction of the Civil Service Commission, or the grievance procedure, hereof, at the officer's option.

(B) Disciplinary charges seeking a second (2nd) suspension within a six (6) month period of time shall be subject to the jurisdiction of the Civil Service Commission, or the grievance procedure hereof, at the officer's option.

(C) Further, it is agreed that with respect to the option described in paragraphs A and B above, the grievance procedure of Article VI and the Civil Service hearing procedure are mutually exclusive and that no relief shall be available under Article VI with respect to any matter which, at the officer's option, is appealed to the Civil Service Commission; and no relief shall be available under the Civil Service hearing process with respect to any matter which, at the officer's option, is appealed to the grievance and arbitration procedures of Article VI of this Agreement. Disciplinary suspensions of thirty

(30) days and discharges shall be subject to the expedited arbitration procedure mutually agreed to by the parties.

(D) Suspensions of five (5) days or less not subject to the possible review jurisdiction of the Civil Service Commission are within the exclusive review jurisdiction of the Discipline Review Board or the grievance procedure hereof, at the officer's option.

(E) The service of charges upon an officer shall trigger the commencement of the time period for the officer to exercise his option.

### **14.3 Service of Charges**

Written Disciplinary Charges and Specifications shall be personally served on an officer by a ranking member of the Department, or served by First Class United States Postal Service, certified mail, return receipt requested. A copy of Disciplinary Charges and Specifications shall be forwarded to the office of the PBPA within three (3) working days after service. The PBPA President will be notified via e-mail that a member of the bargaining unit has been advised that he/she is being investigated.

### **14.4 Service of Civil Service Commission Findings**

Decisions of the Civil Service Commission shall be served in accordance with the procedures of the Civil Service Commission.

### **14.5 Service of Findings by Disciplinary Review Board**

Decisions of the Disciplinary Review Board shall be served in accordance with Section 14.3 above.

### **14.6 Conduct of Investigations**

(A) Since the duties of the Springfield Police Department involve officers in all types of contacts with the public, some of which may result in the need for investigation of an officer's conduct, any such investigations shall be conducted in accordance with the provisions of the Uniform Peace Officer's Disciplinary Act and the following:

1. Unless the exigencies of the situation dictate otherwise, the interrogation of an officer shall be at a reasonable hour, preferably when the officer is on duty. An officer not on duty called in for interrogation shall be eligible for overtime compensation.

2. An officer who becomes the target or suspect of a criminal investigation will first be advised orally and in writing of his constitutional rights as dictated by current decisions of the United States Supreme Court prior to the commencement of interrogation concerning his conduct. Within twenty-four (24) hours after the officer is so notified, the PBPA shall also be notified.

3. In all cases an officer shall have the right to have a PBPA representative present during any questioning by the Employer. If an officer is likely to be recommended for suspension or discharge pursuant to the result of an interrogation, he shall be informed that the interrogation may result in a recommendation for suspension or discharge, and shall have the right to an attorney at the officer's expense.

4. All disciplinary investigations shall be conducted as expeditiously as practicable, and the officer shall be notified whether or not any charges are to be placed against him as expeditiously as practicable following the conclusion of an investigation.

#### **14.7 Representation at Discipline Review Board Hearings**

(A) For suspensions in excess of three (3) days that are contested by an officer, such officer shall have the right to an attorney to represent him at the Discipline Board hearing.

(B) For suspensions of three (3) days or less that are contested by an officer, such officer shall have the right to a PBPA representative to represent him at the Discipline Board hearing.

#### **14.8 File Inspection**

An affected officer's Personnel File, Member's Complaint Record, and completed inactive Disciplinary Investigation Files, except for information which the Employer reasonably deems to be confidential, shall be open and available for inspection by the affected officer during regular business hours.

#### **14.9 Limitation on Use of File Material**

(A) It is agreed that any material and/or matter not available for inspection, as provided for in Section 14.8 above, shall not be used in any manner or any form adverse to the officer's interests. File materials are confidential, but if a bona fide reason arises for the removal of inactive files from the Department, the officer shall be provided with a written notification regarding where the file is located, who has the file, and the reason for its transfer, to the extent allowed by law.

(B) Any record of reprimand punishment may be used for a period of time not to exceed one (1) year (three (3) years in the case of vehicle use violations) and shall thereafter not be used to support or as evidence of adverse employment action.

(C) Any record of discipline greater than a reprimand shall be expunged five (5) years from the date of suspension.

#### **14.10 Probationary Officers**

Probationary officers who are the subject of a disciplinary action shall have an exclusive right of review in the form of a pre-deprivation hearing before the Chief of Police. The Probationary Officer may be accompanied by a PBPA representative at this pre-deprivation hearing.

#### **14.11 Drug and Alcohol Testing**

The Employer and PBPA have agreed upon the following language to govern drug and alcohol testing:

(A) **Alcohol** Any officer under the influence of alcohol while on duty shall be subject to disciplinary action up to and including discharge. Reasonable suspicion shall be required before any officer is ordered to submit to testing for alcohol. If alcohol testing is ordered, in addition to a breathalyzer or blood test, the officer shall be afforded the opportunity to be taken by the Employer to have blood drawn at a local hospital, the costs of which are to be paid for by the Officer. The refusal by any officer to submit to and complete any testing provided for under this section shall subject the officer to discipline, up to and including discharge.

(B) **Just Cause Required for Testing** No Officer shall be required to submit to drug or alcohol testing without just cause except as provided for in (C) below. To the extent not outlined herein, the collection firm shall utilize a reasonable protocol for all such testing, including but not limited to, the specific tests to be conducted, retention, and transportation of samples. Nothing herein shall be construed to restrict the Employer's right to insist upon a force free of controlled substances users.

(C) **Random Drug Testing** The Chief of Police shall have the right to order random tests for the presence of illegal drugs on all officers, which may include anabolic steroids. Officers shall be selected by the use of a lottery, administered by the collection firm, with each drawing, including the names of all officers. The Department shall be allowed to test up to fifty officers per fiscal year, with tests conducted up to six (6) times per fiscal year. A PBPA representative shall be allowed to verify that a current Department list of officers is used during the lottery drawing processes. All tests ordered by the Employer in this regard shall be at the expense of the Employer.

The parties agree that the participating officers' names will be chosen on a random basis. The testing company will be provided with a complete list of all the PIN numbers for all the then current sworn officers in the bargaining unit. The testing company will generate a random list of fifty (50) PIN's from the then current list. The Department will go down the list of fifty (50) until they reach the first officer actually working on the date of the test. Officers will not be selected to test that are not working on the date of the test. That first working officer's shift will be considered the first shift of the three (3) consecutive shift, twenty-four (24) hour, testing period. If the parties agree that there is a need to further promote the random nature of the process, the Department will start at the bottom of the list on next test date, alternating thereafter.

1. Policy/Procedure.

a. The Chief of Police, or his designee, will submit the names of all sworn police officers to the collection firm for the firm to conduct the lottery.

b. The collection firm will submit back to the Chief of Police or his designee, the names in random order of the officers selected for the testing. The list shall be generated by the computer in random fashion and the officers names shall be selected in that order for testing. An officer's name shall be skipped only for the reason of being not on duty on the date of testing. The PBPA shall receive a duplicate copy of the original list of names twenty-four (24) hours after the first officer is notified.

c. The Chief, or his designee, will inform the officer in writing of the time the officer is to report to the collection firm.

d. The collection firm will conduct the standard Department of Transportation urinalysis testing that looks for the presence of marijuana, cocaine, PCP, opiates, and amphetamines.

e. The Chief of Police, or his designee, will contact the collection firm after the selected testing day to verify that each selected officer has submitted a sample.

f. Each of the testing sessions to be conducted in a fiscal year will contain the names of all then current sworn personnel. Therefore, in order to insure that the testing is random, it is possible that an officer may be selected up to six (6) times during a fiscal year, for the random drug testing process.

g. It is the responsibility of each selected officer to report to the collection firm, as outlined in his written order, at the appointed time. The refusal by any officer to submit to and complete any testing provided for under this directive shall subject the officer to discipline, up to and including discharge. The City takes the position that discharge is appropriate under these circumstances.

h. If the first sample comes back non-negative, the results are reviewed by the Medical Review Officer who will then contact the officer who gave the sample to inquire as to the possibility of an explanation for the non-negative result.

i. The City shall be advised of positive test results after the split sample has been tested to confirm a positive result.

j. No discipline shall be imposed prior to obtaining the results of the second test, and then only if the second test results are positive.

2. Bodily Fluid Or Material Testing. When the Department chooses to use bodily fluid for drug testing, the Department shall:

- a. Use only a clinical laboratory or hospital facility that is licensed pursuant to the Illinois Clinical Laboratory Act and is accredited by the National Institute of Drug Abuse (NIDA);
- b. Ensure that the laboratory or facility selected conforms to all NIDA standards;
- c. Use tamper-proof containers, maintaining confidentiality and preserve specimens for a minimum of twelve (12) months;
- d. Collect a sufficient sample of the same bodily fluid or material to allow for an initial screening, a confirmatory test and a sufficient amount to be set aside and reserved for later testing;
- e. Collect samples in such a manner as to ensure a high degree of security for the sample and its freedom from adulteration;
- f. Confirm any sample that tests positive in the initial screening by testing the second portion of the same sample by gas chromatography, plus mass spectrometry or an equivalent or better scientifically accurate and accepted method that provides quantitative data about the detected drug or drug metabolites;
- g. Immediately provide the employee tested with a copy of all information and reports received by the Department in connection with the test and results;
- h. Provide the employee tested with an opportunity to have the additional sample tested by a clinical laboratory or hospital facility (that meets the criteria set forth in 1 above) of the employee's choosing, at the employee's own expense. The employee shall have seventy-two (72) hours from the time the

employee received the results of the test to inform the collection firm, if the employee wishes to have an independent test performed;

- i. Not release the results of the test to any external third party; without the authorization of the tested employee or as required by law;
  - j. Pay the cost of the initial screening test and, if necessary, the confirmation test.
3. Bodily Fluid Or Material Test.
- a. A positive test result will occur at the initial test level if the test results are equal to or greater than the following:

(1) Marijuana metabolites	50 ng/ml
(2) Cocaine metabolites	300 ng/ml
(3) Opiate metabolites	2000 ng/ml
(4) Phencyclidine	25 ng/ml
(5) Amphetamines	1000 ng/ml
(6) Steriod Metabolites	
Nandrolone	2 ng/ml
Testosterone <u>to</u>	
Epitestosterone ratio (T/E)	> 6

- b. A positive test result will occur at the confirmatory test level if the test results are equal to or greater than the following:

(1) Marijuana metabolites	15 ng/ml
(2) Cocaine metabolites	150 ng/ml
(3) Opiate metabolites	2000 ng/ml
(4) Phencyclidine	25 ng/ml
(5) Amphetamines	500 ng/ml



(6) Steroid Metabolites

Nandrolone	2 ng/ml
Testosterone to	
Epitestosterone ratio (T/E)	> 6

The parties agree to follow any changes in cut off levels as determined by the Federal CDL regulations.

(D) **Voluntary Requests for Assistance** The Department shall take no adverse employment action against an officer who voluntarily seeks treatment, counseling or other support for an alcohol or drug related problem, if the request for treatment is made prior to being ordered to take a test. Such requests do not insulate an officer from discipline or adverse actions for other rule violations, for conduct other than the subject alcohol or drug use. The Department may require reassignment of the officer with pay if he is then unfit for duty in his current assignment. The duration of the reassignment shall last no longer than is necessary.

Any determination of general fitness for duty shall be made by a physician, qualified in the appropriate area of practice. The Department shall make available through its Employee Assistance Program a means by which the officer may obtain referrals and treatment. All such requests shall be confidential and any information received by the Department, through whatever means, shall not be used in any manner adverse to the officer's interests, except reassignment as described above. If an officer is determined unfit for all duty, the officer shall be required to utilize an appropriate leave of absence, utilizing accrued time. Such leave shall be no longer than sixty (60) calendar days.

(E) **Right to Contest** The PBPA and/or the officer shall have the right to file a grievance concerning any testing permitted by this Agreement, contesting the basis for the order to submit to the test, the administration of the tests, the significance and accuracy of the tests, the consequences of the testing or results of any other alleged violation of this Agreement. Such grievances shall be commenced at Step 2 of

the grievance procedure. It is agreed that the parties in no way intend or have in any manner restricted, diminished or otherwise impair any legal rights that officers may have with regard to such testing. Officers retain any such individual rights as may exist and may pursue the same in their own discretion, with or without the assistance of the PBPA.

(F) **Right and Obligations of Officers** At the time an officer is ordered to submit to testing authorized by this Agreement, the Department shall provide the officer with a written copy of the order. The officer shall be permitted to consult with a representative of the PBPA at the time the Order is given. Officers ordered by the Department to submit to drug testing shall promptly comply with the order. Officers who submit to such testing shall not be deemed to have waived or otherwise impaired their rights to grieve or otherwise contest as provided by law or by this Article. Officers shall have the right to be represented by counsel and/or a Union representative during all meetings with the Department concerning such tests or evaluations. Officers shall also have the right to be represented by counsel and/or to have a witness of their own choosing during the testing procedures, except as restricted by the rules of the collection firm. The Department shall present each officer, prior to requiring an officer to submit to any testing or evaluation, with a written description of the officer's rights under this Article as well as all other pertinent information concerning the Department's policy on employee testing and evaluation.

(G) **Discipline**

1. Action for confirmed positive – use of legal drugs other than with valid prescription.

a. First Positive Test. In the circumstance that an employee tests positive on the confirmatory test for legal drugs, that employee may be subject to a suspension not to exceed five (5) days. The foregoing limit on the length of suspension is conditioned upon the employee agreeing to:

- (1) Undergo appropriate treatment as determined by a physician;
- (2) Discontinuance of the use of drugs;

- (3) Completion of any course of treatment prescribed, including any follow-up treatment for up to twelve (12) months; and
- (4) Submission to random drug testing during the work shift for twelve (12) months from the date of the initial test.

Refusal to agree to the above terms or a second positive test will result in discipline up to and including discharge. The City takes the position that discharge is appropriate under these circumstances.

b. Second and Subsequent Positive Test. Employees whom test positive on the confirmatory test more than once are subject to discharge. If there exists mitigating circumstances, at the Chief's discretion, the discharge may be commuted to an unpaid suspension of not less than sixty (60) days. Mitigating circumstances may include, but are not limited to current treatment for the drug and/or alcohol abuse, substantial time passage since the first positive test result or absence of any adverse job performance.

## 2. Illicit or Illegal Drugs

An Officer who tests positive for illicit or illegal drugs shall be subject to discipline up to and including discharge. The City takes the position that discharge is appropriate under these circumstances.

(H) **Confidentiality** The Department and its agents, representatives, employees, and the physicians and clinical laboratories which it utilizes who have access to or receive information about drug or alcohol tests or evaluations and the results thereof shall keep all information confidential. Release of such information shall be solely pursuant to a written consent form signed voluntarily by the officer, except where such release is compelled by court order or when the employee or the Union grieves issues related to the information. The consent form must contain at least the following:

1. the person or persons authorized to obtain the information;
2. the purpose of the disclosure;
3. the precise information to be disclosed;
4. the duration of the consent.

#### **14.12 Use of Compensatory Time**

An officer receiving a disciplinary suspension under this Article may forfeit accrued compensatory time to satisfy the unpaid suspension. However, the officer may only forfeit up to five (5) days of compensatory time, and must utilize accrued time to satisfy the entire suspension, and may not use a combination of unpaid time and accrued time forfeiture for such purpose.

### **ARTICLE XV**

#### **SHIFT SELECTION**

##### **15.1 Applicable Dates**

Shift selection will be held on November 1st of each year that this Agreement is effective. Assignments pursuant to shift selections made by officers will take effect on January 2<sup>nd</sup> of the new calendar year.

If an officer elects to change his normal work shift from Third Watch to First Watch pursuant to this Section, the Department shall allow the officer to adjust his schedule so that the officer will not be forced off on a holiday as long as it is his regular day to work. The officer shall be given the option as to which shift he or she desires to work.

##### **15.2 Eligibility, Participation and Manning**

(A) The following officers, who are assigned to Field Operations or will be as of January 2nd of the upcoming year, will be eligible to participate in the shift selection process under the following conditions.

1. All patrol officers assigned to the Field Operations Division, Patrol Section, will select shifts based on seniority as defined in Article X.
2. All Sergeants will select shifts on the basis of seniority as defined in Article X within their respective Divisions and Sections.