

In The Matter Of
The Arbitration Between:

Local 648, IAFF
And
City of Springfield

JLMC Case No. 12-12-F

Date of Award: March 5, 2013

Award

After having considered the evidence and arguments of the parties, Board of Arbitration awards as follows:

Issue 1: Drug & Alcohol Policy

Issue 2: The City of Springfield (the Employer) and the Springfield Association of Firefighters, Local 648 (AFL-CIO) (the Union) are committed to protecting the health, safety and well-being of the members of Local 648 and the general public which they serve. To that end the parties have committed to promoting a workplace that is free from the harm caused by the use of illegal drugs and the abuse of prescription drugs or alcohol. This Drug & Alcohol Policy serves a threefold purpose: a) to secure the workplace as one free from the negative influences of drugs/alcohol; b) to help rehabilitate, as appropriate, any employee suffering from the harmful influence of drugs/alcohol; and c) to discipline, as necessary, any employee for whom discipline is justified due to the use of drugs/alcohol.

Issue 3: No definitions

Issue 4: No language regarding random drug/alcohol testing

Issue 5: An employee shall be required to undergo drug and/or alcohol testing based on reasonable suspicion that the employee is

impaired due to drug/alcohol use. Reasonable suspicion means circumstances from which one may reasonably infer that an employee is under the influence of drugs/alcohol. Reasonable suspicion must be supported by objective facts and observations such as, but not limited to, the appearance, behavior/conduct, speech, and body odors of the employee, the presence of vials or containers for drugs/alcohol, unexplained deterioration in job performance, unexplained change in behavior, and criminal citations or arrests involving drugs/alcohol.

An employee who is subject to a reasonable suspicion test shall be placed on sick/vacation leave or leave without pay, if no sick/vacation leave is available, pending the results of the test. Once the test results are known, the employee shall be immediately returned to work and shall be restored his/her sick/vacation leave if the test results are negative; if the test results are positive, the employee shall be subject to treatment/rehabilitation as provided for under Issue 12.

Issue 6: Any employee who is found to have tested positive for either drugs or alcohol will be required to submit to a drug/alcohol test prior to returning to duty. Said test will be administered once an employee has been cleared to return to duty by a substance abuse professional (SAP). The SAP shall confer with and weigh the recommendation of the employee's drug/alcohol counselor prior to ordering a return-to-work drug/alcohol test; in the event that there is a conflict of opinion about return-to-work testing between the employee's counselor and the SAP, the employee may request that the Medical Review Officer (MRO) involved in his/her case make the outcome-determinative decision. Employees must successfully pass a return-to-work test in order to be reinstated to active employment.

Issue 7: At the Employer's option, within sixty (60) days of the effective date of this contract each member of the bargaining unit shall submit to a drug/alcohol test. This shall be a one-time event only and shall not be repeated during the life of this collective

bargaining agreement. No bargaining unit member shall lose any pay during the administration of this particular test.

Issue 8:

An employee who signs a civil service promotional list indicating a willingness to be promoted to a permanent civil service position within the bargaining unit shall be tested for the presence of drugs/alcohol, and the test result shall be considered as part of the promotional process.

Issue 9: Any employee who successfully passes a return to work test will be subject to random, follow up drug/alcohol testing as often as determined by the employee's SAP for a period not to exceed 18 months following the employee's successful return to work.

Issue 10:

An employee shall be accorded the right of Union representation for either breath or urine testing provided that the securing of such representation does not unreasonably delay the conduct of such test.

Testing for alcohol may be done either by breathalyzer or by urine sample. The breathalyzer test shall be performed by a certified breath alcohol technician (BAT). If alcohol testing is done by breathalyzer and if the test result is positive, either the Employer or the employee may request a confirmatory urine test at a certified laboratory.

Testing for drugs shall be done at a certified laboratory. Urine testing shall be done with due regard for the chain of custody. Each urine sample shall be subdivided into primary and split specimens. If the primary specimen has a positive test result, the employee shall be deemed to have tested positive unless the employee within 72 hours after the consultation with the MRO requests that the split specimen be tested at another certified laboratory. If the split specimen also has a positive test result, then the employee shall be deemed to have tested positive. In cases where the employee has requested further testing, i.e., the testing of a split sample, and the test is

positive, the employee shall bear the expense of the test of the split sample. If the split specimen has a negative test result, then the primary specimen shall be deemed to have been negative, and the employee shall be recorded as having a negative test result overall. All testing costs shall be borne by the Employer except where otherwise specified in this Policy.

All test results shall be reviewed by a medical review officer (MRO) prior to the result being reported to the Employer. In the event of a positive test result, the MRO shall contact the employee and conduct an interview to determine if there are any legitimate reasons for the positive test result. If the MRO determines that there is a legitimate medical explanation for the positive test result, the MRO will report the test result as a negative result. The employee shall bear no testing costs under circumstances where the MRO declares a negative test result. The Employer may be asked by the MRO to assist in getting the employee to contact the MRO; the MRO shall divulge no testing information to the Employer prior to reporting the test result to the Employer.

Issue 11: Any interference with the testing process or a refusal to submit to testing shall be grounds for disciplinary action up to and including termination. Interference with the testing process includes, but is not limited to, the following: tampering with a specimen, offering bogus specimens, substituting specimens, altering specimens, and obstructing the testing process. In the event that a test result is a dilute negative as defined by the MRO, an employee will be subject to retesting and will bear the cost of such retest.

Issue 12: Any employee who voluntarily comes forward at any time prior to undergoing a test for drugs/alcohol or being charged criminally regarding drugs/alcohol and discloses to the Employer that s/he has a drug/alcohol problem shall be granted an opportunity to seek treatment, shall be granted 30 days paid administrative leave for such treatment, and shall further be permitted thereafter to use accumulated sick or vacation leave for the period of treatment, and

shall not be subject to discipline. First-time treatment which arises in the course of employment by the City shall be at no cost to the employee for the duration of the time the employee is on paid administrative leave plus any time covered by use of the employee's sick and/or vacation leave. The SAP bears the responsibility for determining the employee's treatment plan after consultation with the employee's counselor, if any.

Following treatment an employee will be subject to return to work testing and follow-up testing pursuant to the terms set forth in this contract with respect to each.

Nothing herein shall preclude disciplinary action against an employee who is under criminal investigation for drug/alcohol related misconduct.

Issue 13: Any employee who has a final positive test result on the first occasion for alcohol/drugs shall receive no discipline provided the employee seeks and participates in treatment for his/her condition.

Any employee who has a positive test result for drugs/alcohol on the second occasion or subsequent occasions shall be subject to discipline up to and including termination of employment.

In the event that an employee fails to pass his/her first return to work drug/alcohol test, the employee shall be returned to rehabilitation and afforded one more opportunity to pass a return to work, drug/alcohol test. In the event that the employee fails his/her second return to work, drug/alcohol test, the employee shall be subject to discipline up to and including termination of employment.

Any refusal to participate in treatment shall result in the discharge of the employee.

Issue 14: An alcohol level of .03 or greater shall be considered a positive test result. An employee with an alcohol level of .01 to less than .03 will be relieved of duty; in such event the employee may, if s/he chooses, use some form of accumulated leave or leave

without pay to cover the balance of his/her absence from the remainder of the shift.

The drugs tested for shall be those comprising the standard DOT 5 panel screen, namely, marijuana (THC), cocaine, amphetamines, phencyclidine (PCP), and opiates including heroin, oxycontin, & oxycodone. Standard cutoffs shall be used in determining whether or not an employee has a positive test result. Standard cutoffs and the drugs tested for may be changed by agreement of the parties.

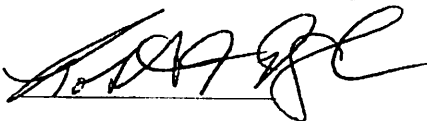
An employee who has a valid prescription for medication and who receives a positive test result shall bring such prescription to the attention of the MRO.

Issue 15: Employees who are out of work due to an on-the-job injury may be required to be available for drug/alcohol testing if they are medically cleared to take such test.

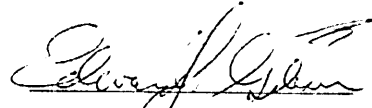
Except as otherwise provided in this Drug/Alcohol Policy, the Employer shall bear all costs associated with the alcohol/drug testing of its employees.

Issue 16: Should any portion of this Alcohol/Drug Policy be held unlawful by any court of competent jurisdiction within Massachusetts, the remaining provisions of this Policy shall remain enforceable provided that the portion struck down does not so cripple the policy as to make it dysfunctional. The parties agree to try to negotiate a substitute provision for any provision struck down.


Issue 17: No language



Robert Taylor
Union-designee
Concur/dissent



Ed Gibson
Management-designee
Concur/dissent



Lawrence T. Holden, Jr., Impartial Chairman

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The Arbitration Between:

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Preliminary Statement

This case arises as a conventional interest arbitration proceeding involving the above-named parties. The Joint Labor-Management Committee (JLMC) appointed a tri-partite panel comprising Ed Gibson, management-designee, Bob Taylor, union-designee, and the undersigned, impartial chairman as the panel to hear this case. The JLMC advised that the only subject to be arbitrated was that of a drug/alcohol policy for the above-named parties. The hearing in this case was held on December 6, 2012 in Springfield, Massachusetts. Representing the Employer at such hearing was William E. Mahoney, Esq., and representing the Union was Joseph G. Donnellan, Esq.. No stenographic notes of the hearing were taken; both parties filed post-hearing briefs which were received by the undersigned on January 8, 2013. An executive session of the panel was held on February 12, 2013.

Discussion & Rulings

There are before the Panel for resolution some 17 issues involving a drug/alcohol policy, and these issues are addressed in ascending numerical order. Where discussion is warranted with respect to a particular issue, the discussion can be found under the heading of that issue; where no discussion is deemed necessary, the ruling with respect to that issue has simply been set forth.

When the Panel met in executive session on February 12, 2013, the Panel discussed and considered with care each issue in this case. The

Panel has arrived at a unanimous judgment on all issues. The sum of the Panel's rulings on all the issues in this case is compiled under a separate "Award" page. The commentary found in the decision below is solely that of the Chairman.

Issue 1 (Title of Policy)

Award: Drug & Alcohol Policy

Issue 2 (Statement of Purpose in Preamble)

Award: The City of Springfield (the Employer) and the Springfield Association of Firefighters, Local 648 (AFL-CIO) (the Union) are committed to protecting the health, safety and well-being of the members of Local 648 and the general public which they serve. To that end the parties have committed to promoting a workplace that is free from the harm caused by the use of illegal drugs and the abuse of prescription drugs or alcohol. This Drug & Alcohol Policy serves a threefold purpose: a) to secure the workplace as one free from the negative influences of drugs/alcohol; b) to help rehabilitate, as appropriate, any employee suffering from the harmful influence of drugs/alcohol; and c) to discipline, as necessary, any employee for whom discipline is justified due to the use of drugs/alcohol.

Issue 3 (Definitions)

AWARD: No definitions

Discussion: I think it important that everyone within the Fire Department, and not just supervisors, take an interest in the well-being of their fellow employees to insure that the Department operates as the most effective firefighting unit possible. Firefighting is an inherently dangerous occupation where firefighters are called upon to work in burning structures, sometimes at significant heights or below grade, in all kinds of weather where teamwork and sound decision-

making are often the difference between life and death. Everyone in the Department has a vested interest in eliminating conditions which impair the judgment and effectiveness of their fellow workers. Accordingly, if there are any firefighters who have a drug/alcohol problem, such individuals should be encouraged to seek help before tragedy strikes. This vigilance should not be limited to just one class of employees, i.e., supervisors, but should be assumed by all.

Issue 4 (Random Testing)

Award: No language regarding random drug/alcohol testing

Discussion: Random drug/alcohol testing of bargaining unit members is the core issue in this interest arbitration proceeding. The City proposes that there be random drug/alcohol testing of bargaining unit members on an annual basis. Its proposal is as follows:

"Random drug and alcohol testing: the Fire Commissioner shall determine the number of employees to be tested on an annual basis. Not more than 25% of employees shall be randomly selected per test. An independent testing agency shall select employees to be tested by a computer generated process not more than four times per year. If for any reason a court of competent jurisdiction, or the Massachusetts Division of Labor Relations, subsequent to the effective date and implementation of this policy, determines that random drug testing, as described above, is illegal, the parties agree that employees will be subject to one drug test per year within the period of 60 days before or after their birthday."

The Union opposes random drug/alcohol testing and, accordingly, offers no contractual language on this subject.

This is not, by any means, the first time that this issue has been debated in Massachusetts. This issue has been directly addressed by Massachusetts' highest court in a case entitled Guiney v. Police Commissioner of Boston, 411 Mass. 328 (1991). In that case the Police Commissioner of Boston issued in April 1986 a rule authorizing random,

urinalysis drug testing of Boston police officers. No factual record in support of such a rule was made at the trial court level. The question before the Supreme Judicial Court was whether or not random urinalysis testing of Boston police officers amounted to an unreasonable search and seizure within the meaning of Art. 14 of the Massachusetts Declaration of Rights. In addressing this issue, the court apparently utilized an interest balancing test¹ wherein it weighed an individual's right of privacy under Art. 14 against a demonstrated and substantial public purpose justifying such random testing. The Court stated:

"If such an intrusive testing process could ever be justified as reasonable in an art. 14 sense (barring the police officer's consent to the testing), the government would have to make a strong factual showing that a substantial public need exists for the imposition of such a process applicable to all police officers." P. 330

...

"<T>he important constitutional right of privacy established by art. 14 should not be overruled by abstract goals of safety and integrity ... without any factual information in the record to demonstrate frequency of drug use by police officers or to demonstrate any connection between such use and grave harm to the force or public safety." P. 331

...

"The record offers nothing to show that there is a drug problem in the Boston police department. Nor is there anything outside the record of which we could take note that would permit such a conclusion. There is also no fact in the record, or otherwise established, to which the commissioner points to show that a substantial public purpose requires and justifies random testing of the urine of Boston police officers." P. 333

...

¹ Chief Justice Liacos in his concurring opinion in Guiney referenced the interest-balancing approach adopted in the majority opinion. Chief Justice Liacos stated: "While I concur with the result reached in this case, I must reiterate my concern with this court's willingness to consider the 'balance' of public interests against privacy interests in determining the constitutionality of searches and seizures." P. 334

"The justification for body searches ... cannot rest on some generalized sense that there is a drug problem in this country, in Boston, or in the Boston police department and that random urinalysis of police officers will solve, or at least help to solve, the problem or its consequences." P. 333

Utilizing the rationale expressed above and applying its interest-balancing test, the court struck down random urinalysis testing of Boston police officers as an unreasonable search and seizure on grounds that it violated Art. 14 of the Massachusetts Declaration of Rights.

The task before us now is to apply the rationale and interest-balancing test utilized by the court to the record made in this case. The record showed that there are approximately 220 sworn officers in the Springfield Fire Department. Gerald Prendergast, Deputy Chief and Chief of Administration, who has been employed by the Fire Department for 27 years, testified that he could not recall any positive drug/alcohol test of a Fire Department employee during his years of service. Firefighters Robert Duffy (now a captain in the Department) and Dave Wells (Union President and now a lieutenant in the Department) testified that they were not aware of any incident in the Department attributable to drug/alcohol use. Lt. Wells has been with the Department for 24 years and Capt. Duffy for 18 years.

Additionally, Deputy Chief Prendergast testified that an extremely small percentage of the discipline within the Department over the years was related to drugs/alcohol. The Employer introduced some disciplinary records (eight in total) relating to discipline for drug/alcohol activity; almost all of these records pertained to off-duty conduct for which employees had been disciplined, and over a 10 year period the rate of discipline for off-duty conduct was no more than once per year and sometimes once every two to three years.

Based on the evidence submitted in this case, it is evident that drug/alcohol issues have been few over the course of a decade and that almost all of them have involved off-duty conduct. There has been no incident on duty involving drug/alcohol use over a quarter century,

and there has been no positive drug/alcohol test of a Department member over the same period of time.

Can it be said based on the record made in this case that there is a drug/alcohol problem in the Springfield Fire Department which needs to be rooted out by the administration of random drug/alcohol testing to all members of the Department? I think not. I find that when the Supreme Judicial Court's interest-balancing test is applied to the record made in this case, the conclusion that is warranted is the same conclusion that the court reached in the Guiney case - no random testing is warranted.

Another factor worthy of consideration with regard to this issue is whether or not random drug/alcohol testing has been adopted in other bargaining units within the City of Springfield and/or within comparable communities in the Commonwealth.² The police bargaining unit in Springfield would be the comparison which has the most commonality with the firefighters' bargaining unit as both groups are in the category of public safety employees working for the City of Springfield. The evidence was that there is no contractual provision authorizing random drug/alcohol testing of Springfield police officers (either patrol officers or superior officers). This is of significance in terms of comparability.

The record did show that random drug/alcohol testing within the Springfield Department of Public Works is required of all employees holding commercial drivers' licenses (CDLs) as well as other employees in the City holding CDLs; the three employees or so who work on repairing fire equipment apparatus are also subject to random drug/alcohol testing. Such employees are subject to random drug/alcohol testing because the US Department of Transportation (DOT) mandates such testing for these employees. However, most of the ~~Springfield firefighter bargaining unit~~ is not subject to this mandatory DOT requirement of random drug/alcohol testing as firefighters are generally not required to hold CDLs. Given this

² This factor is one of the factors that Ch. 589 of the Acts of 1987 specifically states as pertinent to the decision-making process in interest arbitration.

distinction between firefighters and DPW employees and given the fact that the traditional comparison for firefighters is other public safety employees, namely, police, I do not think firefighters should be compared, first and foremost, to DPW employees. The Springfield police, as I have already pointed out, have no random drug/alcohol testing regimen in their collective bargaining agreement.

The City did offer the collective bargaining agreements of some five other municipalities scattered around Massachusetts which agreements contain provisions providing for random drug/alcohol testing of firefighters. By inference, then, there are far more communities in Massachusetts which do not have random drug/alcohol testing than those which do have it. Moreover, the five communities cited by the City cannot logically be found comparable to Springfield if the reasoning of the Guiney decision is applied across the board. Per Guiney there had to have been strong evidence of a need for random drug/alcohol testing in order for the five communities to have adopted such testing; this factor alone distinguishes the five communities from Springfield because there is no strong evidence of a need for random testing in Springfield based on the record made in this case.³ Accordingly, Springfield cannot be found to be comparable to the five communities cited by the Employer.

In sum, then, the conclusion remains, based on the interest-balancing test formulated in Guiney and on considerations of comparability (the factors argued in this case), that no random drug/alcohol testing is warranted for the Springfield firefighters.

Issue 5 (Reasonable Suspicion Testing)

Award: An employee shall be required to undergo drug and/or alcohol testing based on reasonable suspicion that the employee is impaired due to drug/alcohol use. Reasonable suspicion means

³ The other method by which random testing might have been adopted by the five communities would have been by consent of the bargaining unit members. In this case the Springfield firefighters have not given their consent to random drug/alcohol testing, and the lack of such consent would potentially be a central distinguishing factor between Springfield and the other five communities.

circumstances from which one may reasonably infer that an employee is under the influence of drugs/alcohol. Reasonable suspicion must be supported by objective facts and observations such as, but not limited to, the appearance, behavior/conduct, speech, and body odors of the employee, the presence of vials or containers for drugs/alcohol, unexplained deterioration in job performance, unexplained change in behavior, and criminal citations or arrests involving drugs/alcohol.

An employee who is subject to a reasonable suspicion test shall be placed on sick/vacation leave or leave without pay, if no sick/vacation leave is available, pending the results of the test. Once the test results are known, the employee shall be immediately returned to work and shall be restored his/her sick/vacation leave if the test results are negative; if the test results are positive, the employee shall be subject to treatment/rehabilitation as provided for under Issue 12.

Issue 6 (Return-to-Work Testing)

Award: Any employee who is found to have tested positive for either drugs or alcohol will be required to submit to a drug/alcohol test prior to returning to duty. Said test will be administered once an employee has been cleared to return to duty by a substance abuse professional (SAP). The SAP shall confer with and weigh the recommendation of the employee's drug/alcohol counselor prior to ordering a return-to-work drug/alcohol test; in the event that there is a conflict of opinion about return-to-work testing between the employee's counselor and the SAP, the employee may request that the Medical Review Officer (MRO) involved in his/her case make the outcome-determinative decision. Employees must successfully pass a return-to-work test in order to be reinstated to active employment.

Discussion: The Union sought to have the employee's counselor make the recommendation as to the employee's readiness to undergo a return-to-work test. I think that this decision is best made by someone who is an independent third party as well as a substance abuse

professional, but that the SAP must, of course, first consult with and weigh the recommendation of the employee's counselor before ordering a return-to-work drug/alcohol test. In the event of a disagreement between the SAP and the employee's counselor concerning the timing of a return-to-work test, the employee may request that his counselor and the SAP consult with the MRO involved in his/her case, and the MRO shall render the outcome-determinative decision.

Issue 7 (Initial, one time only, unit-wide drug/alcohol testing)

AWARD: At the Employer's option, within sixty (60) days of the effective date of this contract each member of the bargaining unit shall submit to a drug/alcohol test. This shall be a one-time event only and shall not be repeated during the life of this collective bargaining agreement. No bargaining unit member shall lose any pay during the administration of this particular test.

Discussion: This provision was offered by the Union. Accordingly, it does not run afoul of the ruling in the Guiney case because the employees through their Union have given their consent to the testing called for under this provision.

Since the Employer has not included this provision in its proposals, we have decided to give the Employer the option of determining whether or not it wishes to implement this provision under circumstances where it was not successful in obtaining inclusion of its random drug/alcohol testing proposal within the contract; accordingly, we have added the language - "At the Employer's option" - to the Union's proposal.

Issue 8 (Promotional Testing)

AWARD: An employee who signs a civil service promotional list indicating a willingness to be promoted to a permanent civil service

position within the bargaining unit shall be tested for the presence of drugs/alcohol, and the test result shall be considered as part of the promotional process.

Issue 9 (Follow-up Testing)

AWARD: Any employee who successfully passes a return to work test will be subject to random, follow up drug/alcohol testing as often as determined by the employee's SAP for a period not to exceed 18 months following the employee's successful return to work.

Issue 10 (Testing procedures)

AWARD: An employee shall be accorded the right of Union representation for either breath or urine testing provided that the securing of such representation does not unreasonably delay the conduct of such test.

Testing for alcohol may be done either by breathalyzer or by urine sample. The breathalyzer test shall be performed by a certified breath alcohol technician (BAT). If alcohol testing is done by breathalyzer and if the test result is positive, either the Employer or the employee may request a confirmatory urine test at a certified laboratory.

Testing for drugs shall be done at a certified laboratory. Urine testing shall be done with due regard for the chain of custody. Each urine sample shall be subdivided into primary and split specimens. If the primary specimen has a positive test result, the employee shall be deemed to have tested positive unless the employee within 72 hours after the consultation with the MRO requests that the split specimen be tested at another certified laboratory. If the split specimen also has a positive test result, then the employee shall be deemed to have tested positive. In cases where the employee has requested further testing, i.e., the testing of a split sample, and the test is positive, the employee shall bear the expense of the test of the split sample. If the split specimen has a negative test result, then the

primary specimen shall be deemed to have been negative, and the employee shall be recorded as having a negative test result overall. All testing costs shall be borne by the Employer except where otherwise specified in this Policy.

All test results shall be reviewed by a medical review officer (MRO) prior to the result being reported to the Employer. In the event of a positive test result, the MRO shall contact the employee and conduct an interview to determine if there are any legitimate reasons for the positive test result. If the MRO determines that there is a legitimate medical explanation for the positive test result, the MRO will report the test result as a negative result. The employee shall bear no testing costs under circumstances where the MRO declares a negative test result. The Employer may be asked by the MRO to assist in getting the employee to contact the MRO; the MRO shall divulge no testing information to the Employer prior to reporting the test result to the Employer.

Issue 11 (Interference with or Refusal to Submit to Testing)

AWARD: Any interference with the testing process or a refusal to submit to testing shall be grounds for disciplinary action up to and including termination. Interference with the testing process includes, but is not limited to, the following: tampering with a specimen, offering bogus specimens, substituting specimens, altering specimens, and obstructing the testing process. In the event that a test result is a dilute negative as defined by the MRO, an employee will be subject to retesting and will bear the cost of such retest.

Issue 12 (Rehabilitation)

AWARD: Any employee who voluntarily comes forward at any time prior to undergoing a test for drugs/alcohol or being charged criminally regarding drugs/alcohol and discloses to the Employer that s/he has a drug/alcohol problem shall be granted an opportunity to seek treatment, shall be granted 30 days paid administrative leave for

such treatment, and shall further be permitted thereafter to use accumulated sick or vacation leave for the period of treatment, and shall not be subject to discipline. First-time treatment which arises in the course of employment by the City shall be at no cost to the employee for the duration of the time the employee is on paid administrative leave plus any time covered by use of the employee's sick and/or vacation leave. The SAP bears the responsibility for determining the employee's treatment plan after consultation with the employee's counselor, if any.

Following treatment an employee will be subject to return to work testing and follow-up testing pursuant to the terms set forth in this contract with respect to each.

Nothing herein shall preclude disciplinary action against an employee who is under criminal investigation for drug/alcohol related misconduct.

Issue 13 (Consequences of a Positive Test)

AWARD: Any employee who has a final positive test result on the first occasion for alcohol/drugs shall receive no discipline provided the employee seeks and participates in treatment for his/her condition.

Any employee who has a positive test result for drugs/alcohol on the second occasion or subsequent occasions shall be subject to discipline up to and including termination of employment.

In the event that an employee fails to pass his/her first return to work drug/alcohol test, the employee shall be returned to rehabilitation and afforded one more opportunity to pass a return to work, drug/alcohol test. In the event that the employee fails his/her second return to work, drug/alcohol test, the employee shall be subject to discipline up to and including termination of employment.

Any refusal to participate in treatment shall result in the discharge of the employee.

Issue 14 (Drug/Alcohol Screen & Testing Thresholds)

AWARD: An alcohol level of .03 or greater shall be considered a positive test result. An employee with an alcohol level of .01 to less than .03 will be relieved of duty; in such event the employee may, if s/he chooses, use some form of accumulated leave or leave without pay to cover the balance of his/her absence from the remainder of the shift.

The drugs tested for shall be those comprising the standard DOT 5 panel screen, namely, marijuana (THC), cocaine, amphetamines, phencyclidine (PCP), and opiates including heroin, oxycontin, & oxycodone. Standard cutoffs shall be used in determining whether or not an employee has a positive test result. Standard cutoffs and the drugs tested for may be changed by agreement of the parties.

An employee who has a valid prescription for medication and who receives a positive test result shall bring such prescription to the attention of the MRO.

Issue 15 (Availability for Drug/Alcohol Testing; Cost of Testing)

AWARD: Employees who are out of work due to an on-the-job injury may be required to be available for drug/alcohol testing if they are medically cleared to take such test.

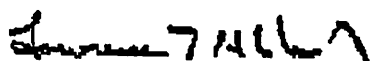
Except as otherwise provided in this Drug/Alcohol Policy, the Employer shall bear all costs associated with the alcohol/drug testing of its employees.

Issue 16 (Severability Provision)

AWARD: Should any portion of this Alcohol/Drug Policy be held unlawful by any court of competent jurisdiction within Massachusetts, the remaining provisions of this Policy shall remain enforceable provided that the portion struck down does not so cripple the policy as to make it dysfunctional. The parties agree to try to negotiate a substitute provision for any provision struck down.

Issue 17 (Compliance with the ADA)

AWARD: No language

A handwritten signature in black ink, appearing to read "Lawrence T. Holden, Jr.", with a stylized flourish at the end.

Lawrence T. Holden, Jr.

Impartial Chairman