

Contract no. 1418

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COLLECTIVE BARGAINING AGREEMENT

between

ATLANTIC CITY BEACH PATROL BENEVOLENT ORGANIZATION, INC.

and

THE CITY OF ATLANTIC CITY

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January 1, 1990 through December 31, 1992

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TABLE OF CONTENTS

<u>ARTICLE</u>		<u>PAGE</u>
	PREAMBLE.....	1
I	RECOGNITION.....	3
II	PURPOSE.....	4
III	INTERPRETATION.....	5
IV	NEGOTIATIONS.PROCEDURE.....	6
V	MANAGEMENT RIGHTS.....	8
VI	DUTIES OF EMPLOYEES.....	9
VII	GRIEVANCE PROCEDURE.....	10
VIII	CHECK-OFF.....	15
IX	EMPLOYEE REPRESENTATION.....	18
X	NON-DISCRIMINATION.....	19
XI	STRIKES.....	20
XII	BULLETIN BOARDS.....	21
XIII	UNITED STATES LIFEGUARD MEETING.....	22
XIV	SPECIAL LEAVES.....	23
XV	LONGEVITY.....	24
XVI	PROMOTIONAL PROGRAM.....	25
XVII	SEASON/SENIORITY RIGHTS.....	26
XVIII	WORKWEEK AND OVERTIME.....	27
XIX	PROBATIONARY PERIOD.....	28
XX	UNIFORMS.....	29
XXI	TENURE.....	30
XXII	LEAVE OF ABSENCE.....	31

XXIII	SALARY.....	32
XXIV	FULLY BARGAINED PROVISION.....	33
XXV	EXPUNGEMENT.....	34
XXVI	WINTER EMPLOYMENT.....	35
XXVII	MISCELLANEOUS PROVISION.....	36
XXVIII	DURATION.....	37

PREAMBLE

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 1990, by and between the City of Atlantic City, a Municipal Corporation of the State of New Jersey, hereinafter referred to as the "CITY," and the Atlantic City Beach Patrol Benevolent Organization, Inc., a New Jersey Corporation, with its address located at 2318 Atlantic Avenue, Atlantic City, New Jersey, hereinafter referred to as "ORGANIZATION," represents the complete and final understanding by the parties on all bargainable issues.

W I T N E S S E T H:

WHEREAS, the Atlantic City Beach Patrol Benevolent Organization, Inc., did make application to the Public Employment Relations Commission of the State of New Jersey requesting an election to be held to determine the exclusive representative of the lifeguards, captains and lieutenants of the Atlantic City Beach Patrol; and

WHEREAS, the Public Employment Relations Commission did issue, under Docket Number RO-85-137 notice of election to be held Thursday, July 18, 1985; and

WHEREAS, an election was duly held and the eligible members of the Atlantic City Beach Patrol voted in favor of the Atlantic City Beach Patrol Benevolent Organization, Inc., and an official certification of representative was issued by the Public Employment Commission on July 30, 1985, certifying the Atlantic City Beach Patrol Benevolent Organization, Inc., as the official representative for the purpose of collective negotiations with

respect to the terms and conditions of employment with the City of  
Atlantic City.

ARTICLE I  
RECOGNITION

The "City" recognizes the Atlantic City Beach Patrol Benevolent Organizes, Inc., as the sole and exclusive negotiating agent and representative for all lifeguards. Lieutenants and Captains, but excluding the Chief, Assistant Chief, Area Chief, Beach Surgeon, Medical Assistant and All other employees of the "City".

The "City" agrees that the "Organization" has the right to negotiate as to rates of pay, hours of work, fringe benefits, working conditions and procedures for adjustment of grievances.

## ARTICLE II

### PURPOSE

This agreement is entered into pursuant to the provisions of Chapter 303, Laws of 1968, as amended by Chapter 123, Laws of 1974, of the State of New Jersey to promote and ensure harmonious relations, cooperation, and understanding between the "city" and the Employees: to provide for the resolution of legitimate grievances, all in order that the public service and safety shall be expedited and effectuated in the best interest of the people of the City of Atlantic City and its Employees and the "City".

ARTICLE III

INTERPRETATION

A. IT is the intention of the parties that this Agreement be construed in harmony with the Rules and Regulations of the Civil Service Commission, Chapter 303 of the Laws of 1968, as amended by Chapter 123 of the Laws of 1974, the Statutes of the State of New Jersey, the Ordinances of the city of Atlantic City, and the Rules and Regulations of the Atlantic City Beach Patrol.



## ARTICLE IV

### NEGOTIATIONS PROCEDURE

A. THE Parties agree to enter into collective negotiations over a successor agreement in accordance with Chapter 303, public Laws of 1968, as amended by Chapter 123, public Laws of 1974, in a good faith effort to reach agreement on all matters concerning the terms and conditions of employees, employment. Such notification of negotiations shall be given not later than April 1 of the calendar year in which this Agreement shall commence no later than the first week in May of the Year in which this Agreement expires. Any agreement so negotiated shall apply to all members of the unit, be reduced to writing, be signed by the City and the Organization, and be adopted by the City.

B. Both parties realize that the protection and safety of the public while using the beaches is of paramount importance. Therefore, if no agreement is reached by October 1 of the year in which the Agreement expires, the parties agree to request the appointment of an arbitrator from the Public Employment Relations Commission and submit all unresolved issues to binding interest arbitration. Nothing herein is to preclude an extension of this date if mutually agreed upon by the parties. The rules and procedures for such arbitration shall be the same as set forth in law for police and fire interest arbitration. If either party desires to propose a deletion of this provision

during the course of bargaining, such proposal must be presented at the first Formal negotiation session. It is agreed to by the parties that such request, if made, would not be applicable to the negotiations in progress and the resulting Agreement, but rather for the subsequent Agreement to the one being bargained.

C. During negotiations, the City and THE Organization shall present relevant data, exchange points of view, and make proposals and counter-proposals.

D . Neither party in any negotiating shall have control over the selection of the negotiating representatives of the other party. The parties mutually pledge that their representatives shall be clothed with all necessary power and authority to make proposals, consider proposals, and make counter-proposals in the course of negotiations.

E. Should a mutually acceptable amendment to this Agreement be negotiated by the parties, it shall be reduced to writing, be signed by the city and the Organization, and be adopted by the City.

ARTICLE V

MANAGEMENT RIGHTS

It is the right of the City through and by the Director of Public Safety and any of his designated representatives to determine the standards of service to be offered by its agencies; determine the standards of selection for employment; direct its employees; take disciplinary action; relieve its employee from duty because of lack of work or for any other legitimate reason; maintain the efficiency of the Beach Patrol; determine the methods, means and personnel by which the Beach Patrol is to be conducted; determine the content of the job classifications; schedule the hours; take all necessary actions to carry out its Public Safety mission in emergencies; and exercise complete control and discretion over the employees and the method of Performing their work. Nothing in this article shall alter or relieve the City of any of its obligations this Agreement.

ARTICLE VI

DUTIES OF EMPLOYEES

The prarties agree that the lifeguards shall exercise their duties faithfully and to the best iñterest of the City and the bathing public irrespective of the fact that they are covered by this Agreement.

## ARTICLE VII

### GRIEVANCE PROCEDURE

#### A. DEFINITIONS

1. The term "grievance," as used herein , means any controversy arising over the interpretation, application or alleged violation of policies or administrative decision affecting terms and conditions of employment or of the express terms of the Agreement, and may be raised by an individual unit employee, a group of unit employees, or the Organization, hereinafter referred to as the "grievant".

#### B. PURPOSE

The purpose of this grievance procedure is to secure an equitable solution to grievances as used herein defined. The parties agree that grievances should be resolved at the lowest possible administrative level. Therefore, no grievance shall by-pass any step of the grievance procedure, except as expressly provided herein, and any failure to prosecute a grievance within the time periods provided shall constitute an absolute bar to relief and shall estop the grievant from prosecuting his grievance in any forum thereafter. This grievance procedure constitutes the sole and exclusive method for raising and disposing of controversies within the definition of the term. Nothing contained herein shall be deemed to preclude the filing and processing of any unfair labor practice or discrimination charge through an appropriate administrative agency or court of law. This shall not bar an administrative agency or tribunal or

the courts from deferring a matter to arbitration under the terms of this collective bargaining agreement.

C. Procedure

1. Step One - Area Chief

- (a) A grievant must file his grievance in writing with the Area Chief within the (10) calendar days of the occurrence of the matter complained of. If the grievant is not the Organization, a copy of said grievance shall be provided to the Organization.
- (b) A written grievance must set forth a statement of the facts constituting the grievance, the approximate time and place of occurrence of the facts leading to the grievance, the names of all City representatives whose action or failure to act forms the basis of the grievance, specific contract provision(s), if any, allegedly violated, misinterpreted or misapplied, and the remedy sought by the grievant. Any written grievance failing to comport with the foregoing requirements shall be null and void, need not be processed by the City, and shall constitute an abandonment of the grievance.
- (c) Once a grievance comporting with all the foregoing requirements is timely filed, the Area Chief shall investigate the grievance and render a written response, which shall be given to the grievant within the (10) calendar days from receipt of the grievance.

## 2. Step Two- Assistant Chief

In the event the grievance is not resolved to the grievant's satisfaction at Step One, or in the event the Area Chief has not served a timely written response at Step One, then within five (5) calendar days after the response date set forth in Step One, the grievant may present the written grievance and any written response(s) received at Step One to the Assistant Chief, or his designee. Upon receipt of the grievance by the Assistant Chief, or designee, the procedure set forth in Step One shall be followed.

## 3. Step Three- Chief of Beach Patrol

In the event the grievance is not resolved to the grievant's satisfaction at Step Two, or in the event the Assistant Chief, or designee has not served a timely written response at Step Two, then within five (5) days after response date set forth in Step Two, the grievant may present the written grievance and any written response(S) received at Step Two to the Chief, the procedures set forth in Step Two shall be followed, except that the parties shall meet within the ten (10) days of the presentation of the grievance to the Chief or designee and the Chief, or designee, shall have ten (10) days thereafter to respond in writing.

## 4. Step Four- City Personnel Director

In the event the grievance is not resolved to the grievant's satisfaction at Step Three, or in the event the .pa Chief or Designee has not served a timely written response at Step Three, then within five (5) days after the response date set forth in Step Three, the grievant may present the written grievance and any written response received at Three to the Personnel Director.

The procedures set forth in Step Three shall be followed, with respect to all grievances not relating to the express terms of this written Agreement, the decision of the Personnel Director shall be final and binding upon the parties.

5. Step Five- Arbitration

(a) with respect only to these grievances relating to the express written terms of this Agreement, if the grievance remains unsettled, only the Organization may, if the Organization deems the grievance to be meritorious, within fifteen (15) calendar days after the reply of the Personnel Director is due, by written notice to the City, Proceed to binding arbitration. A request for arbitration shall be made no later than such fifteen (15) day period and a failure to file within said time period shall constitute an abandonment of the grievance unless the Organization and City shall mutually agree upon a longer time period within which to adjust such a demand.

(b) with regard to subject matters that are grievable, the arbitration proceedings shall be conducted by an arbitrator to be selected through the auspices of the Public Employment Relations Commission. The arbitrator shall restrict his inquiry to the



standards established by the Agreement and the arbitrator shall be requested to issue his decision within thirty(30) days.

(c) The cost of the arbitrator shall be split equally between the parties.

(d) The arbitrator shall have no authority to add to, subtract from, or in any manner modify the terms of this Agreement. He shall issue a written award containing his findings of fact and conclusions of law, within the thirty (30) days period aforesaid.

(e) No arbitration proceeding shall take place less than thirty (30) days from the decision of the Personnel Director. If the grievant elects to pursue Civil Service remedies, he shall be estopped from filing for arbitration on the matter.

(D). Time limits may only be extended by mutual agreement of the parties in writing.

ARTICLE VIII

CHECK- OFF

A. Upon receipt of proper written authorization, the City shall deduct Union dues on a pro rata basis and shall remit the monies collected to the Organization once per season.

B. The Organization agree to indemnify, defend and hold and save the City harmless from any causes of action, demand, claim, suit, loss, damages, or any other liability that shall arise out of or by reason of action taken under this Article.

C. If the rate of dues should change, the Organization shall provide the City with forty- five (45)days advance notice of such change.

D. All deductions under this Article shall be subject to Chapter 233, N.J. Public Laws of 1969, N.J.S.A. (R. S.) 52:14-15.9 (e).

E. If a bargaining unit employee does not become a member of the Organization during any calendar year which is covered in whole or in part by the Agreement, said employee will be required to pay a representation fee to the Organization for that Year. The purpose of this fee will be to offset the empolyee's per capita cost of services rendrerd by the Organization as majority representative.

F. Prior to the beginning of each season, the Organization will notify the City in writing if the amount of the regular membership dues, inition fees and assessments charged by the Organization to its own members for that calendar Year. The

representation fee to be paid by non-members will be equal to 85% of that amount.

G. 1. Once during each calendar year covered in whole or in part by this Agreement, the Organization will submit to the City a list of those employees who have not become members of the Organization for the then current membership year. The City will deduct from the salaries of such employees, in accordance with paragraph G.2, below, the full amount of the representation fee and will transmit the amount so deducted to the Organization.

2. The City will deduct the representation fee once per season, from the paychecks paid to each employee on the aforesaid list during the remainder of the membership in question. The deductions will begin with the first paycheck paid:

- (a) Within thirty (30) days after receipt of the aforesaid list by the City; or
- (b) Thirty (30) days after the employee begins his or her employment in a bargaining unit position and continues in the employ of the City in a non-bargaining unit position or was on layoff, in which event the deductions will begin with the first paycheck paid thirty (30) days after the resumption of the employee's employment in a bargaining unit position, whichever is later.

3. Except as otherwise provided in this Article, the mechanics for the deduction of representation fees and the transmission of such fees to the Organization will , as nearly as

possible, be the same as those used for the deduction and transmission of regular membership dues to the Organization.

4. The Organization will notify the City in writing of any changes in the list provided for in paragraph 1, above, and/or reflected in any deductions made more than thirty (30) days after the City received said notice.

5. The Organization agrees that it has established and shall maintain at all times a demand and return system as provided by N.J.S.A. 34:13A-5.5(c), and membershis in the Organization shall be available to all employees in the unit on an equal basis at all times. In the event the Organization fails to maintain such a system or if membership is not so available, the City shall immediately cease making said deductions.

6. The Organization shall make a copy of its Demand and Return System together with any revisions thereto available to the City prior to the institution of this Article.

## ARTICLE IX

### EMPLOYEE REPRESENTATION

The "Organization" must notify the "City" as to the names of its accredited representatives who shall be the President of the "Organization" with the First Vice President serving as his alternate. Representatives of the "Organization," who are not employees of the "City" will not be permitted to visit with employees during working hours at their work stations for the purpose of discussing "Organization" representation matters without notifying the head of the department. The Chief of the Beach Patrol may, at his discretion, give time off for official union business to members of the Organization Committee.

ARTICLE X

NON-DISCRIMINATION

The "City" and employees both recognize that there shall be no discrimination by reason of sex, creed, racial origin, or age as far as employment is concerned or as far as any opportunity for improvement of jobs or as condition for employment.

## ARTICLE XI

### STRIKES

The "Organization" assures and pledges to the "City" that its goals and purposes are such as not to condone any strikes by lifeguards, captains and lieutenants, nor work stoppages, slowdowns, or any other such method which work interfere with service to the public or violate the Constitution and laws of the State of New Jersey; and the "Organization" will not initiate such activities nor advocate or encourage members of the unit to initiate the same.

ARTICLE XII

BULLETIN BOARDS

A. The "City" shall permit the use of bulletin boards, located in the lifeguard stations, Organization, for the posting of notices concerning "Organization" business and activities.

B. All such notices shall be signed by the President or other authorized official of the "Organization,"



ARTICLE XIII

UNITED STATES LIFEGUARD MEETING

The duly elected Executive Delegate and President of the "Organization" shall be granted leave from duty with full pay for meetings (up to two (2) PER year) OF THE United States Lifeguard Association when such meetings take place at a time when such officers are scheduled to be on duty, Providing the delegate and President give reasonable notice to the Chief to secure other employees to work in their place. Such employees shall be allowed up to three(3)days for each such meeting.

ARTICLE XIV

SPECIAL LEAVES

A. Leave from active duty with full pay shall be granted to up to three (3) members of the "Organization"negotiation committee who attend meetings between the "City"and the "Organization"for the purpose of negotiating the terms of the contract provided the employees are scheduled for duty at the same time.

B. UP to three (3)consecutive days of funeral leave shall be allowed for death of a mother, father, spouse, children, brothers and sisters, and one calendar day of leave granted for the death of cousins,aunts,uncles,nieces,nephews,mother-in-law,father-in-law and grandparent. All leave must include the day of the funeral.

ARTICLE XV

LONGEVITY

A. Payment for longevity shall commence on the annual anniversary date of an employee. Payment shall begin the following pay period.

B. The practice governing Longevity shall be as follows:

<u>Years of Service</u>	<u>Compensation per diem in addition to fixed salary percent of annual salary</u>
1 to 3 years	0%
4 to 8 years	2%
9 to 13 years	4%
14 thru 18 years	6%
19 thru 23 years	8%
24 years and up	

C. The aforesaid additional salary of compensation shall be paid in annual bi-weekly installments at the same time as the basic pay, or once per year in a lump sum, as determined once per year by each employee, with the City's approval.

ARTICLE XVI

PROMOTIONAL PROGRAM

The "City" agrees to notify the "organization" of all available positions on the Atlantic City Beach Patrol for lifeguards, captains and lieutenants and shall set forth their qualifications for hiring and promotions.

ARTICLE XVII

SEASON/SENIORITY RIGHTS

A. THE SUMMER SEASON FOR ALL EMPLOYEES SHALL BE FROM May 1st until October 31st. Rehiring of all employees in the spring of the year shall be based upon seniority. The employees with the greater number of years of service.

B. When it become necessary to reduce the work force by layoff in any classifications, however.

C. An employee must complete fifty (50) full days of employment during the season in order to earn credit for one (1) year of service for seniority Purposes. D. In all cases of layoff, recall and rehiring, merit, ability, fitness and qualifications will be considered by the City along with seniority.

E. Nothing herein shall guarantee any specific number of hours or days in a given work year or work week, nor shall anything be construed to guarantee a specific number of staff at any given time.

F. Effective January 1, 1992, increase the pension for all covered employees on such retirement six (6) percent..

ARTICLE XVIII

WORKWEEK AND OVERTIME

An employee shall be entitled to overtime after forty-eight (48) hours of work during a week. Any overtime earned on a weekly basis shall result in the employee being paid at straight time and shall be paid on the pay day following the previous pay period, unless the City elects to utilize compensatory time.

ARTICLE XIX

PROBATIONARY PERIOD

A lifeguard shall be on probation for his or her first three (3) seasons from the date of his or her employment with the Atlantic City Beach Patrol. Until such time is completed, an employee shall be subject to discharge or non-renewal for any cause, and the Organization shall not file any grievance on his behalf or subject the City to any type of claim as a result of such discharge or non-renewal.

## ARTICLE XX

### UNIFORMS

A. The City shall continue to supply provide each employee a full uniform for the official performance of his/her duties without costs to the employee.

B. The City further agrees that uniform damaged in the line of duty, requiring immediate replacement, shall be replaced by the City after inspection by a Superior Officer.

C. An employee shall be required to submit a full written report as to the cause of damage.

D. Employees shall be responsible for thir uniforms in all other cases and shall wear them onlyduring working hours.

E. Effective January 1, 1989, each employee shall be examined at the time of their regular annual re-employment or pre-employment physical examination by a health care professional for the purpose of screening for skin cancer and/or other related medical problems. If there is any suspicion of skin cancer and/or other related medical problems a subsequent review by a dermatologist will be provided. The cost for such examination(s) shall be borne by the City. Each employee shall received by thr City. Such copy shall be provided to the employee in a sealed envelpoe to insure confidentiality.



ARTICLE XXI

TENURE

A lifeguard who has completed three (3) Full seasons of service shall not be discharged except for just cause.

ARTICLE XXII

LEAVE OF ABSENCE

A . An employee shall be entitled to request an unpaid leave of absence for up to two (2) seasons without losing his/her seniority rights.

B. Effective January 1, 1989, if an employee, as a result of his/her performance is scheduled to work, the employee shall not be required to make up such time. If the City requires an employee is not scheduled to work, the employee shall be given compensatory time. If in the off-work season, the employee shall be paid straight time for such court time and payment shall be by July 15.

ARTICLE XXIII

SALARY

Salary shall be paid in accordance with the following scale:

	<u>1990</u>	<u>1991</u>	<u>1992</u>
	<u>Per Diem</u>	<u>Per Diem</u>	<u>Per Diem</u>
<u>Lifeguards</u>			
1st to 3rd year	52.96	56.14	59.51
4th to 6th year	59.74	63.32	67.12
7th to 8th year	66.53	70.52	74.75
9th year	66.53	70.52	74.75
10th to 12 year	73.32	77.72	82.38
13 year	80.09	84.90	89.99
14th to 15th year	80.09	84.90	89.99
16th to 18th year	86.88	92.09	97.62
19th to 23rd year	86.88	92.09	97.62
24 and over	86.88	92.09	97.62
<u>Lieutenants</u>			
	99.92	105.92	112.28
<u>Captains</u>			
	114.90	121.79	129.10

It is understood that any retroactive payments due shall be paid after January 1, 1990.

## ARTICLE XXIV

### FULLY BARGAINED PROVISION

A. This Agreement represents and incorporates the complete and final understanding and settlement by the parties of all bargainable issues which were or could have been the subject of negotiations.

B. The parties acknowledge that during the negotiations that resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any matter or subject 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.

C. The City and Organization, for the life of this Agreement, each voluntarily and unqualifiedly waive all bargaining rights, and each agrees that the other shall not be obligated to bargain or negotiate with respect to any subject or matter referred to or covered in the Agreement, or with respect to any matter or subject not specifically referred to or covered in this Agreement, even though each subject or matters may not have been within the knowledge or contemplation of either or both parties at the time they negotiated or signed this Agreement.

D. This Agreement shall not be modified in whole or in part by the parties except by an instrument in writing only executed by both parties.

ARTICLE XXV

EXPUNGEMENT

When a member of the bargaining unit is charged with an offense or crime arising out of his duties and is subsequently acquitted therefrom, the City shall provide for the expungement of said charge from his/her record.

ARTICLE XXVI

WINTER EMPLOYMENT

A. Non-supervisory members of the bargaining unit who are employed at the City boatyard during the winter and whose titles continue to be that of "lifeguard," shall receive benefits and wages consistent with that received by the members of the City's blue collar bargaining unit, for the period of time employed at the boatyard, so long as such are consistent with laws. Supervisory employees shall receive those benefits and wages consistent those received by members of the City's Supervisory bargaining unit for the same period of time.

B. Employees shall be considered "lifeguards" so long as the word "lifeguard" appears in their official civil service title.

ARTICLE XXVII

MISCELLANEOUS PROVISION

The City will provide twenty-seven (27) copies of the Agreement plus two (2) to each district plus five (5) to the Organization.



ARTICLE XXVIII

DURATION

This Agreement shall be in full force and effect from January 1, 1990 until December 31, 1992.

The parties agree that negotiations for a successor agreement modifying, amending or altering the terms and provisions of this Agreement shall commence during the first week of June, 1992. In the event no successor agreement is completed on or before December 31, 1992, the present contract will continue in effect.

IN WITNESS WHEREOF, the undersigned have affixed their signatures as the duly authorized legal representatives of the City and the Organization on this \_\_\_\_\_ day of \_\_\_\_\_, 1990.

ATTEST:

CITY OF ATLANTIC CITY

\_\_\_\_\_  
Benjamin Fitzgerald  
City Clerk

\_\_\_\_\_  
James L. Usry, Mayor

ATTEST:

ATLANTIC CITY BEACH PATROL  
ORGANIZATION

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
President

SIDEBAR AGREEMENT

DRUG TESTING

1. If a non-tenured employee fails the annual pre-employment physical drug test, the employee shall not be hired. This shall not preclude the employee from reapplying upon passing the drug test.
2. If the tenured employee fails the annual pre-employment physical drug test, such tenured employee shall have the right to a second test for drugs within seven (7) days. If the employee passes the second test, such employee shall be paid for any time lost off payroll and shall return to employment with no loss of seniority. If the lab made an error in the first test, the tenured employee shall also be entitled to any loss in pay incurred. If the tenured employee fails the second test, he shall be discharged; but if the employee utilizes a rehab program successfully within one (1) year and passes the City's test, the employee shall be granted his prior seniority with all rights.
3. Effective 1989, notice shall be given April 1, of dates of tests, what test will be performed, and the name of the lab.
4. Any member of the union who has failed a test can receive a copy of the lab report.
5. Results of all tests shall remain confidential.
6. This Sidebar Agreement shall remain in effect for the duration of the contract.

7. Nothing contained herein shall be construed to deny any employee any rights he may have under law.

8. Nothing contained herein is to deny the City from testing any individual if reasonable individual suspicion exists.

9. By agreeing to the Sidebar, neither party is agreeing or disagreeing on the constitutionality or legality of said test.

ARTICLE XXII

LEAVE OF ABSENCE

A . An employee shall be entitled to request an unpaid leave of absence for up to two (2) seasons without losing his/her seniority rights.

B. Effective January 1, 1989, if an employee, as a result of his/her performance is scheduled to work, the employee shall not be required to make up such time. If the City requires an employee is not scheduled to work, the employee shall be given compensatory time. If in the off-work season, the employee shall be paid straight time for such court time and payment shall be by July 15.