

IN THE SUPREME COURT,
STATE OF FLORIDA

F.O.P., Miami Lodge 20,

Petitioner,

vs.

Case No. 77394

CITY OF MIAMI,

Fla. Bar No. 200141

Respondent. :

INITIAL AMICUS CURIAE BRIEF OF THE
FLORIDA POLICE BENEVOLENT ASSOCIATION
ON BEHALF OF PETITIONER

FLORIDA
POLICE
BENEVOLENT
ASSOCIATION
INC.

Mailing Address:
Post Office Box 11239
Tallahassee, Florida 32302

300 East Brevard Street
Tallahassee, Florida 32301
(904) 222-3329
1-800-733-3722
FAX (904) 561-0192

GENE "Hal" JOHNSON
General Counsel

JOAN STEWART
Asst. General Counsel

STEPHEN W. FOXWELL
Asst. General Counsel

Gene "Hal" Johnson
Counsel for Amicus Curiae
Florida Police Benevolent
Association, Inc.
300 East Brevard Street
Tallahassee, Florida 32301
904/222-3329, extension 406

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Preliminary Statement

Throughout the text of this brief the following references will be **used**:

Petitioner, F.O.P., Miami Lodge 20: "Lodge 20."

Respondent, City of Miami: "City."

Florida Public Employees Relations Commission: "PERC" or "Commission."

Florida Police Benevolent Association, Inc.: "Florida P.B.A."

All references to the Florida Statutes will be to the 1983 version unless otherwise noted.

Statement of the Facts and the Case

The Florida Police Benevolent Association, Inc., adopts the statement of the facts and the case contained in the initial brief filed with the Court by F.O.P., Miami .odge 20.

In order to assist the Court in its resolution of the certified question raised in this case, the Florida **P.B.A.** would like to advise the Court of the following background information, all of which are matters of public record:

The Florida Police Benevolent Association, Inc., its charters and chapters are certified by PERC as the bargaining representatives for 127 law enforcement and corrections bargaining units.

Of the bargaining units represented by the Florida P.B.A., **71** have collective bargaining agreements which contain provisions dealing with compulsory drug testing and/or procedures for the implementation of drug testing.

The specificity of the drug testing provisions vary from bargaining unit to bargaining unit. Some agreements make reference to drug testing "permitted by law." Some agreements incorporate, by reference, the Drug-Free Workplace Act, Chapter 112.0455, Florida Statutes (1989). Others establish the circumstances under which testing may be required. Still others, establish standards for the validation of test results. See Appendix at A1 through A5.

Due to the collective bargaining and impasse resolution procedures provided for in Section **447.403**, Florida Statutes, the Florida **P.B.A.** is unaware of any public employer with which it negotiates that has not been able to implement compulsory drug testing for the law enforcement and corrections employees it employs.

Summary of Argument

The subject of compulsory drug testing and the procedures for its implementation are terms and conditions of employment. There is no compelling state interest which warrants removal of these **subjects** from the bargaining process. Thus, this Court should find compulsory drug testing for law enforcement officers to **be** a mandatory subject of bargaining.

Argument

COMPULSORY DRUG TESTING AND THE PROCEDURES FOR ITS IMPLEMENTATION ARE MANDATORY SUBJECTS OF COLLECTIVE BARGAINING.

It is the obvious position of the Florida P.B.A. that compulsory drug testing and the procedures for its implementation are mandatory subjects of collective bargaining. The Florida Constitution dictates this conclusion. See, Article I, Section 6 of the Florida Constitution. The Florida case law dictates this conclusion. See, Dade County Classroom Teachers' Association, Inc. v. Ryan, 225 So.2d 903 (Fla. 1969). See also, Hillsborough County Governmental Employees Association v. Hillsborough County Aviation Authority, 522 So.2d 358 (Fla. 1988); United Teachers of Dade FEA/United AFT, Local 1974 v. Dade County School Board, 500 So.2d 508 (Fla. 1986) and City of Tallahassee v. Public Employees Relations Commission, 410 So.2d 487 (Fla. 1981). Florida law dictates this conclusion. See, Section 112.0455(13), Florida Statutes.

In all candor, the issue of whether drug testing is a mandatory subject of collective bargaining is not difficult to resolve. As previously recognized by the Court, the issue breaks down into two basic inquiries. **Is the subject matter sought to be negotiated a term or condition of employment? If so, is there a compelling state interest which would permit the official abridgement of the constitutional right to bargain on the subject?** See, United Teachers of Dade, 500 So.2d at 510-512 and City of Tallahassee, 410 So.2d at 489-491.

Clearly, where the subject matter under review is determined not to be a term or condition of employment, the rights guaranteed by Article I, Section 6 of the Florida Constitution are not implicated. However, where the subject matter under review is

determined to be a term or condition of employment, barring negotiations of the matter constitutes an abridgement of the fundamental right to collectively bargain guaranteed by Article I, Section 6. See, United Teachers of Dade, 500 So.2d at 510 and City of Tallahassee, 410 So.2d at 489.

The Court has consistently relied on the expertise of PERC in interpreting the statutory provisions of the Public Employees Relations Act, Chapter 447, Part II, Florida Statutes. Public Employees Relations Commission v. Dade County Police Benevolent Association, 467 So.2d 987, 989 (Fla. 1985). When seeking additional guidance on labor relations matters or assessing the correctness of PERC's statutory interpretations, the Court has looked to private sector labor law as a polestar for its actions. Palm Beach Junior College v. United Faculty of Palm Beach Junior College, 475 So.2d 1221, 1226-1227 (Fla. 1985). It has also looked to the decisional law in other public sector labor jurisdictions for guidance in the development of a consistent and fair labor policy. United Teachers of Dade, 500 So.2d at 511-513. It is respectfully suggested the Court should follow this approach in the instant case.

Are compulsory drug testing and the procedures for its implementation terms and conditions of employment? The answer is a simple "yes." The Public Employees Relations Commission determined them to be terms and conditions of employment. The National Labor Relations Board has determined them to be terms and conditions of employment. Other states with public sector collective bargaining have determined them to be terms and conditions of employment. See, Lodge 20's Initial Brief at pages 24 through 35 for a discussion of private and public sector **cases** on drug testing.

Finally, it must be noted the Florida Legislature recognizes that compulsory drug testing and the procedures for its implementation are appropriate subjects of

collective bargaining. In enacting the Drug-Free Workplace Act, Chapter 112.0455, Florida Statutes (1989), the Legislature provided specifically that its mandate to implement the drug-free workplace legislation "**shall not be construed to eliminate the bargainable rights as provided in the collective bargaining process where applicable.**" Section 112.0455(13), Florida Statutes (1989). Moreover, the Legislature provided the Act and its provisions are not applicable to those State employees covered by a collective bargaining agreement until the agreement is renegotiated or renewed. See, Section 2, Chapter 89-173, Laws of Florida.

Clearly, compulsory drug testing and the procedures for its implementation are terms and conditions of employment. The Public Employees Relations Commission recognizes this fact. Private sector labor law recognizes this fact. Other public sector labor jurisdictions recognize this fact. The Florida Legislature recognizes this fact.

Having determined compulsory drug testing to be a term of employment, the next inquiry is whether there is a compelling state interest to remove the matter from the collective bargaining process. The answer is "no."

Certainly, the lower court's "father knows best" approach to the subject of drug testing outlines the many concerns the Florida citizens have in establishing a "drug-free police force." Both the City and Lodge 20 acknowledge these to be significant concerns, The concerns do not, however, warrant total abridgement of the constitutional right to bargain on the subject matter.

It is apparent such negotiations on the subject of drug testing are not against public policy. The Legislature made that clear by enacting Section 112.0455(13) which acknowledges the duty to bargain over the subject.

Furthermore, the lower court loses sight of the fact that the collective bargaining process leaves the ultimate decision regarding drug testing and its implementation procedures to the public employer's legislative body. A recalcitrant bargaining agent cannot stop drug-testing through the collective bargaining process.¹ It can merely force the public employer's legislative body to be the final arbiter on the matter. See, section **447.403**, Florida Statutes.

Finally, while the concerns outlined by the lower court in its decision may appear legitimate, they are not borne out by the actual facts. Today, Florida's public employers and the bargaining representatives of law enforcement and correctional officers routinely negotiate compulsory drug testing provisions in their collective bargaining agreements.² See, Appendix at **A1** through **A5**. The public employers and representatives have acted responsibly to protect interests of Florida citizens in a "drug-free police force" and the officer's employment interests.

Simply put, there is no demonstrably compelling state interest for removing the negotiation of compulsory drug testing from the collective bargaining process guaranteed by Article I, Section 6 of the Florida Constitution.

¹A public employer may still be free to immediately implement a compulsory drug testing policy based on "exigent circumstances." See, Florida School for the Deaf and the Blind Teachers United v. Florida School for the Deaf and Blind, 11 FPER ¶ 16080 (1985), aff'd, 483 So.2d 58 (Fla. 1st DCA 1986).

²As previously stated, 71 of the 127 bargaining units represented by the Florida P.B.A. have collective bargaining agreements containing specific drug testing provisions.

Conclusion

Based upon the foregoing discussion and legal analysis, the Florida Police Benevolent Association would urge the Court to find that compulsory drug testing and the procedures for its implementation are mandatory subjects of collective bargaining for Florida's public sector **employees**.

Dated this 17th day of April, 1991.

Respectfully Submitted,



Gene "Hal" Johnson
Counsel for Amicus Curiae

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished, by mail, to:

Robert Klausner, Esquire
Post Office Drawer 2088
Hollywood, Florida 33020-2088

Peter Hurtgen, Esquire
200 South Biscayne Boulevard, Suite 5300
Miami, Florida 33131

H. Lee Cohee, Esquire
Public Employees Relations Commission
2586 Seagate Drive, Suite 100
Tallahassee, Florida 32399-2171

Terrence Conner, Esquire
200 South Biscayne Boulevard, Suite 5300
Miami, Florida 33131

Jane C. Hayman, Esquire
Post Office Box 1757
Tallahassee, Florida 32307-1757

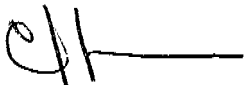
George N. Ayelsworth, Esquire
Thomas Guilfoyle, Esquire
1320 N.W. 14th Street, Room 318
Miami, Florida 33125

Lorene C. Powell, Esquire
118 North Monroe Street
Tallahassee, Florida 32399-1700

Craig Freger, Esquire
2699 South Bayshore Drive
Miami, Florida 33133

Mark Brown, Esquire
1401 61st Street South
St. Petersburg, Florida 33707

Dated this 17th day of April, 1991.



Gene "Hal" Johnson
Gene "V" Johnson

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F.O.P., Miami **Lodge 20**,

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CITY OF MIAMI,

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**APPENDIX TO
INITIAL AMICUS CURIAE BRIEF OF THE
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APPENDIX TO
INITIAL AMICUS CURIAE BRIEF OF THE
FLORIDA POLICE BENEVOLENT ASSOCIATION
ON BEHALF OF PETITIONER

Agreement between the State of Florida and the Florida Police Benevolent Association	A1
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Agreement between the City of Tampa and the Hillsborough County Police Benevolent Association	A3
Agreement between the Metropolitan Dade County, Florida and the Dade County Police Benevolent Association	A4
Agreement between the City of Tallahassee and the Big Bend Police Benevolent Association. Inc.	A5

AGREEMENT



STATE OF FLORIDA
and



FLORIDA POLICE BENEVOLENT
ASSOCIATION

Law Enforcement Bargaining Unit

July 1, 1990 through June 30, 1993

SECTION 2 - Emergency Travel In Excess of Three Days

When an emergency arises requiring temporary personnel assignment with less than forty-eight (48) hours notice, the State agrees to make the necessary payment to the vendor for lodging for such employees. The employee shall have no responsibility to make such payments to the vendor. Travel vouchers will be submitted as required in Section 1 above.

SECTION 3 - Mileage Allowance

The State agrees to seek continued funding to provide for the payment of a mileage allowance for the use of privately-owned vehicles for official travel at the rate of 20 cents per mile.

**Article 29
DRUG TESTING**

(A) The State and the Association agree to drug testing of bargaining unit employees in accordance with Chapter 22K-27, F.A.C., Procedures For Drug Testing.

(B) Special risk classes for drug testing purposes within the bargaining unit are denoted by an asterisk in Appendix A. Special risk means employees who are required as a condition of employment to be certified under Chapter 633 or Chapter 943, Florida Statutes.

(C) An employee shall have the right to grieve any disciplinary action taken under Chapter 22K-27, F.A.C., subject to the limitations on the grievability of disciplinary actions in Article 7. If an employee is not disciplined but is denied a demotion, reassignment or promotion as a result of a positive confirmed drug test, the employee shall have the right to grieve such action in accordance with Article 6.

**Article 30
NO STRIKE**

SECTION 1 - No Strike Agreement

Neither the Association nor any of its officers or agents nor members covered by this Agreement, nor any other employees' covered by this Agreement, will instigate, promote, sponsor, or engage in any prohibited activities as defined in Section 447.203(6), Florida Statutes.

SECTION 2 - Penalty

Any or all employees who violate any provision of this law prohibiting strikes or of this Article will be subject to disciplinary action up to and including discharge, and any such disciplinary action by the State shall not be subject to the Grievance Procedure established herein.

**Article 31
PREVAILING RIGHTS**

All pay and benefits provisions published in the Personnel Rules of the Career Service System which cover employees in the bargaining Unit and which are not specifically provided for or modified by this Agreement shall continue in effect during the term of this Agreement,

AGREEMENT



THE CITY OF ORLANDO

AND



October 1, 1989 through September 30, 1992

ARTICLE 39

HEALTH AND WORKERS' COMPENSATION BENEFITS

- 39.1 The City agrees that each employee shall receive and will be obligated to an annual physical examination which includes the following tests:
- a. Urinalysis (see 39.8)
 - b. Audio Screen Test
 - c. Blood Pressure
 - d. Blood Chemistry Profile (SMAC-24)
 - e. Vision Test
 - f. Height and Weight Recorded
 - g. EKG At Rest
 - h. EKG Stress EKG annually after 40 years of age
 - i. Pulmonary Function Test
- 39.2 In addition to the above, employees, at their discretion, may choose to have a chest X-ray performed and interpreted in conjunction with the annual physical provided appropriate justification is furnished,
- 39.3 Scheduling of the above examinations will be at the discretion of the Department, and the results will become part of the employee's permanent health record except for the A-24 test. Cost of the examination and tests will be underwritten by the City as provided by this article.

- 39.4 The City and the Union agree to an Employee Drug Screening program. The method and procedure for the drug screening shall be as encompassed in the Orlando Police Department's Policy and Procedure. The costs of such tests shall be borne by the City. The Department's Policy and Procedure, Employee Drug Screening, shall not be modified for bargaining unit members without negotiation of the changes.
- 39.5 Effective January 1, 1990, no smoking or use of tobacco products will be permitted in the Orlando Police Department Headquarters, or any other interior Orlando Police Department work area.
- 39.6 The City will reimburse each bargaining unit employee once every two (2) years for the cost of an eye examination (not to exceed \$40.00) by a certified Optometrist upon the employee's request. The employees may exercise their right to obtain eyeglasses through the current program as instituted by the City Safety Department.
- 39.7 If the Industrial Medical Unit finds it necessary to refer an on-the-job injury to an outside physician, the injured employee will have the discretion of choosing said physician, providing all reports and charges of physicians comply with the Workers' Compensation Law. No employee shall be coerced by the employer or his representative in the selection of a physician. This section shall in no way alter present policy related to the Authorization for Treatment Report Form 36-99.

- 39.8 No test of any controlled substance, as defined in Chapter 893, Florida Statutes, shall be performed except under the provisions of the Employee Drug Screening Policy and Procedure.

ARTICLE 40

GENERAL PROVISIONS

- 40.1 All Policies and Procedures governing the employees shall be kept in strategic locations throughout the Department to ensure that each employee has access to them. Written Policies and Procedures which are frequently used will be distributed to each employee at management's option.
- 40.2 The Orlando Police Department will provide the Union with anticipated adjustments to, amendments of and new Policies and Procedures in order that the Union may give comments and/or recommendations on the subject matter. The Union will return its response to the Planning and Research Section within ten (10) business days (Monday through Friday) from the date submitted. It is further recognized that there may be emergency situations wherein the Chief deems immediate action regarding Policies and Procedures appropriate. In those instances the Union will be notified after the fact and may then respond if an adjustment is recommended. The Chief will give serious consideration to the Union's comments and/or recommendations.

AGREEMENT

BETWEEN

CITY OF TAMPA



AND

**HILLSBOROUGH COUNTY
POLICE BENEVOLENT
ASSOCIATION, INC.**

October 1, 1988 thru September 30, 1991



remaining Incentive Leave shall be paid at the employee's regular rate of pay,

ARTICLE 41 EMPLOYEE ASSISTANCE PROGRAM

41.1 Purpose. The City of Tampa and the PBA recognize that an employee's personal problems may result in a less than optimum, and even a declining, job performance. These personal problems may include, but are not limited to, emotional or behavioral problems, marital or family problems, legal problems, financial problems, alcohol abuse, or drug abuse. In keeping with the mission of the City to provide the finest of services to the citizens of Tampa and recognizing the importance of the City's human resources, the City has established an Employee Assistance Program (EAP). The goal of this program is to restore the employee to full productivity by offering guidance and referral to qualified, professional providers. It is the City's policy that an employee's participation in the EAP will not jeopardize his or her future opportunities with the City, however, the EAP shall not replace, alter or be used to circumvent the City's discipline administration policy.

41.1.1 Substance Abuse. The City of Tampa and the PBA have grave concerns regarding the abuse of alcohol and other drug substances in the community. It is understood that City policy prohibits the consumption, possession, or being under the influence of drugs or intoxicating substances while on duty.

41.2 Eligibility. Employees enrolled in the City's group health insurance plan are eligible for EAP services. Spouses and/or dependents of employees are eligible if the employee is enrolled in the City's group health

insurance **program** with family coverage. **Any** eligible employee **or** family member may directly **seek** EAP services for any personal problem. Such problems may include, but are not limited to: depression, anxiety, stress or psychiatric illnesses, **difficulties** stemming from alcohol or drug abuse **or** the emotional impact **of** problems of another **person**.

413 Program Access. Eligible employees or family members may **access** EAP services **by**:

A. **Self-Referral.** Employees **or** eligible family members may voluntarily and directly contact the **EAP** for services. Employees who utilize self-referral due to a substance **abuse** problem shall **be** eligible to utilize **sick** leave or other appropriate paid leave (or a medical leave **of** absence if eligible) in order to enroll in an appropriate **program**. Upon completion **of** the program, the City shall **require** medical substantiation regarding fitness **for duty** and resolution **of** drug **or** alcohol use or dependency prior to reinstatement from the leave. Reinstatement shall be conditioned **on** continued monitoring and **testing** to **ensure** **continued** and complete recovery. Only one substance abuse self-referral to the EAP shall be permitted. An employee **who** fails to complete the program **or** who resumes **use of** said substances after the original reinstatement shall **be** dismissed.

B. **Supervisor/Department Director Mandatory Referral.** A supervisor/department director, noting a declining job performance **on** the part **of** an employee which is **not** related to substance abuse, may mandate referral **of** an employee **to** the **EAP for assessment**, further referral **or** counseling **services**.

1) All mandatory referrals to the EAP must be coordinated through the City's Employee Relations Division.

2) An employee's job will not be jeopardized by such a referral or by the employee's refusal to participate in the EAP. However, an employee's job may be jeopardized by failure to improve job performance, and such failure will be handled according to the discipline procedures.

C. Mandatory Referral for Substance Abuse Testing.

The City has the authority to require an employee to complete physical examinations to ensure that the employee is fit for duty. This includes, but is not limited to, physical examinations to determine if a specified employee is under the influence of alcohol on duty; to determine any abuse of prescription or non-prescription drugs; and, to determine any use of illegal substances.

1) Random drug testing will not be conducted except as allowed by law. The requirement of an employee to complete a drug or alcohol screen or test shall be based on the standard of "reasonable suspicion." The reasonable suspicion standard requires that the City must have some factual foundation and rationale which is interpreted in light of experience." In other words, a decision to test an employee shall be based on factors such as changes in job performance; physical symptoms commonly associated with drug usage such as slurred speech, altered motor skills and other changes; changes in attention span or attendance; reports or actual witnessing of possession or use of substances; changes in appetite or sleeping habits; or other mannerisms or behavioral changes which indicate the suspicion of drug usage.

2) The City shall meet with and inform an employee that, in the opinion of the City, there is a basis for reasonable suspicion and of the City's intention to schedule a drug or alcohol Screen or test. At said meeting, the City shall consider the comments from the employee regarding the matter and shall then make the determination of whether to proceed and require the screen or test. If it is determined, at the sole discretion of the City, that a drug test will be required, the employee shall be immediately escorted to the appropriate facility for tests. Refusal by an employee to submit to said test shall be grounds for dismissal.

3) The supervisor having reasonable suspicion of the use of alcohol or drugs shall immediately contact the City's Employee Relations Division to arrange for referral for testing and shall arrange to escort the employee for testing. The employee shall not be allowed to drive. Prior to transport, the supervisor shall obtain the employee's signature on the "Consent to Perform" and obtain a witness of the signature, The "Consent to Perform" must be presented upon arrival at the facility for testing.

4) If an employee tests positive, the employees shall be placed on sick leave (or a medical leave of absence if eligible when there is an insufficient leave balance) and shall be referred to the City's Employee Assistance Program (EAP) for counseling, further drug testing, and/or enrollment in an appropriate program. Upon completion of the program, the City shall require medical substantiation regarding fitness for duty and resolution of drug or alcohol use or dependency prior to reinstatement from sick leave or the medical leave of absence. Reinstatement shall be conditioned on continued monitoring and testing to ensure continued and complete recovery.

Only one such referral to the Employee Assistance Program shall be permitted. An employee who fails to complete the program or who resumes use of said substances after the original reinstatement to work shall be dismissed.

5) If an employee tests positive for an illegal substance, the employee shall be dismissed.

41.4 Confidentiality. The confidentiality of EAP services is absolutely essential to the program's acceptance and success. Participants have the right to complete confidentiality concerning their use of the program, the content of the sessions, and all existing case information and records. Regardless of the nature of the referral, the EAP Counselor may not disclose any information about a participating employee to the City without the employee's written consent. In the case of a supervisory referral, the EAP Counselor may communicate to the City that the employee has or has not kept appointments. The EAP Counselor may also, with the employee's consent, work with the employee and the supervisor in defining the job performance difficulties and in setting work goals for improvement. All counseling records and information from employee visits are the property of the EAP.

41.5 Appointments. Appointments may be scheduled Monday through Friday between the hours of 8:00 a.m. and 6:00 p.m. An EAP staff member is available on a 24 hour basis by beeper service for life threatening situations.

A. Employees and eligible family members may see an EAP staff member or other participating practitioner

COLLECTIVE BARGAINING AGREEMENT
BETWEEN
METROPOLITAN DADE COUNTY, FLORIDA
AND
THE DADE COUNTY POLICE BENEVOLENT ASSOCIATION
LAW ENFORCEMENT SUPERVISORY UNIT
OCTOBER 1, 1988 TO SEPTEMBER 30, 1990

b. Anyone qualified for these **benefits** whose condition or impairment renders him totally disabled shall be eligible for benefits as defined in Section 2-56.24 of the Code of Metropolitan Dade County until such time as he is sufficiently recovered to resume employment as defined in (3) (a) or becomes eligible for an unreduced pension under the Florida Retirement System.

(4) Exclusions

Nothing herein shall be construed to extend or otherwise affect the provisions of Chapter 440, Florida Statutes, pertaining to Workers' Compensation, and Section 2-56.27.1 of the Code of Metropolitan Dade County, pertaining to short term disability leave benefits.

(5) Administration

Determination of eligibility and benefits under this section shall be vested in the Long Term Disability Panel.

The provisions of Article 16 Section F shall be effective October 1, 1986.

ARTICLE 17 TOXICOLOGY AND ALCOHOL TESTING

The County and the Association recognize that employee substance and alcohol abuse can have an adverse impact on Dade

County government, a Department's operations, the image of County employees and the general health, welfare, and safety of the employees, and the general public.

The Department shall continue to have the right to require Toxicology and Alcohol Testing as part of any physical examination provided in accordance with the provisions of Article 16 - Health Services.

The Department shall also have the right and authority to require employees to submit to toxicology and alcohol testing designed to detect the presence of any controlled substance, narcotic drug, or alcohol. The Department agrees that requiring employees to submit to testing of this nature shall be limited to circumstances that indicate reasonable suspicion to believe that the employee is under the influence of such substances, suffers from substance or alcohol abuse, or is in violation of the Dade County Personnel Rules, or Departmental Rules and Regulations regarding the use of such substances.

It is further understood by the parties that the aforementioned authority to require that employees submit to such testing be approved by the concerned Division Director, or higher authority within the Department to ensure proper compliance with the terms of this Article.

The County, guided by the most recent research in toxicology, will select the appropriate test(s) to be used. If an employee tests positive, a second confirmatory test on the original specimen must be administered in a timely manner to verify the results before administrative action is taken. The County shall make a reasonable effort to provide employees with the results of a positive test within 72 hours of providing the specimen. However, failure to comply with this 72 hour notification provision shall

not preclude the County from utilizing the **positive test results** in any administrative or disciplinary action up to and including dismissal as deemed appropriate in accordance with the applicable provisions of County Administrative Orders, the County Code, the Dade County Personnel Rules, and Departmental Rules and Regulations. All tests will be conducted in approved laboratories **using** recognized technologies.

All disputes arising out of the implementation of this article will be pursued under Article 3 of this agreement.

The results of such tests may result in appropriate disciplinary action up to **and** including dismissal, in accordance with the applicable provisions of the Code of Metropolitan Dade County, the Dade County Personnel Rules and Departmental Rules and Regulations. Employee refusal to submit to **toxicology** or alcohol testing in accordance with the provisions of this Article may result in disciplinary action up to and including dismissal, in accordance with the applicable provisions of the County Code, the Dade County Personnel Rules and Departmental Rules and Regulations.

ARTICLE 18 PROMOTIONAL EXAMINATIONS AND ICIES

A. The County will continue its program of validating promotional examinations.

B. The County will announce promotional examinations at **least** ninety (90) days in advance. The County shall list the areas which the examinations will cover, the sources from which the examination is drawn will be posted by the County, and all such reference material and sources will be made

AGREEMENT

CITY OF TALLAHASSEE

BIG BEND POLICE RENEVOLENT ASSOCIATION, INC.

Police Officer Unit

October 1, 1990 - September 30, 1993

Article XXIII
RESIDENCY REQUIREMENTS

It is agreed that **the** City will continue to follow its policy of requiring all **bargaining** unit employees, hired after October **2**, 1978, to **reside** in Leon County or within a twenty mile radius of the Tallahassee Police Department, **as long** as within the State of Florida, and preferably within the boundaries of the **City** of Tallahassee.

The change in the residency requirement **does** not extend the current departmental policy on take-home vehicles.

Article XXIV
SAFETY AND HEALTH

A. Seat Belts

All employees **are** required to wear **seat** belts when driving or riding **as** a passenger in City vehicles or in **a** personal vehicle on City business, except in cases of operational necessity.

Violations of this provision will result in disciplinary action as follows:

First Offense: Oral Reprimand

Second Offense: Written Reprimand

Third Offense: One day suspension without pay

Fourth Offense: ~~Five~~ day suspension without pay

Fifth Offense: Dismissal

B. Employee Examinations

In an effort to identify and eliminate on or off duty controlled substance/alcohol abuse, urinalysis/blood tests shall be administered **as** provided herein:

1. As part of a scheduled physical examination program where participation is required in accordance with Article XIV, or within 30 days of the employment anniversary date during a year when a physical examination is not required.

2. Following any police vehicular-accident occurring on or off duty where a supervisory officer has reasonable belief based upon objective factors that the involved employee may be under **the** influence of alcohol or may **have** been using, possessing, dispensing or selling controlled substance, unlawful, mind-altering, or non-physician prescribed **drugs**.

3. Where a supervisory officer has a reasonable belief based upon objective factors that the employee has possession or is using, dispensing, or selling **any** illegal drug or controlled substance not prescribed by a licensed physician on or off duty.

4. Where a supervisory officer has a reasonable belief that the employee is under the influence of alcohol on duty, or on an off-duty detail, or traveling to or from **same**, or while covered for portal to portal pay for worker's compensation.

The employee shall have the right to have present during the testing a representative of his choice but the Department will not be required to wait more than 30 minutes for such representative to arrive. In the event that the employee's initial representative is unable to serve, he may choose another representative but in no event shall the Department **be** required to wait more than **30** minutes.

Refusal to comply with an order to submit to such an examination will constitute the **basis** for disciplinary action up to and including dismissal.

Any positive test for a controlled substance which is confirmed by Gas Chromatography/Mass Spectrometry (G.C.M.S.) or better testing **shall** result in a recommendation for discipline up to and including dismissal.

When a sample is taken under any of the above circumstances, a portion shall be retained for a second test **within** 24 hours should either management or the employee request same.

The employee who is using an over-the-counter or prescription drug which is significantly influencing his ability to perform his job (i.e., causing **drowsiness**, slowing reaction times, distorting perception, etc.) must *so* advise his supervisor. If no accommodations can be made for the employee, he must **be** placed on sick leave, annual **leave**, or on leave without pay, **as appropriate**.

The employee who fails to **advise his** supervisor of legal drug use which is negatively affecting his job performance is subject to disciplinary action.

C. Controlled Substance Testing Procedure

The laboratory **shall** have a qualified individual to **assume** professional, organizational, educational, and administrative responsibility for the laboratory's urine drug testing facility.

The laboratory **shall** take precautions to **ensure** that a urine specimen not be adulterated or diluted during the collection procedure and that information on the urine bottle and in the record book can identify the individual from whom the specimen was collected,

The drug testing laboratory **shall** be secure at all times. Sufficient **security measures** to control access to the **premises** and to ensure that no unauthorized personnel handle specimens or gain **access** to the laboratory **processee** or to **areas** where **records** are

stored must be in place. Access to these secured areas shall be limited to specifically authorized individuals whose authorization is documented.

The laboratory shall use standardized chain of custody procedures to maintain control and accountability of specimens from receipt through completion of testing, reporting of results, during storage, and continuing until final disposition of specimens. The date and purpose shall be documented on an appropriate chain of custody form each time a specimen is handled or transferred, and every individual in the chain shall be identified. Accordingly, authorized technicians shall be responsible for each urine specimen in their possession and shall sign and complete chain of custody forms for those specimens as they are received.

In order to insure the reliability and integrity of the testing process, the laboratory shall verify, with regard to urine sample analysis that:

1. Each urine sample was screened by either an enzyme immunoassay or radioimmunoassay testing method or an equally scientifically rigorous screening method.

2. The immunoassay screen employed must, at minimum, test for the presence of the following controlled substances or classes of controlled substance or their metabolites and be capable of detection at the following minimum levels:

<u>Substance</u>	<u>Nanogramme per Milliliter</u>
(a) Amphetamines	1000
(b) Barbiturates	300
(c) Cannabis or Cannabinoide	100
(d) Opiates	300
(e) Cocaine or Cocaine Metabolite	300

(f)	Phencyclidine	75
(g)	Benzodiazepines	300
(h)	Methaqualone	750

3. Each urine sample which was screened positive by an immunoassay method or an equally scientifically rigorous screening method, for any of the specified controlled substances or their metabolites set forth in this section, were confirmed and verified by gas chromatography-mass spectrometry or other equally scientifically rigorous testing method. Each substance isolated must be specified by chemical name. Unless verified as described herein, a urine sample screened positive by an immunoassay method or equally scientifically rigorous screening method shall be considered inconclusive.

Should the FDLE minimum screening levels, as per rule 11B-27.000225, P.A.C., be reduced, the minimum screening levels used by the City will be reduced correspondingly.

D. No Smoking

As a condition of employment, no person shall be hired as a police officer in the Tallahassee Police Department if he smokes or uses tobacco on or off duty.

ARTICLE XXV
Indemnification

The City will provide a defense for, and indemnify, any employee who is made a party to any suit or proceeding, other than by an action of the City of Tallahassee, or against whom a claim is asserted by reason of his action(s) taken within the scope of duty or service as an employee of the City. Such indemnity shall extend to judgments, fines, and amounts paid in settlement, of any