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**Contract Database Metadata Elements**

Title: **Westchester, County of and Westchester County Police Officers Benevolent Association (2001)**

Employer Name: **Westchester, County of**

Union: **Westchester County Police Officers Benevolent Association**

Effective Date: **01/01/01**

Expiration Date: **12/31/02**

PERB ID Number: **7126**

Unit Size: **1**

Number of Pages: **60**

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POL/7126

**AGREEMENT**

**BETWEEN**

**THE COUNTY OF WESTCHESTER**

**AND**

**THE WESTCHESTER COUNTY POLICE OFFICER'S**

**BENEVOLENT ASSOCIATION, INC.**

(Police Officers / Sgts)

**January 1, 2001 - December 31, 2002**

**RECEIVED**

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**NYS PUBLIC EMPLOYMENT  
RELATIONS BOARD**

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**ARTICLE I**  
**THE AGREEMENT**

1.1 Definitions

As used herein, the following terms shall have these meanings: "County" means the County of Westchester.

"Association" means the Westchester County Police Officer's Benevolent Association, Inc.

"Department" means Westchester County Department of Public Safety, Division of Police, including the Criminal Warrant Division.

"Employee" means a member of the negotiating unit defined in paragraph 1.2 below.

"Spouse", "Family" or "Family Member" shall be used interchangeably with the term "domestic partner".

1.2 Appropriate Unit

The appropriate employer-employee negotiating unit in accordance with the Civil Service Law and Act number 84-1967 of the Board of Supervisors of Westchester County, as amended, to which this agreement applies, consists of all Police Officers and Sergeants employed by the Department, excluding all other County employees.

1.3 Recognition

Based upon the Association's no-strike affirmation (Appendix A), the recognition heretofore granted to the Association (Appendix B) is hereby confirmed and extended for the maximum period permitted by law.

1.4 Duration

This agreement shall be effective January 1, 2001 and remain in effect through December 31, 2002.

1.5 Priority of Agreement

a. Where the provisions of this agreement are in conflict with County policy or practices, this agreement shall govern, except as provided by law.

b. Nothing contained herein shall be construed to deny or restrict, with respect to employees, any rights they may have under the Civil Service Laws or any other applicable laws and regulations. The rights provided to employees hereunder shall be deemed in addition to those provided elsewhere.

c. IT IS AGREED BY AND BETWEEN THE PARTIES THAT ANY PROVISION OF THIS AGREEMENT REQUIRING LEGISLATIVE ACTION

TO PERMIT ITS IMPLEMENTATION BY AMENDMENT OF LAW OR BY PROVIDING THE ADDITIONAL FUNDS THEREFORE, SHALL NOT BECOME EFFECTIVE UNTIL THE APPROPRIATE LEGISLATIVE BODY HAS GIVEN APPROVAL.

1.6 Maintenance of Standards

Conditions of employment in effect prior to this agreement and not covered by this agreement shall not be reduced without good cause during the term of this agreement. "Good Cause" may be determined through the grievance procedure herein, including Step 3.

**ARTICLE II**

**ASSOCIATION STATUS AND RIGHTS**

2.1 Right of Organization

Employees shall have the right to join and participate or refrain from joining and participating in the Association.

2.2 Right of Representation

Employees shall have the right to be represented by the Association and to negotiate collectively with the County in the determination of their wages, hours, and terms and conditions of employment, and the administration of grievances.

2.3 Non-Discrimination

The County and the Association will not discriminate against any Employee with respect to wages, hours, or any terms or conditions of employment by reasons of race, creed, color, national origin, age, sex or marital status, except as such conditions may constitute bona fide occupational or assignment qualifications. Complaints arising from this clause shall not be processed through the grievance procedure contained in this agreement.

2.4 Dues Deductions/Agency Shop Deductions

- a. Subject to reasonable procedural requirements, the County will honor, during their effective period, individual assignments signed by Employees authorizing deductions of membership dues, service charges, and/or Employee welfare charges of the Association.
- b. Dues deduction requests in favor of any "employee organization" (as defined in Article 14 of the Civil Service Law) other than the Association will not be honored for the Employees covered by this Agreement.
- c. All Employees in the appropriate negotiating unit, as defined by Section 1.2, not desiring membership in the Association shall be required as a condition of employment to have deducted from their salaries a service charge for the administration of this Agreement and the representation of such Employees.

- d. The service charge for appropriate negotiating unit Employees shall be the amount equivalent to the amount of annual dues payable by a member of the Association in the category appropriate to the status of the Employee.
- e. The Employer shall deduct the service charge from non-association member Employees and transmit the sums so deducted to the Association at the same time and in the same manner as dues deducted from Association members.
- f. The Association shall notify the employer annually of the amount of annual dues.

## 2.5 Dues Remittance

Dues will be deducted after each payroll period and will be remitted to the Association at the address designated by the Association in the manner currently established.

## 2.6 Association Time

- a. The President shall have such time off as is reasonably necessary to administer Association business and to negotiate and administer the contract. The President shall be assigned to a Monday through Friday day tour schedule, which may be changed only when the exigencies of the Department require. Such change may not be unreasonably exercised and requires a reasonable period of notification to the President of the Association.
- b. Upon written request of the 1st Vice-President of the Association, he shall be assigned to a two tour position on the duty chart. Changes of such working tour of the 1st Vice-President shall be subject to the restrictions as they apply to the President of the Association in 2.6a above.
- c. Effective January 1, 1999, the Vice-President shall be entitled to up to twenty days paid time off per year, not chargeable to any other paid time off, to assist the PBA President in administering PBA business and in negotiating and administering the contract. Such time off must be taken with the advance knowledge and permission of the Vice-President's immediate supervisor, and, where a conflict arises between DPS and PBA needs, those of the DPS shall prevail. In the event the President of the Association is on leave greater than three days, the Vice-President will assume the association time available to the President without any reduction in Association time otherwise available to the Vice-President or other members of the Association.
- d. The President shall be authorized to attend the annual national, state and county conferences and such other conferences or functions as may be allowed, consistent with 2.6a. above. The Association shall have an additional total of one hundred fifty days for other members of the association to attend like functions.
- e. Duly authorized representatives of the Association shall be permitted to transact official Association business directly related to the administration of this Agreement on County property during the work day, but at times that shall not in any manner interfere with or interrupt work or the individual duties and responsibilities of such representatives as County employees.
- f. The Association shall certify to the County the names of its authorized representatives and areas in which their representation is effective.



g. When an Association representative meets by agreement with a County representative during the workday, such meeting shall be without loss of pay.

h. Subject to reasonable rules with respect to security, safety, and operating requirements, representatives of the Association may be granted access to working areas for the purpose of observing whether the terms of this Agreement are being maintained.

## 2.7 Bulletin Boards

The Association shall have the right to post notices of its legitimate activities on an Association bulletin board at Police headquarters. The Association may use the County inter-office mail service for bulk transmittal of communications to Employees and/or Association members.

## ARTICLE III

### EMPLOYEE STATUS AND RIGHTS

#### 3.1 Position Classification

No employee shall be appointed or assigned under any title not appropriate to the duties to be performed as defined in the specification for that title under the position classification system for the county of Westchester.

#### 3.2 Out-of-title Guarantee

a. When an Employee is directed to perform substantial duties of a higher classification not common to the Employee's current classification on a regular basis for more than 15 consecutive work days, the Employee shall be paid at least the lowest rate currently authorized to pay in such higher classification for the duration of such assignment, which shall not be lower than the Employee's current rate, retroactive to the first day of such assignment.

b. Employees directed to perform the duties of a lower classification with no change in their job title shall not have their rates of pay reduced because of such assignment.

c. In the event a Sergeant is assigned to perform the work of a Desk Officer for the majority of a work tour, and there is no Lieutenant on duty, the Sergeant shall be paid at a Lieutenant's rate of pay for such tour.

#### 3.3 Personnel Records

No complaint or report (other than normal classification and assignment status, payroll, and attendance records) adverse to an Employee will be retained in the Departmental file unless the Employee has had an opportunity to read same and to provide a response to be filed therewith. Except for pre-employment materials deemed confidential, an employee may be permitted to examine such file at reasonable intervals and to make copies of items therein.

### 3.4 Police Bill of Rights

The County and the PBA recognize that the performance of police duties involve the Employees in many important contacts and relationships with the public, out of which questions may arise concerning the actions of members of the Force. Such questions may require prompt investigation by superior officers, as designated by the Commissioner/Sheriff or other competent authority.

To insure that such investigations are conducted in the proper manner, while observing and protecting the individual rights of each Employee of the Force, the parties hereby agree that there shall be a formal internal investigation procedure established for the review of police activity or civilian complaints, and shall be conducted in accordance with the following:

- a. It is understood by the parties that the supervision of Employees by the County is not to be encumbered by the review procedure;
- b. The interrogation of an Employee shall be at a reasonable hour; preferably when the Employee is on duty, unless the circumstances of the investigation dictate otherwise;
- c. The interrogation shall take place at a location designated by the Commissioner/Sheriff or the officer in charge of the investigation;
- d. The Employee shall be informed of the name and rank of the interrogating officer in charge of the investigation, and all other persons present at the interrogation. If an Employee is directed to leave a post and report for interrogation to another post, the Employee's superior shall be promptly notified of the Employee's whereabouts;
- e. The Employee shall be informed of the nature of the investigation before any interrogation commences. The names and addresses of the complainants and/or witnesses need not be disclosed; however, sufficient information to reasonably apprise the Employee of the allegations should be provided. If it is known that the Employee being interrogated is a witness only, the Employee should be so informed at the initial contact;
- f. The questioning shall not be overly long, and shall be completed with reasonable dispatch. Time shall also be provided for personal necessities, meals, telephone calls, and rest periods as are reasonably necessary;
- g. The Employee shall be given an exact copy of any written statements the Employee may execute. If questioning is mechanically or stenographically recorded, the Employee shall be given access to same. During the complete interrogation, there shall be no "off the record" questions, except at the request of the investigating officer. All recesses called during the questioning shall be recorded;
- h. The Department shall afford an opportunity for the Employee, if the Employee so requests, to consult with an Association representative before being questioned concerning any violation of rules and regulations, provided the interrogation is not unduly delayed. However, in such cases, the interrogation may not be postponed for purposes of Association representation beyond 10:00 a.m. of the day following notification of interrogation. A representative of the Association may be present during the interrogation of the Employee, if so requested by the Employee;

- i. If an Employee is under arrest or is likely to be; that is; if the Employee is suspect or the target of a criminal investigation, the Employee shall be given the right, pursuant to the Miranda Decision; and
- j. The aforementioned procedure will be observed by all superior officers and other officers of the Department while conducting investigations of the actions of the Employee.

**ARTICLE IV**

**HOURS AND WORKING CONDITIONS**

**4.1 General**

No departure from the norms below shall be made without prior notification to the Association. In the event of any disagreement between the County and the Association as to the need and desirability of such deviation, or as to the manner in which it has been made, the matter may be processed through the grievance procedure.

**4.2 Hours of Work**

- a. Employees assigned schedules with rotating shifts shall work a chart based upon 243.3 tours per year.
- b. The proposed schedule or the annual/seasonal assignment of shifts will be posted at least twenty (20) days prior to the effective date.
- c. Employees working non-rotating schedules shall work on the average 247 days per year.
- d. Employees assigned to non-rotating schedules, which is a basic work year of 260 days, shall accrue 13 chart days annually, which represents additional time off. The non-rotating shift employee must use 8 accrued chart days each year as time off. Chart days may, at the employee's sole option, be taken in time off, paid in straight time pay, or accrued by the employee for future use or pay. In the event the employee opts to take chart days in pay, he or she may not receive such pay until at least the calendar year following the year of accrual, or at the time of the employee's retirement, or at the Commissioner's discretion, on a case by case basis, in the event of extenuating circumstances, in accordance with past practice.
- e. Employees initially assigned to a non-rotating schedule during a calendar year shall be excused from tours the following number of times during the remainder of that year providing they remain working non-rotating schedules for that year:

Assigned:	January, February, March	13 tours
	April, May, June	10 tours
	July, August	7 tours
	September, October	4 tours
	November, December	2 tours

- f. Employees shall advise the County, during the month of December, of their intention to carry chart days on the books into the following year. If the County is not advised during this

month, chart days on the books shall be paid to the employee at the straight time rate. Employees may elect to carry all chart days on the books or any portion thereof into the following year.

- g. When changing an employee's schedule the following procedure shall be used:
  - 1) The Department reserves the right to make temporary tour schedule changes and/or reassignments at any time due to unforeseen, exigent circumstances for the duration of such, subject to any right to overtime provided in this contract.
  - 2) The annual/seasonal shifts will be posted at least twenty (20) days prior to the effective date.
  - 3) Any member subjected to tour change of change of assignment except as set forth above will be given notification of such change seven(7) days prior to the effective date of such change, or overtime will be paid.
  - 4) In any event a change shall involve no more than one change of tour in a given week. Consecutive tours shall reflect only one change, i.e., 08-08-16-08-08, 08-08-16-16-16, only one change.
- h) Employees shall be assigned one training day per year. Training shall be worked without compensation, shall be scheduled for the day tour upon at least 30 days notice, and shall not precede a member's evening tour (tour 3) assignment. A labor-management committee shall be established by the parties to investigate and recommend training courses to the Commissioner.

#### 4.3 Premium Pay

- a. Overtime.
  - 1) Overtime shall be defined as all hours worked outside of the Employee's schedule. Overtime earned shall be compensated at the Employee's option in either compensatory time off or in cash at the rate of time and one-half. Compensatory time accrued within one calendar quarter must be used prior to the end of the succeeding calendar quarter. If the compensatory time is not used, the balance is to be paid in cash at the Employee's pay rate in effect when the compensatory time was accrued. Such payment shall be made in the next pay period following the end of the calendar quarter.
  - 2) The Department reserves the right to waive a tour and credit the time not worked against overtime worked immediately prior to the waiver in those rare instances where an emergency has required long continuous hours of overtime.
  - 3) Except when personal interests of the Employee are involved, unit members shall be compensated for all hours actually worked, at the rate of time and one-half for court appearances made during non-duty hours, with a minimum of 4 hours of pay at straight time, or a minimum of 6 hours of pay at straight time when an officer is so assigned on his/her day off.
  - 4) In computing time worked, all paid time off shall be included.

5) Overtime may not be compensated in any manner unless authorized and approved in accordance with regulations.

6) An Employee who is offered and who voluntarily accepts paid overtime in another classification shall receive one and one half (1-1/2) times the rate for such other classification for all hours worked in such other classification in that week above the basic workweek.

7) An Employee's regular starting or quitting time will not be changed on a day an Employee is assigned extra work hours in order to avoid over time. A change of shift or workweek within a workweek may not be used to deprive an Employee of overtime the Employee would otherwise have earned in that workweek.

8) An Employee who is directed to report for work and who is present for work shall receive the equivalent of at least four (4) hours straight time pay.

#### 4.4 Health and Safety

a. The County will make every effort to maintain employment conditions conducive to the health and safety of the Employees and will discuss such matters with a Safety Committee of the Association on request.

b. Special safety equipment required by the Director of Risk Management will be supplied without cost to the Employee.

c. First aid equipment as specified by the County Commissioner of Public Health will be made available for Employees performing hazardous duties.

#### 4.5 Swapping of Tours

Members shall be permitted to swap tours upon notice to the Department. Requests for swapping tours shall not be unreasonably denied.

### ARTICLE V

#### COMPENSATION

##### 5.1 Salaries

##### 5.2 Pay Calculations

	Effective 01/01/01	Effective 01/01/02
<u>Police Officers</u>		
Starting Salary	\$36,145	\$37,590
After 1 year	\$43,630	\$45,375
After 2 years	\$51,100	\$53,145
After 3 years	\$58,585	\$60,930
After 4 years	\$66,060	\$68,700
<u>Sergeants</u>	\$77,290	\$80,380

All Sergeants to receive a salary seventeen (17%) percent above the Top Grade Police Officer salary.

Detectives

1 <sup>st</sup> and 2 <sup>nd</sup> year	\$70,620	\$73,440 (6.9% above 1 <sup>st</sup> grade ptl)
3 <sup>rd</sup> and 4 <sup>th</sup> year	\$71,080	\$73,920 (7.6% above 1 <sup>st</sup> grade ptl)
5 <sup>th</sup> year and above	\$71,615	\$74,540 (8.5% above 1 <sup>st</sup> grade ptl)

To calculate hourly rate for pay calculations, one shall take 243.3 times 8 hours, divided into one's annual salary including longevity, if applicable.

5.3 Longevity

	Effective 01/01/01	Effective 01/01/02
After 5 years	\$2,100.00	\$2,300.00
After 10 years	\$2,300.00	\$2,500.00
After 15 years	\$2,500.00	\$2,700.00
After 20 years	\$2,700.00	\$2,900.00

Longevity payments are computed into the annual pay for purposes of payment, but not for computations of future base rate increases. Years are measured from date of original employment, and accumulation of years shall mean continuous employment.

5.4 Holidays

- a. Each calendar year, there shall be fourteen (14) paid holidays, whether worked or not. An Employee shall be permitted to take all of their holidays in either cash or compensatory time off.
- b. If the Employee elects cash payment, seven (7) holidays will be paid in cash in pay period #12 and seven (7) holidays will be paid in cash in pay period #22, pro-rated for portions of the year worked.
- c. If, at the end of the year, the Employee has holiday on the books earned during that year the County shall pay the Employee for this time at his straight time rate. Such payment shall accompany the pay period #2 paycheck.
- d. Holidays accumulated prior to January 1, 1981 shall, at the Employee's option, be retained as holiday time, or the Employee can request cash payment for the holidays.
- e. Cash payment for holidays shall be at the rate of pay the Employee on the date such payment is received.
- f. The rate of time and one-half (1-1/2) will be paid to those who work on Martin Luther King Day, President's Day, July 4<sup>th</sup>, Thanksgiving, Christmas, and Easter and to veterans who work on Veteran's Day or Memorial Day in addition to the holiday pay mentioned above. No change in current practice of assignments for holidays shall be made in order to avoid payment under this Section.

## ARTICLE VI

### DIFFERENTIALS AND ALLOWANCES

#### 6.1 Detective and Special Assignments

Police Officers, when assigned to perform investigative or undercover or personal security work, shall be paid a differential over base pay in recognition of the work difference in accordance with the following schedule:

- a. 6.9 percent above the Top Grade Police Officer salary in the first and second years of such employment;
- b. 7.6 percent above the Top Grade Police Officer salary in the third and fourth years of such employment;
- c. 8.5 percent above the Top Grade Police Officer salary in the fifth year and thereafter.
- d. Those employees assigned on a daily basis shall be paid at the appropriate rate per day.
- e. Detective Differential shall be included in calculations for daily, hourly and overtime rates.

#### 6.2 Shift Differential

All Employees who have a regular starting time of one (1:00) o'clock p.m. or later or have regular quitting time of twelve (12:00) o'clock noon or earlier shall receive additional compensation while regularly working such shift hours of nineteen (\$19.00) dollars. Effective January 1, 2002, the shift differential shall be increased to twenty dollars (\$20.00).

#### 6.3 Clothing Allowance

- a. The initial uniform will be purchased and supplied in full by the County for new Employees. Said issue is to be in lieu of any uniform allowance payment. No such uniform allowance payment shall be made until the first regular payment period, as provided below, following the completion of the Employee's first twelve months of service.
- b. All Employees shall receive a clothing allowance of eleven hundred seventy five dollars (\$1,175.00) per year, payable in two lump sum payments by separate checks in pay periods #5 and #16. Effective January 1, 2002, the clothing allowance shall be increased to twelve hundred fifty dollars (\$1,250.00).
- c. The County shall determine the kinds and specifications of uniforms.

#### 6.4 Mileage Allowance

- a. Employees will be reimbursed at the prevailing IRS rate where a private car is used, with prior County authorization, on County business. This reimbursement rate shall be increased if additional reimbursement is provided for other County employees.

b. Employees who regularly use private cars on County business shall conform with the requirements of the Westchester County Director of Risk Management. Regular use shall be defined as five (5) days or more within a month.

#### 6.5 Meal Allowance

The meal schedule specified in the County Travel Policy Rules and Regulations shall be in accordance with the following or the general County rate, whichever is higher.

	Without Receipt (Allowance)	With Receipt (Reimbursement)	With Receipt (Out of County)
Breakfast	\$3.00	\$4.00	\$5.00
Lunch	\$5.00	\$6.00	\$7.00
Dinner	\$7.00	\$9.00	\$18.00

#### 6.6 Stand-By Allowance

a. Employees assigned to the County Executive's Security Detail shall receive one thousand (\$1,000) dollars per year stand-by pay.

b. Employees permanently assigned to the bomb squad shall receive \$4000 per annum for stand-by.

c. No Employees except for those mentioned above shall be permanently assigned to a stand-by assignment; however, Employees may be assigned stand-by intermittently due to the needs of the Department. When such intermittent assignment is scheduled and worked, the Employee shall be paid 2 hours of pay at straight time for each 8 hours assigned on week days and 8 hours for each 8 hours assigned on weekends and holidays.

#### 6.7 Stipend

a. Effective January 1, 2001, members assigned to the Aviation Unit shall receive an annual stipend of \$4,000.00.

### ARTICLE VII

#### LEAVES

#### 7.1 Vacations

a. In the first calendar year (January 1 through December 31) of employment, the Employee shall be credited on the first day of each month following one completed calendar month of service, with one (1) working day of vacation, provided the maximum shall not exceed ten (10) working days of vacation for that calendar year. However, the Employee cannot utilize any vacation leave until after six (6) months of service. Unused vacation leave earned during the first calendar year of employment may be "carried over" into the second calendar year of employment.

b. On January 1, the second calendar year of employment, the Employee shall be credited with fifteen (15) working days of vacation, plus any carry over of earned vacation.



c. On January 1st an Employee with three (3) or more years of service but not more than ten (10) years shall be entitled to twenty (20) days of vacation, plus any carry over of earned vacation.

d. On January 1st an Employee who has more than ten (10) years of service, or during that year will attain the eleventh (11th) anniversary of service, will be entitled to one (1) additional working day of vacation for each year of service to a maximum of five weeks (twenty-five working days) vacation, as follows:

Years	Vacation Days
Attains eleventh (11th) year	21 days
Attains twelfth year (12th) year	22 days
Attains thirteenth (13th) year	23 days
Attains fourteenth (14th) year	24 days
Attains fifteenth (15th) year	25 days

e. Vacation selection shall be in accordance with the Department's vacation scheduling procedure.

f. Seniority shall govern vacation picks and shall mean date of employment as Police officers in the Police Division. Sergeants' seniority shall be determined by date of appointment to that particular rank.

g. A member's vacation should not be interrupted unless:

1. An emergency situation arises.
2. A court order has directed an officer to appear.
3. The officer voluntarily accepts the call-in assignment.

If the officer is called in, the Department will pay the prevailing rate of pay and transportation from location of vacation to headquarters and return.

## 7.2 Sick Leave

The present paid sick leave program of the County shall be continued for the life of this agreement without change, except as follows:

a. Sick leave may be used for illness in the family up to three (3) days for any one sickness and no more than nine (9) days cumulative in any one (1) year. Family shall be defined to include spouse, father and mother, fathers and mothers-in-law, children, brothers and sisters of either spouse and grandparents of either spouse.

b. Such sick leave shall be taken only from sick leave accumulated to the credit of the Employee.

### 7.3 Extended Sick Leave

Employees who are not entitled to benefits as defined in Section 207c of the General Municipal Law and who have exhausted their regular sick leave, vacation and other time credits may be granted extended sick leave upon recommendation of the Department Head and the approval of the Personnel Officer at one-half (1/2) pay for a period not to exceed one (1) bi-weekly pay period for each complete year of service. Any extended sick leave previously granted, shall be chargeable against the allowance provided for in this section.

### 7.4 Sick Leave Buy-Out

All unused accumulated sick leave shall be compensated for upon retirement at fifty percent (50%) of the daily rate of pay at the time of retirement. No Employee shall receive this benefit that has less than fifty (50) days of accumulated sick leave at the time of retirement. This fifty percent (50%) formula shall not apply to any accumulation above two hundred and forty (240) days.

### 7.5 Bereavement Leave

- a. There shall be four (4) working days of family bereavement leave beginning from the date of death.
- b. Bereavement leave shall apply in those instances where the Employee participates in the usual rites and rituals of death.
- c. With respect to bereavement leave, the family shall be defined to include spouse, father and mother, fathers and mothers-in-law, children, brothers and sisters of either spouse, and grandparents of either spouse.
- d. One (1) day of bereavement leave shall be granted in the event of the death of close relatives which shall be defined to include son-in-law, daughter-in-law, grandchildren, and any other relative who resides in the household of the Employee.
- e. The Deputy Commissioner may grant an Employee bereavement leave for the other relations not named above in special cases.

### 7.6 Personal Leave

- a. The present County program for personal leave with pay and leave of absence without pay shall be continued for the life of this Agreement without change.
- b. Personal leave time may be used in conjunction with vacation time in the current year with the recommendation of the Department Head and the approval of the Personnel Officer.
- c. At the conclusion of the calendar year, unused personal leave shall be credited to sick leave accumulations.

### 7.7 Military Leave

An Employee who is required to render ordered military duty shall be granted a leave of absence as authorized by state law.

## 7.8 Court Appearances

An Employee required to serve as a juror or to appear in court pursuant to subpoena or court order, except when personal interests of the Employee are involved, shall be granted a leave with pay for such required attendance provided that any fees received for such attendance shall be paid to the County.

## 7.9 Maternity/Child Rearing Leave

a. A pregnant Employee shall be allowed to perform the duties of her job as long as she is medically able, except where physical disability may endanger the Employee or constitute a liability in the performance of her duties. Pregnant Employees are not required to report the existence of pregnancy to the County.

b. A pregnant Employee upon filing appropriate medical evidence, that she is unable to perform the duties of her position due to this pregnancy, shall be permitted to use any annual leave, personal leave, supplementary time, holiday leave and sick leave for the period of her disability and shall be eligible for extended sick leave.

c. While on maternity or child rearing leave the Employee may continue to use any or all leave he/she has heretofore accumulated.

d. Upon her/his request to the County, the Employee shall be granted a leave of absence without pay for a maximum period of seven (7) months. Such leave may be extended upon recommendation of the Commissioner, up to a maximum of two (2) years. Said leave of absence without pay shall be in addition to the above leave with pay benefits. Such leave shall not be unreasonable withheld.

## ARTICLE VIII

### EMPLOYEE BENEFITS

#### 8.1 Insurance

The County will, subject to any other provisions of this Article, continue to provide health insurance and retirement programs and options and will, except as modified below, pay the total cost of Employees, their dependents, and retirees premiums for such programs, providing such programs and options remain available.

##### a. Health Insurance

1. The County agrees to provide to the Employees and their dependents, the health insurance benefits equal to the benefits in effect for the Statewide Empire Plan as of 12/31/90.
2. Unless altered in compliance with paragraph (3) below, during the term of this agreement, there shall be no change in health insurance benefit coverage. However, if the County decides to change carriers to provide these benefits, the union may demand arbitration within thirty (30) days after the County notifies the union of the change in carrier if the benefits being offered by the new carrier are not equivalent to the benefits provided under the current plan.

3. Employee Contributions to the health insurance plan shall be deductibles of one hundred and fifty dollars (\$150.00) per annum for a single employee, and up to four hundred and fifty dollars (\$450.00) per annum for family coverage. Prescription Drug Plan - four dollars (\$4.00) brand name prescription and a one dollar (\$1.00) charge for a generic equivalent.

b. Health Maintenance Organization

1. The County will make payments to any Health Maintenance Organization offered to Employees at a rate equivalent to the premium rate of the "Statewide" Plan as outlined in the New York State Government Employees Health Insurance Program Booklet. Members choosing this health insurance plan will be obligated to pay to the plan the premium difference, if any, between the County's contribution and the total cost of the offered Health Maintenance Organization premiums on a monthly basis. In no event will the County be required to make a payment greater than the total payment required by the Health Maintenance Organization.

Employees on the payroll prior to January 1, 1981, shall be required to pay the premium rate between the H.M.O. rate, and the rate of premium determined by the State-wide Health Insurance Plan.

2. For "H.I.P." enrollees who as of May 1977, subsequently switched to a Health Maintenance Organization, the County will continue to make payments to the Health Maintenance Organization the premium rate equivalent to the premium rate of H.I.P. In no event will the County be required to make a contribution greater than the total contribution required by the Health Maintenance Organization.

## 8.2 Welfare Fund

- a. The County shall forward to the Westchester County Police Officers Benevolent Association Welfare Committee Trustees \$1,330.00 per year per Employee. Payments will be made on a monthly basis. Effective January 1, 2002, the annual contribution shall be increased to \$1,480.00.
- b. The fund shall be administered by the Association.
- c. The Board of Trustees of the Welfare Fund shall, on the request of the County and/or the PBA, prepare or cause to have prepared an audit of the Welfare Fund. The cost of such audit shall be paid by the party requesting such audit.

## 8.3 Book Reimbursement and Police Education Program

- a. The Department shall purchase at cost, books from Employees participating in degree programs of police science or related curricula that were required for the courses for the purpose of developing an adequate library for the use of the Employees so as to obviate the need for further book acquisitions, and to provide free access to such books to Employees participating in degree programs.

b. Employees who are enrolled in courses relating to Police Science, Criminal Justice, Public Administration or management in an accredited institution of education shall be entitled to reimbursement of the cost of tuition according to the following rules:

1. Effective January 1, 2001, the maximum annual reimbursement by the County shall be \$25,000.00 per year for the entire bargaining unit.
2. Employees shall notify the County at the time of enrollment as to the specific courses to be taken and the cost of each course and the name of the accredited institution to be attended.
3. Employee shall make application for L.E.E.P. funds, if available, when enrolling for courses.
4. Upon successful completion of the courses, the Employee shall furnish the County with a copy of the Employee's transcripts.
5. The County shall then reimburse the Employee for courses successfully completed, less any monies for tuition received by the Employee from L.E.E.P. during that year. However, the cost to the County shall not exceed \$25,000 per year for all eligible Employees.
6. In the event that the actual cost of tuition due eligible Employees under this program exceeds \$25,000 for the year the reimbursement to the Employees shall be pro-rated according to the total cost of tuition for all eligible Employees.

#### 8.4 Retirement

All bargaining unit members who retire after January 1, 2001 shall not be required to pay for continued family and individual health benefit coverage. All bargaining unit members who retire after January 1, 2001 and marry after retirement, or who qualify for domestic partner coverage, shall receive family health benefit coverage at no cost. The surviving dependents of a member who dies in the line of duty or of a deceased retired member shall continue to receive health coverage at no cost.

All provisions of the prior Agreement (January 1, 1999 through December 31, 2000) shall continue in full force and effect unless altered by the provisions contained herein.

#### 8.5 Emergency Sick Leave Bank

##### a. Eligibility

The County and the Association, realizing the economic effects of a long term illness on any Employee, have joined together in establishing a voluntary Emergency Sick Leave Bank. All Employees who are represented by the Bargaining Unit of the Association and have completed at least one (1) year of continuous County service, shall be eligible to join. Membership is earned when an Employee voluntarily contributes two (2) days of their earned sick leave time to the Bank.

b. Emergency Sick Leave Board

1. An Emergency Sick Leave Board consisting of three (3) members (Trustees), of the Bargaining Unit, shall be appointed by the Association President for a term coinciding with the term of the President.
2. The Board shall administer the Bank, be responsible for the accepting and recording of members, maintaining records regarding the number of sick leave days in the bank, and acting on each application for benefits submitted to it, within ten (10) working days.
3. Decisions by the Board are final, subject to County approval that the Board acted in compliance with Section D.(1) of this Article. If the County rejects the Board's determination and finds that the Board did not act in compliance with D.(1), the dispute will immediately be filed with the American Arbitration Association for a hearing and final determination.

c. Contributions

1. All completed Emergency Sick Leave Bank Contribution Forms must be received by the Board by the first of February each year or on dates mutually agreed to between the Association and the County.
2. Once a contribution has been made, it MAY NOT be withdrawn. Payroll clerks and/or the person responsible for the time and attendance records will distribute contribution forms supplied to them by the Association.
3. When the Board decides that the Bank's remaining number of sick days has reached a level that requires further contributions, they will notify each member of this fact in writing, and will request a further contribution of one (1) or more days. Membership in the bank can only be maintained by complying with such request. Non-compliance will not result in previously contributed sick leave time being returned.

d. Eligibility for Benefits

1. An enrolled member who has exhausted all of their accumulated time credits and is suffering from a prolonged or disabling illness or mental incapacitation and is not entitled to benefits as defined in Section 207c of the General Municipal Law is eligible to apply to the Sick Leave Bank. When applying for Emergency Sick Leave the Employee shall simultaneously request Extended Sick leave. A completed "Application for Emergency Sick Leave Bank Benefits" Form shall be provided to the Board with any documentation deemed necessary by them with regard to the nature and duration of the disabling condition. The Board shall have the right to disapprove an application for appropriate reason, including improper use of accumulated time credits, i.e., suggesting a pattern of absences. The Board shall also have the right, at any time, to consult with independent medical practitioners.
2. After finding that the application meets the requirements described above, the initial application may be granted for up to twenty (20) working days. Vacation,

personal leave and sick leave credits shall not be earned for periods when an Employee is on such leave with pay.

e. Renewal of Application

If after making its original determination it is found that a member's recovery shall require more than twenty (20) working days, the board shall reconvene to determine renewal of the application for up to an additional twenty (20) working days. However, the maximum number of days the Board may allocate for any one illness shall not be for more than one (1) work year.

8.6 Death Benefit

Employees who die as a result of duty-incurred illness or injury as defined by Federal regulations, and who would be eligible for the Federal Death Benefit for eligible dependents, but for technical reasons, said benefit is denied by the Federal program, their beneficiary(s) or estate, as the case may be, shall be entitled to death benefit paid by the County. The County's liability shall equal the Federal benefit, but shall not be less than one hundred thousand dollars (\$100,000.00). In addition to the above, the estate of a member of the bomb squad who is killed in the line of duty, shall receive one hundred thousand dollars (\$100,000.00) from the County.

**ARTICLE IX**

**MISCELLANEOUS**

9.1 Residency

Resolution 42-1962 is hereby rescinded effective December 31, 1978 provided, however, that any Employee's ability to locate outside of the County shall be limited to the extent that a resolution adopted by the Board of Legislators prior to said effective date covering the Employees and other Employees of the County government establishes such uniform limitations.

9.2 Code of Ethics

It is recognized by the County, superior officers of the Department of Public Safety and the Police Officer's Benevolent Association, that a Police Officer (both negotiating unit members and superior officers), is a professional, trained and qualified in Police Science, and dedicated and committed to public service. As an officer of the law he is directly responsible for the impartial enforcement of the law without fear or favor.

As a guardian of the public safety, the Police officer must always be alert to protect the public interest. Because the Police Officer is empowered and obligated to enforce the law, the Police Officer must exercise that power with dignity and respect for the County and for the public, whom the Police Officer serves.

The parties agree to cooperate fully to the end that the standards of this Code of Ethics be achieved.

### 9.3 Labor-Management Committee

- a. There shall be an advisory committee consisting of six members, (three (3) representatives of the Association and three (3) representatives of the department).
- b. The committee shall meet during normal working hours at a time and place mutually agreeable to the parties. Such meetings can be initiated by either party, provided that the initiating party gives the other party five (5) working days written notice and provides a proposed written agenda.
- c. Any advisory recommendation(s) of the committee shall be given to the Deputy Commissioner and such recommendations arising from this clause shall not be processed through the grievance procedure contained in this agreement.

## ARTICLE X

### GRIEVANCE PROCEDURE

#### 10.1 Employee Protection

Nothing contained in this Agreement shall be construed to deny any Employee rights under Section 15 of the New York Civil Rights Law or under applicable Civil Service Laws and Regulations.

#### 10.2 Formal Action

An Employee shall at all times on request be entitled to have present, a representative of the Association designated in accordance with this Agreement, when the Employee is being formally reprimanded for the record following an investigation. This does not include normal progress, performance and evaluation interviews or observations. All formal reprimands for any alleged infraction shall be made with due regard for individual privacy. When a request for representation is made, no such formal action shall be taken with respect to the Employee until there has been a reasonable opportunity for such representative to be present.

#### 10.3 Rules and Regulations

Rules and regulations governing the personal standards of conduct of Employees shall be reasonably uniform County-wide.

#### 10.4 Right to Representation

Every Employee shall have the right to present grievances to the County free from interference, coercion, restraint, discrimination or reprisal, and shall have the right to be represented at all stages thereof.

#### 10.5 Grievance Defined

- a. "Grievance" shall mean any claimed violation, misinterpretation or inequitable application of the agreement, or of applicable existing laws, rules, procedures, regulations, administrative orders or work rules which relate to or involve Employee health or safety, physical facilities, materials or equipment furnished to Employees or supervision



of Employees, provided, however, that such term shall not include, any matter involving and Employee's rate of compensation, retirement benefits, disciplinary proceedings, or any matter which is otherwise reviewable pursuant to law or any rule or regulation having the force and effect of law or as to any matter as to which the County is without authority to act.

b. The filing or pendency of any grievance shall in no way operate to impede, delay or interfere with the right of the County to take the action complained of, subject, however, to the final decision of the grievance.

c. The aggrieved Employee may request the Union Representative to assist and to be present at the initial presentation of the grievance and at any hearings that may take place.

d. No grievance shall be filed later than thirty (30) days after the event constituting the alleged violation became knowable to the grievant, or sixty (60) days for "Out-of-Title" job grievances filed in accordance with the Article and Article III, Section 3.2 of the Agreement.

e. An Association-County or County-Association grievance under the Agreement may be entered in writing in Step 3.

f. The time limits provided in the Grievance Procedure stated below may be extended by mutual agreement of the aggrieved Employee, the Union representative and the representative of the County when extenuating circumstances are found to exist.

#### 10.6 Grievance Procedure

##### Step 1

a. The aggrieved Employee submits the grievance to the local supervisor. The grievance shall be presented in writing, the local supervisor shall respond in writing within five (5) working days of receipt of the grievance.

b. If the aggrieved Employee receives no answer from the local supervisor within five (5) working days mentioned above, the grievance shall be deemed to have received a negative answer.

##### Step 2

a. In the event that the grievance is not adjusted under Step 1, the Employee or the Association, through its Grievance Committee, may within ten (10) working days from the date of the local supervisor's response (or within fifteen (15) working days of the submission of the grievance if no response was given), submit such grievance in writing to the Department Head.

b. The Department Head shall hold an informal hearing at which the aggrieved Employee and the Association representative may appear and present oral and written statements of argument.

c. The Department Head shall respond in writing within ten (10) working days of the hearing.

d. If no hearing is held or response given by the Department Head within ten (10) working days of receipt of the grievance, the grievance shall be deemed to have received a negative response.

### Step 3

a. In the event that the grievance is not adjusted under Step 2, the Employee or the Association, through its Grievance Committee, may within ten (10) working days from receipt of the Step 2 answer or negative response, present the grievance to the Personnel Officer.

b. The Personnel Officer or designee shall hold an informal hearing at which the aggrieved employee and Association representative may appear and present oral and written statements of argument.

c. The Personnel Officer or designee shall respond in writing within ten (10) working days of the hearing).

d. If no hearing is held or response given by the Personnel Officer or designee within ten (10) working days of receipt of the grievance, the grievance shall be deemed to have received a negative response.

e. In the event of a County-Association grievance, the grievance shall be presented by the Personnel Officer to the President of the Westchester County Police Officer's Benevolent Association, Inc. who will conduct an informal hearing and respond within ten (10) working days of the hearing.

f. If no hearing is held or response given by the President of the Westchester County Police Officer's Benevolent Association, Inc. within ten (10) working days of receipt of the grievance, the grievance shall be deemed to have received a negative response.

### Step 4

a. In the event that the grievance is not adjusted under Step 3 or no hearing is held, it may, at the request of either the County or Association, be submitted within ten (10) working days of receipt of the Step 3 answer or negative response, to a mutually agreed upon Arbitrator.

b. In the event that an Arbitrator cannot be agreed upon within ten (10) working days of receipt of the 4<sup>th</sup> Step grievance, such grievance shall be referred to the American Arbitration Association for resolution under its voluntary rules.

c. A grievance dispute arising under any term of the Agreement involving County policy or discretion may be submitted for arbitration only as the question of whether or not the County policy was disregarded, or was applied in such a discriminatory, arbitrary or capricious manner as to constitute an abuse of discretion.

d. The report of the Arbitrator shall contain a statement of the Arbitrator's findings of fact, conclusion and recommendation which shall be binding on all parties to the proceedings.

e. The County and the Association shall bear equally the Arbitrator's fees and other expenses, exclusive of attorney's fees, incidental to the proceedings.

10.7 Waiver of Time Limits.

The time limits provided in the Grievance Procedure stated above may be extended by mutual agreement of the aggrieved member, the Association representative and the County representative for grievances at Step I and II, and by the Association representative and the County representative for grievances at Step III and IV, when extenuating circumstances are found to exist.

**ARTICLE XI**

**POLICE COMPENSATION BENEFITS**

11.1 Effective April 1, 1987, the procedures contained in Appendix D annexed hereto shall be utilized for determinations to be made under Section 207-C of the General Municipal Law and the Worker's Compensation Law.

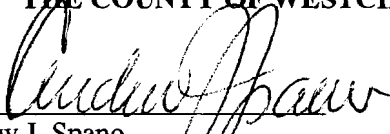
**ARTICLE XII**

**ALCOHOL AND CONTROLLED SUBSTANCE TESTING**

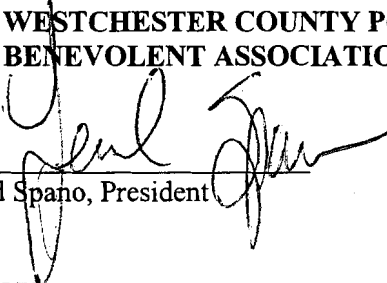
12.1 The procedures annexed hereto as Appendix C shall apply to alcohol and controlled substance tests of employees.

IN WITNESS WHEREOF, The parties hereto have executed this agreement, in quadruplicate, the day and year first above written: The County of Westchester, pursuant to law by Andrew J. Spano, County Executive, whose seal is affixed hereto, and the Westchester County Police Officer's Benevolent Association, Inc. by Leonard Spano, its President.

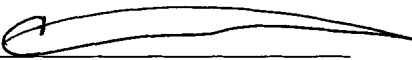
**THE COUNTY OF WESTCHESTER**

by:   
Andrew J. Spano  
Westchester County Executive

**WESTCHESTER COUNTY POLICE OFFICER'S  
BENEVOLENT ASSOCIATION, INC.**

by:   
Leonard Spano, President

**APPROVED AS TO FORM AND  
MANNER OF EXECUTION**

by:   
County Attorney

Principals to the Agreement

A. STATE OF NEW YORK )  
 )  
 ) ss.:  
 )  
 COUNTY OF WESTCHESTER )

On the 8th day of July, 2002, before me, personally came ANDREW J. SPANO, to me known, who being by me duly sworn, deposes and says that he has offices at 148 Martine Avenue, White Plains, Westchester County, New York, that he is the County Executive of the County of Westchester, the municipal corporation described in, and which executed the foregoing instrument; that he knows the official seal of the County Executive of Westchester County; that the seal affixed to said instrument is said official seal and it was so affixed by the order of the Board of Legislators of the County of Westchester; and that he signed his name thereto pursuant to the provisions of the Westchester County Charter.

*Elizabeth Salvi*

**ELIZABETH SALVI**  
Notary Public, State of New York  
No. 49-22352  
Qualified in Westchester County  
Commission Expires April 4, 2006

B. STATE OF NEW YORK )  
 )  
 ) ss.:  
 )  
 COUNTY OF WESTCHESTER )

On the 26th day of June 2002, before me, personally came LEONARD SPANO to me known, and known to me to be the President of the Westchester County Police Officers Benevolent Association, Inc., the corporation described in and which executed the within instrument, who being by me duly sworn, did depose and say that he is the President of said corporation and knows the corporate seal of the said corporation; that the seal affixed to the within instrument is such corporate seal and that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

*Shannon S. Brady*

**SHANNON S. BRADY**  
Notary Public-State of New York  
No. 02SA5060128  
Qualified in Westchester County  
My Commission Expires 5/13/2006

As per sworn authority above and:

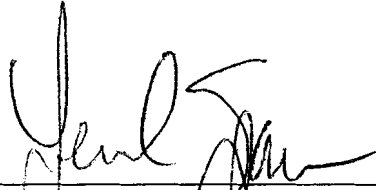
IN WITNESS WHEREOF, The parties hereto have executed the Agreement, in duplicate, the day and year first above written: The County of Westchester, pursuant to law by Andrew J. Spano, County Executive, whose seal is affixed hereto and the Westchester County Police Officers Benevolent Association, Inc., by Leonard Spano, it's President.

**APPENDIX A**

**AFFIRMATION OF NO-STRIKE**

Pursuant to the provisions of Subdivision 3(b) of Section 207 of the Civil Service Law, known as the "Public Employees' Fair Employment Act", the President of the WESTCHESTER COUNTY POLICE OFFICER'S BENEVOLENT ASSOCIATION, INC., does hereby affirm on behalf of said Association that:

1. It does not assert the right to strike against any government, to assist or participate in any such strike, or to impose an obligation to conduct, assist or participate in such a strike;
2. This affirmation has been duly authorized by the Board of Directors of the Westchester County Police Officer's Benevolent Association, Inc., and my authority to make such affirmation has been formally authorized by resolution of said Board.



\_\_\_\_\_  
President  
Westchester County Police Officers Benevolent  
Association, Inc.

6/26/02

\_\_\_\_\_  
Date

## APPENDIX B

### **NOTICE OF RECOGNITION OF CERTAIN EMPLOYEE ORGANIZATIONS FOR THE PURPOSE OF NEGOTIATING COLLECTIVELY FOR THEIR MEMBERS PURSUANT TO THE PROVISIONS AND PROCEDURES ADOPTED BY THE COUNTY OF WESTCHESTER.**

Public Notice is hereby given that the County of Westchester pursuant to the provisions and procedures adopted by the Board of Supervisors of the County of Westchester in the implementation of Public Employees Fair Employment Law, on April 8, 1968 recognized that the following employee organizations for the purpose of negotiating collectively with the County of Westchester in the determination of, and the administration of grievances arising under the terms and conditions of employment of public employees represented by said organizations

1. Westchester Community College Federation of Teachers for all professional staff of the College with the exclusion of the President but including supporting professionals as well as those involved directly in teaching.
2. The Westchester County Police Officer's Benevolent Association, Inc., to include Patrolmen and Sergeants within the Westchester County Department of Public Safety Division of Police including the Criminal Warrant Division, and to exclude all other members of that department.
3. The New York State Nurses Association for all Registered Nurses employed by the County excluding titles of Director, Associate Director and Assistant Director.
4. The Westchester County Police Officer's Benevolent Association, Inc. (Superior Officers Unit), to include Lieutenants, and Captains within the Westchester County Department of Public Safety Division of Police, and to exclude all other members of that department.
5. The Westchester County Correction Officers Benevolent Association, Inc. to include Correction Officers.
6. The Committee of Interns and Residents includes all house staff officers.
7. The Superior Officers Unit of the Westchester County Department of Correction to include Captains, Sergeants, Specialists, and Assistant Wardens.
8. The District Attorney's Investigators PBA of Westchester County, Inc. to include Criminal Investigators, Senior Investigators, and Chief Investigator.
9. The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, Local 456 representing employees in managerial titles.
10. The Westchester County Civil Service Employees Association, Inc. for all other County employees excluding all department heads, deputies, and confidential employees.

**APPENDIX C**  
**WESTCHESTER DEPARTMENT**  
**OF PUBLIC SAFETY DRUG TESTING POLICY AND PROCEDURE**

**I. INTRODUCTION**

To ensure a safe, healthful and productive work environment, to protect the health and welfare of the citizens of Westchester County, and to assure compliance with the Federal Drug-Free Workplace Act of 1988. This policy and these procedures provide reasonable measures to ensure employee drug or alcohol use does not jeopardize the public, or the County's ability to serve its citizens.

It is the overriding intent of the Drug-free Workplace Policy and Procedures to create a humanitarian program. Treatment, in lieu of discipline, is a very important aspect of the plan. (Discipline, however, is always an option.) Even drug testing, which will be part of the program, is intended as a means of identifying those who need help not as unnecessary intrusion to justify harsh discipline.\*\*\* Self-help is the bedrock of this program; employees are urged to take advantage of self-help opportunities including the Employee Assistance Program (EAP).

\*\*\*Any drug or alcohol use which could affect an employee's job performance will not be tolerated. The citizens of Westchester County have a right to expect that County employees will carry out their duties in a safe and reliable manner, free from the effects of drug or alcohol use. The policy and procedures are based upon the Drug-Free Workplace Policy established by the County in October, 1989 by the County. They are designed to achieve the goals stated above and in that policy, while sustaining all employee rights to privacy, confidentiality and fairness. This policy and these procedures\*\*\* do not replace or in any way supplant any other Departmental policies or procedures including, but limited to, rules of professional conduct or performance policies. Nothing in the policy and procedures should be interpreted as providing probationary or provisional employees with any additional rights or privileges other than those granted under current law.

The policy and procedures are significantly more comprehensive than the Federal Drug-Free Workplace Act requirements. Westchester County must, by law, comply with that Act and report its drug-free workplace activities to the Federal government. The Act requires the adoption of a policy, some training, informing employees of the availability of help, and requiring employees to report convictions for drug crimes committed on the job.\*\*\* There are three important ways in which the policy and procedures are broader and more effective than the Drug-Free Workplace Act:

- they emphasize treatment and help rather than discipline in most cases;
- they provide employing drug testing procedures primarily to overcome the drug user's denial that a problem exists, so that help and treatment may be provided if appropriate;
- they set up a support system so that supervisors who will be applying these procedures day-by-day can do so effectively, comfortably, and legally by contacting the County's Drug Helpline (285-DRUG) or a support supervisor.

Implementation of these procedures will be the responsibility of the Offices of Personnel and Criminal Justice Services - War on Drugs.\*\*\*



## II. DEFINITIONS

- A) **Controlled Substance** - any drug included in Title M, Article 220 of the New York State Penal Law or in Schedules I through V, as defined by Section 802(6) of Title 21 of the United States Code (21 US 802(6) (for example: cocaine, marijuana, valium, morphine, anabolic steroids), the possession of which is unlawful under Chapter 13 of that title. The term does not include the use of prescribed drugs which have been legally obtained and are being used for the purpose for which they were prescribed.
- B) **Illegally-Used Drug** - any prescribed drug which is legally obtainable but has not been legally obtained or is not being used for prescribed purposes, all designer drugs not listed in the Controlled Substance Act (for example: MDA, fentanyl), and any other over-the-counter or non-drug substances (for example: airplane glue) being used for other than their intended purpose.
- C) **Alcohol** - colorless, volatile and flammable liquid that is the intoxicating agent in fermented and distilled liquors. It includes, but is not limited to beer, wine and liquor. It does not include alcohol used in chemical processing, cleaning or testing.
- D) **County Property** - includes buildings, offices, facilities, equipment, vehicles, land, and parking lots owned, utilized or leased by the County. It also includes suppliers' facilities and any other site at which business of the County is transacted whether on or away from County-owned or leased property.
- E) **Accident** - an unplanned, unexpected and unintended event which
  - a) occurs on County property, on County business, or during working hours, and b) initially appears, in the judgment of a supervisor, to have been caused wholly or partially by a County employee, and c) results in either i) a fatality, ii) bodily injury requiring medical treatment away from the scene of the event, or iii) damage to property in excess of \$2,500.
- F) **Drug Paraphernalia** - any item which is used for the administering, transferring, manufacturing, testing or storing of a controlled substance and/or an illegally-used drug.
- G) **Reasonable Suspicion of Drug and/or Alcohol Use**

The reasonable suspicion standard for drug testing of employees is based upon specific objective facts and reasonable inferences drawn from those facts in light of experience that the individual may be involved in the use of any illegally used drug, controlled substance, or alcohol. Examples would include:

1. Observable phenomena, such as direct observation of on-duty drug or alcohol use or possession and/or the on-duty display of behaviors which appear to be indicative of the use of any illegally-used drug, controlled substance, or alcohol and are not attributable to other factors;
2. a pattern of abnormal conduct, erratic behavior or deteriorating work performance, including but not limited to, frequent absenteeism, excessive tardiness, or frequent accidents, not attributable to other factors and which appears to be related to drug and/or alcohol abuse;

3. arrest or conviction for a drug-related offense;
4. newly discovered evidence that the employee has tampered with a prior drug/alcohol test;
5. repeated or flagrant violations of the County's safety or work rules which are determined by a supervisor to pose a substantial risk of injury or property damage and which are not attributable to other factors and appear to be related to drug and/or alcohol abuse.

The above examples are not all inclusive, but are intended to be illustrative. The symptoms of being affected by a drug or by alcohol are not confined to those consistent with misbehavior, nor to obvious impairment of physical or mental ability, such as slurred speech or difficulty in maintaining balance. Although reasonable suspicion does not require certainty, mere "hunches" are not sufficient to meet this standard.

H) Under the Influence of an Unauthorized Controlled Substance, Illegally-used drug and/or Alcohol

1. The presence of alcohol in the blood at a concentration greater than .05%; or a verified positive drug test result, at levels specified by the National Institute of Drug Abuse, for an unauthorized controlled substance or an illegally-used drug; and
2. documentation, by a supervisor who has been trained in the making of such determinations, of articulable facts leading to the pre-test determination of reasonable suspicion of drug and/or alcohol use.

### III. SUPERVISOR TRAINING AND CONFIDENTIAL PHONE SUPPORT

To assist supervisors to understand and to avoid the problems associated with application and enforcement of the County's Drug-Free Workplace Policy and these procedures, the County shall provide to its supervisors a comprehensive awareness and training program. Training will include, but not be limited to, the making of determinations of reasonable suspicion, the process of sending an employee for a drug/alcohol test and referring an employee to the Employee Assistance Program.

All supervisors will be provided with the name and phone number of a support supervisor who will be familiar with all procedures relevant to their assigned departments/agencies and who will be available to address callers' questions regarding County Policy, procedural steps, the signs and symptoms of substance abuse, and treatment and rehabilitation programs. All calls to these support supervisors will be kept strictly confidential. In addition, supervisors can contact the 285-DRUG Helpline during business hours for confidential assistance.

### IV. EMPLOYEE ASSISTANCE PROGRAM (EAP)

Early recognition and treatment of alcohol and drug abuse is critical to successful rehabilitation and return to full productivity, and to minimize governmental, personal, family and social disruption. The County encourages early diagnosis and treatment for substance abuse and supports sound treatment efforts.

To assist employees in obtaining treatment, the County has established an assessment, counseling and referral service (EAP) for employees with substance abuse and other personal problems. This service may be accessed Monday to Friday between the hours of 8:30 A.M. to 4:30 P.M. by calling 285-6070. The EAP will provide experienced counselors to help with personal problems and is available to all employees. Anonymity and confidentiality are assured by the EAP when the employee voluntarily refers himself or herself to the EAP.

Supervisors may refer employees who have violated the County's Drug-Free Workplace policy to the EAP for assessment, referral for treatment, and oversight of treatment. If the EAP then refers the employee for treatment, the employee will be required to sign a Rehabilitation Agreement (sample attached): In short, the Rehabilitation Agreement requires the employee to a) accept treatment and comply with clinical mandates, b) remain drug and alcohol free, c) submit to regular follow-up drug testing for a period of time during and following successful completion of treatment, and d) meet all normal job performance requirements, both while in treatment (as appropriate) and upon return to work.

When a supervisor refers an employee to the EAP, the supervisor will notify the Commissioner or his designee of the referral and the name of the EAP counselor. The Commissioner or his designee will contact the EAP counselor to arrange a schedule of communications; this schedule may be altered at any time by the Commissioner or his designee. Scheduled communications will continue as long as the employee is participating in any form of clinical substance abuse treatment. Communications will only consist of reports regarding treatment progress, adherence to the terms of the Rehabilitation Agreement, and the ability of the employee to safely and effectively perform job functions.

It is believed that most persons with substance abuse problems can be treated while continuing in their positions. In those instances where an employee needs leave for treatment purposes, the County will do its best to accommodate such requests.

Voluntary requests for assistance will not prevent disciplinary action for violation of the County's Drug-Free Workplace Policy or for failure to meet performance standards. Employees who undergo voluntary counseling or treatment and who continue to work must meet all established standards of conduct and job performance or be subject to discipline.

## **V. AUTHORIZED USE OF PRESCRIPTION MEDICINE**

Employees, in safety sensitive positions as defined by the Department, undergoing prescribed medical treatment with any drug which may alter their behavior or physical or mental ability, must report this treatment to their supervisor, who will determine whether the employee's job assignment should temporarily change during treatment. Employees must keep all such prescribed medicines which are classified as controlled substances in their original containers which identify the drug, date of prescription and prescribing doctor.

This section is necessary because the use of drugs, even when done under a doctor's care, can cause temporary effects on behavior which could imperil the safety of others or adversely affect the employee's job performance.

## **VI. PROHIBITED CONDUCT**

The following employee conduct is prohibited:

- A) Unauthorized use, possession, manufacture, distribution, dispensation or sale of a controlled substance, illegally-used drug, or drug paraphernalia on County property, on County business, in County supplied vehicles, in vehicles being used for County purposes, or during working hours.
- B) While on County property, on County business, or during working hours:
  - 1. consumption of alcohol, except during and at official County functions where consumption of alcohol has been authorized by the County Executive, Deputy County Executive, or any Commissioner/Department Head of a County Department;
  - 2. possession, distribution, dispensation, or sale of alcohol, except for that which is to be served, as authorized, at an official County function or that which is intended for sale to the general public at an authorized County facility and in the course of official County business.
- C) Any consumption, distribution, dispensation or sale of alcohol while in County supplied vehicles or in vehicles being used for County purposes.
- D) Storage in a desk, locker, automobile or other repository on County property of any illegally-used drug, controlled substance, drug paraphernalia, or alcohol whose storage is unauthorized;
- E) Being under the influence of an unauthorized controlled substance, illegally used drug or alcohol on County property, on County business, in County supplied vehicles or vehicles being used for County business or during working hours.
- F) Possession, use, manufacture, distribution, dispensation or sale of illegally used drugs or controlled substances off County property that adversely affects the employee's work performance, his own or others' safety at work, or the County's regard or reputation;
- G) Switching or adulterating any urine or blood sample;
- H) Refusing consent to testing or refusing to submit a breath, urine, or blood sample for testing;
- I) Failing to adhere to the terms of any Rehabilitation Agreement (sample attached) which the employee has signed;
- J) Conviction under any drug or alcohol statute for a violation occurring in the workplace;
- K) Failure to immediately notify in writing the County of any arrest or conviction under any drug or alcohol statute for a violation occurring in the workplace;
- L) Failure to notify a supervisor of the use of a prescription drug which may alter the employee's behavior or physical or mental ability;
- M) Failure to keep prescribed medicine which may alter behavior or physical or mental ability in its original container;

- N) Refusing to sign a) a statement agreeing to abide by the County's Drug-Free Workplace Policy, b) the Medical Questionnaire, c) the Chain of Custody Form, or d) a Rehabilitation Agreement;
- O) Failure to immediately notify the Department of any arrest or conviction under a drug or alcohol statute;
- P) Conviction of any drug or controlled substance offense.

## VII. TESTING

Employees of Westchester County will be tested by an independent NIDA certified New York State Licensed laboratory for drugs and/or alcohol under the following circumstances:

- A) Reasonable Suspicion of Drug and/or Alcohol Use - An employee of the County will be tested for drugs and/or alcohol when a supervisor who has been trained in the making of determinations of reasonable suspicion has made such a determination. Referrals for reasonable suspicion testing will be made using the procedures set forth in Appendix A of these procedures.
- B) Follow-up Testing - An employee referred by the County to the EAP, and who undergoes any form of treatment for substance abuse, will be subject to unannounced testing for a period of eighteen months following completion of the rehabilitation program.
- C) Pre-Employment Testing - All applicants for the position of Police Officer will be required to submit to a drug test. The Department will not knowingly employ as a Police Officer any individual who actively abuses alcohol, an illegally-used drug or a controlled substance. All applicants for the position of Police Officer will be advised in connection with their application for employment that, after being offered a position, they will be required to submit to a drug screen. Failure to consent to such a test, or a verified positive result, will disqualify the applicant for employment in a position subject to pre-employment testing.
- D) Recruit Training Period Testing - All probationary Police Officers are subject to drug testing twice during their training period.
- E) Post-Accident Testing - Any probationary Police Officer whose actions lead to an accident as defined in Section II.E. will be subject to drug and alcohol testing.
- F) Post Accident Testing - Any Police Officer whose actions lead to an accident as defined in Section II.E. will be subject to drug and alcohol testing.
- G) Random Testing - All Police Officers are subject to random drug testing. Selections for random testing will be generated by a computer under the sole control of an outside contractor and each Officer will have an equal chance of selection. Testing will be performed approximately once per month. Officers will be notified of their selection on the day of testing. The names of all selected Officers will be returned to the selection pool. The number of tests to be conducted each year will vary as follows for different Officer populations:

Narcotics Squads and Bomb Technicians - these two groups will comprise a single pool and the number of tests will be equal to the entire number of Officers in the combined pool.

Detectives - the number of tests will be equal to one-third of the number of Detectives.

All Other Police Officers - the number of tests will be equal to one-fourth of the number of all other Police Officers.

- H) 1. **Consequences of a Positive Test –**
- a) Police Officers who receive a verified positive test result for drugs may be disciplined and/or offered treatment (via referral to the EAP) at the option of the Commissioner. Officers who are offered and accept treatment will be required to serve an immediate thirty day suspension. Upon completion of treatment, Officers will be subject to follow-up testing at random intervals, for a period of sixty months. Any Officer receiving a verified positive drug test will be suspended from law enforcement activities (placed in administrative positions) and have their on-and-off duty weapon carrying privileges suspended until such time as they are certified, by the treatment provider, to be drug-free, recovering, and able to safely carry weapons.
  - b) Police Officers who test positive for alcohol will be subject to discipline and/or treatment at the option of the Commissioner. Officers who undergo treatment for alcohol abuse will be suspended from law enforcement activities (placed in administrative positions) and have their weapon carrying privileges suspended until such time as they are certified, by the treatment provider, to be alcohol-free, recovering, and able to safely carry weapons.
  - c) Consequences of a positive Test – Probationary Police Officers who receive a verified positive test result for drugs or alcohol will be immediately terminated.

## **VIII. CONSEQUENCES OF VIOLATION OF THE POLICY**

A first violation of item (E) in section VI, above (being under the influence as confirmed by a positive drug test) will automatically result in referral to the EAP for assessment. If the EAP makes a referral for treatment, execution by the employee of a Rehabilitation Agreement will be required. Refusing to sign the Rehabilitation Agreement will result in disciplinary actions being taken.

Any violation of the Drug-Free Workplace Policy may lead to disciplinary action. The severity of the action chosen will depend on the circumstances of each case, however, employees need to be aware that certain offenses, including but not limited to the sale or use of controlled substances on County premises, will normally result in a recommendation of termination.

The County may, at its discretion, suspend any disciplinary action while an

employee is undergoing substance abuse treatment. The suspended disciplinary action will remain pending during treatment and for a period of eighteen months (as per Section 75 and/or disciplinary arbitration) after completion of the rehabilitation program. At the end of those eighteen months (with the receipt of the final negative follow-up drug test) the suspended disciplinary act will be canceled.

## **IX. REFERRAL PROCEDURES FOR SUPERVISORS**

The County's supervisors are responsible for being alert to declining job performance, erratic behavior or other symptoms of possible substance abuse. Whenever a supervisor who has been trained in the making of determinations of reasonable suspicion of drug and/or alcohol uses (as defined in Section 11 of these procedures) makes such a determination the following steps will be taken:

- A) The supervisor will document in writing all circumstances, information and facts leading to and supporting his/her suspicion. At a minimum, the report will include appropriate dates and times of suspect behavior, reliable/credible sources of information, rationale leading to referral for testing and the action(s) taken.
- B) Prior to referring an employee for testing, the supervisor will discuss the problem with the employee in a private location with one witness present. Caution will be taken not to accuse the employee of substance abuse, but the employee will be presented with instances of questionable behavior. If the employee does not have an acceptable explanation for his questioned behavior, the supervisor will continue with the procedures set forth in this section.
- C) The supervisor will consult with another supervisor and they will jointly decide whether to refer an employee for testing. Where no other supervisor is reasonably available, the decision may be made by one supervisor. In all cases, at least one person involved in the decision-making process will have received training in the identification of actions, appearance, and conduct which are indicative of the use of alcohol and/or drugs.
- D) In those cases where the supervisor determines that the person's behavior causes a potential threat of harm to himself or others, the employee will be immediately removed from the work site.
- E) Once a determination has been made to refer an employee for testing, it will be the responsibility of the supervisor to advise the employee of such decision and to escort the employee to a collection facility. The supervisor should remain with the employee until testing is concluded. In the event that leaving the scene and/or remaining with the employee is not feasible, the supervisor will arrange transportation to the collection facility (the employee will be instructed not to drive a vehicle), will notify the collection facility that the employee is being sent for testing, will request that the collection facility notify the supervisor when collection procedures are completed, will request that the collection facility arrange for the employee to be transported home following the collection process, and will notify the employee that he or she is not to return to work pending receipt of the test results by the County.
- F) Upon conclusion of the examination, the supervisor will ensure that the employee is escorted home. The supervisor will take all possible steps to ensure the employee does not drive himself home. In those instances where the employee refuses assistance, the supervisor will notify the Westchester County Department of Public Safety. The

employee will be suspended from work pending receipt by the County of the test results and the employee will be notified of this change in status.

- G) In situations where it is impossible or contrary to other important procedural strictures to transport the employee to a collection facility and where it is not possible to have qualified collection facility personnel perform an on-site collection in a timely manner, the supervisor will promptly notify the Department's Special Investigation Unit of the fact. A trained member of the Special Investigation Unit will then go on-site to collect and transport to the collection facility a urine sample. The Special Investigation Unit member will use procedures previously approved by the County.
- H) If the employee tests negative for drugs or alcohol, the employee will be compensated for any regularly scheduled hours he or she would have worked during the suspension period.
- I) In those cases where a supervisor discovers an employee who possesses what appears to be a controlled substance, illegally-used drug or alcohol, he or she will proceed as described above for instances where reasonable suspicion exists, and, if the substance in question appears to be a controlled substance or illegally-used drug, will in addition perform the following steps:
  - 1. Immediately confiscate the substance and all equipment or paraphernalia directly employed with the substance. Wrap them in any available clean material (e.g. paper towel, copier paper, handkerchief). The supervisor will keep the package on his or her person or where he or she can be absolutely sure it cannot be tampered with.
  - 2. As soon as the supervisor can, he or she will put the wrapped materials, still in the wrapping, into a large envelope and seal the envelope completely. The supervisor's initials will be written over the seam of the envelope in several places.
  - 3. The supervisor will write the employee's name, his or her own name, and the date at the top of the envelope, will promptly notify the Westchester County Police Department of their actions by phoning (914) 741-4400 and will turn the envelope over as soon as possible to County law enforcement officials. The supervisor will witness the signing and dating of the envelope by the person to whom he or she turns it over.
  - 4. All persons who subsequently and for whatever reason have possession of the envelope will sign and date it in the presence of the previous supervisor.



**SAMPLE REHABILITATION AGREEMENT**

Date:

Name:

Department:

Dear

On \_\_\_\_\_, 2002, Westchester County agreed to your request to seek counseling and referral by the Employee Assistance Program to a rehabilitation program for alcohol and/or drug abuse. The following conditions apply to your rehabilitation program.

1. You must authorize your treatment provider to provide to the County's EAP proof of enrollment in a rehabilitation program and proof of attendance at all required sessions on a monthly basis. Your attendance will be monitored closely and the County will institute appropriate disciplinary action if you do not regularly attend all sessions.
2. If you are absent from work during the rehabilitation period without prior authorization, you must promptly submit a written doctor's certificate explaining the reason for such absence. The County will take disciplinary action if you are absent as a result of alcohol or drug use.
3. You will pay for all costs of rehabilitation which are not covered under the County's medical plan.
4. During the eighteen months following the completion of your rehabilitation program, the County will test you for alcohol and/or drug use on a random basis. The County will take prompt disciplinary action if you refuse to submit to testing or if you test positive during the eighteen month period.
5. You must meet all established standards of conduct and job performance. The County will institute appropriate disciplinary action if your on-the-job conduct or job performance is unsatisfactory.
6. Failure to comply with all of the above conditions will result in the institution of appropriate disciplinary action.

I hereby voluntarily agree to all of the above conditions and authorize my treatment provider to provide the County's EAP with proof of my enrollment and attendance at the recommended rehabilitation program. I sign this rehabilitation agreement of my own free will, and without duress.

\_\_\_\_\_  
Employee's Name

\_\_\_\_\_  
Supervisors Name

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Supervisor's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**APPENDIX C(1)**

**WESTCHESTER DRUG TESTING PROCEDURE**  
**REASONABLE SUSPICION**

The County of Westchester and the Westchester County Police Officer's Benevolent Association recognize the dangers that could arise in the event of controlled substance abuse by a police officer. In order to insure a continuation of the high standards of performance and of safety within the Westchester County Department of Public Safety, the following procedure is agreed upon:

- A.
  - 1. An employee shall be required to submit to urine analysis on the job where there exists reasonable suspicion to believe that there may be discovered, if tested, that he has used a controlled substance, or is impaired, on the job, from the use of alcohol.
  - 2. When the test is required of the employee off duty, the standard to be employed shall be reasonable cause, as opposed to "reasonable suspicion".
- B. Where an Employee is required to submit to urine analysis pursuant to paragraph "A" above, the following conditions shall apply:
  - 1. The entire procedure, from the order to the employee to be tested and the testing procedure itself, must be conducted in such a manner as to minimize embarrassment of the employee and to minimize awareness in other that the testing is being required or performed.
  - 2. No information gained through the Employee Assistance Program may be used as a basis for initiating such testing.
  - 3.
    - a. The supervisor shall make a good faith effort to allow the employee being ordered to submit to the test to have the opportunity to consult an Association representative before submitting to the testing; provided, however, that the failure of an Association representative to be present within ninety (90) minutes of notification to the Association (in accordance with the procedures set forth below) shall in no way affect the requirement of submission to the test if the conditions set forth in paragraph "A" above have been met. During such waiting period, if any, the Employee shall remain at a location designated by the supervisor present.
    - b. Notification to the Association that an employee is being ordered to submit to testing shall be made as follows:
      - (1) Between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, the supervisor shall notify the Association President or the designated Association representative.
      - (2) At all other times, the supervisor shall call the Association at (914) 741-4315, and if no answer, at (1-800) 503-5093.
      - (3) It is agreed and understood that notification to the Association is not necessary if an Association representative is present at the time the request is made. In the event the supervisor fails to notify the Association because it claims to have been reasonable prevented from doing so, the burden of showing such shall be on the supervisor.
      - (4) The Association reserves the right to change said notification telephone numbers upon ten (10) days advance written notice to the County.

4.
  - a. Subject to Section 8.1., the urine specimen shall be taken at a location designated by the County.
  - b. The Employee being tested shall have the right to an independent analysis from a lab of his/her choice from a list mutually agreed to be the parties. The Employee shall designate, at the time the specimen is given, the laboratory, if any, chosen by such Employee. In that event, specimens shall be separately provided to the laboratory designated by the County and to the laboratory designated by the Employee. Copies of
  - c. All such tests will be fully paid for by the County.
  - d. The following procedure shall be used to insure proper processing:
    - (1) The urine specimen shall be taken promptly with as little delay as possible.
    - (2) Immediately after the specimen is drawn, the individual containers shall, in the presence of the Employee, be labeled and then initialed by the Employee. The Employee has an obligation to identify each container and initial same.
    - (3) The specimen containers shall be placed in the transportation container after being drawn. Then the transportation container shall be sealed in the Employee's presence and the Employee given an opportunity to initial or sign the transportation container.
    - (4) The Container shall be sent to the designated testing laboratory on that day or the soonest regular business day by courier or the fastest other method available.
  - e. In the event two separate tests are conducted in compliance with subsection (b) above, and the test reports by both laboratories are reported to have been positive and conclusive, the prima facie validity of the tests shall be deemed to have been established for the purpose of any subsequent hearings in reference to such testing. In the event an Employee refuses to have the testing done by two laboratories, pursuant to subsection 4(b) above, the hearing officer in a subsequent disciplinary hearing may draw a negative inference from such refusal in determining the guilt or innocence of the Employee on charges of substance or alcohol abuse directly connected to the allegations which led to the testing.
5. If the analysis of the Employee's urine establishes that the sample is negative, all time required by the Employee to take the ordered test shall be considered time worked.
6.
  - a. Within four (4) working days after the test, the Association shall have the right to resolve any procedural questions which arise from the use of these procedures through binding arbitration, on written request from the Employee.
  - b. The following arbitrators are designated, to be called on a rotating basis:
    - (1)
    - (2)
    - (3)

If the next arbitrator to be used is not available within twenty (20) days of the date of suspension of the employee, then the arbitrator soonest available shall be designated for the particular hearing.

- c. The Cost of the arbitrator's fee and expenses shall be shared by the parties.
- d. In the event of arbitration hereunder, the results of the drug test(s) shall not be transmitted or communicated except by order of the arbitrator.

7. To the extent permissible by law, the arbitration procedure hereunder, when resorted to by the Employee, shall be the Employee's sole and exclusive remedy to resolution of the issues raised thereat.

**APPENDIX C(2)**

**COLLECTION AND LABORATORY PROCEDURES FOR DRUG TESTING**

All drug tests administered will be conducted in strict accordance with Federal and State drug testing regulations. The following describes many of those requirements.

**I. Laboratory Qualifications**

Westchester County (the County) shall retain a laboratory certified under the U.S. Department of Health and Human Services (HHS) Mandatory Guidelines for federal workplace drug testing programs. The use of a certified Laboratory should ensure that the highest standards of forensic toxicology are being met.

**II. Controlled Substances**

The following drugs will be tested for:

- Mariguana
- Cocaine
- Opiates
- Amphetamines
- Phencyclidine
- Others as appropriate

**III. Security and Chain of Custody**

The selected laboratory will maintain strict security at its laboratory facilities and will strictly adhere to the chain of custody procedures mandated by the U.S. Department of Transportation – DOT (and Federal Highway Administration) and the U.S. Department of Health and Human Services – HHS. This will include:

- A. Use of a standard drug testing custody and control form;
- B. Use of a clean, single-use specimen bottle or single-use collection container that is securely wrapped until filled with the specimen;
- C. Use of tamper-proof sealing system designed to ensure against undetected opening and the use of a specimen bottle with a unique identifying number which is identical to the number appearing on the custody and control form;
- D. Use of a shipping container in which the specimen and related paperwork may be transferred which can be sealed and initiated to prevent undetected tampering; and
- E. Written procedures, instructions and training to ensure the integrity of the process shall be provided to collection personnel.

**IV. Specimen Collection Procedures**

- A. All specimens will be collected at designated collection sites which have necessary personnel, materials, equipment and supervision to provide for specimen collection, security, storage, and shipping or transportation to the laboratory.

- B. Procedures for collecting urine specimens shall allow individual privacy unless there is reason to believe an employee<sup>1</sup> may alter or substitute the specimen to be provided. The following are the exclusive grounds constituting reason to believe and individual may alter or substitute a specimen:
1. The employee presents a specimen which falls outside normal temperature range (32.5 ° – 37.7 ° C/90.5 ° – 99.8 ° F); and
    - a. The employee refuses to provide a measurement of body temperature or,
    - b. Oral body temperature varies by more than 1 degree C/1.8 ° F from the temperature of the specimen.
  2. The last urine specimen provided by the employee was determined by the laboratory to have a specific gravity of less than 1.003 and a creatine concentration below .25g/L;
  3. The collection site personnel observe(s) conduct clearly and unequivocally indicating an attempt to substitute or adulterate the sample (e.g. substitute urine in plain view, blue dye in the specimen presented, etc.); or
  4. The employee has previously been determined to have used a controlled substance without medical authorization and the test was being conducted subject to the policy and procedures which provides for follow-up testing upon or after return to service.

In any case where a determination is made by a collection site person to observe a specimen collection, a supervisor of the collection site person, or a designated County representative, shall review and concur in such decision in advance. All direct observation shall be conducted by a person of the same gender as the person providing the specimen. In any case where collection is monitored<sup>2</sup> by non-medical personnel, the employee shall be the same gender as the person providing the specimen

C. The following procedures shall be used to ensure the integrity and identity of the specimen:

1. Toilet bluing agents will be placed in the toilet tanks whenever possible so the reservoir remains blue. Where practical, there shall be no other source of **water in the** enclosure where urination occurs. If there is, it shall be effectively secured or monitored so as to ensure it is not used as a source for diluting the specimen.
2. Upon arriving at the collection site, the employee to be tested shall present the collection site person with proper identification to ensure that he/she is positively identified as the person selected for testing (e.g. by presenting a driver's license or other photo ID, or by identification by the County's

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<sup>1</sup> "Employee" means a person actively employed as a police officer by the Westchester County DPS or an applicant for such employment.

<sup>2</sup> A collection site person "monitors" a collection for this purpose only if he or she is in close proximity to the employee as the employee provides the sample, such that the collection site person can hear the employee's actions.

representative). If the employee's identity cannot be established, the collection site person shall not proceed with the collection, and the Westchester County Department of Public Safety shall be notified. If requested by the employee, the collection site person shall show his or her identification to such employee.

3. If the employee to be tested fails to arrive at the collection site at the assigned time, the collection site person shall contact the Westchester County Department of Public Safety to obtain guidance on the action to be taken.
4. The employee to be tested will be required to remove any unnecessary outer garments (e.g. a coat or jacket) that might conceal items or substances that could be used to tamper with or adulterate the urine specimen. The collection site person will ensure that all personal belongings such as purses, briefcases and outer garments remain inaccessible to the employee during collection. The employee may retain his or her wallet. If requested, the collection site person shall provide the employee with a receipt for any personal belonging.
5. The employee shall be instructed to wash and dry his/her hands prior to urination.
6. After washing his/her hands, the employee shall remain in the presence of the collection site person and shall not have access to any water fountain, faucet, soap dispenser, cleaning agent or any other materials which could be used to adulterate the specimen.
7. The employee may provide his/her specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy. The collection person shall provide the employee with a specimen bottle or collection container, as appropriate.
8. The collection site person shall note any unusual behavior or appearance of the employee on an appropriate form.
9. Upon receiving the specimen from the employee, the collection site person shall determine if it contains at least 60 milliliters of urine. If the employee is unable to provide 60 milliliters of urine, the collection site person shall direct the employee to drink fluids, and, after a reasonable time, again attempt to provide a complete sample using a fresh collection kit. The original specimen shall be discarded. If the employee is still unable to provide a complete specimen, the following rules apply;
  - a. In the case of a post-accident or reasonable cause test, the employee shall remain at the collection site and continue to consume reasonable quantities of fluids until the specimen has been provided or until the expiration of a period up to eight (8) hours from the beginning of the collection procedure.
  - b. In the case of a pre-employment, random, periodic or other test not

for cause, the County may elect to proceed as in (a.) above, or may discontinue the collection and conduct a subsequent collection at a later time to be scheduled by the County.

- c. If the employee cannot provide a complete sample within the eight (8) hour period or at the subsequent collection as applicable, then the County's MRO shall refer the employee for a medical evaluation to develop pertinent information concerning whether the employee's inability to provide a specimen is genuine or constitutes a refusal to provide a specimen<sup>3</sup>. The medical evaluator shall report his or her findings to the MRO. Upon completion of the examination, the MRO shall report his or her conclusions to the County in writing.
10. Immediately after the specimen is collected, the collection site person shall measure the temperature of the specimen. The temperature measuring device used must accurately reflect the temperature of the specimen and not contaminate the specimen. The time from urination to temperature measure is critical and in no case shall exceed four (4) minutes.
11. A specimen temperature outside the range of 32.5° to 37.7°C/90.5° to 99.8°F constitutes a reason to believe that the employee has altered or substituted the specimen in accordance with IV.B.1. above. This may be cause for the employee to be required to provide another specimen under direct observation. In such cases, the employee supplying the specimen may volunteer to have his or her oral temperature taken to provide evidence to counter the reason to believe the employee may have altered or substituted the specimen.
12. Immediately after the specimen is collected, the collection site person shall also inspect the specimen to determine its color and to look for any signs of contaminants. Any unusual findings shall be noted on the custody and control form.
13. All specimens suspected of being adulterated shall be forwarded to the laboratory for testing.
14. Whenever there is reason to believe that a particular employee has altered or substituted the specimen as provided in paragraphs (IV.B.1. or 3.) above, a second specimen shall be obtained as soon as possible under the direct observation of a collection site person of the \_ me gender.
15. After the urine specimen is provided, both the employee being tested and the collection site person shall keep the specimen in view at all times prior to its being sealed and labeled. The specimen shall be sealed (by placement of a tamper-proof seal over the bottle cap and down the sides of the bottle) and labeled in the presence of the employee. If the specimen is transferred to a second bottle, the collection site person shall request the employee to observe the transfer of the specimen and the placement of the tamper-proof seal over the bottle cap and down the sides of the bottle.

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<sup>3</sup> Such a referral is not necessary in pre-employment testing where the County does not wish to hire the applicant.



16. The collection site person, in the presence of the employee, shall place securely on the bottle an identification label which contains the date, the employee's specimen number and any other identifying information provided or required by the County. If separate from the label, the tamper proof seal shall also be applied.
17. The employee shall, in the presence of the collection site person, initial the identification label on the specimen bottle for the purpose of certifying that it is the specimen collected from him or her.
18. The collection site person shall, in the presence of the employee, enter on the testing custody and control form all information identifying the specimen. The collection site person shall sign the form certifying that the collection was accomplished according to the applicable Federal requirements.
19. The employee shall be asked to read and sign a statement included in the form certifying that the specimen identified as having been collected from him or her is in fact the specimen he or she provided. He or she will also have the opportunity to provide written information concerning medications taken or administered in the past 30 days.
20. The employee will also be required to read and sign a consent and release form authorizing the collection of the specimen, the analysis of the specimen for designated controlled substances, and the release of the test results to the County.
21. The collection site person shall complete the chain of custody portion of the drug testing custody and control form to indicate receipt of the specimen from the employee and shall certify proper completion of the collection process. If the specimen is not immediately prepared for shipment, the collection person shall ensure that it is appropriately safeguarded during temporary storage.
22. While any part of the above chain of custody procedures is being performed, the urine specimen and custody documents must remain under the control of the involved collection site person.
23. The collection site person shall not leave the collection site in the interval between presentation of the specimen by the employee and securement of the sample with an identifying label bearing the employee's specimen identification number and seal initialed by the employee. If it becomes necessary for the collection person to leave during this interlude, the collection shall be nullified and (at the election of the County) a new collection begun.
24. For collection control, to the maximum extent possible, the collection site personnel shall keep the employee's specimen bottle within sight both before and after the individual has urinated. After the specimen is collected, it shall be properly sealed and labeled.

25. Collection site personnel shall arrange to ship the collected specimen to the drug testing laboratory. The specimens shall be placed in slopping containers designed to minimize the possibility of damage during shipment (e.g. specimen boxes and/or padded mailers) and those containers shall be securely sealed to eliminate the possibility of undetected tampering. On the tape sealing the container, the collection site person shall sign and enter the date specimens were sealed in the shipping containers for shipment. The collection site person shall ensure that the chain of custody documentation is attached or enclosed in each container sealed for shipment to the drug testing laboratory.
26. If the employee refuses to cooperate with the collection process, the collection site person shall inform a County representative and shall document the non-cooperation on the drug testing custody and control form.
27. If the sample is being collected from an employee in need of medical attention (e.g. as part of a post-accident test given in an emergency medical facility), necessary medical attention shall not be delayed in order to collect the specimen.
28. A chain of custody form (and a laboratory internal chain of custody document, where applicable) shall be used for maintaining control and accountability of each specimen from the point of collection to final disposition of the specimen. The date and purpose shall be documented on the form each time a specimen is handled or transferred and every individual in the chain shall be identified. Every effort shall be made to minimize the number of persons handling specimens.

**V. Laboratory Procedures**

- A. Drug testing laboratories shall be secure at all times and shall have sufficient security measures in place to control access, and to ensure no unauthorized personnel handle the specimens or gain access to the laboratory process or records.
- B. Laboratories shall use 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 or aliquot (the portion of the specimen used for testing) in their possession and shall sign and complete chain of custody forms for those specimens or aliquots as they are received.
- C. **Receiving:**
  1. When a shipment of specimens is received, laboratory personnel shall inspect each package for evidence of possible tampering and compare

information on specimen bottles within each package to the information on the accompanying chain of custody forms. Any direct evidence of tampering or discrepancies in the information on specimen bottles and the County's chain of custody forms attached to the Shipment shall be immediately reported to the County and shall be noted on the laboratory's chain of custody form which shall accompany the specimens while they are in the laboratory's possession.

2. Specimen bottles generally shall be retained within the laboratory's accession area until all analyses have been completed. Aliquots and the laboratory's chain of custody forms shall be used by laboratory personnel for conducting initial and confirmatory tests.

D. Short term storage will be provided for specimens that do not receive an initial test within seven (7) days of arrival at the laboratory by placing them in secure refrigeration units. Temperatures shall not exceed 6°C. Emergency power equipment shall be available in case of prolonged power failure.

E. Laboratory facilities for urine drug testing will normally process specimens by grouping-them into batches. When conducting either initial or confirmatory tests, every batch shall contain an appropriate number of standards for calibrating the instrumentation and a minimum of 10 percent controls. Both quality control and blind performance test samples shall appear as ordinary samples to laboratory analysts.

F. Initial Test:

1. The initial test shall use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution. The following initial cutoff levels shall be used when screening specimens to determine whether they are negative for these five (5) drugs or classes of drugs:

	Initial Test Cutoff Levels (n ml) <sup>4</sup>
Marijuana metabolites	100
Cocaine metabolites	300
Opiate metabolites	*300
Phencyclidine	25
Amphetamines	1,000

\*25 ng/ml if immunoassay specific for free morphine.

2. These cutoff levels are subject to change by HHS as advances in technology or other considerations warrant identification of these substances at other concentrations. For drugs not listed in F.1. above, cutoff levels to be used shall, when available, be those then specified by HHS.

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<sup>4</sup> ng=nanograms ml=milliliters

G. Confirmation:

1. All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry [GC/MS] techniques at the cutoff levels listed in this paragraph for each drug. All confirmations shall be by quantitative analysis.

		Confirmatory test cutoff levels ng ml
Marijuana metabolite'		15
Cocaine metabolite 6		150
Opiates:	Morphine	300
	Codeine	300
	Phencyclidine	25
Amphetamines:	Amphetamine	500
	Methamphetamine	500

2. These cutoff levels are subject to change by HHS as advances in technology or other considerations warrant identification of these substances at other concentrations. For drugs not listed in G.1. above, cutoff levels to be used shall, when available, be those then specified by HSS.

H. Reporting Results:

1. The laboratory shall report test results to the County's Medical Review Officer within an average five (5) working days after receipt of the specimen by the laboratory. Before any test result is reported (the results of initial tests, confirmatory tests, or quality control data), it shall be reviewed and the test shall be certified as an accurate report by the responsible individual from the laboratory. The report shall identify the drugs/metabolites tested for, whether positive or negative, the specimen number assigned by the County, and the drug testing laboratory specimen identification number (accession number).
2. The laboratory shall report a negative test result for all specimens that are negative on the initial test or on the confirmatory test. Only specimens confirmed positive shall be reported positive for a specific drug.
3. The Medical Review Officer may request from the laboratory, and the laboratory shall provide, quantification of test results. The MRO shall report whether the test is positive or negative and may report the drug(s) for which there was a positive test, but shall not disclose the quantification of test results to the County.
4. The laboratory may transmit results to the MRO by various electronic means (for example, teleprinters, facsimile, or computer) in a manner designed to ensure confidentiality of the information. Results may not be provided verbally by telephone. The laboratory and the County must
5. Delta-9-tetrahydrocannabinol-9-carboxylic acid 6 Benzoylcgoni ne

ensure the security of the data transmission and limit access to any data transmission, storage, and retrieval system.

5. The laboratory shall send to the MRO only the original or a certified true copy of the drug testing custody and control form (part 2), which in the case of a report positive for drug use, shall be signed (after the required certification block) by the individual responsible for day-to-day management of the drug testing laboratory or the individual responsible for attesting to the validity of the test reports, and attached to which shall be a copy of the last report.
6. The laboratory shall provide to the County official responsible for coordination of the drug testing program a monthly statistical summary of urinalysis testing of the County's employees and shall not include in the summary any personal identifying information. Initial and confirmation data shall be included from last results reported within that month. Normally this summary shall be forwarded by registered or certified mail not more than 14 calendar days after the end of the month covered by the summary.

Monthly reports shall not include data from which it is reasonably likely that information about individuals' tests can be readily inferred. If necessary, in order to prevent the disclosure of such data, the laboratory shall not send a report until data are sufficiently aggregated to make such an inference unlikely. In any month in which a report is withheld for this reason, the laboratory will so inform the County in writing.

7. Unless otherwise instructed by the County in writing, all records pertaining to a given urine specimen shall be retained by the drug testing laboratory for a minimum of two (2) years.
  - I. Long term frozen storage (-20° C or less) ensures that positive urine specimens will be available for any necessary retest during administrative or disciplinary proceedings. The laboratory shall retain and place in properly secured long term frozen storage for a minimum of one (1) year all specimens confirmed positive, in their original labeled specimen bottles. Within this one (1) year period, the County may request the laboratory to retain the specimen for an additional period of time, but if no such request is received, the laboratory may discard the specimen after the end of one (1) year, except that the laboratory shall be required to maintain any specimens known to be under legal challenge for an indefinite period.
  - J. Quantification for a retest is not subject to a specific cutoff requirement but must provide data sufficient to confirm the presence of the drug or metabolite because some analytes deteriorate or are lost during freezing and/or storage.
  - K. The drug testing laboratory shall maintain and make available for at least two (2) years documentation of all aspects of the testing process. This two (2) year period may be extended upon written notification by the County. The required documentation shall include personnel files on all individuals authorized to have access to specimens; chain of custody documents; quality assurance/quality control records; procedure manuals; all test data (including calibration curves and any calculations used in determining test results);

reports; performance records on performance testing; performance on certification inspections; and hard copies of computer-generated data. The laboratory shall maintain documents for any specimen known to be under legal challenge for an indefinite period.

## **VI Reporting and Review of Results**

- A. An essential part of the drug testing program is the final review of confirmed positive results from the laboratory. A positive test result does not automatically identify an employee/applicant as having used drugs in violation of the Westchester County Drug Free Workplace Policy and Procedures.  
An individual with a detailed knowledge of possible alternate medical explanations is essential to the review of results. This review shall be performed by the Medical Review Officer (MRO) prior to the transmission of the results to the County Department of Public Safety- The MRO review shall include review of the chain of custody to ensure that it is complete and sufficient on its face.
- B. The duties of the MRO with respect to negative results are purely administrative.
- C. The MRO shall be a licensed physician with knowledge of substance abuse disorders and may be a private physician retained for this purpose.
- D. The MRO shall not be an employee of the laboratory conducting the drug test unless the laboratory establishes a clear separation of functions to prevent any appearance of a conflict of interest including assuring that the MRO has no responsibility for , and is not supervised by or the supervisor of, any persons who have responsibility for the drug testing or quality control operations of the laboratory.
- E. The role of the MRO is to review and interpret confirmed positive test results obtained through the County's testing program. In carrying out his responsibility, the MRO shall examine alternate medical explanations for any positive test result. This action may include conducting a medical interview and review of the individual's medical history, or review of any other relevant biomedical factors. The MRO shall review all medical records made available by the tested individual when a confirmed positive test could have resulted from legally prescribed medication. The MRO shall not, however, consider the results of urine samples that are not obtained or processed in accordance with the procedures set forth in the mandatory guidelines for federal workplace drug testing programs.
- F. Prior to making a final decision to verify a positive test result for an individual, the MRO shall give the individual an opportunity to discuss the test result with him or her.
- G. The MRO shall contact the individual directly, on a confidential basis, to determine whether the employee wishes to discuss the test result. A staff person under the MRO's supervision may make the initial contact, and a medically licensed or certified staff person may gather information from the employee. Except as provided in paragraph (J.) of this section, the MRO shall talk directly with the employee before verifying a test as positive.

- H. If, after making all reasonable efforts and documenting them, the MRO is unable to reach the individual directly, the MRO shall contact the County Department of Public Safety, which shall direct the individual to contact the MRO as soon as possible. If it becomes necessary to reach the individual through the designated County official, the designated County official shall employ procedures that ensure, to the maximum extent practicable, the requirement that the employee contact with the MRO is held in confidence.
1. If, after making all reasonable efforts, the County Department of Public Safety is unable to contact the employee, the County may place the employee on a temporary leave of absence with or without pay.
- J. The MRO may verify a test as positive without having communicated directly with the employee about the test in two circumstances:
1. The employee expressly declines the opportunity to discuss the test;
  2. The designated County representative has successfully made and documented a contact with the employee and instructed the employee to contact the MRO and more than 5 (five) days have passed since the date the employee was successfully contacted by the designated County representative;
- K. If a test is verified positive under the circumstances specified in paragraph J.2. of this section, the employee may present to the MRO information documenting that serious illness, injury, or other circumstances unavoidably prevented the employee from timely contacting the MRO. The MRO, on the basis of such information, may reopen the verification, allowing the employee to present information concerning a legitimate explanation for the confirmed positive test. If the MRO concludes that there is a legitimate explanation, the MRO declares the test to be negative.
- L. Following verification of a positive test result, the MRO shall notify the County Department of Public Safety.
- M. Before the MRO verifies a confirmed positive result for opiates, he or she shall determine that there is clinical evidence - in addition to the urine test - of unauthorized use of any opium, opiate, or opium derivative (e.g., morphine/codeine). (The requirement does not apply if the County's GUMS confirmation testing for opiates confirms the presence of 6-monoacetyl morphine.)
- N. Should any question arise as to the accuracy or validity of a positive test result, only the MRO is authorized to order a reanalysis of the original sample and such retests are authorized only at laboratories certified by HHS. The MRO shall authorize a reanalysis of the original sample if requested to do so by the employee within 72 hours of the employee's having received actual notice of the positive test. If the retest is negative, the MRO shall declare the final result to be negative.
- O. If the MRO determines there is a legitimate medical explanation for the positive test result, the MRO shall report the test result to the County as negative.

- P. Additionally, the MRO, based on review of inspection reports, quality control data, multiple samples, and other pertinent results, may determine that the result is scientifically insufficient for further action and declare the test specimen negative. In this situation the MRO may request reanalysis of the original sample before making this decision. The laboratory shall assist in this review process as requested by the MRO by making available the individual responsible for day-to-day management of the urine drug testing laboratory or other employee who is a forensic toxicologist or who had equivalent forensic experience in urine drug testing, to provide specific consultation as required by the County. The County shall include in any required annual report a summary of any negative findings based on scientific insufficiency but shall not include any personal identifying information in such reports.
- Q. Except as provided in this paragraph, the MRO shall not disclose to any third party any medical information provided by the individual to the MRO as a part of the testing verification process.
1. The MRO may disclose such information to the County or a physician responsible for determining the medical qualification of the employee under applicable County regulations, only if-
    - a. An applicable County regulation permits or requires such disclosure;
    - b. In the MRO's reasonable medical judgment, the information could result in the employee being determined to be medical unqualified under an applicable County rule; or
    - c. In the MRO's reasonable medical judgment, in a situation in which there is no County rule establishing physical qualification standards applicable to the employee, the information indicates that continued performance by the employee of his or her safety sensitive function could pose a significant safety risk.
  2. Before obtaining medical information from the employee as part of the verification process, the MRO shall inform the employee that information may be disclosed to third parties as provided in this Section and the identity of any parties to whom information may be disclosed.

## **VII. Protection of Employee Records**

The County contracts with laboratories shall require that the laboratory maintain employee test records in confidence, as provided herein. The contracts shall provide that the laboratory shall disclose information related to a positive drug test only to the County Department of Public Safety.

## **VIII. Individual Access to Test and Laboratory Certification Results**

Any employee who is the subject of a drug test conducted under this policy shall, upon written request, have access to any records relating to his or her drug test and any records relating to the results of any relevant certification, review, or revocation-of-certification proceedings.



## APPENDIX D

### **POLICE COMPENSATION PROCEDURE**

#### **A. STATEMENT OF PURPOSE**

The administrative decision making process which is used to resolve questions which arise under Section 207-c of the General Municipal Law and under the Workers' Compensation Law shall be combined into a single procedure. It is the purpose and intent of this procedure to provide administrative convenience to the County in its decision making process without loss of benefits to the employee and without the imposition of any additional costs on his behalf to resort to these procedures.

#### **B. DEFINITIONS**

1. Police Compensation - means benefits or entitlements pursuant to Section 207-c of the General Municipal Law and Workers' Compensation.
2. Finance Department - designated by the County of Westchester to administer 207-c benefits.
3. P.C. Employer's Consulting Physician - means a medical doctor or other properly licensed medical person retained or provided by the Finance Department to examine employees for the purpose of making a medical determination regarding the existence of an employee injury and/or sickness, the cause thereof,--the employee's ability to return to full or limited duty and, where applicable, the necessity for any tests or treatment which the employer may have been directed to undergo. A Police Compensation Employer's consulting physician may not have any direct connection with any Department.
4. Department - means the department of the County of Westchester in which an employee entitled to Police Compensation benefits is employed.
5. Department Physician - means a doctor or other properly licensed medical person whose services are obtained through a department.
6. P.C. Hearing Officer - means an impartial arbitrator appointed hereunder to make determinations after a hearing concerning the existence of an employee sickness or injury, the cause thereof, the ability of the employee to return to full or light duty and the appropriate monetary award, if any.
7. Employee - means a person employed by the County of Westchester eligible to receive Police Compensation benefits.

#### **C. NOTIFICATION**

An employee claiming a job injury or job related illness must notify his/her supervisor as soon as reasonably able to do so, depending upon the circumstances and nature of the injury or illness within 24 hours of incident or knowledge of injury/sickness. If an employee misses any time due to an injury or illness which was previously the subject of a Police Compensation hearing or an employer's physician's prior examination he must also notify his supervisor.

**D. INCIDENT REPORT**

Within 24 hours of the notification specified in Section C above, the supervisor must complete an incident report form provided by the Finance Department. Upon completion, the incident report form must be forwarded, to the Commissioner of the Finance Department or his/her designee.

**E. MEDICAL EVALUATION**

1. At any time after notification, the Department or the Finance Department has the right to require the injured employee to be examined by a physician which may be the employee's personal physician, or a physician designated by the Department County as a Police Compensation Employer's Consulting Physician.
2. If, during the ten day period following notification of the incident the employee loses three days of work because of the injury or illness reported in the incident report, the employee must be directed to be examined by a physician if he has not already been so examined.

The employee must arrange for submission to the Department of any examining, treating or attending physician's findings. The physician's written report must specify the nature and cause of the injury, the expected period of disability, and the present ability of the employee to return to full or light duty.

If the employee consults his own physician, he may also be directed to consult with a Department physician and/or a Police Compensation Employer's Examining Physician.

Where an employee has selected a physician for the purpose of rendering an opinion in support of a claim under the Police Compensation Procedure, the employee may not change such physician without consent of the Finance Department. Such permission shall not be unreasonably withheld. This shall not prevent the employee's physician from referring the employee to additional physicians for consultation or treatment, nor shall it prevent the employee from consulting with, or being treated by, other physicians in areas in which he has not sought consultation or treatment from the original physician

3. If the Department physician and the employee's doctor disagree about the nature, cause of the injury and/or necessity to lose time, the employee will be directed to be examined by a Police Compensation Employer's Examining Physician.
4. If, at any stage, a Police Compensation Employer's Examining Physician determines that the employee does not have an injury and/or illness that is work-related or that the employee may return to full or light duty, and the employee fails to so return to duty, whether because of contrary medical opinion or otherwise, then a hearing, as set forth below, shall be convened to determine the employee's continued eligibility to receive Police Compensation benefits.
5. If a Police Compensation Employer's Consulting Physician determines that the employee is not able to return to duty for a specified period, such determination is binding upon the County for the period indicated by the Police Compensation Employer's Consulting Physician. After such period, the evaluation process set forth in this section E may commence again.

F. COMPLIANCE

1. If at any time the injured employee fails without good cause based on written medical opinion to consult with a physician or to take any tests or treatments as may be directed by a Police Compensation Employer's Consulting Physician, then the employee's Police Compensation benefits shall be deemed waived and shall be suspended until such time as he or she shall visit, consult and participate as directed by the Police Compensation Employer's Consulting Physician. After thirty (30) days, the employee's continued, unwarranted refusal to consult and participate as directed by the designated Police Compensation Employer's Consulting Physician shall constitute a final waiver of Police Compensation benefits and the employee may be directed to return to work.
2. If an employee fails to consult with a physician or participate in treatment or tests as directed by a Police Compensation Employer's Participating Physician because of contrary, written medical advice, then a hearing shall be scheduled as set forth below.

G. HEARING PROCEDURE

1. Absent an employee waiver of benefits as set forth in paragraph F above, no employee eligible to receive Police Compensation benefits may be denied such benefits unless it has been determined after a hearing pursuant to this section that the employee does not have a work related injury or illness or that the employee's failure to return to duty is not supported by credible medical evidence.
2. The hearing pursuant to this section shall be conducted by a Police Compensation hearing officer, who shall have sole discretion regarding the conduct and scheduling of hearings. The following arbitrators are designated as Police Compensation hearing officers, to be called on a rotating basis:
  - (1) Herbert Haber
  - (2)
  - (3)

If the next arbitrator to be used is not available within twenty (20) days of the date of request for hearing, then the arbitrator soonest available shall be designated for the particular hearing. The arbitrator shall have the right to avail himself of independent professional consultation to the extent that he deems necessary. The decision of the arbitrator shall be final and binding on both parties. The cost of the arbitrator's fee and his expenses shall be shared by the parties.

3. The employee must be given at least five (5) days written notice of the time, place and date of such hearing and that she/he has the right to be represented at such hearing by an attorney or *official of* the recognized or certified collective bargaining union which represents him/her and that he/she has the right to present, at such hearing, testimony or written reports from qualified medical personnel regarding the employee's condition, the cause of that condition and the employee's ability to perform full or light duty. The hearing may proceed in the absence of any person who has not obtained a prior adjournment from the Police Compensation hearing officer.

4. The Police Compensation Employer's Consulting Physician who examined the employee and determined that the employee may return to work must be present and testify at the hearing. The Police Compensation Employer's Consulting Physician's testimony is subject to cross-examination- Either side may also present such other testimony or written reports as may be accepted by the Police Compensation hearing officer.
5. The decision of the Police Compensation hearing officer must be in writing and must make findings of fact, concerning the nature and the cause of the employee's condition, the employee's ability to return to full or limited duty, and, where applicable, the necessity of any tests or treatment which may have been recommended for the employee together with an appropriate monetary award, if any. Such findings shall be delivered by the Police Compensation hearing officer to the Commissioner of the Finance Department, to the employee and his representative, and to the Commissioner of the Department.
6. Rules of evidence applicable to arbitration hearings shall apply at a Police Compensation hearing.
7. If the Police Compensation Hearing Officer determines that the employee may return to full or limited duty, failure of the employee to do so may be cause for disciplinary action.
8. The provisions hereunder shall be the sole and exclusive remedy and procedure for any and all claims otherwise arising out of Section 207-c and/or Workers' Compensation. All limitations as to actions by the employee against the employer which exist under the Worker's Compensation Law shall remain in effect under this procedure.

#### H. CONTINUATION OF BENEFITS

1. During a period of Police Compensation disability of less than a cumulative total of 365 calendar days from a single cause, there shall be no diminution in the employee's contractual vacation, sick leave, longevity, insurance benefits, welfare fund payments, holiday pay, personal leave or clothing allowance. After a cumulative total of 365 days, only longevity, insurance benefits, welfare fund payments and holiday pay shall continue to be paid in addition to the employee's wages.

#### I. TAX NOTIFICATION

1. If it is determined that wages payable hereunder are tax deductible, the County shall so notify each employee whose normal pay is continued during a period of Police Compensation disability of such fact. In such event, the County shall also render a statement to each such employee, not later than the date of issuance of the applicable W2 form, as to the total amount of wages paid *which* are tax deductible.

J. **UNION ESCROW**

1. An amount of \$6,000.00 shall be paid by the employer into an Association Escrow Fund for the purpose of defraying legal or procedural costs which might not otherwise have been incurred in the resolution of an employee's Police Compensation rights but for the existence of this procedure.

K. **LEGAL ACTION AGAINST THE EMPLOYER**

To the extent that an employee is prohibited from bringing legal action against the employer under the Workers' Compensation Law, the employee shall be similarly prohibited hereunder.