



MICHAEL G. LUTZ LODGE #5 PHILADELPHIA
FRATERNAL ORDER OF POLICE

1336 Spring Garden Street, Philadelphia PA 19123-3213
215-629-3600 website: www.fop5.org 215-629-5736 (fax)

John J. McNesby, President

James P. Wheeler, Recording Secretary

DECEMBER 31, 2008

Dear Director:

A few days ago you should have received in the mail the FOP proposals for the upcoming Act III Interest Arbitration.

Enclosed are the City's proposals which were received on December 31st, 2008.

Please read carefully the proposals and inform your District/Unit.

This is what the City thinks of you, and the work you are doing on a daily basis.

Forget the nice speeches and all the "that -a- boy" quotes. What's enclosed is insulting, and goes even further than what some of us experienced in 1992.

We will keep you informed as the process continues.

Stay united and stay safe.

Fraternally,

JOHN J. McNESBY, President
Michael G. Lutz Lodge #5 Philadelphia
Fraternal Order of Police

JJMcN/lm

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CITY OF PHILADELPHIA

**INITIAL BARGAINING PROPOSALS FOR A SUCCESSOR
AGREEMENT TO BEGIN ON JULY 1, 2009
WITH
FRATERNAL ORDER OF POLICE
LODGE 5**

These proposals are made without prejudice to the City's position in any grievance, grievance arbitration, unfair labor practice, court case, or appeals thereof. The City reserves the right to add to, delete and modify these proposals during the course of negotiations.

Submitted December 31, 2008

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1. **DURATION**

The TERM provision shall be amended to reflect a contract term of July 1, 2009 through June 30, 2013.

2. **DIRECTION OF THE WORKFORCE¹**

Any and all provisions of the contract that would impede or are alleged to impede the City's exercise of flexibility to assign personnel shall be eliminated. Any and all provisions of the contract that would impede the City's right to fully implement the provisions of the City of Philadelphia Crime Plan, and any successor plan that may be issued, shall be suspended including, but not limited to, restrictions that may exist or that the FOP may claim to exist on the City's ability to do any of the following: transfer, detail, change work schedules and use non-bargaining unit personnel. Any past practice or alleged past practice limiting the City's ability to do any of the above is abolished.

¹ Submitted as a declaration of existing rights

3. HOURS OF WORK AND OVERTIME

- (a) The City shall have the flexibility to eliminate guaranteed overtime, change how overtime is assigned and change scheduling of paid leave.
- (b) The City shall pay overtime only as required by the Fair Labor Standards Act.
- (c) In no event will any employee receive more than one-and-one-half times their regular rate for any hour worked.
- (d) No employee shall receive overtime as a result of working more than 8 hours in a work day.
- (e) Hours for which an employee is paid but does not actually work (e.g., sick time, vacation time or administrative leave) shall not be counted as hours worked when determining overtime due under the Fair Labor Standards Act.

4. WORK SCHEDULES

Conform the contract language regarding assignments to the permanent midnight shift to the existing practice that all bidding for permanent midnight shift takes place in October for the following calendar year. The first Monday of the new pay period in January will continue to be the transition day for the new “Last Out” assignments.²

The current Work Schedules provision shall be amended, if necessary, to permit the greatest flexibility to deploy personnel to promote public safety in an efficient and economical manner. The City shall have the flexibility to change work schedules during declared emergencies and to meet the day to day operational needs of the department without the payment of overtime, except overtime required by the Fair Labor Standards Act or Pennsylvania Minimum Wage Act, including but not limited to the following:

- (a) During an emergency or other extraordinary circumstances, the Department shall have the right to temporarily adjust the starting time of any employee(s) without being required to pay overtime as a result of the change.
- (b) The Department’s existing right to adjust an employee’s normal scheduled starting time up to four (4) days per year shall be expanded. The Department shall be entitled to adjust an employee’s normal scheduled starting time up to twelve (12) days per year without the payment of overtime. Employees will be given at least twenty-four (24) advance notice whenever practical.
- (c) The Department shall be entitled to adjust an employee’s normal scheduled shift up to twelve (12) days per year without the payment of overtime to provide for non-MPO training.
- (d) Employees who volunteer for work details or training that would require a change in their work schedule may have their schedule adjusted without the payment of overtime.
- (e) The Department may adjust the starting times of employees in specialized assignments with particularized skills (e.g., canine, marine, aviation, bomb, SWAT, homeland security) by up to eight (8) to handle special assignments without payment of additional overtime.
- (f) The Department’s right to adjust the work schedules of employees in the Highway Patrol Unit and the Strike Force contained in paragraph 12 of the 2008 Award shall be extended permanently.

² Submitted as a declaration of existing rights.

5. APPEARANCES BEFORE CIVIL OR JUDICIAL BODIES

The existing contract language relating to appearances before civil and judicial bodies shall be changed to reflect the following:

- (a) Employees who are scheduled to work from 12:00 midnight to 8:00 a.m. on the day that they are scheduled to appear before a civil or judicial body will work their entire regularly-scheduled tour. Employees will not longer be permitted to terminate their tour two (2) hours before their regularly-scheduled quitting time.
- (b) Employees who are scheduled to work from 4:00 p.m. to 12:00 midnight on the day they are scheduled to appear before a civil or judicial body shall be required to report to work as scheduled following their court appearance. The provision for receipt of an additional two (2) hours of vacation or holiday leave shall be deleted.

6. **TRANSFERS**

Any contract provision or past practice or alleged past practice limiting the City's ability to transfer employees to meet the operational needs of the Department is abolished, including but not limited to the following:

- (a) There shall be no restriction on the Department's ability to transfer employees at the rank of Lieutenant and above.³
- (b) In addition to transfers currently permitted for any other reason, the Department shall have the right to transfer any employee out of a specialized assignment after they have been in that assignment for at least five (5) years at the discretion of the Commissioner. All such transfers shall be reviewed by a transfer review committee, which shall include representatives of the FOP, but will not be subject to the grievance and arbitration procedure.

³ Submitted as a declaration of existing rights.

7. **FURLOUGHS**

Upon seven (7) days advance notice to the FOP and the affected employee(s) the City shall have the unrestricted right to temporarily furlough any employee or employees for a definite length of time, which shall not exceed thirty (30) days in any fiscal year. Such furloughs may occur in one or more blocks of time (e.g., a workweek every three months) or in a specified number of single days (e.g., every Friday for six weeks). The notice will specify the length of the furlough of and the anticipated schedule, if known. Time spent on furlough shall be unpaid and shall be treated as time spent on temporary lay off for purposes of pension and service credits. The City will continue to make health benefit contributions on behalf of the employee during the furlough period.

8. HOLIDAYS

- (a) The following four (4) paid holidays will be eliminated: employee's birthday, Columbus Day, President's Day, Veterans' Day.
- (b) Employees who take leave on a holiday, including vacation, will have their holiday leave bank charged for their absence.

9. COMPENSATION

Subject to the City's Five Year Plan and Fiscal Year 2010 budget, any increase in the City's costs imposed by the contract shall be consistent with the City's ability to pay, which shall be accorded substantial weight as mandated by the PICA statute, without adversely affecting levels of service.⁴

To contain the City's costs and help the City achieve savings during this time of significant financial challenge, the City proposes the following wage terms:

- (a) There will be no increase in employees' base wages for the term of the contract.
- (b) Effective July 1, 2009, the existing pay plan will be deleted and replaced with the pay plan attached hereto as Appendix A.
- (c) During the term of this Agreement, employees shall remain in the pay step that they occupy as of June 30, 2009.
- (d) No longevity payments will be made during the term of this contract

All employees shall be paid through direct deposit and receive an electronic pay stub instead of a paper stub.

⁴ Submitted as a declaration of existing rights

10. HEALTH AND WELFARE

The cost of Health Benefits has come to present a significant threat to the City's Five Year Plan and overall fiscal stability. To address this problem, changes shall be made to the terms governing health and welfare benefits to achieve significant cost savings for the City including, but not limited to, changes in benefits, carriers, vendors, plan design, plan administration and employee cost sharing.

Changes will also be made to the contract and any health plans as necessary to ensure that the City has meaningful oversight over the provision of health and welfare benefits to members of the bargaining unit.

In the event that comprehensive healthcare legislation is passed on the federal or state level, the parties agree to meet and discuss the impact, if any, of such legislation on the City's contractual funding obligation towards the cost of the existing health care programs.

11. **PENSION BENEFITS**

The cost of Pension Benefits is increasing at a rate that has come to present a significant threat to the City's Five Year Plan and overall fiscal stability. To address this problem, the existing pension plans shall be changed to achieve significant cost reductions for the City, including but not limited to the following:

(a) COLA

If the pension ordinance is amended to change the timing, method or calculation of payments under the Pension Adjustment Fund, such changes shall automatically apply to eligible employees and retirees without need for further negotiations.

(b) Member Contributions

Effective July 1, 2009, the employee contribution under all existing pension plans shall increase by 3%.

(c) New Pension Plan

All employees hired on or after July 1, 2009, shall be placed in a new pension plan adopted by the City, which may be a defined benefit plan with a different benefit calculation formula and eligibility and vesting rules, a defined contribution plan, a cash balance plan or any combination thereof.

At the time that the new pension plan goes into effect, existing employees shall have the option, for a period of ninety (90) days, to make an irrevocable election to enter the new pension plan. If any employee so elects, his or her benefits in the existing pension plan shall be frozen and all future earnings and service credits shall count only towards benefits under the new pension plan.

12. VACATION

The existing vacation selection procedures will be deleted and replaced with the following:

The Department will assign group numbers to each week in the year. Assignment of vacation by group numbers will be on a year round basis to insure balanced staffing for the Department at all times. The new year-round system will provide for a smaller number of vacations in each week in the current prime vacation periods and more employees assigned to vacation weeks during non-prime periods. Employees shall continue to be permitted to trade vacation periods.

13. SICK LEAVE

Changes shall be made to the existing sick leave provisions as necessary to reduce sick leave and absenteeism, including, but not limited to, the following:

- Sick leave shall be earned by all employees at the rate of five-sixths (5/6) days per month or ten (10) days per year.
- The definition of pattern abuse contained in the sick leave policy shall include certified and uncertified days, and shall permit examination of sick leave usage over multiple years of service.
- Employees shall be placed on the excessive use list after using five (5) uncertified sick days in any twelve-month period.
- Employees placed on the excessive use of sick leave list shall not earn sick leave until they have been removed from that list.
- All employees shall be subject to visitation by the department while on sick leave to verify that the employee is unable to work.
- Employees who use uncertified sick leave shall be precluded from working voluntary overtime for a period of thirty (30) days from their return to work.

14. FITNESS FOR DUTY

All employees shall be subject to regular medical evaluations to determine fitness for duty. Employees shall be required to participate in a program of physical fitness adopted by the Department. Employees who are unable to perform the duties of their position or unable to satisfy the Department's fitness standards will be permitted to use available paid leave benefits during such periods in which they are unable to work.

15. HEART AND LUNG

The below listed proposals shall be adopted to control excessive workers' compensation/Heart and Lung disability costs and to eliminate duplicative and costly Heart and Lung hearing procedures:

- (a) All Heart and Lung claims shall be decided by the workers' compensation forum (Workers' Compensation Judges, Workers' Compensation Appeal Board, etc.) to reduce duplicative, expensive proceedings. The Heart and Lung panel shall defer to and be fully bound by all decisions in the workers' compensation forum. The Heart and Lung MOU shall be amended to reflect these cost savings measures.
- (b) Heart and Lung benefits shall only be payable for a maximum of 365 days for each disabling work-related injury. Heart and Lung benefits shall only be payable for temporary injuries which shall be defined as up to a maximum of 365 days of Heart and Lung benefits payments.
- (c) All officers receiving Heart and Lung benefits shall not accrue or be permitted to use any paid leave benefits while receiving Heart and Lung benefits.
- (d) The City shall receive a dollar for dollar credit taken against any pension benefits whenever an officer is awarded or receives pension benefits and workers' compensation benefits.
- (e) All appeals of any and all determinations made by the Heart and Lung panel shall be controlled by the legal standard of local agency appeals and not by the Act 111 appeal standard. All appeals shall be heard by Common Pleas Court under the applicable appeal standard of local agency law proceedings.
- (f) Adopt fast track procedure for returning officers to light duty and expeditiously addressing any disputes when officers have been medically cleared to return to light duty work.
- (g) All officers shall treat with the City's panel doctors for the entirety of their treatment for any and all work-related injuries. The City shall appoint all panel doctors and have sole discretion and control over the appointment or removal of doctors from the City's panel.
- (h) Any award of counsel fees related to an officer's disability shall be deducted from the officer's Heart and Lung benefits.

16. DISCIPLINE AND DISCHARGE

The DISCIPLINE AND DISCHARGE provisions shall be amended as follows:

- (a) The Department may require an employee, at its discretion, to cover disciplinary suspensions of up to 5 days through deductions from a member's Holiday Compensatory bank in lieu of an unpaid, non-working suspension.
- (b) At the Commissioner's sole discretion, all or a portion of a disciplinary suspension may be held in abeyance for a period of one (1) calendar year from the date of imposition of the disciplinary penalty. If the employee maintains a clean work record during that year, the portion of the discipline held in abeyance will be removed from the employee's record and no longer considered. If the employee commits any additional disciplinary offenses during that year, the employee will be required to service the portion of the discipline held in abeyance, in addition to any new penalty imposed for the additional offenses. Suspensions placed in abeyance in whole or in part are not subject to the grievance procedure.

17. CIVILIANIZATION

The CIVILIANIZATION provision shall be amended, as necessary, to reflect the following:

Any duties that do not require the exercise of police powers may be assigned to civilian employees or to any other individuals designated by the Police Commissioner, including subcontractors and volunteers.

The Police Commissioner shall have the discretion to determine which functions and duties within the Police Department require sworn employees and which functions and duties may be performed by civilian employees. Accordingly, the City shall be entitled to consider the civilianization of any classifications and of any positions presently occupied by sworn employees. For example, the City seeks to civilianize the following positions and duties as well as others:

Police Communication Dispatcher and Supervisor
Graphic Artist
Evidence Custodian
Electronic Technician
Detention Unit supervisors
Guarding of prisoners at hospitals
Information Technology employees
Operation Room employees
Abandoned Vehicle employees
Traffic control

Prior to implementing civilianization, the City shall meet with designated representatives of the FOP to discuss the jobs the City intends to civilianize and the reasons and need for such civilianization. If the parties, after thirty days subsequent to the initial meeting, are unable to agree upon the need for and conditions applicable to civilianization of the jobs under discussion, then the City may implement the civilianization of such jobs.

18. PERFORMANCE MANAGEMENT

During the course of these negotiations, the City will present a proposal on performance management for employees in the ranks of Lieutenant and above. This proposal shall include separate performance measures related to the successful performance of officer duties. The City also reserves the right to propose economic incentives for above satisfactory performance in achieving established goals.

19. GRIEVANCE AND ARBITRATION

The GRIEVANCE AND ARBITRATION provision shall be amended, as necessary, to improve the efficiency of the contractual dispute resolution procedure by taking measures that include the following:

- Disciplinary suspensions of ten (10) work days or less shall not be subject to arbitration.
- Performance reports, rejections during the probationary period, transfers, written or verbal reprimands, promotions and IOD issues shall not be subject to arbitration.⁵
- Employees discharged due to criminal charges shall not be eligible for any back pay in the event of reinstatement.
- Grievance arbitration awards providing for back pay shall not include pay for overtime not worked.
- Employees who are reassigned or suspended due to charges of domestic abuse, shall not be eligible for any economic award in the event that such charges are not sustained due to a lack of prosecution or cooperation by the charging party.
- Employees charged with criminal misconduct by a jurisdiction other than Philadelphia, who are suspended, reassigned or discharged as a result of those charges shall not be eligible for any economic award in the event that their discipline is rescinded during the grievance and arbitration process.
- Implementation of Arbitration Remedies – The City shall not be required to make any interest payment on the implementation of arbitration remedies or settlement agreements for a period of 120 days from the date of the award or of the settlement. This time period shall be extended in the event an award is appealed, and shall not commence until final resolution of the appeal process. This time period shall also be extended and shall not commence until an employee provides required documentation of outside employment or offsetting wages. In the event that a remedy covers multiple years, or more than one grievant, the time period shall be extended to 180 days.

⁵ Submitted as a declaration of an existing right.

20. **FIREARMS**

The current Firearms provision shall be amended to remove the following: "If a police officer has purchased a GLOCK 9MM sidearm and produces either a receipt or proof of purchase including the cost of such weapon, the City shall reimburse the police officer for that cost."

21. **CLASSIFICATION REVIEWS**

Establishment of classes, specification revisions and class abolitions are subject to Civil Service Commission approval. Prior to the distribution of the Civil Service Commission agenda for each forthcoming meeting, the Personnel Department shall discuss the item with the FOP. Should such consultation result in non-agreement in a particular item in which the FOP is interested, such item will not be presented to the Civil Service Commission for action if the FOP representative indicates a desire for a further review and consultation. If, after further review and consultation, agreement is not reached, the item shall be placed on the Commission agenda and, during the ensuing public meeting at which the item is presented, the FOP shall indicate that it requests a formal hearing before the Commission with both sides presenting their respective cases. The Commission's decisions shall be final.

This provision in no way restricts departmental Management in carrying out the work of the department.

22. SEPARABILITY AND SAVINGS

The current SEPARABILITY AND SAVINGS provision shall be amended, as necessary, to include the following:

- (a) If during the term of this agreement, any other legislation is passed that provides for an increase in wages or fringe benefits for covered employees, and this change results in increased costs for the City, the City shall have the right to make adjustments to other terms and conditions of employment to cover the increased costs.
- (b) If the FOP appeals any provisions of this award, the City shall not be required to implement any provisions of the award, whether or not challenged in the appeal, until the appeal has either been withdrawn or all avenues of appeal have been exhausted.

APPENDIX A

Proposed New Pay Plan for FOP Lodge 5 Effective July 1, 2009

Pay Range	Step 1	Step 1.5	Step 2	Step 2.5	Step 3	Step 3.5	Step 4	Step 4.5	Step 5	Date Effective	Pay Range
201	\$40,036	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	July 1, 2009	201
202	\$42,814	\$44,761	\$46,708	\$48,375	\$50,043	\$51,712	\$53,380	\$54,491	\$55,603	July 1, 2009	202
203	\$48,893	\$51,092	\$53,292	\$53,868	\$54,444	\$55,024	\$55,603	N/A	N/A	July 1, 2009	203
204	N/A	N/A	\$58,621	\$59,255	\$59,889	\$60,526	\$61,163	N/A	N/A	July 1, 2009	204
205	N/A	N/A	\$60,753	\$61,410	\$62,066	\$62,727	\$63,387	N/A	N/A	July 1, 2009	205
Pay Range	Step 1	Step 2	Step 3	Step 4	Step 5	Date Effective	Pay Range				
206	N/A	N/A	\$69,258	\$70,007	\$70,756	\$71,509	\$72,262	N/A	N/A	July 1, 2009	206
207	N/A	N/A	\$74,111	\$74,909	\$75,708	\$76,514	\$77,319	N/A	N/A	July 1, 2009	207
208	N/A	N/A	\$80,340	\$81,208	\$82,076	\$82,950	\$83,824	N/A	N/A	July 1, 2009	208
209	N/A	N/A	\$88,374	\$89,329	\$90,284	\$91,245	\$92,206	N/A	N/A	July 1, 2009	209
210	N/A	N/A	\$91,587	\$92,577	\$93,566	\$94,563	\$95,560	N/A	N/A	July 1, 2009	210
Pay Range	Step 1	Step 2	Step 3	Step 4	Step 5	Date Effective	Pay Range				
211	N/A	N/A	\$104,409	\$105,538	\$106,666	\$107,802	\$108,938	N/A	N/A	July 1, 2009	211
212	N/A	N/A	\$114,405	\$118,002	\$121,599	\$122,894	\$124,189	N/A	N/A	July 1, 2009	212
299	\$51,091	\$52,192	\$53,292	\$53,868	\$54,444	\$55,024	\$55,603	N/A	N/A	July 1, 2009	299