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JUN 25 1993

In the Matter of Final and Binding :
Final Offer Arbitration Between :
WISCONSIN PROFESSIONAL POLICE ASSOCIATION - :
LAW ENFORCEMENT EMPLOYEES RELATIONS DIVISION : **AWARD**
and : Decision No. 27471-A
VILLAGE OF PLOVER (POLICE DEPARTMENT) :
WERC Case 4 No. 44933 MIA-1560 :

I. NATURE OF THE PROCEEDING. This is a proceeding under Section 111.77 (4) (b) of the Municipal Employment Relations Act in the resolution of an impasse in collective bargaining between the Village of Plover and its Police Department and the Wisconsin Professional Police Association - Law Enforcement Employees Relations Division representing the sworn officers of the Plover Police Department. On December 11, 1990, the WPPA/LEER Division filed a petition with the Wisconsin Employment Relations Commission asking the Commission to initiate compulsory final and binding arbitration pursuant to Section 111.77 (3) of the Municipal Employment Relations Act because of an impasse between the Association and the Village of Plover. The impasse was investigated by Stuart Levitan, a member of the Commission staff, who reported that the parties were at impasse. On November 20, 1992, the Commission found that the parties were indeed at impasse, concluded that an impasse within the meaning of the Act existed, certified that the conditions precedent to the initiation of compulsory final and binding arbitration had been met, and ordered final and binding interest arbitration pursuant to the statutes. The parties having selected Frank P. Zeidler, Milwaukee, as arbitrator, the Commission appointed him on December 16, 1992.

II. HEARING. A hearing in the above entitled matter was held on April 2, 1993, in the Village Hall, Plover, Wisconsin. Parties were given full opportunity to give testimony, present evidence and make argument. Briefs were exchanged on June 3, 1993.

III. APPEARANCES.

GORDON E. MC GUILLEN, Attorney, CULLEN, WESTON, PINES AND BACH, appeared for the Association.

RICHARD T. LITTLE, WPPA/LEER Representative, also appeared for the Association.

ANDERSON, SHANNON, O'BRIEN, RICE & BERTZ by DAVID G. KEEFE, appeared for the Village.

IV. THE FINAL OFFERS.

A. The Village Offer. See Appendix A.

B. The Association Offer. See Appendix B.

V. FACTORS TO BE WEIGHED BY THE ARBITRATOR. Section 111.77 (6), Stats., requires the arbitrator to give weight to the following factors:

- a. The lawful authority of the employer.
- b. Stipulation of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs.
- d. Comparisons of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 1. In public employment in comparable communities.
 2. In private employment in comparable communities.
- e. The average consumer prices for goods and services, commonly known as the cost of living.
- f. The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays, and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- g. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- h. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

VI. LAWFUL AUTHORITY. There is no question involving the lawful authority of the Employer to meet the terms of either offer.

VII. STIPULATIONS. The parties have stipulated to all other matters between them.

VIII. COSTS OF THE OFFERS. The following table on costs of the offers is derived from Association Exhibits 23-28:

Table I

COSTS OF THE OFFERS

	Association		Employer	
	<u>1991</u>	<u>1992</u>	<u>1991</u>	<u>1992</u>
Base Wages	\$189,301	\$199,846	\$188,261	\$196,706
Total Wages	192,495	293,132	191,434	199,952
Total Compensation	274,565	292,625	273,221	288,597

The following table is derived from Association Exhibits 24, 25, 27 and 28:

Table II

DOLLAR AND PERCENT INCREASES FOR TOTAL COMPENSATION

	1991	%	1992	%
Association	\$15,528	5.99	\$18,060.20	6.58
Employer	14,185	5.48	15,376.00	5.63

IX. COMPARISON OF MUNICIPALITIES. The Association is using as comparables all cities, villages and townships within a 25 miles radius of Plover, which units have a population above 2,500. Plover's 1991 population is listed as 8,337. The governmental units included by the Association are Wausau, Stevens Point, Marshfield, Wisconsin Rapids, Weston, Plover, Waupaca, Rothschild and Mosinee. The populations range from 47,474 at Wausau and 23,189 at Stevens Point to 3,888 at Rothschild and 3,840 at Mosinee.

The Village as Employer uses as comparables Plover, Stevens Point, Rothschild, Portage and Weston. Here the population range is from 24,000 reported at Stevens Point to 3,892 at Rothschild. (EX "Comparable Information.")

The Association, noting that Plover is relatively small compared to the surrounding community, feels that its list of all cities, villages and townships within a 25 mile radius having a level over 2,500 is the appropriate one. The Association also holds that the Crime Index Information illustrates the fact that small communities are equally susceptible to rising crime rates and must respond accordingly.

The following table is derived from Employer Exhibit "Comparable Information" and Association Exhibits:

Table III

COMPARATIVE DATA FOR UNITS OF GOVERNMENT PROPOSED BY THE PARTIES AS COMPARABLES

<u>Unit</u>	<u>Population</u>	<u>Sq.Mi.</u>	<u>Size of Force</u>	<u>Prop. Offenses</u>	<u>Violent Offenses</u>
Wausau	37,474	-	53	1,929	37
Stevens Point	23,189	15	40	1,768	48
Marshfield	19,378		37	734	30
Wisconsin Rapids	18,259		38	1,050	53
Weston (Township)	11,139	40	13	376	5
Plover	8,337	7.2	9F/1PT	269	4
Waupaca	5,064		11	266	
Rothschild	3,888	2	6	246	6
Mosinee	3,840		6	114	26
Portage	8,566		20		

Discussion. The Association mentions in its brief the difficulties of finding comparable districts for Plover. This is indeed the case because of the fact that Plover is a relatively small municipality, while being near much larger municipalities. Generally there is a higher compensation paid by larger municipalities, but the correlation between the size of the municipality and the rate of pay is not always one that holds true as will be evident here in the case of Wausau.

Looking at both the map furnished in AX 20 and recognizing that there are some economic areas more closely related than others, and recognizing that some of the comparables offered by the parties are either much larger than Plover and/or relatively remote, and recognizing the special impact of Stevens Point on Plover as being contiguous, the arbitrator then concludes that the most comparable group among the units of government offered by the parties include Stevens Point, its suburb of Plover, Wausau and its suburbs, Weston, Rothschild and the nearby community of Mosinee. Portage, Waupaca, Wisconsin Rapids, and Marshfield are of secondary value either because of size and/or remoteness.

It will be noted that for an issue on drug testing, the Village had a different list of comparables.

X. WAGE COMPARISONS - TOP PATROL OFFICER. The following table is derived from Association and Village exhibits:

Table IV

WAGE COMPARISONS, PRIMARY AND SECONDARY COMPARABLES

	<u>1990</u>	<u>1991</u>	<u>% Inc.</u>	<u>1992</u>	<u>% Inc.</u>
Primary Comparables					
Plover	2,134				
Assn.		2,264	6.1	2,401	6.1
Emp.		2,241	5.0	2,342	4.5
Stevens Point	2,270	2,361	4.0	2,455	4.0
Weston	2,272	2,352	3.5	2,466	4.8
Rothschild	2,259	2,349	4.0	2,443	4.0
Mosinee	2,246	2,336	4.0	2,454	5.1
Wausau	2,066	2,171	5.1	2,281	5.1
Secondary Comparables					
Marshfield	2,073	2,178	5.1	2,288	5.1
Wisconsin Rapids	2,307	2,407	4.3	2,515	4.5
Waupaca	2,072	2,177	5.1	2,274	4.5
Portage	2,009	2,109	5.0	2,179	3.3

The next table is derived from the above table and shows the rank of the Plover offers in terms of dollars paid.

Table V

RANK OF DOLLAR COMPENSATION PER MONTH FOR TOP PATROL OFFICER
OF PLOVER OFFERS

	<u>1990</u>	<u>1991</u>	<u>1992</u>
6 Primary Comparables w/Plover			
Association	5	5	5
Employer	5	5	5
5 Secondary Comparables w/Plover			
Association	2	2	2
Employer	2	2	2

The Village in its Exhibit 6 lists the total percentage increases in the two years of 1991 to 1992. The following table is derived from Employer's Exhibit 6 and the above Table IV:

Table VI

PERCENTAGE INCREASES FOR TOP PATROL OFFICER IN COMPARABLE DISTRICTS
1990-1992

Primary Comparables	Year-End Wages	
	<u>% Increases (Added)</u>	<u>% Lift Increases</u>
Plover		
Association	12.2	12.51
Employer	9.5	9.72
Stevens Point	8.0	8.16
Weston	8.2	8.46
Rothschild	8.0	8.16
Mosinee	9.1	9.3
Wausau	10.2	10.46
Secondary Comparables		
Marshfield	10.2	10.46
Wisconsin Rapids	8.8	8.99
Waupaca	9.6	9.82
Portage	8.3	8.46

(The above data has been reviewed in relation to Association Exhibits 18, 19, 20 and 21.)

Association Position on Wages Summarized. The Association, arguing that its lists of comparables is the most appropriate list, asserts that its offer allows Plover to maintain its relative position with respect to comparisons on base salary. Under the Association list of 10 comparables, Plover is sixth and will remain so. The Association argues that the critical difference between the parties is the below average rate that has prevailed at Plover. The Association is not asking for the highest pay, but only to reach the average.

Village Position of Wages Summarized. The Village argument relates to its five comparables and notes that in the 1991 offer its 5% offer ranks with the Portage increase as highest. Also in the Association offer of 10 comparables, the offer of the Village is higher percentagewise than the offer of any other of the 10 comparables except Waupaca where the wage rate is lower than that in Plover.

For the 1992 comparison, the Village says that its offer is the highest when considered percentagewise among the Village's comparables.

The Village argues that its lift in comparison far exceeds the total lift in any of the comparables of the Association for the two years while the Association lift is far above any Village or Association comparables.

Discussion. The discussion here will be on wages for Top Patrolman. Table IV foregoing indicates that as far as the comparables are concerned, the situation at Plover indicates some catching up might be in order. However under either offer the rank of Plover does not change, being fifth among six comparables. The question then is whether the effort by the Employer is moving toward closing the gap. Table VI foregoing shows that the percentage increase by the Employer over two years of 9.5% when percentages are added with a lift of 9.72% is second highest among the primary comparables. The percentage increases under the Association offer exceed the second highest percentage offer which is at Wausau by 2%. The arbitrator concludes that the Employer offer on base wages is the more comparable and is also acceptable because it is moving toward closing a catch-up situation.

XI. WAGES - DETECTIVE/PSO. The Association offer has included in the salary schedule for both years under the word, "CLASSIFICATION," the classification of "Detective/PSO" with a rate of \$13.30 per hour effective 1/1/91, \$13.56 per hour effective 7/1/91, \$13.97 per hour effective 1/1/92 and \$14.39 per hour effective 7/1/92. The incumbent in this position has been a regular Patrolman and was given the assignment of investigation. The parties consider this a special assignment for a Patrol Officer. The incumbent, according to the testimony at the hearing, works 8 hours a day on the regular shift. He contends he has lost overtime and the right to shift differential. The Employer states that the incumbent refused to take overtime assignments and would not work on holidays, but rather took compensatory time.

Village Position Summarized. The Village contends that the Association has unilaterally sought to increase the wages in a position which the Association conceded at the hearing to be a line transfer of a Patrol Officer. There never has been a Detective position incorporated in the Village system. The Association is now viewing the investigator/"detective" position as a difference in rank and though it conceded the work was a line transfer. This position was implemented several years ago, and it was made clear that no additional pay would be provided for this line transfer. The position was for regular business hours, and the person in the position would not be subject to shift or patrol work. The current incumbent has turned down numerous overtime hours and numerous holiday pay. The incumbent is complaining about a position when he knew what it entailed. The incumbent's attitude constitutes a case of his wanting his cake and eating it too. The Association offer for this line transfer calls for a 10.15% increase in 1991 and 6.12% in 1992, which the Village says is out of line. No quid pro quo has been offered the Village by the Association.

Association Position Summarized. The Association says that its offer to the person occupying the Detective/PSO classification amounts to a 50 cent per hour wage adjustment. The Association acknowledges that it was stipulated at the hearing that the Association proposal does not create a new position, but compensates officers for the performance of duties normally attributed to this classification.

Discussion. The Association here, as the arbitrator perceives it, is making a bid to have a special kind of work, investigation, recognized as deserving more compensation. However it has not put its offer in such terms, such as for special pay as in the case of shift differential or holiday work. Rather the Association chooses to include its offer under the heading "Classification" the position of "Detective/PSO". Despite the expression of both parties that what was intended was only a line transfer with the Association asking for higher pay, the wording of the Association offer constitutes clearly the creation of a new job classification. If the Association offer is hereafter determined as the most appropriate under the terms of the statutory factors to be weighed, then in the roster of Village employees there would appear a new position of "Detective/PSO".

This being the case, the arbitrator views the wording of the proposal as creating a new position. That being the case, there is some reason to consider continuous and specialized investigating work as a kind of work requiring a higher degree of skill than general police, and the arbitrator notes that such work is generally given a higher degree of compensation.

However, it must be recognized that if the Association offer on this position is accepted and a new classification comes into being, the Village as Employer under Article III of the Agreement as stipulated to, would have the authority to determine the conditions of work of any employee occupying the position other than those which have been agreed to, such as the employee working during regular business hours. There is also a question as to whether the incumbent being a transferred Patrolman could retain the position. This being the case, the arbitrator is of the opinion that the Employer offer, which does not make any changes, should prevail, and that if the Association wants other conditions for the present incumbent while he retains his assignment, this could be the subject of further bargaining so that the parties can understand more fully what the implications are of creating a new classification.

XII. PAY STRUCTURE. The Employer is proposing to add the following language to the contract relative to pay. "Pay Structure. New Article to be applied to new employees hired after the contract is executed as follows:

"1st Class: Eligible after 3 years of service
100% of negotiated salary.

"2nd Class: Eligible after successful completion of
probationary period
90-95% of negotiated salary.

"3rd Class: Probationary Officers
80% to 85% of negotiated salary.

"The Village may opt to hire a qualified candidate at the Officer 2nd CLASS LEVEL. This option may be exercised when the candidate's training or experience have been validated, and determined to be a beneficial asset. This individual would still be subject to a one year probationary period."

The previous Agreement of 1989 to 1990 read as follows:

"APPENDIX A

"PLOVER PROFESSIONAL POLICE ASSOCIATION

"1. 1989-1990 Salary Schedule

<u>CLASSIFICATION</u>	<u>Effective 1-1-89</u>	<u>Effective 1-1-90</u>
Patrolman (after probation)	\$11.78 per hour	\$12.31 per hour

"The above hourly rates are based upon 1,040 hours per six-month period, or a total of 2,080 hours per year.

"Newly hired employees shall receive 80% of the negotiated salary during their probationary period. The Village may elect to start an experienced employee at a rate of pay higher than 80% of negotiated salary."

The Association has no offer to change the existing language.

Village Position Summarized. The Employer did not address this proposal in its brief, but the matter was explained in the hearing in terms essentially those as shown in the proposal itself.

Association Position Summarized. The Association argues that there was shown no need by the Employer to change the existing language for salary progression. The Village offer leaves room for individual interpretation, providing no clear wage level for future new officers. A potential for disagreement thus is created. There is nothing remotely similar in other units to this pattern of progression proposed by the Village.

Discussion. As to this issue, neither party presented any table of evidence as to comparable practice in which there is a three step progression for new officers with a range of options for the Employer to make payment instead of a fixed salary. In the Stevens Point Agreement of 1991-92, the pay for beginning officers is specifically stated as a given amount. (EX 10). This is also true for Weston (EX 11), for Rothschild (EX 12), and for Portage (EX 13).

The arbitrator concludes that the offer of the Village for an optional form of pay to be determined by the Employer is not comparable, and therefore the Association position in which there is a stated pay for beginning officers is more comparable.

XIII. WORKING CONDITION - GRIEVANCE PROCEDURE. The Association is proposing a change in Step 2 of Article V on the grievance and arbitration procedure. The essence is that if a grievance is not settled at Step 1, the grievant would have 10 days to submit it in writing to the Police Commission. If the matter is suspension, demotion, discharge or other discipline, the letter is to go to the President of the Commission with a request for a hearing under the Section 62.13, Wis. Stats. Thereafter the grievant may elect either to take the matter to court or to arbitration but not both, and the standard to be considered is "just cause." If the matter goes to the Commission, the Commission has to set up a hearing in 15 days and provide the grievant with an answer in 5 days.

Under the previous agreement, the grievance had ten calendar days in which to make a written appeal to the Police Commission. The Police Commission had 15 calendar days to meet with the grievant and thereafter the Commission had to respond in 5 weekdays. Thereafter the Association had 15 calendar days to give written notice of an appeal to arbitration.

The Association submitted two examples of language covering its proposal - one in Mosinee which is very similar in providing the option to the grievant of proceeding to arbitration or to the courts and citing Section 62.13 of the Stats. The other example was that of Wausau. In Wausau there are three steps of appeal instead of two, but the agreement there also mentions Section 62.13 as the governing procedure where applicable.

Association Position Summarized. The Association supports its position by citing Arbitrator Vernon in City of Rhinelander, Dec. 2355-a to the effect that arbitration is superior to going to the courts on the grounds of its informal procedure and the suitability of arbitrators to handle disciplinary disputes as compared to the courts.

Employer Position Summarized. The Employer states that the Association is attempting to change the status quo on the grievance procedure without showing that any need exists.

Discussion. The position of the Employer that there has been no need shown to change the existing language is persuasive to the arbitrator here. Although two examples have been shown by the Association in which a mention is made of the existence of Section 62.13 of the Stats. as governing when discipline is involved, this is not a sufficient preponderance of evidence to show that the present language in the contract needs changing. Indeed under the present language, an officer facing discipline can go through an arbitration hearing and might even make a challenge in the courts, whereas under the Association proposal, an unfavorable arbitrator's ruling cannot be challenged. The arbitrator therefore believes the previous language of the agreement should remain until it is shown inadequate by experience.

XIV. WORKING CONDITION - DRUG TESTING PROVISION. Both parties are proposing to include in the agreement language covering drug testing of employees, and both consider this to be a highly important feature of the new contract. The Employer presented a series of exhibits consisting of the texts of drug policies in contracts at Weston, Green Bay, Brown County, Milwaukee Police Supervisors, Port Washington, Eau Claire, Price County and Marshfield. Marshfield Police are not organized however. In Marshfield an employee must be tested when a supervisor requires it. In the other locations all have a provision of applicants for a position being tested and during probation. All have a provision that where there is "reasonable suspicion" on the part of the supervisor, the employee may be tested. Five of the above contracts call for drug testing upon promotion or the employee being given a special type of assignment. Four of the agreements call for testing after either discharge of a firearm, or auto accident, or use of deadly force, or any of the foregoing.

The principal issue here between the parties is whether the employee shall be tested only after reasonable suspicion, or can be randomly tested by the so-called "neutral method" in which all employees are in the cohort each time from which a random selection is or selections are made.

The following table is derived from Employer Exhibits 15-22 incl.

Table VII

SUMMARY OF EXISTING PROVISIONS ON RANDOM SELECTION FOR DRUG TESTING

<u>Govt. Unit</u>	<u>Provision</u>
Weston	Testing on order from the Chief.
Green Bay	In 1992 all to take test with 30 days notice. After 1992 contract, random testing of 10% of employees per shift per year.
Brown County	Random testing on five employees per year.
Milwaukee Police Supervisors	List of members for testing generated by independent secure random selection process. Frequency of testing prescribed by Chief. Frequency can be increased for special service units.
Port Washington	No provision for random testing.
Eau Claire	No provision for random testing.
Price County	All employees to submit to no more than one drug test during a calendar year. 24 hour notices and all employees to take test.
Marshfield	Member to submit to chemical test on order of superior officer.
Plover - Association Employer	No provision for random testing. Random testing, neutral selection, as often as Village prescribes. Testing approximately 50% of all employees and completed at regular intervals.

Employer Exhibit 14 is a table listing among other things the presence of a provision on random selection in the eight units of government reported as having a provision on testing for drugs. Six of the units are reported to have provision for random testing. An inspection of the contracts reveals, however, that the term "random" testing is found only in Green Bay, Brown County and the Milwaukee Police Supervisors' contracts. In Price County every employee is expected to be tested once a year with 24 hours notice and specifically there will be no random testing. In the cases of the Weston and Marshfield contracts the employees are directed by the Chief to be tested. Whether this would permit the Chief to institute random testing is not specifically spelled out.

Another significant set of provisions to be observed in contracts is that relating to mandatory testing under certain circumstances. Testing before hiring, testing during probation, testing before promotion, testing when given certain special assignments, testing after discharge of firearm, auto accident, or where bodily harm has occurred appear in the contracts submitted by the Village for comparison. Not all contracts have all of these features. However 4 of the 8 have some of them. In the Association contract in Plover applicants have a mandatory requirement for drug testing, and then any other testing is limited to "reasonable suspicion". Under the Employer offer here there is mandatory testing for applicants, during probation, promotion, transfer to employment in drug interdiction, carrying of a firearm or handling classified information, for the discharge of a firearm, auto accident or physical altercation.

Association Position Summarized. The Association argues that the morale of the officers require reasonable and desirable working conditions. The heart of the impasse here lies in the proposals on employee drug testing. The Association says that its offer on this issue provides a program that is inherently fair and affords the greater confidentiality. The Association proposal is a response to the original proposal of the Employer. A large portion of the original Employer proposal remains, but the fundamental difference is that the Association proposal views all employees on an equal basis and deletes references to supervisory or managerial employees. Under the Association offer testing is to be performed outside the Village limits to protect employees' integrity. The Association offer clearly describes how costs are to be met and when the test policy is to be exercised. In the Association offer, the trigger for a test is "reasonable suspicion", whereas under the Employer offer, it is a "neutral selection" basis with the mechanics and timing of this process not specified and uncertain.

The Association states that its offer provides the highest level of confidentiality to the employee, views all employees on an equal basis and provides a clear and concise chain of custody of specimens and information while providing the Village with the ability to utilize the program effectively. Any officer required to submit to a drug test will be placed under public scrutiny regardless of innocence or guilt.

The Employer offer will have a direct impact on an employee's ability to function as a law enforcement officer. Officer and departmental pride are not affected in a positive manner under the Employer offer. The Association offer is the more reasonable one.

Village Position Summarized. The Village argues that studies show drug and alcohol use are increasingly serious employment problems, and they are having a serious economic effect due to lost time, reduced productivity, lost employment, injuries, accidents and crime. There is a high incidence of prior drug use to those entering the work force for the first time. The evidence is that drug users seeking help have admitted in high percentage that they used drugs on the job, and their work was adversely affected.

Random drug testing has had a significant deterrent effect upon drug use by active personnel. A President's Executive Order of 1986 established the goal of a drug free workplace in the federal employment. In the private sector, major companies are not conducting pre-employment drug testing, so that it is apparent that drug testing has become pervasive also in private employment.

Random drug testing in the public sector has been upheld by the United States Supreme Court in cases involving United States custom agents, railroad workers, some army employees, and police. Lower courts also have upheld random drug testing for prison guards and public safety positions.

The purpose of random testing is early detection and deterrence. The Supreme Court has held that generally corrections personnel, police and criminal justice professionals have a diminished expectation of privacy, and this allows random testing. The Village of Plover has a duty to provide random testing in view of the Supreme Court's decision. This is for the safety and protection of citizens and officers. An officer for example would want to be certain that his backup is not inhibited by drugs which would affect his performance.

The Village states that its Exhibit 14 shows that numerous other communities of the state have drug testing in police departments, and this includes random testing and incident testing. Six of the eight departments have random or neutral testing of non-probationary officers.

The Association offer does not include neutral or random testing nor incident testing, and the Association set forth no rationale why these types of testing, especially incident testing, should not occur. The Village in its offer has set forth limited and precise public safety oriented incidents which would result in automatic testing; discharge of a fire arm, auto accidents resulting in injury, and physical altercations involving death or great bodily harm. The safety element of the public and employees is involved in this type of incident testing.

The Village notes that its testing policy provides for testing supervisory employees also. The testing is neutral in that every person in the department is involved in an equal chance to be selected. The Village argues that its policies are virtually identical to those set for federal agencies. The Village states that its proposal gives assurance against contamination and provides a chain of custody and also dual testing and more specific testing if positive results are found. The Employer notes that officers in the Village are participating in voluntary testing at the same facility envisioned under the Village's proposal.

Discussion. The comparison of the two proposals presents a complex matter in which many aspects of the proposals are different, despite the fact that the Association proposal is a modification of an original proposal of the Village. For example in the section of the proposals marked "DISCUSSION", the Association has in its offer deleted a paragraph appearing in the Village offer which paragraph in the opinion of the arbitrator might leave the impression that Police Officers in general might be serious abusers of drugs. The Association's concern therefore for the morale of the officers is justified if the language of the Village provision implies that Police Officers are prone to chemical addiction. Thus it is understandable for the Association in its offer to strictly limit the testing to applicants and to the case where there is reasonable suspicion of an Officer based on specific objective facts.

Having said this, the arbitrator is of the opinion that the Association offer, though, is deficient in respect to not including some of the other reasons for testing such as involvement in firearm discharge, auto accidents where injury occurs, and physical altercation where great bodily harm occurs. Drug testing after such events would be a protection to the Officer involved if matters come to litigation.

As far as random testing is concerned, the prevalence of it in the units of government cited is in the opinion of the arbitrator, not as the Employer has cited it, clearly in support of random testing, but rather in only three cases is random testing specifically identified. In the other cases, the authority to order a test lies in the hands of the Chief. As to whether the Chief in these jurisdictions could on his own order random testing rather than testing for reasonable suspicion is not clear.

So then one here must look at three things about the Village proposal. The first of these is that in the lists of primary and secondary comparables governments, only one is reported as having any drug testing, namely Weston, and here the authority lies with the Chief, who may or may not have the power to institute random testing. So there are not primary comparables of major significance on the issue and no secondary comparables at all.

However since the Association has agreed to the concept of a drug testing provision, the next thing to look at is the internal characteristics of the provisions. The first the arbitrator looks at is the absence of incident testing. This the arbitrator considers to be a major deficiency in the Association offer. The limited requirements in incident testing required in the Employer offer seem reasonable.

The next provision to look at is the issue of random testing itself. The arbitrator does not believe that random testing is likely to cause as much stigma upon an employee as testing under reasonable suspicion. The very generality of random testing indicates that it is merely a safety precaution and that guilt for any specific Officer is not involved when someone gets selected under this process. This fact is especially true when supervisory officers are in the pool of selection. In a sense this is similar to the provision that every Officer has to be tested once a year.

The arbitrator believes that there is a defect in the Village offer in the provision "D. Employment Drug Testing." Here the frequency and method of sampling rate may produce an excessive number of testings.

The goal set by the Village is approximately 50% of the personnel annually. This could be met by saying having one test annually, with five designees in one random selection, there being nine employees including Chief and Lieutenant. However if only one employee is tested after each random selection, this could result in five or more random tests, particularly if one person's name appears twice.

On another matter, the arbitrator in reading the various proposals for methods of conducting tests, protecting against alteration or contamination and providing a proper chain of custody, the Association offer is superior to that of the Village, but not enough so to determine the outcome here.

In sum then, the arbitrator is of the opinion that the random testing, coupled with incident testing, despite its nebulosity on how it will be conducted, outweighs the proposal of the Association to limit testing to probationary Officers and other Officers for reasonable suspicion only.

XV. COMPARISON OF CONDITIONS IN THE PUBLIC SECTOR. The Association supplied two exhibits relating to internal wage changes in the Village from 1987 to 1992. Personnel categories shown were listed generally in clerical positions and various public works. The exact job titles were not shown, but terms "Street Department", "Water Department", "Sewer Department", and "Police Officers" were used along with clerical workers. According to Exhibit 36 the change in pay of Police Officers went from \$11.00 in 1987 to \$13.83 under the proposed Association offer, an increase of 26%. Police Officers were the highest paid among the categories. In the Street and Water Departments, the gap was closed, however, where three Street Department categories of pay ranges changed by 27%, 46% and 55% respectively, and the Water Department pay range went up by 34% during the same period of time. Percentages for secretarial work were higher, but the pay rate was lower than for Police Officers or public works employees.

According to Association Exhibit 37 other employees in a non-managerial position received a \$200 merit payment in 1991, but the Police Officers did not. Also in 1991, Street, Sewer and Water Department employees received a 1% wage payment, which the Police Officers did not. In the hearing it was explained that this payment was for extra work involved in installing a water system.

An Assistant Assessor was shown to have received a 119% increase during this time. (AX 36). An affidavit from Mark Arentson supplied to the arbitrator asserts that the employee described as Assistant Assessor was not such but only an "assistant" and not certified as an assessor. She was promoted after certification and given an increase. According to the Administrator, two Street Department employees were given lead positions with supervisory duties. The Water Department employee change was a reflection of completion of probation. Village Hall employee changes reflected an increase in minimum wage and an employee with more skills was hired.

Discussion. The Association did not address this subject except in its exhibits and testimony. The Village calls the exhibits misleading and unsubstantiated and prepared by a person with no competence. The Police Officer compiling the information made no additional inquiry nor sought information, and the exhibit is considered by the Village as disingenuous. The increases reported, according to the Village administration, represents promotions, changes in duties and in personnel. The Village also argues that the employees are not unionized and therefore not comparable to organized Police Officers. Even so, according to the Village, Police Officers are the highest paid.

The arbitrator is of the opinion that despite the relative lack of sophistication of the reports submitted in Exhibits 36 and 37 of the Association, yet the evidence is that the relative relationships between Police Officer's pay and that of other employees has narrowed, and the Association offer in this regard becomes more reasonable.

XVI. COMPARISON OF WAGES AND CONDITIONS IN THE PRIVATE SECTOR. The parties did not address this type of comparison.

XVII. BENEFITS AND TOTAL COMPENSATION. The parties did not address total compensation. As to benefits and with respect to longevity, the previous agreement provided that employees with five years of employment received a 2% longevity payment annually. The arbitrator from the exhibits calculates this will be about \$46.83 per month under the Village offer and \$48.00 per month under the Association offer.

The Employer provided a supplementary exhibit on longevity pay for nine districts. It is the arbitrator's conclusion from examining this exhibit that the longevity rate at Plover ranks among the highest both for amount and its early attainment.

The Village also provided information on health insurance payments in nine districts. No information was supplied by either party on the premium paid by the Village. The previous contract said, "The employer shall continue to provide hospitalization and surgical care insurance to those employees electing to be covered." The Village also provides term life insurance in the amount of \$1,000 per \$100 of base salary, rounded to the next highest \$1,000.

Association Exhibit 24 shows that in 1991 the cost of "health insurance" as a fringe benefit was \$30,769.44. No costs are shown for life insurance. Assuming that the costs are only for health insurance for six employees, the resulting average cost per employee would be \$5,128 per year or about \$427.33 per month. Family or single premiums are not differentiated. This places Plover among the highest payers of premiums, which high group included Wisconsin Rapids and Mosinee.

The conclusion is that for the limited benefits of longevity and health insurance, Plover is comparable.

XVIII. **COST OF LIVING.** The Village furnished an exhibit on the cost of living using a local cost of living index. The exhibit was essentially this:

Table VIII

COST OF LIVING INDEX COMPARISON

	1991 %	1992 %*
Cost of living increase	.45	.20
Village offer	5.00	4.50
Association offer	6.09	6.05
Association (detective)	10.15	6.12

*Through third quarter.

However Board Exhibits 9A to 9K contain information on ACCRA Cost of Living Index from the first quarter of 1990 to the third quarter of 1992. From these exhibits the arbitrator derives the following data:

Table IX

**COST OF LIVING CHANGES, ACCRA INDEX
STEVENS POINT-PLOVER, WISCONSIN**

	100% Composite Index
1st Quarter, 1990	99.6
1st Quarter, 1991	101.7
Percent change	2.1
3rd Quarter, 1991	98.9
3rd Quarter, 1992	98.5
Percent change	- 0.4

Association Exhibit 29 showed price changes under the Consumer Price Index-All Urban Consumers (CPI-U) of the U.S. Bureau of Labor Statistics. This index showed a 6.1% increase between December 1989 and December 1990, and a 3.1% increase between December 1990 and December 1991.

Positions of the Parties. The Association cites Arbitrator Kerkman in the Merrill Area Education Association, Decision No. 17955-A, to the effect that the proper measure of the amount of protection against inflation should be determined by what other comparable employers and associations have voluntarily settled for. These settlements create a reasonable barometer as to the weight the cost of living increases should be given by an arbitrator. Employees in interest arbitration should be given the same protection against cost of living increases as those who entered into voluntary settlement. The Association says its offer is cognizant of current economic conditions and comparable settlements.

The Village notes that the offers for salary increases for both years significantly outpace the consumer price index for the Stevens Point-Plover area.

Discussion. The offer of the Village more nearly meets the changes in the consumer price index both nationally and locally than does the Association offer.

XIX. THE ABILITY OF THE UNIT OF GOVERNMENT TO MEET THE COSTS. No contention has been raised by the Village that it cannot meet the costs of the Association offer.

XX. INTEREST AND WELFARE OF THE PUBLIC. The essence of one of the two major issues here, that of the terms of the drug testing article, is which one more nearly meets the criterion of the public interest and welfare. The fact that both offers include a proposed article on drug testing meets the public need for such an article in view of a danger in society from drug use. In this matter, however, earlier, the arbitrator has found that the Village offer, because of its provision for incident testing, and because of the feature of random testing in which no particular offer is singled out by reason of suspicion more nearly fits the public interest.

XXI. CHANGES DURING THE PENDENCY OF THE PROCEEDINGS. There have been no changes needed to be considered during the pendency of the proceedings.

XXII. OTHER FACTORS. The arbitrator believes he has covered all factors needed to be considered and has endeavored to treat fully the positions of the parties.

XXIII. SUMMARY AND CONCLUSIONS.

1. In comparison municipalities in this matter the arbitrator has found that the primary comparables include Plover, Stevens Point, Mosinee, Wausau, Rothschild, and Weston. Portage, Waupaca, Wisconsin Rapids and Marshfield have secondary value.

2. The wage offer of the Village is the more comparable one and is also reasonable, because it is moving toward closing a catch-up situation.

3. Because of an ambiguity in the Association offer as to whether or not it intends to create a classification of "Detective" in the contract, or merely to make compensation for investigation work, a specially compensated work for Patrol Officer, the arbitrator is of the opinion that the Village offer of making no change should prevail, and the matter further considered by the parties as to what is intended.

4. The offer of the Village for a change in pay structure produces a result which is not found in comparable districts because of a lack of a definite pay rate stated in the salary schedule. The Association position is the more comparable.

5. The Village offer of grievance procedure is sustained on the ground that the present language has not been shown to be inadequate by past experience.

6. In the drug testing article, the arbitrator considers the Village offer with random testing, incident testing, and testing on reasonable suspicion to be weightier than the Association offer with testing on reasonable suspicion only. This conclusion is made even though the Village proposal is unclear in its application of the mechanics on random testing.

7. In comparisons with other Village employees, the gap has been narrowed between the Association employees and other Village employees, and the Association offer is more reasonable.

8. In benefits, the evidence is that the Village of Plover is comparable when the benefits of longevity and health insurance are considered. The parties furnished no information on overall compensation among comparables.

9. The Village offer is the more comparable one when cost of living changes, nationally and locally, are considered.

10. The Village has the ability to meet the costs of the Association offer.

11. Though both offers, especially as to drug testing are in the interest and welfare of the public, the Village offer is judged on the whole to more nearly meet the public interest particularly because of the inclusion of incident testing.

12. There were no changes during the pendency of the proceedings and the arbitrator believes he has covered all factors needing to be considered.

In the foregoing list of findings, the two weightiest matters, wages and drug testing article both accrue to the Village offer. For this reason the following award is made:

XXIV. AWARD. The 1991-1992 Agreement between the Wisconsin Professional Police Association - Law Enforcement Employee Relations Division and the Village of Plover should include the Village final offer.

Frank P. Zeidler

FRANK P. ZEIDLER

Arbitrator

Date June 23, 1993
Milwaukee, Wisconsin

LAW OFFICES OF
ANDERS L. J., SHANNON, O'BRIEN, RICE & BERTZ
1257 MAIN STREET
POST OFFICE BOX 228

- 19 -

STEVENS POINT, WISCONSIN 54481-0228
FAX NO 1-715-344-1012

HIRAM D ANDERSON, JR
JOHN E SHANNON, JR
GERALD M O'BRIEN
MAURICE G RICE, JR
THOMAS W BERTZ
MARIS RUSHEVICS
DANIEL G. GOLDEN
RONALD T SKRENES
ROBERT F KONKOL
RUSSELL T GOLLA
TORREN K PIES
DAVID G KEEFE
NADINE I. DAVY
RICK A FLUGAUR
ROBERT J SHANNON
DANIEL J RUPAR

715-344-0890

May 20, 1992

PLOVER OFFICE

DANIEL G GOLDEN
NADINE I DAVY
RESIDENT COUNSEL

1402 POST ROAD
P.O. BOX 340
PLOVER, WI 54467-0340

(715) 341-2560

FAX# 1-715-341-2676

Mr. Stuart Levitan, Investigator
Wisconsin Employment Relations Commission
P.O. Box 7870
Madison, WI 53707-7870

In Re: Village of Plover (Police Department)
Case No.: 44933 MIA-1560
Our File: 15,412

RECEIVED
MAY 21 1992
WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

Dear Mr. Levitan:

Below please find the Village of Plover's final offer with respect to the above matter:

1. Contract length: Two years.
2. Wages: First Year: 5 percent as of January 1, 1991.
Second Year: 4½ percent as of January 1, 1992.
3. Drug Testing Policy. As attached.
4. Pay Structure. New Article to be applied to new employees hired after the contract is executed as follows:

1st Class: Eligible after 3 years of service
100% of negotiated salary.

2nd Class: Eligible after successful completion of
probationary period
90% - 95% of negotiated salary

3rd Class: Probationary Officers
80% - 85% of negotiated salary

The Village may opt to hire a qualified candidate at the Officer 2ND CLASS level. This option may be exercised when the candidate's training or experience have been validated, and determined to be a beneficial asset. This individual would still be subject to a one year probationary period.

Mr. Stuart Levitan, Investigator
Wisconsin Employment Relations Commission
May 20, 1992
Page 2

Please be advised that we have provided both Mr. Richard T. Little and Mr. Gordon McQuillen with a copy of this final offer.

If you have any questions with respect to the above or wish to engage in further mediation or discussion, please feel free to contact me at your convenience.

Very truly yours,

ANDERSON, SHANNON, O'BRIEN,
RICE & BERTZ

By


David G. Keefe

DGK:jf/38926

Enclosure

cc: Mr. Richard T. Little
WPPA Bargaining Consultant
9730 West Blue Mound Road
Wauwatosa, WI 53226

Mr. Gordon McQuillen
Attorney at Law
20 North Carroll Street
Madison, WI 53703

WV MAY 21 1992

USA 1/11/00 10:02/0000

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

I. PURPOSE

The purpose of this policy is to provide all Department personnel with notice of the provisions of the department drug testing program.

II. DISCUSSION

It is the policy of this department that the critical mission of law enforcement justifies maintenance of a drug-free work environment through the use of a reasonable employee drug testing program.

The law enforcement profession has several uniquely compelling interests that justify the use of employee drug testing. The public has a right to expect that those who are sworn to protect them are, at all times, both physically and mentally prepared to assume these duties. There is sufficient evidence to conclude that the use of controlled substances and other forms of drug abuse will seriously impair an employee's physical and mental health and, thus, job performances.

Where law enforcement officers participate in illegal drug use and drug activity, the integrity of the law enforcement profession and public confidence in that integrity are destroyed. This confidence is further eroded by the potential for corruption created by drug use.

Therefore, in order to ensure the integrity of the department and to preserve public trust and confidence in a fit and drug-free law enforcement profession, this department shall implement a drug testing program to detect prohibited drug use by employees. In appropriate circumstances, rehabilitation and counseling may be applied.

III. DEFINITIONS

- A. Employee. Those employees who have been formally vested with full law enforcement powers and authority other than probationary employees.
- B. Supervisor. Any person employed by the employer and identified as a supervisor by section 111.70(1)(o), Wis. Stats.
- C. Drug Test. The compulsory production and submission of urine by an employee, in accordance with departmental procedures, for chemical analysis to detect prohibited drug usage.
- D. Reasonable Suspicion. A belief that an employee is using or has used drugs in violation of the employer's policy drawn from specific, objective and articulable facts and reasonable

inferences drawn from those facts in light of experience, and may be based upon, among other things:

1. Observable phenomena, such as direct observation of drug use and/or the physical symptoms or manifestations of being under the influence of a drug;
 2. Abnormal conduct or erratic behavior while at work, absenteeism, tardiness, or deterioration in work performance;
 3. A report of drug use provided by reliable and credible sources and which has been independently corroborated;
 4. Evidence that an individual has tampered with a drug test during his/her employ with the current employer;
 5. Evidence that an employee is involved in the illegal use, possession, sale, solicitation, or transfer of drugs while working or while on the employer's premises or operating the employer's vehicle(s), machinery, or equipment.
- E. Probationary Employee. For the purposes of this policy only, a probationary employee shall be considered to be any person who is conditionally employed with the department as a law enforcement officer.
- F. Collection Site. A place designated by the employer where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.
- G. Confirmatory Test. A second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principal from that of the initial test in order to insure reliability and accuracy. (At the this time, gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.)
- H. Initial Test (also known as Screening Test). Immunoassay screen to eliminate "negative" urine specimens from further consideration.
- I. Neutral Selection Basis. A mechanism for selecting employees for a drug test that (1) results in an equal probability that any employee from a group of employees subject to the selection mechanism will be selected and (2) does not give an employer discretion to waive the selection of any employee selected under the mechanism.
- J. Medical Review Officer. A licensed physician responsible for receiving laboratory results generated by an agency's drug testing programs who has knowledge of substance abuse

disorders and has appropriate medical training to interpret and evaluate an individual's positive test result together with his or her medical history and any other relevant biomedical information.

IV. PROCEDURES

A. Prohibited Activity

The following rules shall apply to all applicants, probationary employees, employees and supervisors while on and off duty:

1. No probationary employee, employee or supervisor shall illegally possess any controlled substance.
2. No probationary employee, employee or supervisor shall ingest any controlled or other dangerous substance, unless as prescribed by a licensed medical practitioner.
 - a. A probationary employee, employee or supervisor shall notify his or her immediate supervisor when required to use prescription medicine that he or she has been informed has the potential to impair job performance. The individual shall advise his or her supervisor of the known side effects of such medication as well as the prescribed period of use.
 - b. Supervisors shall document this information through the use of an internal memorandum and maintain this memorandum in a secured file.
3. Any probationary employee, employee or supervisor who unintentionally ingests, or is made to ingest, a controlled substance shall immediately report the incident to his supervisor so that appropriate medical steps may be taken to ensure the employee's health and safety.
4. Any probationary employee, employee or supervisor having a reasonable basis to believe that another probationary employee, employee or supervisor is illegally using, or is in possession of any controlled substance, shall immediately report the facts and circumstances to his or her supervisor.
5. No probationary employee, employee or supervisor shall ingest any prescribed medication in amounts beyond the recommended dosage and shall be responsible for the prudent use of over-the-counter medications.
6. Discipline of probationary employees, employees and supervisors for violation of this policy shall be in accordance with the Collective Bargaining Agreement, Department policy, rules and regulations and state law.

B. Applicant Drug Testing

1. Applicants for positions involving full law enforcement powers and authority will be required to take a drug test as a condition of employment during a pre-employment medical examination.
2. Applicants shall be disqualified from further consideration for employment under the following circumstances:
 - a. Refusal to submit to a required drug test; or
 - b. A confirmed positive drug test indicating drug use prohibited by this policy.

C. Probationary Employee Drug Testing

All probationary employees shall be required, as a condition of employment, to participate in unannounced drug tests prior to the completion of the probationary period. The frequency and timing of such testing shall be determined by the chief of police or his or her designee. Refusal or confirmed positive drug test may invoke dismissal from the department. Probationary employees shall also be subject to drug testing as set forth below.

D. Employment Drug Testing

Probationary employees, employees and supervisors will be required to take drug tests as a condition of continued employment in order to ascertain prohibited drug use as provided below:

1. Probationary employees, employees and supervisors shall be subject to drug tests based upon a neutral selection basis. The village shall implement a mechanism for selecting probationary employees, employees or supervisors for drug tests that results in an equal probability that any probationary employee, employee or supervisor from a group of individuals subject to the selection mechanism will be selected and a mechanism that does not give the employer or any supervisor discretion to waive the selection of any probationary employee, employee or supervisor selected under the mechanism. The frequency of the neutral testing, and sampling rate, shall be as prescribed from time to time by the village, but such testing will, on an annual basis, test approximately 50 percent of the total number of probationary employees, employees and supervisors covered by the policy and shall be completed at reasonably regular intervals.
2. A supervisor may order a probationary employee, employee or less senior supervisor to take a drug test upon documented reasonable suspicion that the probationary

employee, employee or supervisor is or has been using drugs. A summary of the facts supporting the order shall be made available to the probationary employee, employee or supervisor prior to the actual test. A supervisor's suspicion must be supported by evidence of specific contemporaneous physical, behavioral or performance indicators. Only the personal independent observations and/or investigations of the supervisor shall be relied upon to require that a probationary employee, employee or supervisor submit to drug testing for reasonable suspicion. No such requirements shall be applied to other required drug testing.

3. Whenever a probationary employee, employee or supervisor is eligible for promotion or a transfer to employment involving drug interdiction, the carrying of a firearm or the handling of classified information he or she shall be tested prior to the promotion or transfer. The promotion or transfer shall be contingent upon passing the drug test.
4. Any probationary employee, employee or supervisor directly involved in a serious incident, including but not limited to the following cases, shall be required to participate in a drug test immediately following the event, or soon thereafter, as the situation allows:
 - a. The intentional or accidental discharge of a firearm at a human being or a vehicle or building in which human beings are located;
 - b. Employer vehicle auto accident in which an incapacitating injury is sustained by any involved employee or citizen; and
 - c. Physical altercation resulting in death or great bodily harm as defined by Wisconsin Statutes.

Failure to submit to a drug test under such conditions shall constitute a refusal to submit to a required drug test. Under the circumstances set forth above, a probationary employee, employee or supervisor directly involved shall be defined as the individual or individuals discharging a firearm, driving the automobile or participating in the physical altercation.

5. Any probationary employee, employee or supervisor who in the carrying on of his or her police duties, ingests, either directly or indirectly, any drug or narcotic substance, is required to document, as soon as possible thereafter, such contact. Documentation shall occur in writing explaining all circumstances, and the employee's supervisor shall be notified as soon as possible. The chief of police's supervisor shall be the police commission for the purpose of this policy. Drug tests

will be administered and no disciplinary action will be taken if the tests are positive under the following conditions:

- a. The probationary employee, employee or supervisor was in physical danger if he or she did not ingest the drug or narcotic substance.
 - b. Nothing in this policy shall be construed as granting permission for probationary employees, employees or supervisors serving as a police officer or narcotics agent to ingest any illegal drug, marijuana, narcotic substance, or controlled substance under any circumstance unless the probationary employee, employee or supervisor was in physical danger if he or she did not ingest the drug or narcotic.
6. The employee serving as chief of police shall be subject to the drug testing set forth herein. For purposes of this policy, the police commission shall be considered the superior of the chief.

E. Supervisory Training

All supervisory employees shall be provided with training in detecting possible symptoms of drug abuse.

F. Drug Testing Procedures.

1. Specimen Collection Procedures.

- a. Designation of Collection Site. The employer shall have one or more designated collection sites which have all the necessary personnel, materials, equipment, facilities and supervision to provide for the collection, security, temporary storage, and shipping or transportation of urine specimens to a certified drug testing laboratory.
- b. Collection Site Personnel. Collection site persons, supervisors and authorized personnel shall be such collection site employees so designated by the collecting site to assist in the collection and testing of specimens as necessary under the drug testing methodology.
- c. Security. Procedures shall provide for the designated collection site to be secure. If a collection site facility is dedicated solely to urine collection, it shall be secure at all times. If a facility cannot be dedicated solely to drug testing, the portion of the facility used for testing shall be secured during drug testing.

- d. Chain of Custody. Chain of custody standardized forms shall be properly executed by authorized collection site personnel upon receipt of specimens. Handling and transportation of urine specimens from one authorized individual or place to another shall always be accomplished through chain of custody procedures. Every effort shall be made to minimize the number of persons handling specimens.
- e. Access to Authorized Personnel Only. No unauthorized personnel shall be permitted in any part of the designated collection site when urine specimens are collected or stored.
- f. Privacy. Procedures for collecting urine specimens shall allow individual privacy unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided.
- g. Integrity and Identity of Specimen. The employer and collection site shall take precautions to ensure that a urine specimen not be adulterated or diluted during the collection procedure and that information on the urine bottle can identify the individual from whom the specimen was collected.
- h. Identification. Personnel authorized to administer drug tests shall require positive identification from each participant to be tested before they enter the testing area. This shall consist of picture identification or Driver's License.
- i. Interview. A pretest interview shall be conducted by testing personnel with each participant in order to ascertain and document the recent use of any prescription or non-prescription drugs, or any indirect exposure to drugs that may result in a false positive test result.
- j. Collection Control. To the maximum extent possible, collection site personnel shall keep the individual'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. An approved chain of custody form 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 an approved chain of custody 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.

- k. **Transportation to Laboratory.** Collection site personnel shall arrange to ship the collected specimens to the drug testing laboratory. The specimens shall be placed in containers designed to minimize the possibility of damage during shipment, for example, specimen boxes 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 supervisor shall sign and enter the date specimens were sealed in the containers for shipment. The collection site personnel shall ensure that the chain of custody documentation is attached to each container sealed for shipment to the drug testing laboratory.

- l. **Inability or Unwillingness to Provide Specimen.** Where the participant appears unable or unwilling to give a specimen at the time of the test, testing personnel shall document the circumstances on the drug test report form. The participant shall be permitted a reasonable amount of time to give a sample, during which time he shall remain in the testing area. Reasonable amounts of water may be given to the participant to encourage urination. Failure to submit a sample shall be considered a refusal to submit to a drug test. Documented medical inability to submit a sample shall not be considered a refusal.

- m. **Split Specimen.** Participants shall have their urine specimen split and made available to the participant for retesting in case of a positive test result. The urine specimen must be provided at the same time identified, marked and placed in identical specimen containers by authorized testing personnel. One specimen shall be submitted for immediate drug testing at the approved testing laboratory. If the specimen tests positive, the other specimen shall remain at the facility in frozen storage for one year. This specimen shall be made available to the participant or his attorney, should the original sample result in a legal dispute or if the chain of custody is broken.

- n. **Altered Specimen.** Whenever there is a reason to believe that the participant may have altered or substituted the specimen to be provided, a second specimen shall be obtained immediately under direct supervision of a same gender collection site person.

2. Laboratory Analysis Procedure

- a. Laboratory. The employer shall use a laboratory that conforms with the National Institute on Drug Abuse (NIDA) Guidelines.
- b. Security. Drug testing laboratories shall be secure at all times. They shall have in place sufficient security measures to control access to the premises and to ensure that no unauthorized personnel handle specimens or gain access to the laboratory processes or to areas where records are stored. Access to these stored areas shall be limited to specifically authorized individuals whose authorization is documented.
- c. Chain of Custody. 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 in their possession and shall sign and complete chain of custody forms for those specimens or aliquots as they are needed.
- d. Inspection. 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 agency's chain of custody forms attached to the shipment shall be immediately reported to the employer 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.
- e. Retention. Specimen bottles will normally 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.
- f. Two-Step Procedure. The testing or processing phase shall consist of a two-step procedure to include an initial screening test (immunoassay drug screening test) and a confirmatory test (gas chromatography/mass spectrometry - GC/MS testing).

- g. Initial Test. The initial test shall use an immunoassay which meets requirements of the Food and Drug Administration for commercial distribution which are in effect on the day the aliquot is obtained. The following initial cutoff levels shall be used when screening specimens to determine whether they are negative for these five drugs or classes of drugs.

	Initial Test Level (ng/ml)
Marijuana metabolites.....	100
Cocaine metabolites.....	300
Opiate metabolites.....	300
Phencyclidine.....	25
Amphetamines.....	1,000

The types of drugs tested and the levels considered to be a positive result may be modified pursuant to NIDA guidelines.

- h. Confirmatory Test. All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques at the cutoff values listed in this paragraph for each drug. Concentrations of a drug at or above the following levels shall be considered a positive test result when performing a confirmatory GC/MS test on a urine specimen that tested positive in the initial test.

	Confirmatory Test Level (ng/ml)
Marijuana metabolites.....	15*
Cocaine metabolites.....	150**
Opiates:	
Morphine.....	300***
Codeine.....	300***
Phencyclidine.....	25
Amphetamines:	
Amphetamine.....	500
Methamphetamine.....	500

*Delta-9-tetrahydrocannabinol-9-carboxylic acid

**Benzoyllecgonine

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

The types of drugs tested and the levels considered to be a positive result may be modified pursuant to NIDA guidelines.

- i. Reporting Results.

- 1. The laboratory shall report test results to the employer's medical review officer. Before any test result is reported (the results of initial tests,

confirmatory tests, or quality control) it shall be reviewed and the test certified as an accurate report by the responsible individual. The report shall identify the drugs/metabolites tested for, whether positive or negative and the cutoff for each, the specimen number assigned by the agency, and the drug testing laboratory specimen identification number. The results (positive and negative) for all specimens submitted at the same time to the laboratory shall be reported back to the medical review officer at the same time.

2. The laboratory shall report as negative all specimens which are negative on the initial test or negative on the confirmatory test. Only specimens confirmed positive shall be reported positive for a specific drug.
 3. The medical review officer shall report the test results to the employer along with any additional information, documentation or findings he or she deems relevant.
- j. Subcontracting. Drug testing laboratories shall not subcontract and shall perform all work with their own personnel and equipment. The laboratory must be capable of performing testing for the five classes of drugs (marijuana, cocaine, opiates, phencyclidine and amphetamines) using the initial immunoassay and confirmatory GC/MS methods specified in these guidelines.
- k. Laboratory Facilities.
1. The employer shall use only those laboratories certified by the Federal Department of Health and Human Services and that are in compliance with the applicable provisions of the Wisconsin licensure requirements. Facilities in Wisconsin that are currently federally certified are as follows:
 - i. Alpha Medical Laboratory, Inc.
405 Alderson Street
Schofield, WI 54476
 - ii. Bay Shore Clinical Laboratories
4555 West Schroeder Drive
Brown Deer, WI 53223
 - iii. C.B. Clini-Lab
140 East Ryan Road
Oak Creek, WI 53154
 - iv. General Medical Laboratories
36 South Brooks Street
Madison, WI 53715

v. Mental Health Complex Laboratories
9453 Watertown Plank Road
Milwaukee, WI 53226

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2. The list of facilities set forth above shall be modified as necessary to include newly certified laboratories and exclude those which are no longer certified.

1. Employees having negative drug test results shall receive a memorandum stating that no illegal drugs were found. A copy of the memorandum will be placed in the employee's personnel file.

G. Drug Test Results.

1. Confidentiality.

- a. All information, interviews, reports, statements, memoranda, test results, written or otherwise received by the employer through its drug testing program are confidential communications. A physician-patient relationship is not created between the employer and the applicant, probationary employee, employee or supervisor and the employer or between these individuals and the medical review officer.
- b. Any information obtained by the employer pursuant to this policy shall be the property of the employer.
- c. The employer shall not release to any person other than the probationary employee, employee, supervisor or job applicant, or employer medical, supervisory, or other personnel, as designated by the employer on a need-to-know basis, information related to drug test results unless:
 - i. The employer or job applicant has expressly, in writing, granted permission for the employer to release such information; or
 - ii. It is necessary to introduce a positive confirmed test result into an arbitration proceeding pursuant to a collective bargaining agreement, an administrative hearing under applicable state or local law, or a judicial proceeding, provided that information is relevant to the hearing or proceeding, where the information must be disclosed to a federal or state agency or other unit of the state or United States Government as required under law, regulation, or order, or in accordance with compliance requirements of a state or federal government contract, or disclosed to a

drug abuse rehabilitation program for the purpose of evaluation or treatment of an employee.

iii. There is risk to public health or safety that can be minimized or prevented by the release of such information. Unless such a risk is immediate, a court order permitting the release shall be obtained prior to the release of the information.

2. Drug test results and records shall be retained in the employee's personnel file for an indefinite period.

V. Second Sample Testing

If the applicant, probationary employee, employee or supervisor desires to have his/her specimen retested because of a positive test result, he/she may do so at his/her own expense at an approved testing laboratory of his/her choice. Results of any retesting should be submitted to the Chief of Police in writing as soon as possible.

VI. Actions Taken

- A. If a probationary employee, employee or supervisor tests positive after the confirmatory tests, such individuals shall be subject to discipline pursuant to the Collective Bargaining Agreement, Department policy, rules and regulations and state law unless otherwise specified herein.
- B. On any action, employee assistance program counseling and follow-up may be applied.
- C. At any time prior to a required drug test that produces a positive result, a probationary employee, employee or supervisor may inform his or her supervisor of prohibited drug use and seek assistance under an employee assistance program or private rehabilitation and counseling. Any and all assistance rendered shall be closely monitored. This may include but is not limited to:
 - 1. Further assessment of the individual by qualified persons.
 - 2. Treatment of the individual by a recognized facility or person.
 - 3. Release of information to the chief of police on the progress and treatment of the employee, upon consent of the individual.
 - 4. Process of after care treatment with possible random screening for a period of up to one year after initial treatment. Random screening under these conditions can occur up to twice within a calendar month. This is to

ascertain compliance with said treatment and objectives of the department relevant to this issue.

5. In those instances where the individual fails to utilize the assistance to overcome his/her problem(s) and/or fails to make reasonable progress in counseling or treatment within a reasonable period of time as determined by the employee assistance program staff and/or treatment personnel and/or continues to perform in a substandard manner, and/or continues to be under the influence of chemicals in the work place, the individual shall be considered a safety hazard to the department, public and co-workers. This shall result in corrective disciplinary action pursuant to the Collective Bargaining Agreement, Department policy, rules and regulations and state law unless otherwise specified herein.

VII. Refusal to Submit

Employees who refuse to submit to a required drug test under this policy shall be terminated from employment.

VIII. Union Inspection

At any time, upon reasonable advance request, the PPPA, upon request, will have the right to designate a representative to inspect and observe any aspect of the drug testing program with the exception of individual test results. The PPPA may inspect individual test results if the release of this information is authorized by the employee(s) involved and the employee(s) provides the employer with a release, hold harmless and indemnification agreement to allow the release.

LAW

ENFORCEMENT

EMPLOYEE

RELATIONS



DIVISION

WISCONSIN - 35 -

PROFESSIONAL

POLICE

ASSOCIATION

9730 WEST BLUEMOUND ROAD
WAUWATOSA, WI 53226
414 / 257-4000
1-800-236-4002

7 N. PINCKNEY STREET, NO. 220
MADISON, WI 53703
608 / 256-3344
1-800-362-8838

April 24, 1992

Mr. Stuart Levitan
Wisconsin Employment Relations
Commission
P.O. Box 7870
Madison, Wisconsin 53707-7080

RE: Village of Plover (Police Department)
Case 4 No. 44933 MIA-1560

Dear Mr. Levitan,

Pursuant to our phone conversation, this letter is to serve as confirmation that the Association has no further amendments to the final offer which was previously submitted. I have enclosed a copy for your files.

If you have any questions, please feel free to contact me.

Sincerely,

Richard T. Little
Bargaining Consultant

enclosure

cc: Len Jaglarski
Association Rep.

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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

36 -
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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

FINAL OFFER
OF THE
WISCONSIN PROFESSIONAL POLICE ASSOCIATION
LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION

TO
THE VILLAGE OF PLOVER

November 4, 1991

The final offer of the WPPA-LEER for a Collective Bargaining Agreement between the WPPA-LEER and The Village of Plover is as follows:

A. All terms and conditions of the 1989-1990 Agreement shall be continued for a one (1) year term except as otherwise agreed to between the parties in their written stipulations and except as noted below:

B. Amend Article V - Grievance and Arbitration Procedure, Section F. Steps in Procedure, Step 2, to read as follows:

Step 2: If the grievance is not satisfied in Step 1, it shall be reduced to writing and submitted to the Police Commission within ten (10) working days; provided, however, that if it is a matter which related to suspension, demotion, discharge or any other discipline, a written request for a hearing may be submitted to the President of the Police Commission requesting a hearing, pursuant to SS62.13. After a matter related to suspension, demotion, discharge or other discipline is heard by the Police Commission pursuant to SS62.13, the grievant may elect to appeal the decision of the Police Commission either to circuit court as provided by SS62.13, or to arbitration as provided under Section G, below, of this grievance procedure. An election of one disciplinary appeal option by the grievant shall preclude use of the other. The standard of review for arbitration of a disciplinary appeal by the grievant under Section G, below, shall be "for cause." If the grievance is pursued to the Police Commission, the Police Commission shall set up a meeting within a reasonable time which shall not be later than fifteen (15) days to allow the grievant and/or his representative to present the grievance. Thereafter, the Police Commission shall have five (5) working days, excluding holidays as defined in Article XII, to provide an answer to the grievant.

- C. Add new Article - Article () - Drug Testing, to read as follows:

The Drug Testing policy as attached in Appendix B, is incorporated in and made part of this agreement.

- D. Revise APPENDIX A - Wages as follows:

1. 1991 Salary Schedule

<u>CLASSIFICATION</u>	<u>Effective 1-1-91</u>	<u>Effective 7-1-91</u>
Patrolman (after probation)	\$12.80 per hour	\$13.06 per hour
Detective/PSO	\$13.30 per hour	\$13.56 per hour

2. 1992 Salary Schedule

<u>CLASSIFICATION</u>	<u>Effective 1-1-92</u>	<u>Effective 7-1-92</u>
Patrolman (after probation)	\$13.45 per hour	\$13.85 per hour
Detective/PSO	\$13.97 per hour	\$14.39 per hour

- E. Revise all applicable dates to reflect a duration of two (2) years. (1991-1992)

Appendix "B"

I. PURPOSE

The purpose of this policy is to provide all employees with notice of the provisions of the department drug testing program

II. DISCUSSION

It is the policy of this department that the law enforcement justifies maintenance of a drug-free work environment through the use of a reasonable employee drug testing program.

Where law enforcement officers participate in illegal drug use and drug activity, the integrity of the law enforcement profession and public confidence in that integrity are destroyed. This confidence is further eroded by the potential for corruption created by drug use.

Therefore, in order to ensure the integrity of the department and to preserve public trust and confidence in a fit and drug-free law enforcement profession, this department shall implement a drug testing program to detect prohibited drug use by employees. All costs associated with the program will be paid by the Employer.

III. DEFINITIONS

- A. Employee. Those employees who have been formally vested in full law enforcement powers and authority other than probationary employees.
- B. Supervisor. Any person employed by the employer and identified as a supervisor by Section 111.70(1)(o), Wis. Stats.
- C. Drug Test. The compulsory production and submission of urine by an employee, in accordance with departmental procedures, for chemical analysis to detect prohibited drug usage.
- D. Reasonable Suspicion. That quantity of proof or evidence that is based on observed behavior which is aberrant or unusual; which is a recognized and accepted symptom of impairment caused by controlled substances or addiction to or dependence upon said controlled substances; and which is behavior not reasonably explained as resulting from causes other than the use of controlled substances (such as, but not by way of limitation, fatigue, lack of sleep, side effect of prescription or over-the-counter medications, reaction to noxious fumes or smoke, etc.). Reasonable suspicion must be based on specific, objective

facts, and any rationally derived inferences from those facts about the conduct of an individual.

- E. Probationary Employee. For the purposes of this policy only, a probationary employee shall be considered to be any person who is conditionally employed with the department as a law enforcement officer.
- F. Aliquot. A portion of a specimen used for testing.
- G. Being subject to the effects of illegal drugs. Having the presence of an illegal drug or a drug metabolite in an individual's system, as determined by appropriate testing of a bodily specimen that is equal to or greater than the levels specified for the confirmation test. This shall be referred to as a "positive test."
- H. Chain of Custody. Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. These procedures shall require that an employer chain of custody form be used from time of collection to receipt by the laboratory and that upon receipt of the laboratory and appropriate laboratory chain of custody form(s) account for the sample or sample aliquots within the laboratory. Chain of custody forms shall, at a minimum, include an entry documenting date and purpose each time a specimen or aliquot is handled or transferred and identifying every individual in the chain of custody.
- I. Collection Site. A place designated by the employer where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.
- J. Confirmatory Test. A second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principal from that of the initial test in order to insure reliability and accuracy. (At this time, gas chromatography/mass spectrometry (gc/ms) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.)
- K. Initial Test (also known as Screening Test). Immunoassay screen to eliminate "negative" urine specimens from further consideration. Further defined at paragraph IV F(2)(c).
- L. Medical Review Officer. A licensed physician responsible

for receiving laboratory results generated by an agency's drug testing programs who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test result together with his or her medical history and any other relevant biomedical information.

- M. Record Book. A book in which identifying data on each specimen collected at a collection site are permanently recorded in the sequence of collection. The permanent record book shall be maintained by the collection site.

IV. PROCEDURES

A. Prohibited Activity

The following rules shall apply to all applicants and employees while on and off duty:

1. No employee shall illegally possess any controlled substance.
2. No employee shall ingest any controlled substance, unless as prescribed by a licensed medical practitioner.
3. Any employee who unintentionally ingests, or is made to ingest, a controlled substance shall immediately report the incident to his supervisor so that appropriate medical steps may be taken to ensure the employee's health and safety.
4. Discipline of employees for violation of this policy shall be in accordance with the Collective Bargaining Agreement, department policy, rules and regulations and state law.
5. No employee will be tested for a controlled substance unless a supervisor determines that there exists a reasonable suspicion that the employee to be tested is under the influence of drugs.

B. Applicant Drug Testing

1. Applicants for positions involving full law enforcement powers and authority will be required to take a drug test as a condition of employment during a pre-employment medical examination.
2. Applicants shall be disqualified from further

consideration for employment under the following circumstances:

- a. Refusal to submit to a required drug test; or
- b. A confirmed positive drug test indicating drug use prohibited by this policy.

C. Employee Drug Testing

Employees will be required to take drug tests as a condition of continued employment in order to ascertain prohibited drug use as provided below upon direction of a supervisor.

1. When a supervisor has reasonable suspicion to believe that an employee is using, consuming or under the influence of a non-prescribed controlled substance, and/or non-prescribed narcotic drug while on duty, the supervisor will document in writing the specific objective facts constituting reasonable suspicion of drug use. The employee will be offered an opportunity to give an explanation of his or her condition. An Association representative shall be present during such explanation unless the employee waives such representation. After the employee has had a chance to explain his condition, and if the supervisor still believes the employee to be under the influence of a controlled substance, then, by a written order, the employee may be ordered to submit to drug testing in accordance with the procedures set forth below.
2. Any employee, who in the carrying on of his or her police duties, ingests, either directly or indirectly, any drug or narcotic substance, is required to document, as soon as possible thereafter, such contact. Documentation should occur in writing explaining all circumstances, and the employee's supervisor should be notified as soon as possible. Drug tests will be administered and no disciplinary action will be taken if the tests are positive under the following conditions:
 - a. The employee was in physical danger if he or she did not ingest the drug or narcotic substance.
 - b. The ingestion of drug or narcotic was unintentional or unknown.

c. Nothing in this policy shall be construed as granting permission for employees serving as a police officer or narcotics agent to ingest any illegal drug, marijuana, narcotic substance, or controlled substance under any circumstance except as cited in 5(a).

3. Employees who seek voluntary assistance for substance abuse should not be disciplined for seeking such assistance. Requests from employees for such assistance should remain confidential and should not be revealed to other employees without the employee's consent.

E. Supervisory Training

All supervisory employees shall be provided with training in detecting possible symptoms of drug abuse.

F. Drug Testing Methodology

1. Specimen Collection Procedures.

a. Designation of Collection Site. The employer shall have one or more designated collection sites which have all the necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and shipping or transportation of urine specimens to a certified drug testing laboratory. There will be no collection site within the Village of Plover.

b. Collection Site Personnel. Collection site persons, supervisors and authorized personnel shall be such collection site employees so designated by the collecting site to assist in the collection and testing of specimens as necessary under the drug testing methodology.

c. Security. Procedures shall provide for the designated collection site to be secure. If a collection site facility is dedicated solely to urine collection, it shall be secure at all times. If a facility cannot be dedicated solely to drug testing, the portion of the facility used for testing shall be secured during drug testing.

d. Chain of Custody. Chain of custody standardized forms shall be properly executed

by authorized collection site personnel upon receipt of specimens. Handling and transportation of urine specimens from one authorized individual or place to another shall always be accomplished through chain of custody procedures. Every effort shall be made to minimize the number of persons handling specimens.

- e. Access to Authorized Personnel Only. No unauthorized personnel shall be permitted in any part of the designated collection site when urine specimens are collected or stored.
- f. Privacy. Procedures for collecting urine specimens shall allow individual privacy unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided.
- g. Integrity and Identity of Specimen. The employer and collection site shall take precautions to ensure that a urine specimen not be adulterated or diluted during the collection procedure and that information on the urine bottle in the record book can identify the individual from whom the specimen was collected. The following minimum precautions shall be taken to ensure that unadulterated specimens are obtained and correctly identified.
 - 1. To deter the dilution of specimens at the collection site, toilet bluing agents shall be placed in toilet tanks wherever possible, so the reservoir of water in the toilet bowl always remains blue.
 - 2. The collection site person shall ask the individual to remove any unnecessary outer garments such as a coat or jacket that might conceal items or substances that could be used to tamper with or adulterate the individual's urine specimen. The collection site person shall ensure that all personal belongings such as a purse or briefcase remain with the outer garments. The individual may retain his or her wallet.
 - 3. The individual shall be instructed to wash and dry his or her hands prior to

urination.

4. After washing hands, the individual 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.
5. The individual may provide his/her specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy.
6. The collection site person shall note any unusual behavior or appearance of the individual in the permanent record book.
7. Upon receiving the specimen from the individual, the collection site person shall determine that it contains at least 60 milliliters of urine. If there is less than 60 milliliters of urine in the container, additional urine shall be collected in a separate container to reach a total of 60 milliliters. (The temperature of the partial specimen in each separate container shall be measured in accordance with paragraph (f)(12) of this section, and the partial specimens shall be combined in one container.) The individual may be given a reasonable amount of liquid to drink for this purpose (e.g., a glass of water). If the individual fails for any reason to provide 60 milliliters of urine, the collection site person shall contact the appropriate authority to obtain guidance on the action to be taken.
8. After the specimen has been provided and submitted to the collection site person, the individual shall be allowed to wash his or her hands.
9. Immediately after the specimen is collected, the collection site person shall also inspect the specimen to determine its color and look for any signs of contaminants. Any unusual findings shall be noted in the permanent

record book.

10. All specimens suspected of being adulterated shall be forwarded to the laboratory for testing.
11. Wherever there is reason to believe that a particular individual may alter or substitute the specimen to be provided, a second specimen shall be obtained as soon as possible under the direct supervision of a same gender collection site person.
12. Both the individual being tested and the collection site person shall keep the specimen in view at all times prior to its being sealed and labeled. If the specimen is transferred to a second bottle, the collection site person shall request the individual 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.
13. The collection site person and the individual shall be present at the same time during procedures outlined in paragraphs (f)(14)-(f)(17) of this section.
14. The collection site person shall place securely on the bottle an identification label which contains the date, the individual's specimen number, and any other identifying information provided or required by the agency.
15. The individual shall initial the identification label on the specimen bottle for the purpose of certifying that it is the specimen collected from him or her.
16. The collection site person shall enter in the permanent record book all information identifying the specimen. The collection site person shall sign the permanent record book next to the identifying information.

17. The individual shall be asked to read and sign a statement in the permanent record book certifying that the specimen identified as having been collected from him or her is in fact that specimen he or she provided.
 18. The collection site person shall complete the chain of custody form.
 19. The urine specimen and chain of custody form are now ready for shipment. If the specimen is not immediately prepared for shipment, it shall be appropriately safeguarded during temporary storage.
 20. While any part of the above chain of custody procedures is being performed, it is essential that the urine specimen and custody documents be under the control of the involved collection site person. If the involved collection site person leaves his or her work station momentarily, the specimen and custody form shall be taken with him or her or shall be secured. After the collection site person returns to the work station, the custody process will continue. If the collection site person is leaving for an extended period of time, the specimen shall be packaged for mailing before he or she leaves the site.
- h. Collection Control. To the maximum extent possible, collection site personnel shall keep the individual'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. An approved chain of custody form 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 an approved chain of custody 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.
- i. Transportation to Laboratory. Collection site personnel shall arrange to ship the collected

specimens to the drug testing laboratory. The specimens shall be placed in containers designed to minimize the possibility of damage during shipment, for example, specimen boxes 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 supervisor shall sign and enter the date specimens were sealed in the containers for shipment. The collection site personnel shall ensure that the chain of custody documentation is attached to each container sealed for shipment to the drug testing laboratory.

2. Laboratory Analysis Procedures. The Employer shall use a laboratory that conforms with the National Institute on Drug Abuse (NIDA) Guidelines. The relevant provisions are as follows:

- a. Security and Chain of Custody.

1. Drug testing laboratories shall be secure at all times. They shall have in place sufficient security measures to control access to the premises and to ensure that no unauthorized personnel handle specimens or gain access to the laboratory processes or to areas where records are stored. Access to these stored areas shall be limited to specifically authorized individuals whose authorization is documented.
2. 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 in their possession and shall sign and complete chain of custody forms for those specimens or aliquots as they are received.

- b. 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 agency's chain of custody forms attached to the shipment shall be immediately reported to the agency 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 will normally 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.
- c. Short-Term Refrigerated Storage. Specimens that do not receive an initial test within 7 days of arrival at the laboratory, shall be placed in secure refrigeration units. Temperatures shall not exceed 6 degrees C. Emergency power equipment shall be available in case of prolonged confirmatory tests.
- d. Specimen Processing. Laboratory facilities for urine drug testing will normally process specimens by grouping them into batches. The number of specimens in each batch may vary significantly depending on the size of the laboratory and its workload. 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 analysis.
- e. Initial Test.

The initial test shall use an immunoassay which meets requirements of the Food and Drug Administration for commercial distribution which are in effect on the day the aliquot is obtained. The following initial cutoff levels shall be used when screening specimens to determine whether they are negative for these five drugs or classes of drugs.

	Initial Level (ng/ml)	Test
Marijuana metabolites.....	100	
Cocaine metabolites.....	300	
Opiate metabolites.....	300	
Phencyclidine.....	25	
Amphetamines.....	1,000	

f. Confirmatory Test.

All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques at the cutoff values listed in this paragraph for each drug. All confirmations shall be by quantitative analysis. Concentrations which exceed the linear region of the standard curve shall be documented in the laboratory record as "greater than highest standard curve value."

	Confirmatory level (ng/ml)	test
Marijuana metabolite.....	15 *	
Cocaine metabolite.....	150 **	
Opiates:		
Morphine.....	300 ***	
Codeine.....	300 ***	
Phencyclidine.....	25	
Amphetamines:		
Amphetamine.....	500	
Methamphetamine.....	500	

* Delta-9-tetrahydrocannabinol-9-carboxylic acid.

** Benzoylecgonine.

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

g. Reporting Results.

1. The laboratory shall report test results to the Employer's Medical Review Officer within an average of 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) it shall be reviewed and the test certified as an accurate report by the responsible individual. The report shall identify the drugs/metabolite tested for,

whether positive or negative and the cutoff for each, the specimen number assigned by the agency, and the drug testing laboratory specimen identification number. The results (positive and negative) for all specimens submitted at the same time to the laboratory shall be reported back to the Medical Review Officer at the same time.

2. The laboratory shall report as negative all specimens which are negative on the initial test or negative on the confirmatory test. Only specimens confirmed positive shall be reported positive for a specific drug.
- h. Long-Term Storage. Long-term frozen storage (-20 degrees C or less) ensures that positive urine specimens will be available for any necessary retest during administrative or disciplinary proceedings. Drug testing laboratories shall retain and place in properly secured long-term frozen storage for a minimum of 1 year all specimens confirmed positive. Within this 1 year period, an employer may request the laboratory 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 1 year, except that the laboratory shall be required to maintain any specimen under legal challenge for an indefinite period.
 - i. Subcontracting. Drug testing laboratories shall not subcontract and shall perform all work with their own personnel and equipment. The laboratory must be capable of performing testing for the five classes of drugs (marijuana, cocaine, opiates, phencyclidine, and amphetamines) using the initial immunoassay and confirmatory GC/MS methods specified in these Guidelines.
 - j. Laboratory Facilities.
 1. The Employer shall use only those laboratories certified by the Federal Department of Health and Human Services and that are in compliance with the applicable provisions of the Wisconsin licensure requirements. Facilities in Wisconsin that are currently federally certified are as follows:

1. Smith-Kline-Beecham Laboratory
506 East State Parkway
Schaumburg, Il 60173
2. Alpha Medical Laboratory, Inc.
405 Alderson Street
Schofield, WI 54476
3. Bay Shore Clinical Laboratories
4555 West Schroeder Drive
Brown Deer, WI 53223
4. C.B. Clini-Lab
140 East Ryan Road
Oak Creek, WI 53154
5. General Medical Laboratories
36 South Brooks Street
Madison, WI 53715
6. Mental Health Complex Laboratories
9453 Watertown Plank Road
Milwaukee, WI 53226

2. From among the facilities listed above, the Smith-Kline-Beecham Laboratory shall be the facility of choice, unless the other laboratories are comparable in reputation, accuracy, etc. Employer shall select the facility or facilities whose employees are represented for purposes of collective bargaining by a duly elected representative, as that term is defined in Section 111.02(11), Wis. Stats.
3. The list of facilities set forth above shall be modified as necessary to include newly certified laboratories and exclude those which are no longer certified.

V. Actions Taken

- A. Corrective action may be taken against an employee found to be under the influence or in unauthorized possession of chemicals in the workplace. The extent of discipline is dependent upon the following factors:
 1. Type of violation.
 2. Severity.
 3. Prior like violations.
 4. Prior service record.

5. Defiance, carelessness.

- B. Severity of violation may invoke dismissal at any point, regardless of the number of prior violations of a like nature.
- C. On any action, EAP counseling and follow-up may be applied.

VI. Refusal to Submit

Employees who refuse to submit to a required drug test under this policy shall be terminated from employment.

VII. Union Inspection

At any time, upon reasonable advance request, the PPPA, upon request, will have the right to designate a representative to inspect and observe any aspect of the drug testing program with the exception of individual test results. The PPPA may inspect individual test results if the release of this information is authorized by the employee(s) involved and the employee(s) provides the Village with a release, hold harmless and indemnification agreement to allow the release.