RESOLUTION NO. 2000.39

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, APPROVING THE MEMORANDUM OF UNDERSTANDING WITH THE TEMPE POLICE OFFICERS UNIT AND AUTHORIZING ITS EXECUTION.

WHEREAS, representatives of the City and the Tempe Police Officers Unit as established by Tempe Ordinance 99.39, have met and conferred pursuant to City Ordinance and Resolution; and

WHEREAS, the City Council is presented this day with a Memorandum of Understanding agreed to by the representatives of Tempe Police Officers Unit and the City Manager.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPE, that the Memorandum of Understanding presented this day is approved and the City Manager is authorized to sign said document as the authorized representative of the City of Tempe.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this 15th day of June, 2000.

Neil G Giuliano
MAYOR

ATTEST:

Karen Bickingham
City Clerk

APPROVED AS TO FORM:

C. Brad Woodford
City Attorney

CITY OF TEMPE
POLICE OFFICERS UNIT
MEMORANDUM OF UNDERSTANDING

July 1, 2000

Resolution 2000.39

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ARTICLE 1
PREAMBLE

This Memorandum of Understanding is made and entered into between the City of Tempe, Arizona, hereinafter referred to as "City," and the Tempe Officers Association, hereinafter referred to as "Association," under the authority of City of Tempe Ordinance No. 99.39.

WHEREAS the parties, through their designated representatives, met and conferred in good faith pursuant to Ordinance 99.39 in order to reach agreement concerning wages, hours, and working conditions of employees in the Police Unit.

NOW THEREFORE, it is agreed that this Memorandum of Understanding (hereinafter "Memorandum") shall be submitted to the City Council of the City of Tempe for its consideration.

ARTICLE 2
RIGHTS OF THE CITY AND POLICE DEPARTMENT

1. The Association recognizes that the City has statutory and Charter rights and obligations in contracting for matters relating to municipal operations. This Memorandum of Understanding (MOU) shall not limit that authority in any manner unless such limitation is expressly provided for by the specific terms of this MOU. There shall be no implied limitations on the rights of the City. In the event this MOU, City Rules and Regulations, and/or the Department General and Operations Orders are silent regarding a particular issue, the City Manager, or designees, shall retain the right to exercise judgment on such matter.

2. The Association pledges cooperation to the increasing of departmental efficiency and effectiveness. The Association agrees to cooperate with the efforts of the department to increase the diversity of the work force while maintaining the philosophy of community policing.

ARTICLE 3
RIGHTS OF THE ASSOCIATION

1. The Association, as the authorized representative, has the exclusive right to serve as the meet and confer representative of all employees in the Police Unit as described in Attachment "A."

2. There shall be no use of City paid time for Association-related activities except as expressly authorized by this article. Association representatives have the right to release time subject to the following guidelines:

A. The Association may designate up to ten (10) Association representatives, and shall notify the Chief of Police of such designations.

B. Association representatives will be released from duty with full pay to provide representation in a grievance hearing or disciplinary meeting with a unit member.

C. During the term of this Memorandum of Understanding, Association representatives will be released from duty with full pay when directed by the City to participate in a meeting with the City and/or City representatives. Association representatives will also be released from duty to participate in any committee or task force established by this Memorandum.

D. It is understood and agreed that meetings such as those mentioned above shall be scheduled in such a manner as to minimize disruptions to service and to minimize overtime.

3. During the term of this Agreement, the City will provide up to 520 hours to be utilized by the Association Officers as determined by the Association President for the purpose of conducting union/management related business. The time utilized must be authorized by the Chief or his/her designee. The Association President will be responsible for complying with the following guidelines:

- Time will not be authorized if it results in overtime for the Union member utilizing the time or if it creates an operational problem for the Department.
- The activity to be engaged in cannot create a conflict of interest between the Union and the City of Tempe.

- The time used must be considered in accordance with the overall mission and values of the City and must not negatively impact upon the relationship between the City and the Union.

4. The City shall furnish monthly to the Association a listing of unit members on City payroll deduction for Association dues. Included with the names shall be the unit members' current job assignments. Unit members who wish to have their addresses disclosed to the Association may so designate to the City, and this information will be included. The City shall solicit this information from unit members within thirty (30) days of the effective date of this Agreement. Unit members' authorization shall remain in force until revoked in writing. The Association agrees to use this list solely for purposes of communicating with unit members and will not share this information with other individuals or organizations.

5. A. The City agrees, in conformity with City of Tempe Ordinance No. 99.39, to deduct an amount specified in writing by the unit member and transmit such amount to the Association each pay period. Such deductions shall be made only when the unit member's earnings for such pay period are sufficient after other legally required deductions are made. The Association reserves the right to increase the amount withheld for all unit members pursuant to a generalized dues increase.

B. Unit members may initiate, discontinue or amend payroll deductions at any time.

6. The Association is authorized to use the City e-mail meeting folder for distribution to unit members of Association meetings and agendas in accordance with parameters established by City policy.

7. The Association may, at the discretion of the Chief, be allowed to talk to newly sworn police officers solely to explain the rights and benefits of employment under the MOU. This time may be allotted during the post academy time of said officers. In recognition of the Association as the official and exclusive employee organization, such time will not be provided to any other labor unions, trade groups, associations, organizations, corporations, or entities offering employment-related services or representation of any type.

8. During the term of this agreement, the City and the Association shall discuss joint training alternatives in the context of the Labor/Management Committee meetings.

9. Following the adoption of this Memorandum, members of the Association's negotiation team will have vacation time restored or be paid

for compensatory time used during their participation in negotiations for this Memorandum.

10. There shall be no implied rights beyond the specific terms of this Memorandum.

ARTICLE 4
RIGHTS OF UNIT MEMBERS

1. All unit members have the right to have the Association serve as their exclusive "meet and confer" representative for the purposes designated in Section 2-400 of Ordinance 99.39.

2. A. Unit member has the right to be represented by the Association or a regular employee in dealings with the City as specifically delineated in this memorandum.

B. If a unit member requests, representation will be allowed during investigatory interviews concerning allegations focused on the unit member, that if sustained, are likely to result in a suspension, disciplinary pay reduction, demotion, or termination.

C. For any unscheduled interview, the Association representative who is a City employee or a regular employee designated by the employee being investigated will respond within one hour and act as a silent witness during the interview. The Association representative or other employee representative will be allowed to meet with the unit member for up to 30 minutes prior to the beginning of the interview.

D. For any scheduled interview, the unit member has the right to bring an Association representative with them at the scheduled time and place to act as a silent witness. No waiting period applies to scheduled interviews.

E. In both unscheduled and scheduled interviews, the unit member does not have the right to stop the interview once it has begun to request the presence of an Association representative.

3. A. Unit members have the right to present their own grievance, in person or by an Association representative or other regular employee representative.

B. The Association maintains the right to be present during any meeting regarding an alleged breach of the Memorandum of Understanding as defined in Attachment A to the Resolution 2000.01. No person other than the Association may reach a written agreement with the City that interprets or alters the rights or benefits covered under this Memorandum.

4. A. Any unit member covered hereunder shall, on his/her request and by appointment, be permitted to examine his/her bureau, and department and/or Human Resources' personnel file.

B. A unit member may, at his/her discretion, attach rebuttal statements to any material contained in his/her bureau or personnel file that may be adverse in nature.

C. Supervisor's separate working files are not accessible to the unit member.

D. Citizens' complaints about a unit member that are exonerated or unfounded (as these terms are defined in Department General Order 3.208 B.) will not be used in future performance ratings or disciplinary actions.

5. A. Any unit member under investigation for a matter that may lead to a suspension, disciplinary pay reduction, demotion, or termination, and who is interviewed or interrogated, shall be given a written notice of investigation informing him/her of the nature of the investigation, the specific allegations (including known dates, times, and locations) and his/her status in the investigation. The unit member may mechanically record such interview/interrogation.

B. In the event a unit member does not record his/her interview/interrogation, he/she may request a copy of the investigator's tape(s), if the investigator records the interview/interrogation.

C. If any unit member who is the subject of an investigation is told not to speak to anyone regarding the investigation, this admonition does not apply to speaking either with legal counsel or with the designated Association representative. The designated Association representative will be identified in writing prior to the initiation of the investigation. The designated Association representative must not be associated with the matter under investigation. Association representatives must refrain from discussing the investigation with anyone except the unit member, his/her legal counsel and/or the Association President, all of whom are required to maintain the confidentiality of the investigation.

Unit members who are witnesses in an investigation have no right to a representative and/or legal counsel and are required to participate truthfully as a condition of employment.

D. Investigation involving unit members will be completed within a reasonable time, and when the investigation is completed, the unit member will be notified in writing of the findings.

6. The parties agree that the purpose of the language in this Article is to assist the Department in conducting a thorough investigation, not to in any way impede that investigation. The investigating officer may take appropriate action to control and continue the investigation. In the event that the department is not in complete compliance with the provisions of this article, this lack of compliance shall not in any way preclude the discipline of the unit member.

7. The time spent by the Association representatives who are City employees to participate in this process shall not result in any overtime payment, nor shall it be considered time worked for the purpose of computing overtime.

ARTICLE 5
PROVISO FOR EXISTING BENEFITS

For the purpose of expediting the Meet and Confer process leading to agreement on a Memorandum of Understanding for the July 2000 through June 2001 fiscal year, the parties agree to the following Proviso which shall expire on June 30, 2001, unless renewed in writing by subsequent action of the parties:

The parties agree and City Resolution 2000.01 confirms that in the event of a conflict between the City of Tempe Personnel Rules and Regulations, Department General and Operations Orders, attachments thereto, other Council approved programs, and this Memorandum of Understanding, the Memorandum of Understanding shall apply to the conflicting issue. If there is no conflict between the above referenced documents, the parties are governed by the Rules and Regulations, Department General and Operations Orders, attachments thereto and other Council approved programs. In the event all such formerly referenced documents are silent on a particular issue, the City Manager and/or designee shall retain the right to exercise judgment on all such matters.

If, during the term of this Agreement, the City anticipates a substantive change in the benefits not included in this MOU, but provided to unit members through the City of Tempe Personnel Rules and Regulations and attachments thereto, and other Council approved programs, the City shall meet with the Association, explain the reasons for the change, and discuss the potential impact of such changes. Because the parties acknowledge the changes that are occurring in the Master Officer Program, this proviso will not apply to that program.

The purpose of the provisions of this Article is to continue to provide current financial benefit levels, as that terminology is customarily defined, as part of the employees' overall compensation package, while simultaneously not restricting the authority of management in the administration and management of such benefits.

The referencing of the Personnel Rules and Regulations and other such policies and procedures herein does not make them an extension of this Memorandum of Understanding. Therefore, the process for an alleged breach of this MOU as contained in City Resolution 2001-01 shall not be applicable.

Health Insurance

The City will continue to contribute 100% of the cost of unit member health insurance premiums and 70% for spouse and dependent health insurance premiums. The parties acknowledge that co-payments, deductibles, and coverage options shall be in accordance with the group plan available for all City employees.

ARTICLE 6
WAGES

Effective July 3, 2000, unit members shall receive a three percent (3%) market adjustment consistent with that received by other City employees. In addition, those unit members eligible for a five percent (5%) merit increase shall receive this increase on July 3, 2000. See City of Tempe 2000-2001 Fiscal Year Pay Plan.

ARTICLE 7
HEALTH INSURANCE

1. An Employee's Health Insurance Evaluation Committee shall be established to examine issues related to the provisions and maintenance of health insurance for unit members and other City employees.

2. The Association shall be entitled to appoint a unit member to the Health Insurance Evaluation Committee related to the provision and maintenance of health insurance for unit members, including the reviewing of the Request for Proposal, the evaluation of the submitted proposals, and the recommendation of the preferred provider.

ARTICLE 8
SHIFT DIFFERENTIAL

1. Shift differential will be paid for regularly scheduled work shifts including any hours between 10:00 p.m. and 4:00 a.m. Shift differential is also paid for hours worked over the regular shift when work is a continuation of the regular shift. Unit members who are called back and perform work outside their regularly assigned shifts and are receiving premium pay do not receive shift pay.

2. When working a shift, which ends between the hours of 10:00 p.m. and 12:00 midnight, a unit member will be paid a shift differential of 45 cents an hour.

3. When working a shift, which includes work between the hours of 12:01 a.m. and 4:00 a.m., a unit member will be paid a shift differential of 60 cents an hour.

4. Shift differential is not paid to unit members on paid leave.

ARTICLE 9
SENIORITY

1. Once during the term of the Agreement upon request, the City shall provide the Association with a list of unit members indicating each unit member's date of graduation from the academy with the City as a sworn police officer and entry into his/her current classification title/rank.

2. Seniority shall be length of continuous service within a classification title/rank. If seniority within the classification title/rank is not determinative, then ranking on the Police Sergeant's examination and ranking upon graduation from the academy as a sworn police officer shall prevail. Continuous service shall not be broken by an approved leave of absence with or without pay.

3. Seniority shall not be required to be used as a factor unless there is such specific requirement in this Memorandum of Understanding, departmental orders, or the City Personnel Rules and Regulations.

4. Lateral entries shall have seniority assigned by the Police Department.

ARTICLE 10
DRUG TESTING

1. The City and the Association will meet and discuss or provide a period for submission of written comments on any proposed substantive changes to the City's current policies.

2. References to or results of any negative drug or alcohol test will not be placed in a unit member's personnel file and/or employment file. The results may be maintained as part of any investigation conducted in conjunction with the test.

ARTICLE 11
LABOR-MANAGEMENT COMMITTEE

1. There shall be a Labor-Management Committee consisting of three (3) representatives of the Association and three (3) representatives of the Department of the City. The purpose of the Committee is to facilitate improved Labor-Management relationships by providing an informal forum for the free exchange of views and discussions of mutual concerns and problems as distinguished from meeting and conferring.

2. The Committee shall meet at least quarterly at mutually scheduled times.

3. Any committee member/party who has an issue to discuss shall provide the other party with a proposed agenda at least five (5) days in advance of the meeting.

4. Representatives of the Association on the Committee who are unit members shall not lose regular pay for meetings conducted during his/her duty time. Participation in such meetings shall not result in overtime, nor shall the time spent in such meetings be considered time worked for the purpose of computing overtime. If necessary, the department may allow unit members to change their schedule to attend meetings during duty hours.

5. In non-urgent situations, as determined by the Police Chief and/or his/her designee, proposed changes to the Police Department General and Operations Orders will be distributed to the Association in the same manner as generally provided to management staff, and may be discussed during Labor-Management meetings.

ATTACHMENT A
Police Unit

Police officers, all classifications up to and including sergeants, but excluding all other classes and positions of lieutenants, division commanders, assistant police chiefs, police chief, and all non-sworn Police Department employees.

IN WITNESS WHEREOF, the parties have set their hands this 16th day of June, 2000.

CITY OF TEMPE, a municipality

City Manager

Michael Brown
Police Officers Unit Representative

APPROVED AS TO FORM:

C. Brad Woodford
City Attorney