

City of Detroit

INTERDEPARTMENTAL COMMUNICATION

TO: MAYOR COLEMAN A. YOUNG

IN REPLY PLEASE REFER TO

FROM: Alexander N. Luvall, 2nd Deputy Chief/Liaison

DATE: April 25, 1988

RE: DRUG TESTING PROPOSAL

As you are aware, several court and administrative actions to halt City efforts to establish a Drug Testing Policy, hinge on both constitutional and mandatory bargaining challenges.

To obviate these challenges, and establish a comprehensive department-wide Drug Testing Policy, is reasonably obtainable. In fact, the City would gain more authority in both management and disciplinary areas of administration.

We believe drug testing to be a management right, permissive pursuant to state law, and constitutional under federal law. Currently, courts are split across the country on the federal question and Michigan courts lean in favor of mandatory negotiations on change in condition situations.

So strategically, we should side-step the legal and administrative challenges, which are time consuming and risky, and obtain a department-wide agreement; including executives, for drug testing. This could be accomplished by entering an agreement with both unions, preserving the respective rights of both parties, to provide drug testing for all sworn members; including civilian executives. This 'agreement' would be sealed in legal fashion and prohibit either party from exercising perceived or real constitutional or collective bargaining rights.

As the current challenges are limited to practices in the Narcotics Division only, a department-wide agreement would accomplish more for the City and have greater impact.

As I mentioned Mr. Brian Ahern, who currently represents the City on an Act 312 FSLA issue, may be the person to hammer out the 'agreement' and obtain dismissal in the other actions. As directed, I have spoken with him and he feels confident that an 'agreement' on the attached 'Drug Program' could be reached (see Draft Drug Program).

In the meantime, the Law Department is handling the various actions filed.

Please advise.

C O N F I D E N T I A L

DRAFT - DRUG PROGRAM

I. STATEMENT OF PURPOSE

Use of illicit drugs by law enforcement officers represents a repudiation of their oath and sworn duty, brings the Department into disrepute, severely undermines public confidence, and is a clear and present danger to the public safety.

II. NEW PERSONNEL

Student police officers shall submit to two (2) unannounced drug tests before graduating from the Police Academy.

III. FOR CAUSE DRUG TESTING

A police officer may be ordered by competent authority to submit to a drug test upon reasonable suspicion of use or possession of illicit controlled substances. No police officer shall disobey such order. Any person who does disobey shall be suspended without pay and discharged.

IV. SPECIALIZED ASSIGNMENTS

Police officers assigned to the Narcotics Division, Vice Section, Gang Squad, and Internal Controls Bureau, shall participate in the 'Specialized Assignment' random testing program.

Such persons shall be selected on a random basis to undergo a drug test. The frequency of the selection shall be designed so that all assigned persons are tested within a one (1) year period. Persons not selected by random drawing shall be tested within 90 days of the end of the first year and every year thereafter. No person shall be subject to more than one (1) test per year under this article.

The procedure for random selection shall be:

V. DEPARTMENT WIDE TESTING

Police officers assigned to other departmental entities shall participate in the Department wide random testing program.

No more than ____% of the number of police officers on July 1, of the involved Fiscal Year shall be selected on a random basis to undergo a drug test. No person shall be subject to more than one (1) test per year under this article.

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Police Dept

The procedure for random selection shall be;

Department executives (Sworn & Civilian) shall be included in this program.

VI. AUTOMATIC DISCHARGE

Any person testing positive for illicit controlled substances in any drug test shall be suspended without pay and dismissed from the Department. An umpire shall be without power or authority to mitigate the penalty of any individual who is properly required to take a drug test and whose test is positive. An umpire shall also be without authority to overturn the discharge of a person dismissed for disobeying an order to take a drug test.

VII. VOLUNTARY DISCLOSURE

Notwithstanding the above provision, a member may be afforded one (1) and only one (1) opportunity to enroll in a stipulated drug rehabilitation program, provided strict compliance with the following conditions:

- (a) The member comes forward on a voluntary basis to the Commanding Officer of the Office of the Chief of Police and seeks voluntary treatment for drug usage.
- (b) There exists no complaint, allegation, investigation, or other independent knowledge of illicit use of drugs or other violations of law or department regulations, at the time of the disclosure or within 14 days after the disclosure.
- (c) An investigation discloses no involvement in serious criminal violations other than violation of The controlled substance act. If all of the conditions are fully and completely satisfied, The Department, Association, and member shall enter into a signed "Last Chance Agreement." Under the terms of the agreement the individual must participate in the designated treatment and follow-up program. He will be thereafter subjected to random testing for a period of ____ years.

Any failure to fully participate in any aspects of the treatment program shall be grounds for declaring the last chance agreement in breach and shall empower the Department to immediately suspend without pay and discharge the member. Any positive drug test shall likewise result in immediate suspension without pay and discharge.

An umpire's jurisdiction shall be limited to declaring whether the provisions of the last Chance Agreement were or were not breached.

VIII. TESTING PROCEDURES

The tests and procedures for testing shall be as follows:

- 1) Secure sampling
- 2) Four-step procedure
EMIT - Drug-Screen
HP/TL (High Pressure/Thin Layer)
GCMS Smith-Kline
GCMS (Roche Labs)

IX. SIDE AGREEMENT

The six (6) officers from the Narcotics Division shall be reinstated to duty with back pay and charges shall be dropped and the persons re-assigned to their previous precinct assignment. They shall be subjected to one (1) unannounced drug test within the next twelve months and shall be subject to discharge if they refuse to take the test or test positive for any illicit controlled substance.

The ULPs and lawsuit shall be dismissed with prejudice and without costs.

Every member of the Department will sign a acknowledgement of drug policy.

Possibility that the union will not concede to unreviewable automatic discharge on marijuana cases leaving either party to take appropriate action in defending before arbitrator.