

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between the City of Portland (“City”) and the Portland Police Commanding Officers Association (“PPCOA” or “Union”).

RECITALS

A. The bargaining unit represented by PPCOA currently consists of all Lieutenants, Captains and Commanders (collectively, “commanding officers”) in the Portland Police Bureau, with the exception of confidential and supervisory employees as defined in ORS 243.650(6) and (23). The parties’ collective bargaining agreement (“Contract”) specifically provides that ranking commanding officers assigned to the Personnel and Internal Affairs Divisions are confidential employees and that Deputy Chiefs and Assistant Chiefs are supervisory employees and that, therefore, employees in each of these positions are excluded from representation.

B. On May 1, 2013, the City filed a unit clarification petition with the Employment Relations Board (“ERB” or the “Board”) pursuant to OAR 115-025-0005(2) seeking to clarify that all Lieutenants, Captains and Commanders in the PPCOA bargaining unit are exempt from representation on the basis that the employees in these positions are “supervisory employees” as defined in ORS 243.650(23) and, therefore, do not meet the definition of “public employee” as provided in ORS 243.650(19).

C. This matter came before Administrative Law Judge Wendy Greenwald for hearing on September 10, 11, 12 and 13, 2013, and the record closed on November 29, 2013. The Board elected to exercise its authority to consider and rule on the City’s petition directly rather than have Judge Greenwald first issue a recommended order.

D. On April 28, 2014, the Board issued its Rulings, Conclusions of Law, Findings of Fact and Order (“Board Order”), concluding that all Captains and Commanders serving as

reporting unit commanders are supervisory employees as defined in the PECBA and, therefore, are excluded from the bargaining unit and that all Lieutenants and all Captains not serving as reporting unit managers are not supervisory employees as defined in PECBA and, therefore, are not excluded from the bargaining unit.

E. On May 12, 2014, each party filed a Petition for Reconsideration of the Board Order.

F. The parties have conferred and desire to settle this clarification of the PPCOA bargaining unit on the terms and conditions stated in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and for good and adequate consideration, the parties agree as follows:

AGREEMENT

1. Bargaining Unit: All positions and premium pay assignments above the rank of lieutenant (at the time of this Agreement, this includes Captains and Commanders), regardless of assignment, are excluded from the PPCOA bargaining unit. All Lieutenants, regardless of assignment, with the exception of confidential employees as defined in Article 1 – Recognition of the PPCOA Contract, are included in the PPCOA bargaining unit.
2. Contract Language: The parties shall make all appropriate language changes to the Contract to reflect this clarification, including taking out all references to Captains, Commanders, Deputy Chiefs and Assistant Chiefs.
3. Salary Structure: The current salary structure for Captains and Commanders as provided in the Contract will transfer to the non-represented positions of Captain and Commander when the positions are created by City ordinance.

The current base rate salary structure for Captains and Commanders as of the date of this Agreement is:

<u>JOB TITLE</u>	<u>ENTRY RATE</u>	<u>AFTER 1 YEAR</u>	<u>AFTER 2 YEARS</u>
Police Captain	\$60.01	\$62.73	\$65.25
Police Commander	\$67.44	\$70.14	

Captains and Commanders who complete 25 years of service with the Portland Police Bureau between July 1, 2013 and June 30, 2015 will receive a 2% longevity premium on their Portland Police Bureau anniversary date. Any Captain or Commander who completed at least 25 years of service with the Portland Police Bureau prior to July 1, 2013, will not lose any longevity pay that has become part of his or her salary. Specifically, Commander Modica will retain the longevity pay that has become part of his salary and the following Captains and Commanders will be eligible to receive longevity pay on the following dates if they complete the required years of service:

Commander Day: April 26, 2015

Commander Leloff: March 15, 2015

Captain Famous: March 22, 2015

Captain Uehara: June 14, 2015

4. Fitness Premium: The current fitness premium paid to Captains and Commanders will end June 30, 2015.

5. 4.1% Pay Differential for Captain or Commander Serving as an Assistant Chief: The current 4.1% pay differential for a Captain or Commander serving as an Assistant Chief, as provided in Article 2 of the Contract, will carry over as part of the transfer of the current salary

structure for Captains and Commanders to the non-represented positions of Captain and Commander.

6. Vacation Cap/Rollover: Captains and Commanders will be permitted to accumulate up to a maximum of three (3) years' vacation earnings as of the end of the first pay period in January of any year. At that time, any unused vacation credits over the cap will be forfeited.

7. Management Leave: Captains and Commanders are not eligible for management leave.

8. Compensatory Time: Current Captains and Commanders will be permitted to use any currently accrued compensatory ("comp") time by December 31, 2015. Any comp time not used by then will be forfeited. There will be no further accrual of comp time for current Captains and Commanders and new Captains will not be eligible for comp time.

9. Sick Leave Payout/Contribution to a VEBA: Upon retirement, Captains and Commanders will be allowed to cash out and contribute accumulated but unused sick leave to a qualifying and approved Voluntary Employee Benefit Association (VEBA) on the following terms:

A Captain or Commander who has accumulated sick leave at the time of his or her retirement shall receive credit in an amount equal to thirty percent (30%) of the first four hundred and eighty (480) hours of such accumulated sick leave, fifty percent (50%) of the second four hundred and eighty (480) hours of such accumulated sick leave, and seventy percent (70%) of all accumulated sick leave in excess of nine hundred and sixty (960) hours up to a maximum of two thousand and eighty (2,080) hours. The cash value of such credit will be calculated on the basis of the Captain's or Commander's pay rate at the time of retirement.

Except as provided in paragraph 10 of this Agreement, upon retirement a Captain or Commander shall receive a lump sum payment for his or her sick leave credit.

10. VEBA Contributions: The City shall allow Captains and Commanders to participate in a VEBA, a Section 457 plan or any other form of non-qualified deferred compensation plan. For every Captain or Commander who is covered under the FPD&R retirement system under Chapter 5 of the Portland City Charter, the City shall, upon that Captain's or Commander's retirement from the City, contribute to the Portland Police Association ("PPA") VEBA trust, or other qualifying and approved VEBA trust, to the credit of the Captain or Commander one hundred percent (100%) of the unused sick leave which otherwise would be paid to the Captain or Commander under paragraph 9 of this Agreement to be cashed out at the time of the Captain's or Commander's retirement.

11. Layoff/Bumping: In the event of a layoff for any reason, Captains or Commanders will be laid off in the inverse order of their seniority as a civil service Captain. Any Captain who is laid off who has advanced to his or her classification from a Lieutenant position in which he or she held a permanent appointment shall have the right to bump back into a Lieutenant position. Commander is a premium pay assignment and as such an employee cannot obtain civil service status as a Commander. A Commander can be removed from their assignment at any time for any reason and if removed, unless for disciplinary reasons warranting termination or demotion, reverts to a Captain position. Once reverted, any layoff would be handled in accordance with this section.

12. Legal Fees for Criminal Charges: Except as provided below, the City will reimburse any Captain or Commander for all reasonable, usual and customary legal fees charged by an attorney as a direct result of criminal charges or a criminal investigation arising out of the Captain's or Commander's involvement in actions in the performance of his or her duty as a police officer.

The reimbursement shall not be made if:

1. The Captain or Commander is convicted by verdict or plea or pleads no contest to criminal charges arising out of the subject incident; or
2. The Police Bureau sustains disciplinary charges on the basis of the Captain's or Commander's actions that formed the basis for the possible criminal liability and, if the discipline is appealed, the Bureau's sustaining of the charges is upheld in any disciplinary appeals process.

To receive reimbursement for legal fees, the Captain or Commander must use an attorney approved by the City Attorney and the amount of the defense fees must be approved by the City Attorney.

13. Contributions to PPCOA: If any Captain or Commander wishes to make a voluntary contribution to PPCOA, the contribution cannot be made by payroll deduction.

14. Benefits and Applicable Policies and Personnel Rules: Any benefits provided to Captains and Commanders under the current PPCOA Contract and any other benefits, policies or personnel rules that pertain to Captains and Commanders that are not specifically addressed in this Agreement will default to and be governed by the City's Human Resources Administrative Rules for FLSA exempt, non-represented management employees or by applicable Police Bureau directives. Upon ratification and approval of this Agreement by the Association and the City, existing personnel rules will be modified as necessary to incorporate the provisions of paragraphs 6 (Vacation Cap/Rollover), 7 (Management Leave) and 8 (Layoff/Bumping) of this Agreement. The specific benefits provided in this Agreement shall remain in effect for Mayor Hales' term in office but the parties acknowledge and agree that the parties cannot bind future mayors or future City Councils.

15. Transition Time: The transition of Captains and Commanders out of the PPCOA bargaining unit to non-represented positions and the implementation of the terms of this Agreement will be effective upon ratification and approval by all parties.
16. Unit Clarification Case: The City and PPCOA shall withdraw their respective Petitions for Reconsideration filed in ERB Case No. UC-017-13. Each party waives any and all rights to file a petition for reconsideration of or to appeal the Board Order entered in Case No. UC-017-13.
17. No Prejudice to Further Unit Clarification: This Agreement shall not preclude either party from seeking further clarification of positions related to the PPCOA bargaining unit.
18. Non- Precedent Setting: This Agreement is entered into for the purpose of resolving and settling the subject unit clarification and shall not be precedent setting.
19. Collective Bargaining Agreement: Except as specifically provided in this Agreement, all terms and conditions of the parties' collective bargaining agreement shall remain in full force and effect.
20. Fees, Costs and Expenses: Each party shall bear its own attorney fees, representation fees, costs and expenses incurred in connection with the unit clarification proceeding and all related matters.
21. Entire Agreement: This Agreement constitutes the entire agreement between the parties concerning the subject hereof and supersedes any and all prior or contemporaneous discussions, negotiations or agreements regarding the subject matter of this Agreement, whether verbal or in writing, which are not expressly stated herein. This Agreement may not be amended or modified except by a writing signed by duly authorized representatives of both parties.


For the City of Portland:

 10/21/14

Charlie Hales, Mayor

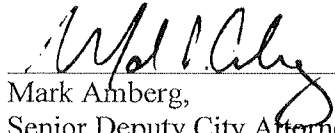
 10/20/14

Michael Reese, Police Chief

 10/20/14

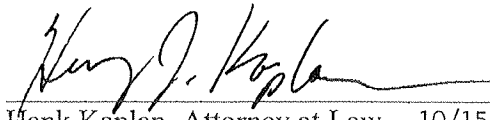
Anna Kanwit, Director, Human Resources

Approved as to Form:


Mark Amberg,
Senior Deputy City Attorney

For the Portland Police Commanding Officers Association:


Bryan Pisman, President 10/15/14


Hank Kaplan, Attorney at Law 10/15/14
Of Attorneys for PPCOA

ORDINANCE No.

*Authorize police officers at the rank of Captain or above who have previously been members of the Portland Police Association or Portland Police Commanding Officers Association bargaining units to contribute, upon retirement, unused sick leave into a Voluntary Employee Beneficiary Association trust (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. The Internal Revenue Code, Section 501(c)(9), allows for the creation of a voluntary employee beneficiary association (VEBA) which is an employee sponsored, tax-exempt health and welfare trust.
2. The Portland Police Association VEBA Trust offers and administers a VEBA trust plan (the "PPA VEBA Plan") for Portland Police Bureau employees represented by the PPA and the PPCOA.
3. The Portland Police Captains Association (Captains Association) is a benevolent association composed of active sworn police officers at the rank of Captain or above employed by the Portland Police Bureau and who have previously been members of the PPA or PPCOA bargaining units. The Association is not a collective bargaining unit, as defined by the Public Employees Collective Bargaining Act (PECBA), nor is the Association recognized by the City as a collective bargaining unit.
4. On or about October 22, 2014, the City and PPCOA entered into an agreement (Settlement Agreement) to settle a unit clarification proceeding filed by the City with the Employment Relations Board (ERB) to clarify whether commanding officers in the Portland Police Bureau are supervisors and, therefore, should be excluded from the PPCOA bargaining unit. A copy of the Settlement Agreement is attached to this ordinance as Exhibit "A" and is incorporated herein by reference.
5. Under the terms of the Settlement Agreement, all Captains and Commanders, regardless of assignment, are excluded from the PPCOA bargaining unit. As part of the Settlement Agreement, the City agreed to permit Captains and Commanders, upon retirement from the City, to cash out and contribute accumulated but unused sick leave to a qualifying VEBA trust plan in accordance with the formula provided in the Settlement Agreement.

6. The City authorizes the Captains Association to establish or participate in a VEBA trust plan for the City's non-represented sworn PPB employees who are members of the Captains Association.
7. Any such defined contribution VEBA trust plan established or participated in by the Captains Association will be administered in accordance with the plan documents provided by the VEBA plan.
8. The City authorizes active sworn police officers at the rank of Captain or above employed by the Portland Police Bureau who previously have been members of the PPA or PPCOA bargaining units, upon retirement from the City, to cash out and contribute accumulated but unused sick leave to the PPA VEBA Plan, or other qualifying and approved VEBA trust plan, in accordance with the terms of and pursuant to the formula provided in the Settlement Agreement.

NOW, THEREFORE, the Council directs:

- a. Effective from and after the date of passage of this ordinance, the City authorizes active sworn police officers at the rank of Captain or above employed by the Portland Police Bureau who have previously been members of the PPA or PPCOA bargaining units and who are now members of the Captains Association, to participate in the Portland Police Association VEBA Plan as presently constituted or hereafter amended using the PPA VEBA Plan administrator as the plan administrator for all members of the Captains Association, or to participate in another qualifying and approved VEBA trust plan.
- b. The plan or plans shall be for the benefit of the members of the Captains Association and, upon a member's retirement from the City, the City shall, in accordance with the terms of the Settlement Agreement, contribute to the PPA VEBA Plan, or other qualifying and approved VEBA plan, one hundred percent (100%) of that member's accumulated but unused sick leave in accordance with the formula provided in the Settlement Agreement.
- c. If at any time during the operation of the Plan or Plans it is determined that (1) deposits made on a pre-tax basis or (2) that plan earnings are not tax-exempt or (3) payments from the Plan or Plans are not tax exempt or if participation in the Plan or Plans or operation of the Plan or Plans is in violation of any federal or state law or regulation, then in that event the City Council will immediately repeal or modify the Plan or Plans.
- d. The Captains Association agrees that it will indemnify, defend and hold the City harmless from all suits, actions, proceedings, compliance orders, citations and claims or regulatory sanctions against the City or person acting on behalf of the City, whether for damages, compensation, reinstatement, fees, penalties or any combination of liabilities arising from either action or inaction on the part of the City in fulfilling its obligations under this ordinance.

Section 2. The Council declares that an emergency exists because delay would unnecessarily delay the ability of certain employees, upon retirement, to enjoy the advantages created by participation in the PPA VEBA Plan; therefore, this ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council:

Mary Hull Caballero
Auditor of the City of Portland

Mayor Charlie Hales
Prepared by: Mark Amberg
Date Prepared: April 8, 2015

By:
Deputy

*Authorize police officers at the rank of Captain or above who have previously been members of the Portland Police Association or Portland Police Commanding Officers Association bargaining units to contribute, upon retirement, unused sick leave into a Voluntary Employee Beneficiary Association trust (Ordinance)

INTRODUCED BY
 Commissioner/Auditor:
Mayor Charlie Hales

COMMISSIONER APPROVAL

Mayor—Finance and Administration - Hales

Position 1/Utilities - Fritz

Position 2/Works - Fish

Position 3/Affairs - Saltzman

Position 4/Safety - Novick

BUREAU APPROVAL

Bureau: Office of the City Attorney
 Bureau Head: Tracy Reeve

Prepared by: Mark Amberg
 Date Prepared: April 8, 2015

Financial Impact & Public
 Involvement Statement
 Completed Amends Budget

Portland Policy Document
 If "Yes" requires City Policy paragraph stated
 in document.
 Yes No

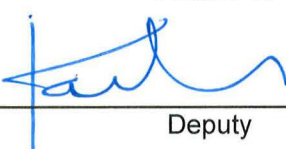
City Auditor Office Approval:
 required for Code Ordinances

City Attorney Approval: Mark
 Amberg, Chief Deputy City Attorney
 required for contract, code, easement,
 franchise, comp plan, charter

Council Meeting Date: April 15,
 2015

CLERK USE: DATE FILED APR 10 2015

Mary Hull Caballero
 Auditor of the City of Portland

By:  _____
 Deputy

ACTION TAKEN:

AGENDA

TIME CERTAIN
Start time: _____

Total amount of time needed: _____
 (for presentation, testimony and discussion)

CONSENT Pulled

REGULAR
Total amount of time needed: _____
 (for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz		
2. Fish	2. Fish		
3. Saltzman	3. Saltzman		
4. Novick	4. Novick		
Hales	Hales		