

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
Orlando Division**

<p>FRANCIS R. CARTER, JR.,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>THE CITY OF MELBOURNE, a Florida Municipal Corporation, DONALD L. CAREY, Former Chief of Police for the City of Melbourne, and JACK M. SCHLUCKEBIER, City Manager for the city of Melbourne,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No.</p> <p style="font-size: 1.2em;">11-cv-824-olc-22DAB</p> <p style="text-align: right;">2011 MAY 18 AM 11:42 US DISTRICT COURT MIDDLE DISTRICT OF FL ORLANDO, FLORIDA</p>
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**FILED**

**VERIFIED COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff, Francis R. "Frank" Carter ("Carter"), by and through his undersigned counsel, sues the City of Melbourne, Donald L. Carey ("Carey") and Jack M. Schluckebier ("Schluckebier"), and states:

**INTRODUCTION**

1. This is an action by Plaintiff against the City of Melbourne, Florida; the Chief of Police (Carey); and City Manager (Schluckebier) for violation of Plaintiff's substantive rights guaranteed by the First, Fourth and Fourteenth Amendments to the United States Constitution.

2. Plaintiff seeks relief under 42 U.S.C. § 1983 for violation of his rights, privileges and immunities guaranteed under the U.S. Constitution. Plaintiff further seeks relief under 42 U.S.C. § 1985 for conspiracy to violate his civil rights.

3. In pertinent part, 42 U.S.C. § 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom or usage, or any state or territory of the District of Columbia, subjects or causes to be subjected, a citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and Laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

4. For 22 years, Plaintiff was a Melbourne Police Officer who put his life on the line daily in the fight against drug dealers and other criminals in South Melbourne, one of the most dangerous areas of the city, to make a difference in the lives of its citizens.

5. When the City of Melbourne sought to hire a new police chief in 2002, Schluckebier appointed an independent board for the purpose of reviewing and recommending candidates. When one of the candidates selected by this board dropped out of the running, Schluckebier selected Carey as a replacement.

6. Carey was selected despite his history of poor job performance – a past littered with votes of “no confidence” from prior police departments he led. Performance history, however, did not matter to Schluckebier; what mattered was the close relationship that he had previously developed with Carey. Schluckebier picked Carey from a list of more highly qualified candidates.

7. Plaintiff, like many of the Melbourne police officers, was deeply troubled by this selection. Carey had a history of destroying morale and causing political infighting in police departments he had managed. Consequently, Plaintiff decided to exercise his right to challenge Carey’s selection by speaking-out against the hiring, while rallying his fellow officers to do the same.

8. Thus began a seven-year battle of wills between Plaintiff and Carey that would eventually lead to the intentional destruction of Plaintiff's career by Carey, with the help of Schluckebier.

9. In 2009, Plaintiff ran for, and won, the position of Chairman of the Fraternal Order of Police ("FOP"), and led the charge to have the FOP as the designated Melbourne police union. Plaintiff won this position based on a stated goal of challenging the policies and practices of Carey.

10. Determined to protect the officers he represented and the overall morale of the department, Plaintiff took a strong stance against Carey, gathered support against him, and as the new union Chairman, requested a meeting with Carey to discuss departmental concerns. Plaintiff let Carey know that he had the support of the officers and demanded that Carey acknowledge and address their concerns. This proved to be the greatest mistake of Frank Carter's career.

11. The sequence of events that followed played out in an almost unfathomable manner. Carey and Schluckebier, mercilessly wielding their governmental power, set out to destroy Carter's professional career. They drummed up sham charges against him in an effort to suspend him. They rained internal affairs investigations down on him for the most routine matters. They wasted taxpayer dollars to launch one of the most comprehensive investigations in the history of Melbourne against Carter, and they fabricated FELONY charges against him for writing traffic tickets. These felony charges carried 34 years in prison. They had him arrested. They threw him in jail alongside the criminals he had arrested. And then, when that was not quite enough to completely destroy him, they went to

the media and called him a racist. In press releases that garnered national attention, Defendants accused Plaintiff of “targeting people of color” and being a “bad cop” and “a rogue cop”.

12. This final act was particularly damaging to the life and reputation of a man who had spent over two decades working in an area that is over 90% African-American, was a four-time “Humanitarian of the Year” award recipient, and who had dedicated his life and career to making the impoverished areas of South Melbourne a safer place to live.

13. Defendants Schluckebier and Carey accomplished exactly what they set out to do: they destroyed the life and reputation of Officer Frank Carter. They used the powers of the State to visit upon him unimaginable financial and reputational ruin. They punished him in shocking ways for exercising his basic constitutional rights of free speech and association: they slandered him; they intentionally inflicted severe emotional distress upon him; they falsely arrested and imprisoned him; they took his job, career, compensation, and hard-earned retirement away; and they robbed him of his dignity. For all of this they are liable.

#### **JURISDICTION AND VENUE**

14. These actions arise under, but are not limited to, the First, Fourth and Fourteenth Amendments to the Constitution of the United States.

15. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1343, and 42 U.S.C. § 1983. This Court has supplemental jurisdiction over Plaintiff’s state law claims under 28 U.S.C. § 1367 because these claims are so related to Plaintiff’s claims under federal law that they form part of the same case or controversy.

16. Venue is appropriate in this District because the acts or omissions described herein accrued in Brevard County, Florida, and because Defendants reside in Brevard County, Florida.

17. All conditions precedent to bringing this action have occurred, have been performed, or have been waived.

18. Plaintiff has retained the law firm of Morgan & Morgan, P.A., agreeing to pay its reasonable attorneys' fees and costs.

#### PARTIES

19. Plaintiff, Frank Carter, is an individual residing at 160 Ruby Street, Rockledge, Florida 32955, in Brevard County, Florida.

20. Defendant, City of Melbourne, is a Municipal Corporation organized and existing under the laws of the State of Florida. It is responsible for the policies, procedures, and practices implemented through its various agencies, agents, departments and employees and for any injury caused thereby. It was also the public employer of Defendants Carey and Schluckebier at all times relevant to this action.

21. Upon information and belief, Defendant, Donald C. Carey, is an individual residing in Osceola County, Florida.

22. At all times relevant to this action, Carey served as Chief of Police for the Melbourne Police Department.

23. Upon information and belief, Defendant, Jack M. Schluckebier, is an individual residing in Brevard County, Florida.

24. At all times relevant to this action, Defendant Schluckebier served as City Manager for the City of Melbourne.

25. At all times relevant to this action, Defendants were acting under color of law within the meaning of 42 U.S.C. § 1983.

26. Plaintiff sues all public employees in their official and individual capacities.

### **FACTUAL ALLEGATIONS**

27. On or about December 10, 2002, the Melbourne City Council appointed Schluckebier as City Manager.

28. Shortly thereafter, Schluckebier was tasked with selecting the new Chief of Police for the City of Melbourne.

29. Carey was not one of original candidates considered for the job. However, when one candidate dropped out, Defendant Schluckebier selected Carey to be a finalist.

30. The other finalists included acting Melbourne Police Chief Jim Reynolds; Deerfield Beach Police Chief George Brennan; North Miami Beach Police Chief Linda Loizzo; and Peter Marcus.

31. Before becoming a candidate in Melbourne, Carey served as chief of police for fourteen years in Blacksburg, Virginia; four years in Independence, Missouri; and five years in Omaha, Nebraska.

32. Carey received votes of "no confidence" while serving as Chief of Police in Blacksburg and Independence. The Omaha Police Department was in the process of passing a vote of "no confidence" when Carey resigned. A no confidence vote is a means to communicate to the community and city management that the police union perceives the

police chief as incompetent, disinterested and/or uncaring, so that he or she can be removed from office.

33. Plaintiff discovered Carey's checkered history after researching each candidate. Plaintiff then informed the PBA of Carey's history for the purpose of gaining support for other candidates.

34. The PBA was the Melbourne police officers' union at this time.

35. On or about May 12, 2003, Schluckebier selected Carey as Chief of Police for the Melbourne Police Department despite strong disapproval from the police officers.

36. From 2003 to 2009, Plaintiff continued to voice his concern regarding Carey's abilities to manage the Melbourne Police Department.

37. On or about May 2009, Plaintiff decided to run for Chairman of the union on the promise of challenging Carey's policies and practices and changing the Melbourne union to the FOP.

38. On or about November 2, 2009, after receiving a complaint from Plaintiff's disgruntled ex-girlfriend, Karen Gregory ("Gregory"), Internal Affairs Sergeant Danny Lynch ("Lynch") began investigating Plaintiff for using a free apartment as an unauthorized gratuity.

39. As the person behind the decision to investigate Plaintiff, Carey took an unusually active role in the investigation, including personally interviewing Gregory.

40. It was ultimately determined by the FDLE that Gregory was not a credible witness.

41. On November 19, 2009, Plaintiff was elected Chairman of the union. The FOP also replaced the PBA as Melbourne police officers' union at this time.

42. Threatened by Plaintiff's new position and influence, the City of Melbourne, Carey, Schluckebier, and others began targeting Plaintiff in retaliation for his public disapproval of Carey's performance as Chief.

43. On November 25, 2009, Plaintiff received a memo from Carey informing him that an internal investigation was being conducted in Case No. IA-2009-52 for obtaining a free apartment as an unauthorized gratuity. A copy of this memo is attached as Plaintiff's **Exhibit A**.

44. On or about November 25, 2009, the Florida Department of Law Enforcement executed and served a search warrant on Plaintiff's phone. Plaintiff was simultaneously served with an administrative suspension, a pre-requisite to terminating Plaintiff.

45. On or about December 4, 2009, Carey instructed Lynch to download surveillance videos from Plaintiff's police vehicle in order to assist with the apartment investigation.

46. At that time, Carey told Lynch to find five separate acts of misconduct for the purpose of establishing cause to terminate Plaintiff's employment.

47. Following Carey's order, Lynch and others spent well over 1000 hours and hundreds of thousands of taxpayer dollars watching Plaintiff's surveillance videos and conducting the investigation.

48. On January 4, 2010, Plaintiff received a memo from Carey informing him that an internal investigation was being conducted in Case No. IA-2009-59 for "a pattern of



conduct of racial profiling.” A copy of this memo is attached to and incorporated herein as **Plaintiff’s Exhibit B**.

49. On January 25, 2010, Plaintiff received a memo from Carey informing him that there may be probable cause to believe that Plaintiff engaged in official misconduct and records falsification. Consequently, at Carey’s urging, Carter’s case was turned over to the Florida Department of Law Enforcement (“FDLE”). A copy of this memo is incorporated herein as **Plaintiff’s Exhibit C**.

50. On January 28, 2010, Plaintiff was arrested and charged with five counts of official misconduct and several counts of falsification of records. At that time, Carey and Schluckebier issued or approved a press release announcing Carter’s arrest to the public, claiming that the charges were “emanating from a number of traffic stops...made on people of color.” A copy of the news release announcing this information to the public is attached as **Plaintiff’s Exhibit D**.

51. Upon information and belief, FDLE did not investigate Plaintiff’s case prior to the arrest. Instead, FDLE made the arrest based solely on the information provided by the Melbourne Police Department.

52. At the time of his arrest, Plaintiff was a 21-year veteran of the Melbourne Police Department with an impeccable record.

53. Plaintiff’s honors include, but are not limited to:

- a. Four-time winner of the Melbourne police’s Humanitarian of the Year Award for his work with charities and for helping residents;
- b. Four certificates of commendation;

- c. Combat Cross Medal in 2001 for coming under gunfire while attempting to arrest a dangerous suspect;
- d. Chief's Achievement Award in 2002; and
- e. Fourteen recognitions for exemplary work, including helping save the life of a woman by administering CPR and his superior dedication during hurricanes Frances and Jeanne.

54. On February 1, 2010, Carey informed Plaintiff of his intent to place Plaintiff on unpaid administrative leave effective February 5, 2010. A copy of this letter is attached as Plaintiff's **Exhibit E**.

55. On February 3, 2010, Plaintiff received a memo from Carey informing him that an internal investigation was being conducted regarding an alleged unlawful search and seizure. A copy of this memo is attached as Plaintiff's **Exhibit F**.

56. On February 11, 2010, Plaintiff's attorney received a letter from Carey directing Plaintiff to report to the Internal Affairs Unit on February 16, 2010 for an interview regarding the apartment incident. A copy of this letter is attached as Plaintiff's **Exhibit G**.

57. Plaintiff had already made plans to be out of the country between February 16 and February 24, 2010. Pursuant to departmental policy, Carter notified his immediate supervisors that he would be out of the country. Carter's attorney also sent letters to the City of Melbourne's counsel, Lynch and Carey informing them that Carter would be out of the country during these dates. This trip provided an ideal opportunity for Carey to use his office to harm Plaintiff.

58. On February 11, 2010, the FOP issued a press release stating that it was actively seeking the formal resignation of Carey. A copy of this press release is attached as Plaintiff's **Exhibit H**.

59. On February 11, 2010, in an obvious move to railroad Plaintiff while he was away, Lynch issued a memo refusing to reschedule the interview despite Plaintiff's absence. A copy of this letter is attached as Plaintiff's **Exhibit I**.

60. Plaintiff's attorney thereafter sent Carey a formal request asking to reschedule the interview until sometime after February 25, 2010. A copy of this letter is attached as Plaintiff's **Exhibit J**.

61. On February 16, 2010, Carey sent a letter to Plaintiff's attorney denying his formal request to reschedule the interview. A copy of this letter is attached as Plaintiff's **Exhibit K**.

62. On February 26, 2010, Plaintiff was put on administrative leave due to pending criminal charges. Plaintiff was also issued an 80-hour suspension without pay for failure to appear for the statement before Internal Affairs and because Carey asserted that Plaintiff violated Department policy by using the apartment for personal gain while on duty. A copy of this letter is attached as Plaintiff's **Exhibit L**.

63. On or about March 2010, the FOP passed a vote of "no confidence" against Carey.

64. On or about April 9, 2010; Carey, who was then on medical leave, announced that he would not return to his job. Instead, he planned to use his paid and unpaid leave during his absence until he was eligible to collect his full retirement, which he now enjoys.

65. On or about April 9, 2010, Steve Mimbs ("Mimbs") was appointed Interim Chief of the Melbourne Police Department.

66. On May 27, 2010, Plaintiff received a letter from Angela Hundt, the benefits coordinator for the City of Melbourne, informing him that his benefits would be terminated effective May 31, 2010. These benefits included Plaintiff's medical insurance and pension. A copy of this letter is attached as Plaintiff's **Exhibit M**.

67. A hearing regarding Plaintiff's prospective termination was scheduled on July 6, 2010. On the advice of counsel and due to pending criminal charges against him, Plaintiff did not attend this hearing.

68. On August 19, 2010, Mimbs informed Plaintiff that he had been terminated from the Melbourne Police Department for: (1) issuing citations to citizens for infractions they did not commit; (2) failure to properly use his in-car video system; (3) trespassing persons from areas where they were not legally eligible to be trespassed; (4) failing to follow oral and written direct orders given by supervisors regarding his attendance during the internal investigation; and (5) obtaining a free apartment as an unauthorized gratuity. A copy of this letter is attached as Plaintiff's **Exhibit N**.

69. On or about August 26, 2010, Plaintiff began the grievance process pursuant to the terms of Collective Bargaining Agreement. A copy of the Collective Bargaining Agreement is attached as Plaintiff's **Exhibit O**.

70. Subsequently, the City of Melbourne informed Plaintiff that Plaintiff is not entitled to arbitration since the FOP is no longer the Melbourne Police union, and also that

the arbitration has been abandoned due to inactivity despite its knowledge that Plaintiff's attorney was facing disciplinary proceedings with the Florida Bar.

71. On or about March 18, 2011, the state attorney dropped all charges against Plaintiff.

72. In May 2011, The City of Melbourne, through its Attorney Paul Gougelman, confirmed that, in spite of the fact that all charges had been dropped against Plaintiff in all cases, the City would not offer Plaintiff his job back. In a final act of damage to Plaintiff's reputation, Attorney Gougelman stated to the media that Plaintiff was seeking a "huge bag of gold" from the City as a result of the horrific damage that the City had caused to the life and career of Plaintiff. A copy of the article quoting Mr. Gougelman is attached as Plaintiff's **Exhibit P.**

73. At all times relevant to this matter, Plaintiff also worked as an independent marketing representative for Melaleuca. Melaleuca is a wellness company that provides different nutritional, cosmetic, and skin care products.

#### **COUNT I**

#### **Violation of Plaintiff's First Amendment Rights Under 42 U.S.C. § 1983**

74. This is an action by Plaintiff against Defendants for depriving Plaintiff of his First Amendment rights.

75. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 73 above.

76. At all times relevant to this action, Plaintiff was a public employee.

77. At all times relevant to this action, the City of Melbourne, Carey, and Schluckebier were state actors within the meaning of 42 U.S.C. § 1983.

78. Plaintiff exercised his First Amendment rights by:

- a. Speaking out and gathering support against Carey's initial appointment;
- b. Speaking out and gathering support of his fellow officers against the policies and practices of Carey;
- c. Rallying support against Carey and the PBA in favor of a new union for the Melbourne police, the FOP; and
- d. As Chairman of the FOP, challenging the policies, practices and performance of Carey and attempting to procure a vote of "no confidence" against Carey.

79. Plaintiff engaged in protected political speech when he publically announced his disapproval of Carey's appointment.

80. At all times relevant to this action, Plaintiff's speech involved a matter of public concern.

81. Defendants harassed, disciplined, arrested, and ultimately terminated Plaintiff in retaliation for his union association and speech in violation of the First Amendment to the United States Constitution.

82. Defendants' actions are not privileged.

83. The harassment, discipline, arrest, and termination of Plaintiff had a chilling effect on speech.

84. Defendants created a general fear of retaliation by Defendants and their agents in Plaintiff, residents of Brevard County, and other Melbourne police officers.

85. As a direct and proximate result of Defendants' actions, Plaintiff has been harmed.

86. Defendants are jointly and severally liable for all damages sustained as a result of the violation of Plaintiff's First Amendment rights.

**WHEREFORE**, Plaintiff demands a judgment against Defendants for compensatory damages, court costs, and reasonable attorneys' fees as authorized by 42 U.S.C. § 1988, and for an award of punitive or exemplary damages in an amount sufficient to deter the conduct complained of herein.

#### **COUNT II**

#### **False Arrest and False Imprisonment Under 42 U.S.C. § 1983**

87. This is an action by Plaintiff against Defendants for false arrest and false imprisonment under 42 U.S.C. § 1983.

88. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 73 above.

89. On January 28, 2010, Plaintiff was arrested and thereby physically restrained or confined against his will.

90. Plaintiff's person was detained wrongfully, illegally, without reason or probable cause and in violation of the Fourth Amendment.

91. Plaintiff spent time in custody and jail as a result of this false arrest.

92. Defendants instigated or directly procured his arrest despite a lack of probable cause as a means of punishing Plaintiff for speaking out against and opposing the policies and practices of Carey.

93. As a direct and proximate cause of Defendants actions, Plaintiff has been harmed.

94. In committing the acts described herein, Defendants exhibited a complete disregard for Plaintiff's rights and person and said acts were malicious and intentional in nature.

**WHEREFORE**, Plaintiff demands a judgment against Defendants for compensatory damages, court costs, and reasonable attorneys' fees as authorized by 42 U.S.C. § 1988, and for an award of punitive or exemplary damages in an amount sufficient to deter the conduct complained of herein.

**COUNT III**  
**Violation of Florida Statute § 448.045**

95. This is an action by Plaintiff against Defendants for wrongful combinations against workers in violation of Florida Statute § 448.045.

96. This Court has supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. § 1367 because these claims are so related to Plaintiff's claims under federal law that they form part of the same case or controversy.

97. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 73 above.



98. At all times relevant to this action, Plaintiff was employed as a police officer for the City of Melbourne.

99. In addition to his annual salary, Plaintiff had or would have become entitled to the following employment benefits:

- a. Promotion;
- b. Insurance coverage;
- c. Retirement benefits, including the cost-of-living adjustment and any "drop monies" to which he is, or would have been entitled; and
- d. Vacation benefits.

100. At all relevant times, the Melbourne Police Department had in force a Collective Bargaining Agreement ("Agreement"). This Agreement provided that just cause is a prerequisite to the termination of employment.

101. At all relevant times to this action, Defendants agreed, conspired, or combined together for the purpose of causing the discharge of Plaintiff from the Melbourne police department in violation of § 448.045, *Fla. Stat.* (2011) and breach of such agreement.

102. On August 19, 2010, Defendants, without just cause, discharged Plaintiff from employment.

103. By reason of the wrongful discharge, Plaintiff has been harmed.

**WHEREFORE**, Plaintiff demands a judgment against Defendants for compensatory damages, court costs, and reasonable attorneys' fees.

**COUNT IV**  
**Malicious Prosecution Under 42 U.S.C. § 1983**

104. This is an action by Plaintiff against Defendants for malicious prosecution under 42 U.S.C. § 1983.

105. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 73 above.

106. On January 28, 2010, Plaintiff was arrested without probable cause in violation of his Fourth Amendment right to be free from unreasonable seizures.

107. Plaintiff was wrongfully charged with five counts of official misconduct and several counts of falsification of records “emanating from a number of traffic stops...made on people of color.”

108. On or about March 18, 2011, the criminal proceedings were terminated in favor of Plaintiff.

109. The initiation of these criminal proceedings was instigated or directly caused by Defendants who coerced individuals within the FDLE and the State Attorney’s office to bring charges against Plaintiff based on false and fabricated evidence.

110. At all times relevant to this action, Defendants acted maliciously.

111. As a direct and proximate result of Defendants actions, Plaintiff has been harmed.

**WHEREFORE**, Plaintiff demands a judgment against Defendants for compensatory damages, court costs, and reasonable attorneys’ fees as authorized by 42 U.S.C. § 1988, and for an award of punitive or exemplary damages in an amount sufficient to deter the conduct complained of herein.

**COUNT V**  
**Intentional Infliction of Emotional Distress**

112. This is an action by Plaintiff against Defendants for intentional infliction of emotional distress. This Court has supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. § 1367 because these claims are so related to Plaintiff's claims under federal law that they form part of the same case or controversy

113. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 73 above.

114. Defendants, Carey and Schluckebier, engaged in a ruthless campaign designed to destroy Plaintiff's reputation and career.

115. Defendants intended to cause Plaintiff to suffer severe emotional distress as a means of punishing Plaintiff for publically opposing Carey. In the alternative, Defendants' conduct was reckless.

116. Defendants' conduct was extreme and outrageous.

117. As a direct and proximate result of Defendants' actions, Plaintiff has suffered severe emotional distress.

**WHEREFORE**, Plaintiff demands a judgment against Defendants for compensatory damages, court costs, and reasonable attorneys' fees, and for an award of punitive or exemplary damages in an amount sufficient to deter the conduct complained of herein.

**COUNT VI**  
**Libel, Slander Per Se and Defamation Under 42 U.S.C. § 1983**

118. This is an action by Plaintiff against Defendants for defamation under 42 U.S.C. § 1983.

119. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 73 above.

120. At all times relevant to this matter, Plaintiff was a public employee.

121. At all times relevant to this action, the City of Melbourne, Carey, and Schluckebier were state actors within the meaning of 42 U.S.C. § 1983.

122. Under color of law, Defendants made numerous false and defamatory statements, both oral and written, concerning Plaintiff.

123. These statements were not privileged and were made public to third parties. The third parties include Florida Today, WESH 2 News, News 13, Hometown News, Fox News, and many others in the local and national media.

124. The slanderous statements include, without limitation:

- a. A January 28, 2010 press release issued by Defendants stating that Plaintiff was arrested for making questionable traffic stops on “people of color,” essentially labeling Plaintiff as a racist to the national media;
- b. That Plaintiff is a “bad cop,” a direct attack on the character and career of Plaintiff;
- c. That Plaintiff is a “rogue cop,” a direct attack on the integrity and character of Plaintiff;
- d. That Plaintiff dishonestly used a free apartment as an unauthorized gratuity, a direct attack on the integrity and character of Plaintiff;

125. Defendants’ statements were intentional and malicious and were made for the purpose of damaging Plaintiff. In the alternative, they were negligent and/or reckless.

126. The above statements are per se defamatory and/or are susceptible to a defamatory meaning in that they subject Plaintiff to hatred, distrust, ridicule, contempt and disgrace.

127. The above statements constitute slander per se as they relate to the integrity and character of Plaintiff and relate to a matter incompatible with Plaintiff's business, trade, profession or office.

128. The above statements and their meanings are false, and Defendants, at the time of making the statements, knew they were false or had serious doubts as to their truth.

129. The above statements are assertions of fact, not opinions.

130. At all relevant times to this action, Plaintiff had a recognizable and protectable property interest in his continued employment with the Melbourne Police Department.

131. As a direct and proximate result of the above slanderous statements, Plaintiff has sustained direct or indirect pecuniary loss including, but not limited to, lost earnings and loss of ability to earn money both as a police officer and as a sales representative for Melaleuca. Additionally, Plaintiff has sustained humiliation, severe emotional distress, and injury to his reputation. All of the above damages are continuing and permanent in nature.

**WHEREFORE**, Plaintiff demands a judgment against Defendants for compensatory damages, court costs, and reasonable attorneys' fees.

**COUNT VII**  
**Conspiracy to Commit All Counts Under 42 U.S.C. § 1985**

132. This is an action by Plaintiff against Defendants for conspiracy in violation of 42 U.S.C. § 1985.

133. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 73 above.

134. At all times relevant to this action, Plaintiff was a public employee.

135. At all times relevant to this action, the City of Melbourne, Carey, and Schluckebier were state actors within the meaning of 42 U.S.C. § 1983.

136. Defendants are associated through employment and public office.

137. Each of these actors conspired and/or agreed to a common, unlawful objective.

138. That common, unlawful objective was to violate Plaintiff's civil rights and to ruin Plaintiff's reputation and career.

139. Each actor acted in furtherance of the common objective as outlined more fully herein.

140. As a direct and proximate result of Defendants' agreement, conspiracy, and overt acts, Plaintiff was damaged.

**WHEREFORE**, Plaintiff demands a judgment against Defendants for compensatory damages, court costs, and reasonable attorneys' fees as authorized by 42 U.S.C. § 1988, and for an award of punitive or exemplary damages in an amount sufficient to deter the conduct complained of herein.

**JURY DEMAND**

Plaintiff, Frank Carter, demands a jury trial on all issues so triable.

**DATED THIS 18th DAY OF MAY, 2011.**

**MORGAN & MORGAN, P.A.**  
**Business Trial Group**  
*Attorneys for Plaintiff*

By: 

**James S. Byrd, Jr. Esq.**  
Florida Bar No.: 539104

**Tucker H. Byrd, Esq.**  
Florida Bar No.: 381632

**Frederick L. Bateman, Jr., Esq.**  
Florida Bar No.: 398901

**Damien H. Prosser, Esq.**  
Florida Bar No.: 17455

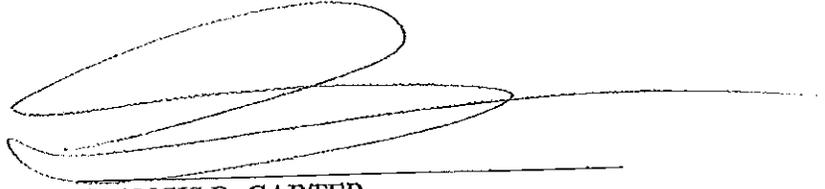
Morgan & Morgan, P.A.  
20 N. Orange Avenue, 10<sup>th</sup> Floor  
Orlando, Florida 32801

Telephone: (407) 420-1414

Facsimile: (407) 418-2048

**VERIFICATION**

I hereby verify that the allegations in this complaint are true and correct to the best of my knowledge and belief.



FRANCIS R. CARTER

STATE OF FLORIDA  
COUNTY OF BREVARD

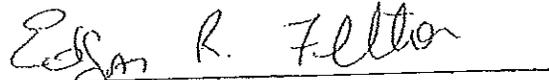
BEFORE ME, the undersigned authority, on this day, Francis R. Carter personally appeared, who being first duly sworn, deposes and says that he has read the foregoing verified complaint and knows the contents of same, and to the best of his knowledge and belief, the same are true and correct.

SWORN TO AND SUBSCRIBED before me on this 17 day of May, 2011.

(Seal)



EDGAR R. FELTON  
NOTARY PUBLIC  
STATE OF FLORIDA  
Comm# DD0925982  
Expires 12/12/2013

  
\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:



# EXHIBIT A



# Melbourne POLICE

## INTERNAL AFFAIRS INVESTIGATION EMPLOYEE NOTIFICATION

To: Officer Frank Carter  
From: *DC* Donald L. Carey  
Chief of Police  
Date: November 25, 2009  
Subject: Internal Investigation IA-2009-52

An internal investigation is being conducted regarding information that you have obtained an apartment, at no cost, through your position as a police officer and that this apartment is utilized by you while on duty and without supervisory approval.

Sergeant Daniel Lynch will be conducting the internal investigation for the Department as a result of this incident. If you are aware of any pertinent witnesses concerning this incident, please inform Sergeant Lynch immediately.

The investigation will be conducted in accordance with the procedures outlined in Department General Orders. Your rights and responsibilities as an employee in this investigation are outlined in Department General Order 52.2, the "Police Officers Bill of Rights", Florida State Statutes 112.532, and the provisions of the current collective bargaining contract.

You are reminded that Department General Orders requires all personnel to treat information concerning complaints and investigations with the utmost confidentiality. Therefore, you are not to have contact with the complainant or witnesses about the allegation that is the focus of this investigation.



Don Carey, Chief of Police  
650 North Apollo Boulevard, Melbourne, Florida 32935  
Internet: [www.melbourneflorida.org/police](http://www.melbourneflorida.org/police) • E-mail: [dcarey@melbourneflorida.org](mailto:dcarey@melbourneflorida.org)  
(321) 409-3314 • Fax: (321) 242-7863  
*An Equal Opportunity Employer*

# EXHIBIT B



# Melbourne POLICE

COPY

COPY

## INTERNAL AFFAIRS INVESTIGATION EMPLOYEE NOTIFICATION

To: Officer Frank Carter  
From: DC Donald L. Carey  
Chief of Police  
Date: January 4, 2010  
Subject: Internal Investigation IA-2009-059

An internal investigation is being conducted regarding information of a pattern of conduct of racial profiling.

Sergeant Daniel Lynch will be conducting the internal investigation for the Department as a result of this incident. If you are aware of any pertinent witnesses concerning this incident, please inform Sergeant Lynch immediately.

The investigation will be conducted in accordance with the procedures outlined in Department General Orders. Your rights and responsibilities as an employee in this investigation are outlined in Department General Order 52.2, the "Police Officers Bill of Rights", Florida State Statutes 112.532, and the provisions of the current collective bargaining contract.

You are reminded that Department General Orders requires all personnel to treat information concerning complaints and investigations with the utmost confidentiality. Therefore, you are not to have contact with the complainant or witnesses about the allegation that is the focus of this investigation.



Don Carey, Chief of Police  
650 North Apollo Boulevard, Melbourne, Florida 32935  
Internet: [www.melbourneflorida.org/police](http://www.melbourneflorida.org/police) • E-mail: [dcarey@melbourneflorida.org](mailto:dcarey@melbourneflorida.org)  
(321) 409-3314 • Fax: (321) 242-7863  
An Equal Opportunity Employer

# EXHIBIT C

MEMORANDUM

APPROVED

DC 1/25/10

Received  
Melbourne, FL

JAN 25 2010

Chief of Police

DATE: January 25, 2010  
TO: Chief of Police Don Carey  
FROM: Sergeant Daniel Lynch   
Internal Affairs Unit  
SUBJECT: Investigation of Ofc. Frank Carter/ IA-09-059

---

During Internal Affairs Investigation 2009-059 I have possibly developed probable cause against Officer Frank Carter for Official Misconduct (F.S.S. 838.022), and Falsifying Official Records (F.S.S 839.13).

It is therefore my recommendation this case be turned over to the Florida Department of Law Enforcement. I also request this administrative investigation be tolled until the Florida Department of Law Enforcement has a chance to review the findings.

If you have any questions about this memorandum please let me know and I will make myself available to you.

# EXHIBIT D

Melbourne Police Department  
News Release

Type of Incident: Arrest of Police Officer

Prepared By: Commander Ron Bell

Date & Time: January 28, 2010/4:00 PM

Phone Number: 321-409-3300

Case Number: N/A

Location: Brevard County Jail

Details of Incident: As a result of a two month FDLE investigation into a complaint made by a citizen to the Melbourne Police Department, Officer Frank Carter was arrested and turned himself in to the FLDE agents at 3:45 p.m. today. The original complaint made to the Melbourne Police Department had potential criminal misconduct and the FDLE was asked to conduct the criminal investigation which culminated today in the arrest of the officer. He is charged with five counts of Official Misconduct (3<sup>rd</sup> degree felony) and several counts of Falsification of Records (1<sup>st</sup> degree misdemeanor).

The criminal charges emanate from a number of traffic stops and subsequent citations that Officer Carter made on people of color. Officer Carter is free on \$2,000 bond and remains relieved of duty from the Melbourne Police Department.

Officer Carter is a 21 year veteran of the Melbourne Police Department and was assigned to Uniform Patrol.

END



# EXHIBIT E



# Melbourne POLICE

February 1, 2010

Officer Frank Carter  
160 Ruby Street  
Rockledge, Florida 32955.

Dear Officer Carter:

Based on the attached Arrest Warrant served by the Florida Department of Law Enforcement, this is notice of my intent to place you on unpaid administrative leave, effective at the close of business on Friday, February 5, 2010 and until further notice.

In the event you or your representative wish to discuss your status, I have set a meeting for 11:00 a.m., February 5, 2010 in my office.

Sincerely,

Donald L. Carey  
Chief of Police

DLC:mb

c: Carol Burns, Interim Personnel Manager  
Andrew Hament, City Labor Counsel



Don Carey, Chief of Police  
650 North Apollo Boulevard, Melbourne, Florida 32935  
Internet: [www.melbourneflorida.org/police](http://www.melbourneflorida.org/police) • E-mail: [dcarey@melbourneflorida.org](mailto:dcarey@melbourneflorida.org)  
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# EXHIBIT F



# Melbourne POLICE

ORIGINAL

## INTERNAL AFFAIRS INVESTIGATION EMPLOYEE NOTIFICATION

To: Officer Frank Carter  
From: *DC* Donald L. Carey  
Chief of Police  
Date: February 3, 2010  
Subject: Internal Investigation CC-10-004

An internal investigation is being conducted regarding a complaint made by Clifton Randall Jr. alleging that you conducted an unlawful stop, searched his vehicle where US currency was taken and that you issued him unwarranted traffic citations on June 1, 2009.

Sergeant Daniel Lynch will be conducting the internal investigation for the Department as a result of this incident. If you are aware of any pertinent witnesses concerning this incident, please inform Sergeant Lynch immediately.

The investigation will be conducted in accordance with the procedures outlined in Department General Orders. Your rights and responsibilities as an employee in this investigation are outlined in Department General Order, the "Police Officers Bill of Rights", Florida State Statutes 112.532, and the provisions of the current collective bargaining contract.

You are reminded that Department General Orders requires all personnel to treat information concerning complaints and investigations with the utmost confidentiality. Therefore, you are not to have contact with the complainant or witnesses about the allegation that is the focus of this investigation.



Don Carey, Chief of Police  
650 North Apollo Boulevard, Melbourne, Florida 32935  
Internet: [www.melbourneflorida.org/police](http://www.melbourneflorida.org/police) • E-mail: [dcarey@melbourneflorida.org](mailto:dcarey@melbourneflorida.org)  
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# EXHIBIT G



# Melbourne POLICE

To: Officer Frank Carter

From:  Donald L. Carey  
Chief of Police

Date: February 10, 2010

Subject: Internal Investigation IA-2009-052

You are hereby directed to report to the Internal Affairs Unit to be interviewed by Internal Affairs Sergeant Daniel Lynch concerning internal investigation IA-2009-052. The interview will be conducted at 650 North Apollo Boulevard on Tuesday, February 16<sup>th</sup>, 2010 at 10:00 a.m.

If you wish to review the evidence regarding this investigation, in accordance with Florida Statute 112.532, please make arrangements with Sergeant Lynch. He will be available to assist in your review of the evidence at your convenience through Monday, February 15<sup>th</sup> at the close of business.

DLC:mb

c: Sergeant Daniel Lynch



Don Carey, Chief of Police  
650 North Apollo Boulevard, Melbourne, Florida 32935  
Internet: [www.melbourneflorida.org/police](http://www.melbourneflorida.org/police) • E-mail: [dcarey@melbourneflorida.org](mailto:dcarey@melbourneflorida.org)  
(321) 409-3314 • Fax: (321) 242-7863  
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# EXHIBIT H



JOHN D. FRY  
General Counsel

# Fraternal Order of Police

## FLORIDA STATE LODGE

### Office of General Counsel



February 11, 2010

To all members of the Print and Visual Media:

General Counsel John Fry, in conjunction with Associate General Counsel, Alan Diamond, will be conducting a Press Conference on Friday, February 12, 2010 at 1430 Hrs. The Press Conference will be held at the Fraternal Order of Police Office in Melbourne, 1049 Julia Drive, Melbourne, FL. 32935.

The purpose of the Press Conference is to discuss the Gross Misconduct of Chief Donald Carey. The Fraternal Order of Police believes Chief Carey has committed a minimum of two Felonies in his official capacity as the Chief. Additionally, Chief Carey's conduct violated Departmental Policy, City Policy and is reprehensible.

The Chief's pattern of systematic harassment has been going on for years, and examples abound. The Officer who wrote the Chief's wife a ticket has been transferred, an Officer who spoke with Council Members has been transferred, and Chief Carey advises Officers that speaking or acting outside of his views can be "very harmful to their career."

Members of the FOP attempted to file a formal Complaint against Chief Carey; however, after a meeting, the City of Melbourne, through the Assistant City Attorney refused our complaint. The Police Officers of Melbourne need your assistance. Municipalities are representational government. Council Members, new media, and residents help eliminate this scourge from the City by compelling The City of Melbourne to address their Chief's conduct.

The FOP believes this conduct is disgusting, inappropriate, and criminal in nature. A Chief of Police should be held to the same standards as his personnel. FDLB has been contacted and is conducting a criminal investigation into Chief Carey. If a regular citizen did this the mere basis of our allegations would result in criminal charges. Chief Carey's use, as late as two weeks ago, of his position to intimidate staff in the Case of Officer Carter is plain and simply Criminal. Carter has been branded a racist, since redacted, and now witnesses are being threatened by the Chief. Chief Carey's continued presence literally places the wolf in the position of guarding the Chicken Coup.

The FOP will be formally asking for the suspension of Chief Carey for multiple Departmental violations, violations of the City of Melbourne's policies, and pending criminal allegations of Official Misconduct and Witness Tampering.

Additional information and copies of an audio statement specifically outlining Chief Carey's intimidation during a criminal investigation will be provided to all who attend.

*John D. Fry*

721 NE 3<sup>rd</sup> Avenue • Fort Lauderdale, Florida 33304  
954.463.3777 Phone • 954.463.3792 Fax



# EXHIBIT I

**COPY**

**MEMORANDUM**

**DATE:** February 11, 2010  
**TO:** Officer Frank Carter #181  
**FROM:** Sergeant Daniel Lynch   
Internal Affairs Unit  
**SUBJECT:** Interview on February 16, 2010

---

It has come to my attention you may be trying to leave the country on a vacation. Though you have not made a formal request to cancel this interview I have to advise you I cannot approve any attempt to reschedule this interview for a vacation. The interview should only take an hour or two of your time and you will be compensated.

This investigation needs to be completed in a timely manner. As you know, I am under time constraints per Florida State Statute.

If you have any questions regarding this information please let me know and I will make myself available to you.

**CC:**  
Chief Donald Carey  
City Labor Attorney Andy Hamont

# EXHIBIT J

**THE  
TORPY  
LAW OFFICES**

February 15, 2010

City of Melbourne, Florida  
Attn: Don Carey, Chief  
650 N. Apollo Blvd  
Melbourne, FL 32935

Ref: Officer Frank Carter I.A. Interview

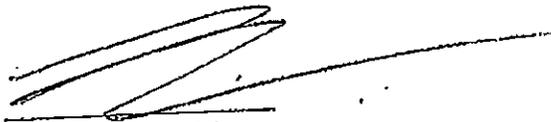
Dear Chief Carey,

Pursuant to my conversation with Paul Gougelman on Friday 12, 2010 I am requesting cancellation of the meeting scheduled for Tuesday 16, 2010 between my client and Sgt. Dan Lynch. I received the documents I have requested since February 2, 2010 this morning and will not have sufficient time to review them to prepare for this meeting. Additionally, my client has a pre-scheduled trip which starts tomorrow and he will return on the 24<sup>th</sup> of February.

As I will need several days to review the material provided to insure it complies with my request and prepare based on its content. I request the meeting be rescheduled for February 25<sup>th</sup> or later.

Please contact me immediately you have any question.

Sincerely,



Richard E. Torpy, P.A.  
The Torpy Law Offices

cc. Paul Gougelman, City Attorney  
Sgt. Dan Lynch

# EXHIBIT K



# Melbourne POLICE

February 16, 2010

Richard E. Torpy, Esquire  
The Torpy Law Offices  
400 East Strawbridge Avenue  
Melbourne, Florida 32901

Dear Mr. Torpy:

I have received your written request to cancel the scheduled interview in Internal Affairs with Officer Frank Carter on February 16, 2010. The interview is being held in accordance with FSS 112.533 (2) (a) in the investigation IA 2009-052. You indicated in your letter of February 15, 2010, that Officer Carter would be on a pre-planned vacation and unavailable until after February 24, 2010. You further indicated that you did not receive the public records information until it was too late to review it in preparation for the interview.

Sergeant Dan Lynch was in contact with you as late as last Thursday, February 11, 2010 and provided you with a copy of a notice to Officer Carter, dated February 10, 2010, informing him that he could make arrangements with Sergeant Lynch to review the evidence at his convenience through Monday, February 15<sup>th</sup>. Sergeant Lynch also advised you that the information you requested in your public records request was available for your review in the Internal Affairs Office at the Melbourne Police Department. In addition, he informed you that he would be available to you at any time, including the weekend, to assist you in reviewing the material.

Furthermore, on February 11, 2010 Sergeant Lynch advised you that the materials you requested were not a part of the current investigation in which Officer Carter is scheduled to be interviewed. You told Sergeant Lynch that you would come to his office on Friday February, 12, 2010 to review the materials since your schedule was clear. You did not appear for that meeting and you did not notify Sergeant Lynch that you were not coming in to review the materials.



**Don Carey, Chief of Police**

650 North Apollo Boulevard, Melbourne, Florida 32935

Internet: [www.melbourneflorida.org/police](http://www.melbourneflorida.org/police) • E-mail: [dcarey@melbourneflorida.org](mailto:dcarey@melbourneflorida.org)

(321) 409-3314 • Fax: (321) 242-7863

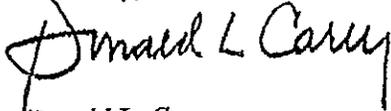
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Page 2

Richard E. Torpy, Esquire

Therefore, I have re-scheduled the interview with Officer Carter for Friday, February 19, 2010, at 10:00 a.m., at the Melbourne Police Department located at 650 North Apollo Boulevard. It is mandatory that Officer Carter appear and give a statement. There will be no further postponements of this appointment. The evidence related to IA 2009-052 is and will remain available for your and/or Officer Carter's review in the Internal Affairs Office prior to the 10:00 a.m. interview.

Sincerely,

A handwritten signature in black ink that reads "Donald L. Carey". The signature is written in a cursive style with a large initial "D".

Donald L. Carey  
Chief of Police

DLC: mb

c: Andrew Hament, City Labor Counsel  
Officer Frank Carter

# EXHIBIT L





# Melbourne POLICE

February 26, 2010

Officer Frank Carter  
160 Ruby Street  
Rockledge, FL 32955

Dear Officer Carter;

You are currently on administrative leave without pay due to pending criminal charges. As of today, February 26, 2010, I am issuing you an 80-hour suspension without pay for the reasons stated below.

The Melbourne Police Department has completed the internal investigation (IA-2009-052) regarding your obtaining an apartment, at no cost, through your position as a police officer and this apartment was utilized by you while on duty for personal gain. Additionally, you were ordered to appear for a statement before Internal Affairs and you failed to appear.

The finding of this investigation is sustained and finds that you have violated Department General Order 26.2 (Professional Conduct and Responsibilities), specifically:

**26.2.2 Conduct On and Off Duty** - Personnel shall conduct themselves on-duty and off-duty in such a manner as to reflect most favorably on the Department. Conduct unbecoming an officer or employee shall include conduct that brings the Department into disrepute, or impairs the operation or efficiency of the Department.

**26.2.50 Gifts** - Members and employees shall not accept, directly or indirectly, any gift, gratuity, loan, fee, or any other thing of value arising from, or offered because of Department employment or any activity connected with their employment unless authorized by the Chief of Police.

**26.2.55 Report Required** - Any unauthorized gift, gratuity, loan, fee, or other thing falling into any of these categories coming into the possession of any member or employee shall be forwarded to the Office of the Chief of Police together with a written report explaining the circumstances.

**Don Carey, Chief of Police**

650 North Apollo Boulevard, Melbourne, Florida 32935 (321) 409-3314

Internet: [www.melbourneflorida.org/police](http://www.melbourneflorida.org/police) • E-mail: [dcarey@melbourneflorida.org](mailto:dcarey@melbourneflorida.org)

Fax: (321) 242-7863

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**26.2.33 Order** - Personnel shall promptly obey all lawful orders of a supervisor or orders given via police radio, phone or in person. This will include orders relayed from a supervisor by personnel of the same or lesser rank

If you desire to file a grievance on this matter, you should submit a written request for this to me no later than 5:00 p.m., on March 10, 2010. If you make this request, you shall remain relieved of duty until the grievance procedure is completed and a final decision is made.

Sincerely,



Donald L. Carey  
Chief of Police

DLC:at

# EXHIBIT M

# City of Melbourne



Personnel Division

900 E. Strawbridge Ave. • Melbourne, FL 32901 • (321) 953-6350 • Fax (321) 953-6260

May 27, 2010

Mr. Frank Carter  
160 Ruby Street  
Rockledge, FL 32955

Dear Mr. Carter,

Due to your continued leave of absence with the City of Melbourne you are no longer eligible to receive benefits as an active employee. Therefore, your current benefits will be terminated effective May 31, 2010.

You have the right to continue your medical and/or dental insurance through COBRA. Ceridian COBRA Services will mail the medical and dental COBRA continuation rights form to your home address. Standard Life Insurance will allow you to continue your life insurance while on a leave of absence up to twelve months. If you would like to continue your life insurance please remit the following amounts directly to the payroll department.

Basic Life Insurance	\$6.67/month
Supplemental Life Insurance	\$7.00/month

Your life insurance policy also contains a portability/conversion option. If you do not return to work for the City of Melbourne and you are interested in continuing your life insurance beyond your leave of absence please contact me for additional information.

Please contact me at 321-608-7800 if I can provide any further assistance.

Sincerely,

A handwritten signature in cursive script that reads "Angela Hundt".

Angela Hundt  
Benefits Coordinator

/ah

70rdletters

An Equal Opportunity Employer

Internet: [www.melbourneflorida.org](http://www.melbourneflorida.org) • E-Mail: [personnel@melbourneflorida.org](mailto:personnel@melbourneflorida.org)

# EXHIBIT N



# Melbourne POLICE

HAND DELIVERED

August 19, 2010

Officer Frank Carter  
160 Ruby Street  
Rockledge, FL 32955

Dear Officer Carter:

On August 14, 2010, I held a hearing regarding the possible termination of your employment. You did not appear for the hearing but you were represented by an attorney. During the hearing your attorney did not present any information to refute the charges outlined in the "Notice of Possible Dismissal and Appeal Rights", dated July 6, 2010. Therefore, effective today, August 19, 2010, you are terminated from your employment as a Police Officer.

Please be advised of your appeal rights under Article 8 (Grievance Procedure), section 8.3 of the collective bargaining contract.

Sincerely,

Steve Mimbs  
Interim Chief of Police

c: Jack M. Schluckebier, City Manager  
Carol Burns, Personnel Manager  
Attorney Richard Torpy  
Deputy Chief Renee Purden  
Maria Condo, Police Personnel Payroll

**Steve Mimbs, Chief of Police**  
650 North Apollo Boulevard, Melbourne, Florida 32935  
Internet: [www.melbourneflorida.org/police](http://www.melbourneflorida.org/police) • E-mail: [police@melbourneflorida.org](mailto:police@melbourneflorida.org)  
(321) 409-3314 \* Fax: (321) 242-7863  
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# Melbourne POLICE

## CITY OF MELBOURNE NOTICE OF POSSIBLE DISMISSAL AND APPEAL RIGHTS

To employee: Officer Frank Carter

Date: July 6, 2010

This is to advise you of possible termination from your employment with the City of Melbourne for the reason(s) stated below:

An Internal Investigation (IA-2009-059) has been completed concerning an allegation that you conducted traffic stops and citizen encounters without legitimate probable cause. During this internal investigation it was learned that you issued citations to citizens for infractions they did not commit. These allegations were verified by your in-car video system, which the investigation showed you failed to properly use for the past 3 years. Also, it was learned you trespassed persons from areas where they were not legally eligible to be trespassed.

The Florida Department of Law Enforcement conducted a criminal investigation and ultimately arrested you in January of 2010 in connection with these allegations. In addition to FDLE's inquiry into your conduct during traffic stops, they also conducted a criminal investigation concerning an allegation of you extorting nude photographs from a female (former girlfriend) in exchange for money.

On March 26, 2010, based on the investigation revolving the traffic stops, the Office of the State Attorney filed an Information charging you with falsifying an official record or document, a third degree felony, and falsifying a record or paper filed in judicial proceedings, a first degree misdemeanor.

You also failed to follow verbal and written direct orders which were lawfully given to you by supervisors; these orders were in regards to conducting your interview for this internal investigation. Both federal and state law and Melbourne Police Department policies and procedures make clear that your Police Officer Bill of Rights and "Garfity" rights would be granted and preserved throughout the interview process.

The above issues compounded with Internal Affairs Investigation IA-2009-052, where you received an 80 hour suspension for obtaining a free apartment as a unauthorized gratuity, show a consistent and disturbing trend of disregarding Florida State Statutes, Department and City policies. During this investigation you also failed to follow a direct order and respond to an interview.

*Therefore this investigation has sustained the following violations of Department and City Policy:*

**CITY OF MELBOURNE PERSONNEL POLICY, SECTION 13.2**

- (a) Failure to meet prescribed standards of work, morality, and ethics to an extent that makes an employee unsuitable for the kind of employment in City service in which he was serving at the time of the offense.*
- (b) Has committed a criminal offense or misdemeanor involving moral turpitude; or criminal act.*
- (d) Has violated any lawful or reasonable regulations or order, or failed to obey any lawful and reasonable regulation or order, or failed to obey any lawful or reasonable direction made and given by a superior where such violations or failure to obey has or might result in loss or injury to the public or to persons or property in the custody of the City.*
- (f) Has been guilty of acts that amount to insubordination or of disgraceful conduct, whether such acts were committed while on or off duty.*
- (g) Has been offensive in his conduct or language toward the public, toward City officers, or toward other employees.*
- (h) Has been incompetent, negligent, or inefficient in the performance of his duty as determined by the Department Director and approved by the City Manager.*

**MELBOURNE POLICE DEPARTMENT POLICY**

***Policy 1.2 Role and Authority of Police Personnel:***

***1.2.3 Legal Constraints-Officers shall exercise their authority based on legal justification.***

- 1. What is reasonable action by a police officer or what constitutes probable cause varies with each situation. Facts may justify an investigation, detention, search, arrest or no action at all. The requirement that legal justification be present imposes a basic limitation on an officer's actions.*
- 2. Officers must act within the limits of authority as defined by statute and judicial interpretation, ensuring the rights of the individual are protected.*



***Policy 26.2 Professional Conduct and Responsibilities:***

***26.2.2 Conduct on and off duty - Personnel shall conduct themselves on-duty and off-duty in such a manner as to reflect most favorably on the Department. Conduct unbecoming an officer or employee shall include conduct that brings the Department into disrepute, or impairs the operation or efficiency of the Department.***

***26.2.20 Efficiency - Personnel shall constantly direct their best efforts to accomplish the Department functions intelligently and efficiently. They shall not engage in any activity or personal business that may cause them to neglect or be inattentive to duty.***

***26.2.23 Professional Competence- Personnel shall maintain sufficient competency to properly perform their duties and assume the responsibilities of their positions. Personnel shall perform their duties in a manner that maintains the established standard of efficiency in carrying out the function and objectives of the Department.***

***26.2.33 Orders - Personnel shall promptly obey all lawful orders of a supervisor or orders given via police radio, phone or in person. This will include orders relayed from a supervisor by personnel of the same or lesser rank***

***26.2.39 Compliance with the law - Personnel shall obey all laws of the United States of America and of any state, local, or foreign jurisdiction in which they are present. A conviction for the violation of any criminal law or failing to comply with a civil court order shall be prima-facie evidence of a violation of this section.***

***26.2.44 Legal Knowledge - Personnel shall familiarize themselves with and have working knowledge of all laws of the United States, the State of Florida and ordinances of the City of Melbourne they are required to enforce.***

***Policy 41.7 In Car Video and Audio System***

***Violation of Entire General Order***

***Policy 52.2 Internal Affairs:***

***52.2.5 Cooperation with Investigation- It shall be the responsibility of all personnel to fully cooperate with the Internal Affairs Investigator or other persons authorized to conduct such investigations in accordance with law.***

Page 4  
Notice of Suspension Prior to Dismissal and Appeal Rights

At the conclusion of this suspension at 5:00 P.M. on July 13, 2010 it is my intention to dismiss you from City employment.

If you desire a hearing to show cause why you should not be dismissed, you should submit a written request for this to me no later than 5:00 P.M. on July 13, 2010. If you make this request, you shall remain suspended without pay until the appeal hearing has been held and a decision has been made.

  
\_\_\_\_\_  
Steve Minnis  
Interim Chief of Police

A copy of this written notice was personally delivered to Officer Frank Carter at  
8:45 A.M. P.M. on 07/14/2010 by K. A. [Signature]

Received by:  \_\_\_\_\_

# EXHIBIT O



**COLLECTIVE BARGAINING AGREEMENT**

**Between**

**CITY OF MELBOURNE, FLORIDA**

**and**

**FLORIDA STATE LODGE  
FRATERNAL ORDER OF POLICE, INC.**

**October 1, 2007 to September 30, 2010**

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## PREAMBLE

This AGREEMENT is entered into by the City of Melbourne, Florida, hereinafter referred to as the City, and The Florida State Lodge, Fraternal Order of Police, Inc., hereinafter referred to as the "Union" for the purpose of promoting harmonious relations between the Employer and the Union, to establish an orderly and prompt procedure for the resolution of grievances; to insure continuation of normal activities and departmental operations; to settle differences which might arise; and to set forth the basic and full agreement between the parties concerning rates of pay, wages, hours of work, and all other conditions of employment.

## ARTICLE 1

### RECOGNITION

1.1 The Employer hereby recognizes the Florida State Lodge, Fraternal Order of Police, Inc. as the collective bargaining agent for all its sworn law enforcement officers in the ranks of Police Officer, Sergeant, and Lieutenant in accordance with certification #1642.

## ARTICLE 2

### NON-DISCRIMINATION

2.1 The City and the Union agree not to interfere with the rights of police personnel to become members of the Union. There shall be no discrimination, interference, restraint, or coercion by the City or the Association against any employee because of Union membership or non-membership.

2.2 Complaints concerning discrimination based on race, creed, color, age, sex, marital status, national origin, religion, disability or any other legally protected status shall be subject to the remedies available under applicable federal and state laws and shall not be subject to the Grievance Procedure contained in this Agreement.

2.3 The City and the Union agree that the use of masculine gender pronouns to indicate employees of the bargaining unit shall be interpreted to mean both male and female employees, that such usage is in the interest of readability and follows the proper rules of English, and further that such usage is not intended, nor shall it be interpreted, to be sexual discrimination.

## ARTICLE 3

### PROHIBITION OF STRIKES

3.1 The Union agrees not to violate the Strike Provision of the Florida Constitution and Florida Statute 447. The City has the right to discharge anyone who violates the Act.

## ARTICLE 4

### MANAGEMENT RIGHTS

4.1 The Union recognizes the prerogative of the City to operate and manage its affairs in all respects in accordance with its responsibilities and the powers or authority which the City has not officially abridged, delegated, or modified by this Agreement; provided that actions taken by the City are not in conflict with the provisions of this Agreement.

4.2 Management officials of the City retain the rights, except where limited or prohibited by applicable laws, regulations, or this Agreement, which include, but are not limited to the following:

- a. To manage and direct the employees of the City.
- b. To hire, promote, transfer, assign, and retain employees in positions with the City.
- c. To suspend, demote, discharge, or take other disciplinary action against employees for just cause.
- d. To relieve employees from duties because of lack of work, or funds, or other legitimate reasons.
- e. To maintain the efficiency of the operations of the City.
- f. To determine the methods, means, and personnel by which such operations are to be conducted.
- g. To determine the organization of City government.
- h. To determine the number of employees to be employed by the City.
- i. To determine the number, types, and grades of positions or employees assigned to an organizational unit, department, or project.
- j. To administer internal security practices.
- k. To determine those matters covered by the Personnel Rules and Regulations.
- l. To introduce new or improved methods or facilities.
- m. To change existing methods or facilities.
- n. To contract or subcontract for goods and services.
- o. To maintain such other rights, normally consistent with management duties, and responsibility for operating the City.



p. To classify and reclassify positions and employees.

4.3 . The exercise of the above rights does not preclude employees or their representatives from conferring or raising grievances about the practical consequences that decisions on these matters may have on terms and conditions of employment.

#### ARTICLE 5

##### DUES DEDUCTIONS

5.1 Any member of the Union who has submitted a properly executed written dues authorization form (see Appendix "A") to the Personnel Director may have his membership dues in the Union deducted from his wages. Dues shall be deducted each pay period and shall, thereafter, be transmitted to the Union accompanied by a list of those employees' names whose dues are included and the payroll period for which the dues are being submitted to the Florida State Lodge Fraternal Order of Police, 242 Office Plaza, Tallahassee, FL 32301.

It shall be the responsibility of the Union to notify the City Manager, or his designee, of any change in the amount of dues to be deducted at least 30 days in advance of said change. Under no circumstances shall the City be required to deduct Union fines, penalties, or special assessments from the wages of any member. An employee may, upon 30 days written notice to the City and the Union, have the City cease deducting dues from his wages.

5.2 The Union will indemnify, defend, and hold the City harmless against any claim made and against any suit instituted against the City on account of any deduction of Union dues.

5.3 The City remittance will be deemed correct if the Union does not give notice to the City within 30 days of an incorrect remittance being received. Such notice shall include the Union's reasons for deeming the remittance incorrect.

5.4 If there is an amount deducted in excess of what is authorized by this Agreement, the employee affected shall seek recourse through the Union and not through the City.

#### ARTICLE 6

##### SPECIAL MEETINGS

6.1 In the event either party desires to modify a certain Article contained in this Agreement, by mutual consent a letter of agreement may be drafted and signed by the parties to supersede such Article or provision subject to ratification by the Union membership.

6.2 During special meetings agreed to by the City, the City agrees that the Union representative, when meeting on City time, shall not suffer loss of pay during these meetings.

## ARTICLE 7

### INTERNAL INVESTIGATIONS, DISCHARGE AND DISCIPLINE

7.1 No employee shall be disciplined except for just cause and in no event until he shall have been furnished with a written statement of the charges.

7.2 Upon the conclusion of any disciplinary action against a member, final discipline shall be decided and put in writing on the disciplinary charge sheet prior to the disciplined member signing the document to either accept or grieve the discipline.

The Supervisor shall not discuss with the member any proposed disciplinary action prior to the final disciplinary action taken.

7.3 Any employee has the right to request the presence of a union representative at any investigatory interview of such employee that the employee reasonably believes will result in disciplinary action.

7.4 The "Law Enforcement Officer's Bill of Rights" as set forth in Florida Statutes §§112.532-112.534, as amended from time to time, is incorporated herein and made a part of this contract.

7.5 A copy of any disciplinary action will be given to the employee being disciplined. The employee will sign the form to acknowledge receipt. A copy will be placed in the employee's file. An employee has the right to prepare a written response pursuant to Florida Statute §112.533(3). The response will be placed in the employee's file.

7.6 Employees are entitled to inspect and copy their personnel files and any internal investigation files which are not confidential by law. The City will supply these documents as soon as reasonably possible. If the employee is the subject of a pending disciplinary action, upon request, the employee will be provided a copy of the internal investigation file that gave rise to the disciplinary action at no cost to the employee. Copies of other documents will be provided at the employee's expense.

7.7 No bargaining unit member shall be required to submit to a polygraph test or computerized voice stress analyzer as a condition of continued employment.

7.8 When suspensions are used in determining subsequent progressive disciplinary action, frequency of violation/offenses within a period of eighteen (18) months should be applied, unless aggravating or mitigating circumstances exist. This provision is limited to determining the appropriate level of disciplinary action and will not preclude either the Union or the City from introducing a member's prior disciplinary history in any grievance/arbitration proceeding.

## ARTICLE 8

### GRIEVANCE PROCEDURE

8.1 In a mutual effort to provide harmonious working relations between the parties to this Agreement, it is agreed to and understood by both parties that there shall be a procedure for the resolution of grievances between the parties arising from any alleged violation of the specific terms of the Agreement.

8.2 Definition: A grievance within the meaning of this contract shall consist of a dispute about alleged misinterpretations or misapplications of particular clauses of this Agreement and about alleged violations of this Agreement. The Union may file a grievance on behalf of a member of the bargaining unit, a group of members of the bargaining unit, or the Union itself.

8.3 Grievances shall be processed in accordance with the following procedures:

Step 1. The Union shall present in writing the grievance to the Commander within 10 calendar days of the occurrence of the action giving rise to the grievance. Discussions will be informal for the purpose of settling differences in the simplest and most direct manner. Following this initial session, the Commander shall discuss the grievance with his immediate superior, and reach a collective decision. That decision will be communicated, in writing, to the Union within 10 calendar days from the date the grievance was first presented to him.

Step 2. If the grievance is not settled at the first step, the Union, within 10 calendar days of the answer in the first step, shall present it to the Chief of Police. The Chief of Police shall investigate the alleged grievance and shall, within 10 calendar days of receipt of the written grievance, conduct a meeting between himself, his representative if needed, and the Union. The grievant may be accompanied at this meeting by a Union representative. The Chief of Police shall notify the aggrieved employee of his decision not later than 10 calendar days following the meeting.

Step 3: If the Union does not settle the grievance in the second step, the Union, within 10 calendar days, shall present the written grievance to the Personnel Director. The Personnel Director shall investigate the alleged grievance and shall meet with the Union within 10 calendar days after receipt of the grievance. The Personnel Director shall obtain the facts and forward his recommendations to the City Manager within 10 calendar days after the meeting. The City Manager shall have 10 calendar days to consult with any of the parties involved and render a decision in writing to the Union.

Step 4. If the grievance, as defined in this Article, has not been satisfactorily resolved within the grievance procedure, either party may request arbitration in writing no later than 16 calendar days after the response was due in Step 3 of the grievance procedure.

The parties to this Agreement will request that an impartial neutral from the Federal Mediation and Conciliation Service be assigned to hear the matter.

This Grievance procedure and the arbitration shall be ~~exclusive~~ to the FOP. Therefore, subject to Sections 447.301 and 447.401, Florida Statutes or other applicable laws, no bargaining unit member may file a grievance or request arbitration without the written authorization from the Union. The arbitration shall be conducted under the rules set forth in this Agreement. Subject to provisions contained herein, the arbitrator shall have the jurisdiction and authority to decide a grievance as defined in this Article, and to enforce compliance with the terms and conditions of the Agreement.

The arbitrator shall have no authority to change, amend, add to, subtract from, or otherwise alter or supplement this Agreement or any part thereof or any amendment thereto. The arbitrator shall have no authority to consider or rule upon any matter which is not a grievance as defined in this Agreement. The arbitrator may not issue declaratory or advisory opinions and shall confine himself exclusively to the question which is presented to the arbitrator, which question must be actual and existing. Copies of the award of the arbitrator, made in accordance with the jurisdictional authority under this Agreement, shall be furnished to both parties within 20 calendar days of the hearing and shall be final and binding upon both parties.

It is contemplated that the City and the employee shall mutually agree in writing as to the statement of the matter to be arbitrated prior to a hearing, and if this is done, the arbitrator shall confine his decision to the particular matter thus specified. In the event of the failure of the parties to so agree on a statement of issue to be submitted, the arbitrator shall confine his consideration to the written statement of the grievance presented in Step 1 of the Grievance Procedure.

Each party shall bear the expense of its own witnesses and its own representative. The non-prevailing party, who will be determined by the arbitrator, shall bear the entire expense of the arbitrator. If the arbitrator's decision is split, the expense of the arbitrator shall be divided equally among the parties. Any party requesting a copy of the transcript of such arbitration hearing shall bear the cost of same.

8.4 The times indicated on all steps may be extended by mutual written agreement.

8.5 When a grievance is reduced to writing there shall be set forth therein:

- a. The grievance shall be filed on the appropriate grievance form signed by the Union (see Appendix "B");
- b. A complete statement of the grievance and facts upon which it is based;
- c. The section or sections of the Agreement that are alleged to have been violated; and
- d. The remedy of correction requested.

8.6 A grievance not advanced to the higher step within the time limit provided shall be deemed permanently withdrawn as having been settled on the basis of the decision most recently given. Failure on the part of the City to answer within the time limit set forth will advance the grievance to the next step.

8.7 In settlement of any grievance resulting in retroactive adjustment, such adjustment shall not be made retroactive any further than the date of the occurrence giving rise to the grievance.

8.8 Upon acceptance of the punishment or the exhaustion of the Grievance process, and within sixty (60) days of the last step as allowed by the disciplinary process, disciplined members shall be contacted by their immediate supervisor to schedule their suspension.

## ARTICLE 9

### CONTRACT DISPUTES

9.1 The City may utilize the following procedure upon any contract dispute with the Union or with any member represented by the Union and covered by this agreement.

- a. The dispute will be submitted in writing to the Union Chairman.
- b. If no satisfactory adjustment is obtained within 8 calendar days, then the City shall have the right to submit the contract dispute to an impartial neutral, agreed upon by both the Union and the City. If, within 8 calendar days, the City and the Union cannot agree upon the selection of a neutral party to dissolve the dispute, then such neutral party shall be selected in accordance with the rules and provisions of the Federal Mediation & Conciliation Service.
- c. The decision of the impartial neutral shall be binding upon both parties.
- d. The neutral shall have no power to alter, amend, add to, or detract from the language of the Agreement.

## ARTICLE 10

### EMPLOYEE SECURITY

10.1 Unfounded complaints will be indicated as such in an employee's personnel file.

10.2 If a Police Officer is suspended during a criminal investigation, he may, at the sole discretion of the Chief of Police, continue to be paid at his normal rate until reinstatement, resignation, conviction, or termination. If the conviction is appealed and reversed, the Police Officer shall be reinstated to his former position with back pay, fringe benefits, seniority, and any other benefits.

10.3 All personnel records of employees shall be maintained in accordance with applicable laws. Information exempt from public disclosure pursuant to Chapter 119, Florida Statutes or other applicable laws shall only be released to the public in accordance with such laws.

10.4 Upon reasonable request, any employee shall have the right to inspect his personnel records during the hours of operation of the Personnel Office.

## ARTICLE 11

### SENIORITY

11.1 Seniority shall consist of continuous accumulated paid service from the date of appointment to a position covered by this Agreement. Seniority shall accumulate during absences because of illness, injury, vacation, military leave, or other authorized paid leave.

11.2 Cumulation: Seniority shall accumulate during authorized unpaid leave of absences of less than 30 calendar days. Every day off for authorized absences in excess of 30 calendar days shall be deducted from the employee's total seniority record on a day-for-day basis.

11.3 Loss of Seniority: Employees shall lose their seniority as a result of the following:

- a. Voluntary termination.
- b. Dismissal for cause.
- c. Layoff exceeding one year.
- d. Absence without authorized leave for 3 consecutive working days without notifying the Chief of Police or his designee.
- e. Failure to return from Military Leave within the time limits prescribed by law.

Employees injured on the job shall continue to accumulate City-wide department and classification seniority during the duration of such injury, except when a finding of maximum medical improvement has been determined to preclude return to a position within the Bargaining Unit.

11.4 Eligibility for shift assignment will be based primarily on seniority, in three respective components:

- a. Date of Hire as a sworn police officer by the Melbourne Police Department.
- b. Date of promotion to a supervisory position in that classification.
- c. For the purpose of determining seniority within the following specialized units or assignments, time within the unit or assignment will determine seniority. A specialized unit or assignment for the purpose of this Article is defined as the following: Detectives, Special Operations Unit (narcotics), Evidence Technicians, Traffic Unit and Canine.
- d. Tie Breakers:
  1. If two or more officers were hired on the same day, preference will be given by a drawing.

2. If two or more officers were promoted on the same day, the Chief of Police will indicate who is more senior in writing. Preference will be given by final ranking on the promotion eligibility list and then by drawing, if necessary.

11.5 Police Officers who voluntarily terminate and are re-hired within one-hundred eighty (180) days shall be restored to the same grade and step for wages that they had at the time of separation. Police Sergeants and Police Lieutenants who voluntarily terminate and are re-hired within one-hundred eighty (180) days shall be placed in a Police Officer position at a Police Officer grade and step closest to, but not to exceed the wages such individual had at the time of separation. Seniority for re-hired employees shall be based on their date of re-hire. Re-hired employees will be subject to the probationary requirements of Article 12 of this Agreement applicable to newly hired employees.

11.6 A newly hired Police Officer with prior certified law enforcement experience may be hired into the salary schedule above the minimum rate of pay based on years of service as a certified law enforcement officer. For documented years of service, the new Police Officer shall be credited with one additional step above the entry pay for each two years of experience up to a maximum of five steps.

## ARTICLE 12

### PROBATIONARY PERIOD

12.1 All new employees, shall be considered on probation for a period of not less than twelve (12) months from date of hire. Promoted employees shall be considered on probation for a period of not less than six (6) months.

12.2 The City, for good reason, may extend the probationary period of an employee for a period not to exceed a total probationary period of 18 months for newly hired employees and twelve (12) months for newly promoted employees. Notice of such extension shall be furnished in writing to the employee prior to the completion of the probationary period.

12.3 Any approved leave of absence in excess of 10 days shall cause the employees' probationary period to be extended by the amount equal to the leave taken. In the event an employee returns to light duty, the probationary period will be extended until the employee returns to full duty. Upon the employee's return, the probation will resume and continue until fully completed.

12.4 Newly hired employees, on probationary status, shall not have recourse with a grievance procedure in any matter of discipline, termination for cause, and layoff due to reduction in force.

## ARTICLE 13

### LAYOFF PROCEDURE

13.1 Layoff. When the City finds that it is in the public interest, it may lay off such employees in the bargaining unit as it finds necessary as limited below.

13.2 Temporary and Probationary Employees: No employee shall be laid off while there are temporary and probationary employees serving in the same classification within the same department.

13.3 Procedure: In determining layoff, the City shall consider equally employee past performance, and seniority in the job classification within the department. It is understood that the parties are subject to all federal requirements and laws which may alter this procedure.

#### ARTICLE 14

#### EMPLOYEE REPRESENTATION AND UNION ACTIVITIES

14.1 Representation: From employees in the bargaining unit, the Union shall select Union Unit Representative(s), as many as deemed necessary by the Executive Board of the Union, but a sufficient number to assure availability for investigation, discipline and grievance meetings where Union representation may be requested by an employee with a reasonable amount of notice. A list of Union Representatives authorized to represent the Union and its members shall be furnished to the City and the Union shall notify the City of any change to the list. The City will not recognize any Union Representative whose name does not appear on the appropriate list. Where Union representation is requested by an employee, the representative shall be a person so selected and designated by the Union and have the authority to resolve the grievance. By mutual agreement on a case-by-case basis, representatives may be permitted to flex their work day hours when the representatives have conducted Union business with the City during their off duty hours.

#### 14.2 Labor/Management Meetings

(A) There shall be a Labor Management Committee established to consist of the Chief of Police or his designee, two members appointed by the Chief of Police, and any three Union representatives from the Melbourne Police Department and the Union State Representative. The Union representatives shall be selected by the Union Chairperson and the Chief shall be notified of said Union representatives who will be attending the meeting at least five (5) days in advance of said meeting. The purpose of this committee shall be to meet and confer concerning problems of a general nature which may from time to time arise in the Police Department, to promote the harmonious operation of the department and make recommendations to the Chief of Police concerning resolution of any such problems. The committee will meet at a mutually acceptable time, place, and date set by the Chief. Recommendations of the committee will be advisory in nature only.

(B) The City agrees that if the Union representative, while on duty, desires to appear before a scheduled City Council meeting, at which discussions concerning contract agreements which affect Bargaining Unit members are to be held, then he may be allowed to attend without loss of pay, after first receiving permission from the Chief or his designated representative. In no case will premium pay be granted for attendance as described above.

(C) It is agreed that the members of this committee will be compensated should the agreed upon meeting time fall on a member's off duty time.



### 14.3 Bulletin Boards

(A) The City agrees to furnish wall space not to exceed 24 x 36 inches for Union bulletin boards of an equal size at each job site (currently the Apollo Boulevard and Babcock Street Sites) where bargaining unit members report to work. Where the Union currently maintains bulletin boards that practice shall continue.

(B) The use of Union bulletin board space is limited to the following notices:

- (1) Recreation and social affairs of the Union,
- (2) Union meetings,
- (3) Union elections,
- (4) Reports of Union committees,
- (5) Union benefit programs,
- (6) Current Union contract,
- (7) Training and educational opportunities, and
- (8) Other materials pertaining to the welfare of Union members.

(C) Notices posted on these bulletin boards shall not contain anything reflecting adversely on the City, or any of its officers or employees; nor shall any posted material violate or have the effect of violating any law, rule, or regulation.

(D) Notices posted must be dated and bear the signature of the Union's authorized representative.

14.4 The City will furnish the Union copies of all Police Department rules and regulations and all memoranda pertaining thereto. The City will allow Union mail to be distributed at roll call and/or electronic mail systems with prior authorization from the Police Chief.

14.5 Employee Lists. Upon request of the Chairperson of the Union or his designee, the City, no more than on a quarterly basis, will provide the Union with a list giving the name, job title, and base hourly rate of pay for each employee in the bargaining unit.

14.6 Negotiations. The Union agrees that all collective bargaining is to be conducted with the City's representatives designated for that purpose. While negotiating meetings shall normally be held at the Human Resource office, the City and the Union may mutually agree to meet elsewhere at a City's facility or other location that involves no rental cost.

#### 14.7 Union Time Bank.

- A. Each bargaining unit member may voluntarily contribute up to two (2) hours of annual leave to the Union Time Bank on an annual basis. Donations to the Time Bank shall be documented by the use of a Union Time Bank Authorization Form to be completed for each donation, attached to this Agreement as Appendix "C" and incorporated herein.
- B. Any contributed hour(s) will be deducted from each bargaining unit member's accrual balance in the second pay period in March. Union Time Bank authorization forms must be submitted to the Police Chief's office upon ratification of this Agreement and on or before March 1 in successive years.
- C. Up to a maximum of three (3) Union Representatives in any one instance shall be granted time off paid from the Union Time Bank for the purpose of conducting Union business; however, this does not preclude management from granting leave to more than three (3) employees, if doing so does not unduly disrupt the operation of the Department.
- D. The Chairperson of the Union or his designee shall submit all requests for the use of the Union Time Bank to the Police Chief or his designee at least fourteen calendar days in advance of the requested time off. However, this shall not preclude management from granting leave with less than fourteen calendar days' notice.
- E. The Police Chief shall have the sole discretion of approving or denying Union Time Bank usage, depending upon the manpower requirements to maintain efficient operations within the Police Department. Denial of Union Time Bank usage shall not be subject to the grievance/arbitration provisions of this Agreement.
- F. Union Time Bank charges will be drawn in increments of one (1) hour and will be charged for all hours during which an elected or appointed Union representative is in an on-duty release while conducting Union business as described in (G).
- G. A Union representative may request time off from the Union Time Bank for the purpose of attending Union training sessions, conferences and meetings, including informational meetings and union elections, but not including grievance hearings, investigations, contract negotiations, and legislative body meetings regarding the resolution of collective bargaining impasse procedures and arbitrations.
- H. The Police Chief or his designee and Chairperson of the Union or his designee shall keep a record of all time donated and drawn against the Union Time Bank. Unused time will be rolled over from year to year and may be drawn against in future years.

### ARTICLE 15

#### LEGAL PROTECTION

15.1 An employee who is named as a co-defendant with the City in a lawsuit arising out of the performance of his duty as a Police Officer and within the scope of his employment with the City, for which there is no coverage for such employee under any policy of insurance for which the City is paying a premium, shall be provided with a free defense by an attorney of the City's choice to defend such a lawsuit, provided any such employee shall agree to the following conditions in writing:

a. That the employee understands that he will pay any judgment whatsoever rendered against him individually, for either compensatory or punitive damages, in any final judgment in which he was found to have caused the harm intentionally.

b. That the City will pay any court costs attributable solely to such employee's interest in such lawsuit.

Nothing herein shall serve to prevent the employee's rights to recovery as provided for in Florida Statute 111.071.

15.2 Each designated Union representative will usually be expected to perform his/her duties as a representative of the Union on his/her own time. However, it is recognized that from time to time it will be necessary for Union activities to be carried out during working hours of the representative for the processing of written grievances and the representation of Union members relative to grievances.

The Chief of Police may authorize representatives to conduct Union business in other matters of importance on a case-by-case basis so long as the matter involves matters of mutual benefit.

#### ARTICLE 16

##### ACTING IN GRADE

16.1 Any Bargaining Unit member who is appointed in writing by the Chief of Police to act in a higher grade for a period in excess of two consecutive work weeks, excluding authorized leave, shall receive pay for that grade while acting in that grade, at the minimum of the range or 5% of his base pay, whichever is higher.

#### ARTICLE 17

##### UNIFORMS AND EQUIPMENT

17.1 All uniforms, protective clothing, or protective devices required of employees in the performance of their duties shall be furnished without cost to the employees by the City with the exception of underwear, socks, and shoes. Newly employed officers will be supplied a departmental handgun and appropriate support equipment. All employees hired prior to October 1, 2006 shall be permitted to retain and carry their personally owned departmentally authorized firearms and the City shall provide the proper caliber ammunition for the weapons.

17.2 Any uniform or related equipment damaged or destroyed while an officer is acting in the performance of his official duties shall be repaired or replaced by the City at no cost to the officer. However, the damage or destruction must not be the result of the officer's own negligence or loss.

17.3 Detectives or other permanently assigned sworn personnel engaged in investigation or undercover work, and required to wear civilian clothes, shall receive a clothing allowance of \$750, one-half to be paid upon appointment, with the balance and future payments to be paid quarterly beginning with the third quarter following appointment. The purpose of this payment is for purchase of street-type clothing. Upon termination or transfer, an employee will pay back the appropriate pro-rata balance of the most recent quarterly payment based on the timing of the transfer or termination.

17.4 An officer, while engaged in the performance of his assigned duty, who shall have damaged or broken his prescription eyeglasses, dentures, or partial dental plates, required sidearm, or wrist watch shall have same repaired or replaced, whichever is the lesser cost of the two, by the City. Maximum cost of repair or replacement of a wristwatch shall not exceed \$100.00. However, such damage shall not be the result of normal wear and tear, negligence, loss or misuse on the part of the employee, or the failure of the officer to utilize the proper protective equipment or procedures, where provided by the City.

17.5 Claims for damages mentioned in this Article must be reported in writing or e-mail to the City within 8 calendar days and be supported with reasonable documentation within 15 calendar days.

17.6 All uniformed personnel shall be paid an annual uniform cleaning allowance and an incidental equipment purchase allowance in the amount of \$200 to be paid during the first pay period in December of each fiscal year.

17.7 All employees who utilize their personal cellular telephones for Police business shall be paid an annual cellular phone allowance in the amount of \$100 to be paid during the first pay period in December of each fiscal year. This allowance will not be paid to any employee who is issued a cellular telephone by the City.

## ARTICLE 18

### TRAINING COSTS & TUITION GRANT PROGRAM

#### 18.1 TUITION GRANT PROGRAM

The Union and the City agree to encourage all Police Officers to further their education. The City shall, subject to availability of budgeted funds, provide a grant for the tuition and class required books in an amount not to exceed the prevailing credit hour rate for either undergraduate or graduate courses, as appropriate, at the University of Central Florida, for accredited courses not funded by other sources, which have been completed by an employee if the following requirements are met. Maximum book/lab fee allowance shall be \$150 per course.

- a. The course is a required part of a degree program that is job related.
- b. Approval to attend is obtained by the employee prior to attendance.

- c. A final grade of "C" or better is earned for undergraduate courses.
- d. A final grade of "B" or better is earned for graduate courses.
- e. A final grade of pass if the available grades are pass/fail only.

In the event an employee covered by this Agreement leaves the City's employment after receiving a tuition grant for any approved course, the employee will be required to refund to the City a pro-rated amount of the grant. Any employee who retires from the City with at least 20 years of service shall be exempt from this requirement. Such refund shall be computed based on the following sliding scale:

Within one year: 100% of grant  
 Within two years: 75% of grant  
 Within three years: 50% of grant  
 Within four years: 25% of grant  
 After four years: 0% of grant

Approval or disapproval of eligibility for grant shall be the decision of the Chief of Police. His decision concerning sub-paragraphs a and b shall be final.

18.2 Where the best interests of the City are served by schooling, seminars, or classes for the employees covered by this Agreement, actual costs incurred shall be borne by the City, providing previous City approval has been obtained.

## ARTICLE 19

### HOURS OF WORK AND OVERTIME

19.1 For the purpose of applying the provisions of this section, continuous operation shall be defined as operations for which there is regularly scheduled employment for 24 hours a day, 7 days a week.

- A. Work schedules/shifts: All employees will have a designated work schedule/shift with an established starting time and quitting time. The schedule will be non-rotating and will be bid upon ratification of this Agreement and each December and June thereafter. Bidding will be based upon seniority. However, special unit members may be reassigned to ensure proper shift coverage and staffing levels of squads and other units may be adjusted from time to time based on operational needs. Work schedules/shifts shall be posted on the bulletin board. Work schedules/shifts may be changed without advance notice in the case of an emergency, subject to overtime provisions and any other applicable provision herein.
- B. Hours: The hours of work each day shall be consecutive except for interruption for meal periods.

- C. As per the attached schedule referred to in this agreement as Appendix "D", uniformed officers assigned to patrol will work six 12-hour workdays and one 8-hour work day in a 14-day period. Uniformed officers assigned to patrol will have Friday, Saturday and Sunday scheduled off every other week. The Selective Traffic Enforcement Unit (except Traffic Sergeant and DUI officers) and the Marine Patrol Unit will work the 12-hour schedule described in this Section C and the attached corresponding Schedule and be governed by the provisions of this Section.
- D. As per the attached schedule, officers assigned as Detectives, Special Operations Unit (Narcotics), and Evidence Technicians will work a 10-hour day with assigned days off. DUI Officers will work a 12-hour work day consistent with the current patrol division schedule.
- E. As per the attached schedule, Detective Lieutenant, Traffic Sergeant and administratively assigned officers, e.g., Community Resource Officers, School Resource Officers, Administrative Lieutenant, Community Relations Sergeant, Internal Affairs Sergeant, P.A.L. Officer, and Recruiting Officer will work an 8-hour work day, with assigned days off.
- F. When the public schools are not in session during the summer, School Resource Officers (SRO) may be temporarily assigned by seniority to a 12-hour day schedule (6 a.m. to 6 p.m. or 7 a.m. to 7 p.m.). Such assignments will be made on or before April 1. Prior approved leave will be honored by the SRO's new shift Sergeant. The Police Chief will make a good faith effort to accommodate any SRO who is unable to work a 12-hour shift due to a hardship.
- G. Officers of the Street Crimes Unit (SCU) will be assigned to a 12-hour schedule as defined in Section C above and shall work 1600 - 0400 hours.
- H. Any new bargaining unit position or position not listed above shall be assigned to a shift described herein based upon the needs of the Department after consultation with the Union.
- I. Officers may work a flexible schedule on a case-by-case basis with supervisory approval. A flexible schedule may only be worked upon mutual consent of both parties. The flexible schedule may include varied hours of the day and days of the week.

19.2 All authorized and approved time for work performed in excess of an employee's scheduled work day shall be paid at the rate of time and one-half (1½) of the employee's regular rate of pay. Employees will also be eligible for statutory overtime as required by the Fair Labor Standards Act. Section 7(k) of the Fair Labor Standards Act shall apply to employees working a 14-day work period as described in 19.1(C) above and the corresponding Schedule.

19.3 In lieu of monetary remuneration for overtime worked, the employee may elect to accrue compensatory time at the rate of 1-1/2 hours for each hour worked, except for assignments where the City invoices third parties for the overtime. Compensatory time shall accrue as follows:

ALL BARGAINING UNIT MEMBERS - 120 hours maximum accrual. Use of compensatory time shall be at the request of the member and shall require the approval of the Chief of Police. Denial shall be based on staffing requirements determined by the Chief of Police. Employees terminating employment shall be paid for accrued compensatory time.

19.4 Employees shall be required to work overtime when requested unless excused by Supervisor.

19.5 No employee may approve the payment of overtime for himself. All overtime will be approved by procedures established by the Chief of Police.

19.6 Premium payment shall not be duplicated for the same hours worked under any of the terms of this Agreement.

19.7 The City will not alter the schedule of an individual for the purpose of circumventing the payment of overtime, with the understanding that nothing herein shall preclude the City from adjusting staff as required for holidays and to alter schedules for training and education.

19.8 An employee may exchange shifts with employees of equal rank and job description upon getting the necessary approval of the Chief or his designee insofar as the exchange of shifts occurs in the same 30-day period.

19.9 Any necessary travel time in the course of a member's employment outside of the member's regularly scheduled hours shall be considered as time worked, provided such travel is approved in advance by the Chief of Police or his designee.

## ARTICLE 20

### CALL BACK AND STAND-BY PROCEDURE

20.1 In the event that an employee is called back to duty before or after his regular shift, for any reason whatsoever, he shall receive a minimum pay of at least 2 hours at a rate of time and one half (1-1/2), except this provision shall not apply when an early call-in period extends into the start of the employee's regular work period. A minimum of one hour of pay at the rate of time and one half shall be paid for any call-in occurring within one hour of the start of the employee's regular work period.

20.2 In the event that an employee is requested to stand-by during his off-duty hours, he shall receive pay at the rate of time and one half (1-1/2), and shall remain on stand-by until notified by the Police Department that he is no longer on stand-by.

20.3 In the event an employee is contacted after his normal hours of employment which places him in an on duty status, he shall be compensated based upon the following schedule:

- a) If contacted within five hours of the end of his normally scheduled hours of employment, they shall receive 1 hour at the applicable overtime rate.
- b) If contacted in excess of five hours after his normally scheduled hours of employment, he shall receive 2 hours at the applicable overtime rate.

20.4 Employees shall be placed on an "on-call list" based on seniority. Each employee shall select at least two (2) days per month to be on-call based on seniority and said list shall be established for a ninety (90) day period. The selection process shall start with the senior employee selecting first, then the next senior employee (and so on) until all of the dates are filled up for the ninety-day period. The employee will utilize a City vehicle for personal use while on "on-call" status and must be available to report for duty at the scene within 30 minutes of being notified. If the employee is unable to respond within 30 minutes, the employee will notify the on-duty Watch Commander of the delay and the new time of arrival. The reasonableness of a delayed response will be evaluated on a case-by-case basis. Employees will carry a beeper, mobile phone or other communication devices provided by the City. While in an "on-call" status, employees are free to engage in personal activities but may not consume or be under the influence of alcoholic beverages or substances that could impair the employee's fitness for duty. Employees will be paid two straight hours of pay for each week day that the employee is on "on-call" status and four straight hours of pay for each weekend day or holiday that the employee is on "on-call" status. When called out, employees will receive call-back pay in accordance with Article 20.1.

## ARTICLE 21

### COURT ATTENDANCE

21.1 Any employee in an off-duty status whose appearance is required in any court by subpoena, due to a work related incident, shall receive a minimum of 2 hours pay if traveling to court in Brevard County. If the employee uses his own transportation, he may retain the applicable travel pay paid by the court in which the employee is subpoenaed.

If transportation is provided by the City, the employee will turn over the applicable travel pay received to the City. All witness fees will be turned in to the City. Time spent in preparation will be furnished while on duty.



## ARTICLE 22

### HOLIDAYS

22.1 Police Officers in the Bargaining Unit shall receive the following paid holidays:

- |   |  |
|---|--|
| 1. New Year's Day                                 | 7. Veteran's Day   |
| 2. Martin Luther King, Jr.<br>Birthday Observance | 8. Thanksgiving Day  |
| 3. President's Day                                | 9. Day after Thanksgiving  |
| 4. Memorial Day                                   | 10. Day before Christmas<br>(December 24 <sup>th</sup> )   |
| 5. Independence Day                               | 11. Christmas Day  |
| 6. Labor Day                                      | 12. Any other day declared as a paid<br>holiday by the City Council for all<br>other City employees. |

22.2 Whenever an observed holiday shall occur on employee's scheduled day off, the City may allow the employee to take a day off at another time, or compensate him at the straight time rate in order to equalize the observed legal holidays.

22.3 If the employee elects and is authorized to be compensated by a day off for the holiday worked, that time will be taken during the calendar year in which the said holiday occurs.

22.4 All employees in the Bargaining Unit shall receive credit for any holiday unless:

- a. He has an unexcused or unpaid absence on the last regular work day preceding such holiday, or on the next regular work day following such holiday.
- b. He is on a leave of absence without pay or layoff on the day on which such holiday occurs.
- c. He fails to report for work, without justifiable reason for such absence, after having been scheduled to work on such holiday.

22.5 When any employee is required to work on a day observed as a holiday and these hours fall within his regular rotating work schedule, he shall be paid at his regular rate of pay plus 1-1/2 times his regular rate of pay or the employee may choose compensatory time under existing City rules.

22.6 Whenever an observed holiday shall occur on an employee's scheduled day off and that employee is called to duty, he shall be compensated at his regular rate of pay plus 1-1/2 times his regular rate of pay.

## ARTICLE 23

### SICK LEAVE

23.1 Sick leave with pay shall be credited at the rate of 8 hours for each calendar month of employment, or a total of 96 hours per year. No sick leave with pay may be used by an employee until the employee has satisfactorily completed a minimum of 720 hours of employment. Sick leave accumulation will begin at once for employees starting prior to the 13<sup>th</sup> day of the calendar month. Otherwise, credit will begin on the first day of the month following employment, and will accumulate each calendar month thereafter to a maximum of 720 hours.

23.2 Sick leave is the number of days which may be used by an employee without deduction from his regular compensation:

- a. When incapacitated for the performance of his duties by sickness or injury.
- b. For medical, dental, optical treatment, or examination.
- c. When, through exposure to contagious disease, the presence of the person at his post of duty would jeopardize the health of others.
- d. Treatment or consultation for mental illness.
- e. Rehabilitation or therapy for alcoholism, drug addiction, or any other addictive condition which is dangerous to the employee's health.
- f. Immediate family member illness. Immediate family is defined for purposes of this policy as the employee's father, mother, spouse, children, and step children or adopted children.

The Chief of Police may require evidence of incapacity for any period of sick leave.

23.3 Bereavement Leave In the event of a death in the immediate family of any employee, the employee shall be granted 3 working days (a working day is equivalent to the current schedule of the affected employee) off with pay. Two (2) additional working days with pay shall be granted to an employee who has to travel outside of the State of Florida to attend a funeral. The immediate family is defined as spouse and children of the member, mother, father, brother or sister, half-brother or sister, step-brother or sister, step-parent, grandchild and grandparents of the member and those of the member's spouse, mother and father-in-law, brother and sister-in-law, son and daughter-in-law and legal guardian.

23.4 Any employee who accumulates 720 hours of unused sick leave shall be entitled to be paid an amount equal to his regular compensation for a period of time equal to 1/2 of the sick leave accumulated by such employee in any 1 year in excess of 720 hours. Said payment shall be made in the month of December.

23.5 In addition to the sick leave benefits herein provided, each employee shall be entitled to and receive terminal leave upon his retirement for a period of time equal to 1/2 of such employee's unused, accumulated sick leave. Retirement is defined as an employee's termination from City employment for retirement under the provisions of the Melbourne Police Officer's Retirement Fund.

23.6 The employee must notify the Office of the Chief of Police, or his designee, as early as possible, and at least 60 minutes before starting time each day he is unable to report for work because of illness. Upon request, the employee will furnish adequate explanation of his illness to his supervisor through the City Nurse to determine that such sick leave should be allowed. Absences under the sick leave conditions will be subject to investigation by the appropriate supervisor. An employee will be counseled if it appears that he is using an excessive amount of sick leave, as determined by the City. The City has the right to require any employee to undergo a medical examination by an assigned medical doctor, at any time, to ascertain whether or not an employee is physically and mentally capable of performing any and/or all duties required for his classification. This examination will be conducted on City time and at City expense.

23.7 Sick leave shall be charged in increments of not less than 1/2 hour.

23.8 Should an employee be absent due to illness, and willfully fail to comply with the rules and regulations covering sick leave, such employee shall be charged with unauthorized absence.

23.9 Sick leave will be charged only against an employee's regular work day and shall not be charged for absences on pre-arranged overtime work, unscheduled call-in overtime work days, or holidays, except as otherwise provided herein.

23.10 An employee may contribute accrued sick leave to a sick leave pool. The sick leave pool may be used by an employee who has exhausted all other paid leave and whose need to use leave from the pool is deemed justifiable by the City. The use of the sick leave pool will be administered on a case by case basis.

23.11 An employee who is injured on the job will continue to be paid in full and no time lost as a result of an on the job injury shall be charged against existing sick leave for the first seven (7) calendar days.

23.12 When an employee agrees to work in for another employee but calls in sick and does not report for work, the sick leave will be charged against the employee who called in sick.

23.13 All light duty assignments are at the sole discretion of the Chief.

## ARTICLE 24

### VACATION

24.1 Accrual of vacation leave shall be limited to the following schedule for all employees in the Bargaining Unit:

(21)

<u>YEARS OF CONTINUOUS SERVICE</u>	<u>TIME PER YEAR</u>
1 - 5	80 hours
6 - 9	96 hours
10 - 14	120 hours
15+	176 hours

24.2 Vacation shall be earned during the first year of employment. Employees completing 1 year of service are entitled to use their accrued vacation. The rate of accrual shall change to the higher rate on the first day of the month in which the employment anniversary occurs. Any unused vacation leave in existence at the end of any employment year shall be carried forward to the credit of the employee.

24.3 Vacation leave may be taken when requested by the employee in writing and when approved by the appropriate commander in writing. The City shall schedule vacations, with due regard to the employee's request, extenuating circumstances to be considered, consistent with the requirements of the City's operation.

24.4 Absence on account of sickness, injury, or disability in excess of that accumulated for such purposes may, at the request of the employee and within the discretion of the City, be charged against that employee's accrued annual leave allowance.

24.5 Upon termination, which includes retirement or resignation from the service of the City, the employee shall take and/or may be paid lump sum payment for any unused accrued vacation leave up to 480 hours maximum accumulation.

Any employee presently on the payroll who currently has over 480 hours accumulated shall retain the actual amount accumulated, but will not be allowed to accumulate any additional hours beyond the amount on the books as of September 30, 1986.

24.6 One time per calendar year employees may cash out up to 40 hours of vacation or compensatory time at the employees' then current rate of pay.

## ARTICLE 25

### LEAVE OF ABSENCE

25.1 Leaves of absence without pay for a period not to exceed 30 days may be granted for a reasonable purpose to any employee by the City. Such leaves may be renewed or extended. Any employee who is a member of the National Guard or the Military Reserve Force of the United States, and who is ordered by the appropriate authorities to attend the prescribed training program or to perform other duties, shall be granted a leave of absence with pay as required by Florida Statutes, Chapter 115.07. Any employee on a non-paid leave of absence will reimburse the City for life and health insurance premium contributions. Any employee who is on a duly authorized non-paid leave of absence shall retain all accrued benefits, including seniority and longevity, but will not accrue any further benefits while on such leave unless otherwise provided for by State or Federal laws.

## ARTICLE 26

### INSURANCE

26.1 In the event of an employee's death, payment shall be made to the beneficiary named by the employee in his City group life insurance policy for any and all accrued overtime, vacation leave, and other terminal leave benefits to which such employee would have been entitled to receive, under the applicable provisions of law.

26.2 Members of the Bargaining Unit, covered retirees, and eligible dependents shall participate in the City's group health insurance plan on the same basis as general employees and retirees including, but not limited to contribution rates. Effective April 1, 2007, this would include:

- For individual coverage -- City contributions at 100% for HMO Standard and Enhanced Plans and City contributions toward PPO Plan at the same dollar level as the HMO Enhanced Plan
- For dependent coverage -- City contribution at 75% for HMO Standard Plan and City contribution towards HMO Enhanced and PPO Plans at the same dollar level as the HMO Standard Plan

26.3 The City agrees to contribute 100% of the cost of an employee's base \$25,000 group life insurance policy for each member of the Bargaining Unit. (This will be in addition to, but exclusive of, existing state requirements relating to police personnel insurance coverage.)

26.4 The City agrees to make available to all membership of the Bargaining Unit a comprehensive group Dental Insurance Plan. The City will not pay any premiums for either employees or dependent coverage. This program shall be optional, and employees shall not be required to participate.

26.5 All employees covered by this Agreement shall have the right to participate in the City's cafeteria (pre-tax) benefit plan. Participation in such a plan will not affect an employee's final compensation under the Melbourne Municipal Police Officers' Pension Plan. In addition, employees shall be eligible for any payroll deduction process pertaining to the cafeteria benefit plan that the City may make available.

26.6 The Union has the right to appoint one representative to the Health Insurance Advisory Committee (HIAC).

## ARTICLE 27

### WAGES

27.1 Retroactive to the first paycheck in October 2007, the salary schedules shall be increased by 2.5% for Police Officer, Police Sergeant and Lieutenant.

Retroactive to the first paycheck in October 2007, employees shall advance one step within their pay plan.

Effective the first paycheck in October 2008, the salary schedules shall be increased by \$750 for the positions of Police Officer, Police Sergeant, and Lieutenant.

Effective the first paycheck in October 2009, the salary schedules shall be increased by 2.0% and employees shall advance one step within their pay plan.

27.2 An employee completing a nineteen (19) year milestone and who is at the top of their respective pay grade shall receive an annual longevity pay bonus of \$1200 computed into their hourly rate effective the first paycheck in October, 2007, October 2008, and October 2009.

27.3 Effective October 1, 1986, during the term of this Agreement, employees who are promoted to a higher rank will receive a salary increase to the minimum for their new pay grade. If the minimum pay step in the new pay grade results in less than a 5% pay increase for the employee, he/she shall be placed in a pay step which equals a minimum 5% pay increase.

27.4 The City shall supply each Canine Officer with a dog that will be owned and maintained by the City in accordance with the form of agreement attached hereto and made a part hereof as Appendix "B". An agreement in such form will be entered into between the individual Canine Officer and the City at the time of assignment of dog to said officer.

Canine Officers will be granted one-half hour at the start and at the end of each shift to prepare feed, groom, and otherwise care for their assigned canine.

Canine Officers assigned to a 12-hour schedule will be compensated at the rate of time and one-half for 7 hours per pay period to provide daily care for the dog on their days off. There will be no compensation when dogs are kenneled.

27.5 Employees assigned to the following duties will receive the pay supplements noted. The supplements will be calculated at an hourly rate, and added to the employee's base rate.

Evidence Technician	Evidence Technicians required to wear civilian clothing shall receive a \$400.00 per year clothing allowance subject to the provisions of Article 17.3 of this contract. Evidence Technicians shall receive \$200.00 per year as a pay supplement. Evidence Technicians required to perform duty in Police uniform shall receive \$600.00 per year as a pay supplement.
Motorcycle	\$600 per year

An appropriate level of in-service training, as established by the Chief of Police, and offered by the Department, must be successfully completed by the Officer receiving a pay supplement on or before the expiration of 1 year from the date a pay supplement is effective in order for its payment to continue.

27.6 Field Training Officers (FTO), SWAT, Dive, and Crisis Negotiation Units (CNU) will be compensated at the rate of \$60.00 per month effective upon ratification of this agreement. Selection of officers for said positions will remain at the sole discretion of the Chief of Police.

27.7 Shift Differential pay will be paid to those officers with regular shift assignments at the following rate:

Officers assigned to shifts beginning between 12:00 noon and prior to 8:00 p.m. shall receive an additional four percent (4%) compensation while assigned to that shift. Officers assigned to shifts beginning at 8:00 p.m. and prior to 6:00 a.m. shall receive an additional two percent (2%) compensation while assigned to that shift.

Differential pay will only apply to sworn personnel assigned to a permanent non-rotating schedule. Persons working special details or on a temporary basis will not be eligible for this supplement.

## ARTICLE 28

### PROMOTION

28.1 The employer will promote employees from an eligibility list established for the particular vacancy or vacancies of a position. Position shall mean a vacancy or vacancies in the rank of Sergeant or Lieutenant. One eligibility list for each rank shall suffice for all vacancies in that position. Listing of all promotional opportunities shall be posted on all bulletin boards not less than 5 days prior to the deadline established for submittal of application.

### 28.2 ELIGIBILITY REQUIREMENTS

1. The eligibility requirements for promotion to the rank of Sergeant are as follows:
  - (A) Completion of four (4) consecutive years of service with the Melbourne Police Department as a sworn officer before the promotional test date.
  - (B) Achieve a "satisfactory" rating for the last three (3) annual performance evaluations preceding the promotional test date.
  - (C) Submit to and pass a written examination with a minimum score of 75%. This examination is intended to test basic legal and supervisory knowledge and allows candidates that pass the written test to continue in the Sergeants assessment process. The written test shall be compiled from the following source material:
    - (1) Department General Orders
    - (2) The Florida Criminal Law and Motor Vehicle Handbook (Gould Publication).

- (3) City of Melbourne Ordinances that apply to law enforcement.
- (4) The current labor agreement.
- (5) Questions from other source material as identified by the Chief of Police: articles, books, or other items of general police knowledge or supervisory skills.
- (D) Based on passing the written examination as specified above, the candidate may participate in an assessment process.

2. The eligibility requirements for promotion to the rank of Lieutenant are as follows:

- (A) Complete three (3) consecutive years of service before the promotional test date as a Sergeant with the Melbourne Police Department.
- (B) Achieve a "satisfactory" rating for the last three (3) annual performance evaluations preceding the promotional test date.
- (C) Participate in an assessment process, based on fulfilling the three requirements listed above.

28.3 Eligibility lists for promotional opportunities will be established when a promotion opportunity occurs. There will be a 60-day notification prior to the promotional test. Once the eligibility list is established, it will be used for subsequent promotions for one year from the date of posting.

28.4 The City will make adequate quantities of testing materials available to eligible employees for study purposes, at least 60 days prior to the posted testing date.

28.5 The City and the Union mutually agree that the testing process shall be administered and performed by a recognized law enforcement testing organization.

28.6 Seniority will be factored in at a value of up to 5 points, with both Sergeant and Lieutenant candidates' seniority based on time in grade within the rank they hold prior to the promotional test date. It will be awarded on the following scale:

Sergeant		Lieutenant	
Years in Grade	Points	Years in Grade	Points
10+	5	10+	5
9	4	9	4
7	3	7	3
5	2	5	2
4	1	3	1

Seniority points will be added to the number of points achieved in the assessment process and will comprise the candidate's final score.



28.7 Candidates will be ranked by final score and placed on an eligibility list that will be valid for one-year from the date of posting.

28.8 The Chief of Police shall conduct a personal interview with each candidate and consider the following elements:

1. Questions that relate to the mission of the Department and what the candidate would bring to the promoted position to help the Department meet its mission.
2. A review of employment history.
3. Educational achievement of the candidate.

28.9 The Chief of Police shall select from the eligibility list, after the interviews and at his discretion based on the "rule of three" as per past practice, a candidate(s) who will be recommended to the City Manager for promotion.

28.10 Candidates may review the results of his or examination. To review any aspect of the results of the promotion process, the employee must submit a memorandum to the Chief of Police. The Chief of Police shall arrange the time and place of the review and assign a monitor. Review of test materials shall be restricted in accordance with Chapter 119, Florida Statutes.

28.11 The Professional Standards Commander will secure and retain all promotion materials for the rank of Sergeant or Lieutenant in accordance with Chapter 119, Florida Statutes. The Commander will also maintain the confidentiality of these records in accordance with these statutes.

## ARTICLE 29

### POLITICAL ACTIVITY

29.1 Employees can engage in lawful political activity as defined by Florida Statute, 104.31.

## ARTICLE 30

### VEHICLES AND EQUIPMENT

30.1 Whenever an employee is authorized in advance to use his own vehicle in the performance of his official duties, he will be compensated in accordance with City Ordinance at the prescribed current rate of reimbursement per mile, as well as reimbursement for tolls and parking charges.

30.2 The City will make every reasonable effort to maintain vehicles and other City provided equipment in a safe operating condition. The City will endeavor to inspect patrol vehicles on a regular basis. Members of the Bargaining Unit using such equipment are charged with a responsibility to the City to assist in this effort. Failure on the part of a Bargaining Unit member to act in a responsible manner with regard to safety shall be cause for discipline.

ARTICLE 31

SEVERABILITY CLAUSE

31.1 Should any provision of this collective bargaining agreement, or any part thereof, be rendered or declared invalid by reason of any existing or subsequently enacted state or federal legislation, or by any decree of a court of competent jurisdiction, all other articles and sections of this Agreement shall remain in full force and effect for the duration of the Agreement.

31.2 Should any Article be rendered invalid, it shall be renegotiated within 30 days.

ARTICLE 32

PREVAILING RIGHTS

32.1 All benefits enjoyed by employees at the present time which are in writing and known to both parties, and which do not infringe upon Management Rights as stated in Article 4 of this Agreement, shall be presumed to be reasonable and proper, and shall not be changed arbitrarily or capriciously.

ARTICLE 33

PENSION

33.1 . COLA on Retirement Benefit

- A. Effective October 1, 2008, there shall be a 1% COLA on pension beginning at retirement and payable for life. Such pension COLA will apply to all future retirees including disability retirees, but excluding vested terminated members. Subject to any legal restrictions, this COLA will be applied to any current DROP participants once their employment actually terminates and they are fully retired from the City.
- B. No additional employee contributions will be required to fund this pension COLA. The maximum premium tax (State) contributions will be used each year to offset the City's contributions towards this COLA up to a maximum of \$752,912.
- C. The FOP and the City will mutually support a recommendation for an assumed actuarial investment rate of return of at least 8.0%.
- D. The City may explore enrolling all new hires in the Florida Retirement System (FRS). Before any transition to FRS occurs, the bargaining unit must approve the transition. In addition, current employees shall individually be given the right to remain in the Melbourne Police Retirement System or to join the FRS.

E. Other Items:

1. Overtime in excess of 300 hours per year shall not be included in the definition of "Salary" for retirement benefit purposes and neither the City nor the employee shall make contributions on these excess overtime hours.
2. Both parties agree that the definition of "Salary" shall be said definition contained in the City Ordinance as of October 1, 2007, with the exception of paragraph E.1 above.
3. These pension changes shall take effect October 1, 2008 for all plan participants. This would change the definition of "Salary" effective October 1, 2008. Salary prior to October 1, 2008 that included more than 300 hours overtime would be permitted for the pension benefit calculation.

33.2 All prior amendments to the Police Officers' Retirement Trust Fund shall remain in full force and effect except as modified by Section 33.1 of this Agreement.

ARTICLE 34

DRUG TESTING

34.1 The City and the Union mutually agree that the use by employees of unlawful drugs and other illegal controlled substances constitutes a danger to the employee, fellow employees, and the general public. It is further agreed that the safety of public property and equipment is placed at jeopardy if an employee is under the influence of drugs.

To allay public concerns regarding the use of drugs, alcohol or other illegal or controlled substances by Public Safety employees, and to mitigate the danger to other employees in the workplace, the City and the Union mutually agree that the following drug testing procedure will be implemented. This procedure will apply to all drug testing performed. As used herein, "drug" includes alcohol, illegal substances and/or controlled substances as defined in Section 112.0455(5)(a), Florida Statutes.

1. The annual physical examination given to all members of the Bargaining Unit will include a drug test to determine the presence of any drug or other illegal and/or controlled substance. This examination and other testing conducted pursuant to this article will be conducted in accordance with FDLR approved standards and testing procedures.
2. Test samples will be collected at Employee Health Services. Tests will be conducted by an independent laboratory contracted by the City. The original sample will be divided into three parts and retained by the independent laboratory. The first part will be used for screening, the second for confirmation of a positive test result on the first part, and the third part will be retained for use by the employee for independent testing. An appropriate chain of custody will be established to ensure the veracity of test results.

3. If initial drug screening tests produce a positive result, then a Gas Chromatography/Mass Spectrometry or other approved confirmatory test of the original sample will be performed by the laboratory. Within 10 calendar days following notification that the confirmatory test was positive, the employee may request a portion of the original sample to be tested by a recognized independent laboratory of the employee's choice. The cost of the test will be paid by the City if the test results are negative. At the conclusion of this process the results will be reviewed by a Medical Review Officer.
4. Drug testing will be conducted on employees at any time the City believes there is a reasonable cause or suspicion that the employee may be placing themselves or others at risk due to the influence of drugs/and or alcohol. The factors giving rise to the reasonable suspicion drug test (as defined below) shall be documented in writing. Prior to testing, the employee shall have the right to confer with his/her representative or attorney; provided, however, that such consultation shall not unreasonably hinder or delay the administration of the test.

Reasonable suspicion is defined as:

1. Observable phenomena while at work, such as direct observation of drug use or the physical symptoms or manifestation of being under the influence of a drug.
2. Abnormal conduct or erratic behavior while at work and a significant deterioration in work performance.
3. A report of drug use, provided by a reliable and creditable source, which has been independently corroborated.
4. Evidence that an individual has tampered with a drug test during his or her employment with the City.
5. Reliable information that an employee has caused, or contributed to an accident while at work.
6. Evidence that an employee has used, possessed, sold, solicited, or transferred drugs outside of his or her job-related responsibilities.

The decision to require the employee to submit to a drug test will require the approval of the Police Chief, or his designee. This requirement shall be reduced to writing and given to the employee.

5. Employees who are using a drug lawfully prescribed by a physician are encouraged to notify the Employee Health Nurse of that situation.
6. Employees who refuse to comply with the provisions of this Article may be subject to disciplinary action, up to and including dismissal, subject to the grievance procedures of this contract.

ARTICLE 35

HEALTH AND WELFARE

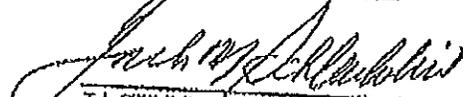
35.1 When an employee in performing his job duties is exposed to a serious contagious disease, as determined by the Center for Disease Control (CDC), the Employer shall pay the reasonable medical expenses for an inoculation or immunization, as medically necessary, for the employee and for members of the employee's family living in the same household.

ARTICLE 36

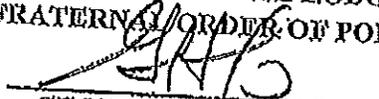
DURATION OF AGREEMENT

36.1 This Agreement shall be effective October 1, 2007, and shall remain in full force and effect through September 30, 2010. Either party to the Agreement may give notice in writing within ninety (90) days prior to the expiration date to the other party of their desire to terminate, amend, or continue this Agreement.

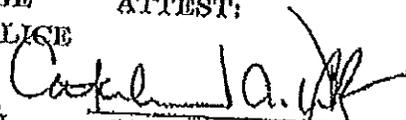
CITY OF MELBOURNE

  
\_\_\_\_\_  
JACK M. SCHLUCKEBIER  
City Manager

THE FLORIDA STATE LODGE  
FRATERNAL ORDER OF POLICE

  
\_\_\_\_\_  
GEORGE F. HACHIGIAN  
General Counsel's  
Chief of Staff

ATTEST:

  
\_\_\_\_\_  
CATHY WYSOR  
City Clerk

# EXHIBIT P



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### Attorney says Melbourne cop will file suit after case dropped

Excellent!  Rated  Rating: ☆☆☆☆ 2.67 / 5 (24 votes) [Share This](#)

Posted: 2011 Apr 15 - 01:23

Lawyer says fired officer wants job back; city attorney opposes rehiring Frank Carter

By Dan Garda

dgarda@hometownnewsol.com

Melbourne defense attorney Kepler Funk makes no bones about why former Melbourne police officer Frank Carter was fired, charged with committing felony crimes and faced more than 15 years in prison.

Mr. Carter was, after all, the head of the Melbourne police union. That put him at odds with former Melbourne Police Chief Don Carey, Mr. Funk said.

In a case that stunned Melbourne residents - including many who supported Mr. Carter - the officer was arrested Jan. 20, 2010, by the Florida Department of Law Enforcement.

Mr. Carter was jailed on charges of official misconduct and falsifying documents.

Mr. Carter was cleared of all charges recently when the Brevard County State Attorney's Office announced it would not pursue the case.

Mr. Carter had basically been accused of making illegal traffic stops and conducting illegal searches of vehicles.

"It was a witch hunt," Mr. Funk said. "Obviously, Mr. Carter was a vocal guy leading the charge for no-confidence votes against Chief Carey."

Asked how he won the case on behalf of Mr. Carter, Mr. Funk said: "The strategy was simple: He didn't do anything wrong. He didn't commit any crimes. It was crazy. We have it all on video."

Mr. Funk said the video exonerated Mr. Carter because it does not show any illegal activity on his part.

"He was doing his job. I told the judge we should be applauding him, not prosecuting him," Mr. Funk said.

Mr. Carter has been stripped of his police badge, fired and faced five felony counts.

Since the case was dropped, Mr. Carter has conferred with an Orlando law firm and could sue the city for wrongful termination or slander while seeking reinstatement.

However, Melbourne City Attorney Paul R. Gougelman said the city may not want the officer back. Mr. Carter had also been suspended for two weeks for using an apartment rented by the police department while on duty. Mr. Gougelman said.

Mr. Gougelman said Mr. Carter was later fired for failing to cooperate with the city's investigation of the apartment use.

"He elected not to cooperate," Mr. Gougelman said. "In one case, he went out of town."

Mr. Gougelman acknowledged a settlement with Mr. Carter is possible, but he said the city may oppose a reinstatement.

"If we felt the need to terminate him, there is a feeling that it would be inappropriate for him to be a police officer," Mr. Gougelman said.

"If you make a decision that somebody has no business being a police officer, and they turn around and sue and say, 'I'll settle with you for a huge bag of gold,' we're in a difficult position because we previously made the decision that he ought not be having a badge and a gun," Mr. Gougelman said.

Mr. Funk said Mr. Carter has the right to clear his name after Chief Carey made potentially slanderous comments about him in the media.

"He called him a radst - publicly!" Mr. Funk said.

"They're better be a Rodney King video before you call someone a radst," Mr. Funk said. "That's about as low as it gets."

Mr. Funk said that then-Chief Carey also referred publicly to Mr. Carter as "a bad cop."

In charging Mr. Carter, the police department had also issued a press release accusing Mr. Carter of "targeting people of color."

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Chief Carey, who retired from the Melbourne force, could not be reached for comment. He has not spoken about the case since it became public.

Mr. Funk won a ruling recently in which Circuit Judge Robert Burger ruled part of the state's case against Mr. Carter was inadmissible.

Assistant state attorney Tom Hastings said the judge's ruling prevented prosecutors from admitting two counts it claimed showed Mr. Carter acted improperly.

Mr. Funk said the judge's ruling was "a routine court ruling" and not overly significant.

"I've called this case 'B.S.' from the moment I reviewed it," Mr. Funk said.

Mr. Funk also blamed the State Attorney's Office for the case against Mr. Carter.

"The State Attorney's Office made the decision to file a charge, not Chief Carey," Mr. Funk said. "I've been practicing law for almost 20 years and have handled thousands of cases. I've represented police officers before, and I've never seen this type of charge before.

That, to me, is an abomination."

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