

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF NEWPORT BEACH
AND
THE ASSOCIATION OF NEWPORT BEACH OCEAN
LIFEGUARDS



July 1, 2012 through June 30, 2014

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ASSOCIATION OF NEWPORT BEACH OCEAN LIFEGUARDS**

This MEMORANDUM OF UNDERSTANDING (hereinafter referred to as "MOU") is entered into with reference to the following:

PREAMBLE

1. The Association of Newport Beach Ocean Lifeguards ("ANBOL" or "Association"), a recognized employee organization, and the City of Newport Beach ("City"), a municipal corporation and charter city, have been meeting and conferring, in good faith, with respect to wages, hours, fringe benefits and other terms and conditions of employment.
2. Association representatives and City representatives have reached a tentative agreement on *July 11, 2013* as to wages, hours and other terms and conditions of employment for the period from *July 1, 2012 through June 30, 2014* and this tentative agreement has been embodied in this MOU.
3. This MOU, upon approval by the Association and Newport Beach City Council, represents the total and complete understanding and agreement between the parties regarding all matters within the scope of representation. Except as limited herein, the City retains all management rights as set forth in the Meyers-Milias-Brown Act and Resolution 2001-50.

SECTION 1. – General Provisions

A. Recognition

In accordance with the provisions of the Charter of the City of Newport Beach, the Meyers Milias Brown Act of the State of California and the provisions of the Employer/Employee Relations Resolution No. 2001-50, the City acknowledges that the Association is the majority representative for the purpose of meeting and conferring regarding wages, hours and other terms and conditions of employment for all employees in those classifications of Lifeguard I, II, and III, or as appropriately modified in accordance with the Employer/Employee Relations Resolution. All other classifications and positions are excluded from representation by the Association.

Recognition is limited to employees who are active employees ("Active Employee") with job titles of Lifeguard I, II, and III who have worked in such positions for the City of Newport Beach during the most recent summer season (or the summer season the year preceding the most recent season if they took an approved leave of absence and missed the most recent year) and have worked 240 cumulative hours by April 15 of the calendar year. An Active Employee is an individual who has completed the Fire Department's re-

certification class with the expectation of working a minimum of 56 cumulative hours per calendar year. All other employees are excluded.

B. Duration of Memorandum

1. Except as specifically provided otherwise, any ordinance, resolution or action of the City Council necessary to implement this MOU shall be considered effective as of *July 1, 2012*. This MOU shall remain in full force and effect until *June 30, 2014*, and the provisions of this MOU shall continue after the expiration date of this MOU in the event the parties are meeting and conferring on a successor MOU. Negotiations for a successor agreement shall commence in March *2014*.
2. The terms and conditions of this MOU shall prevail over conflicting provisions of the Newport Beach City Charter, the ordinances, resolutions and policies of the City of Newport Beach, and federal and state statutes, rules and regulations which either specifically provide that agreements such as this prevail, confer rights which may be waived by any collective bargaining agreement, or are, pursuant to decisional or statutory law, superseded by the provisions of an agreement similar to this MOU.

C. Employee Data and Access

Each April, the City shall provide Association a regular list of all unit members including name, contact info (including e-mail) and job title. For those members who specifically ask that their personal information not be given out, email contact information only will be provided.

D. Conclusiveness

This MOU contains all of the covenants, stipulations, and provisions agreed upon by the parties. Therefore, for the life of this MOU, neither party shall be compelled, and each party expressly waives its rights to request the other, to meet and confer concerning any issue contained herein.

E. Modifications

Any agreement, alteration, understanding, variation, or waiver or modification of any of the terms or provisions of this MOU shall not be binding upon the parties, unless contained in a written document executed by authorized representatives of the parties.

F. Savings

Should any part of this MOU be rendered or declared illegal or invalid by legislation, decree of court of competent jurisdiction or other established governmental administrative tribunal, such invalidation shall not affect the remaining portions of this MOU.

G. Subcontracting

As provided in the Employer-Employee Relations Resolution No. 2001-50, the City shall determine the manner in which City services are to be provided, including whether the City should provide services directly or contract out work, including work that is currently being performed by Association members. In the event the City introduces a plan to outsource services currently being performed by Association members to achieve greater efficiency and/or cost savings, and upon request by the Association, the City shall meet and confer with Association representatives to discuss the impacts of the City's decision to contract out work, a minimum of sixty (60) days prior to contracting out such services. The City shall retain sole authority to decide whether or not to contract out work, including work that is currently being performed by Association members. This provision shall not limit the City's authority to enter into such an agreement for any City services.

SECTION 2. – Compensation

A. Pay for Time Worked

1. Salary Adjustments

There shall be no salary adjustment in the first year of this 2012-2014 contract. Effective the pay period including July 1, 2013, (the second year of the contract) base salaries shall be increased 2.0%.

2. Bi-Lingual Pay

Employees certified as bilingual (Spanish) shall be eligible to receive fifty (\$.50) cents per hour in bilingual pay. The certification process will confirm that employees are fluent at the street conversational level in speaking Spanish. Employees certified shall receive bilingual pay the first full pay period following certification.

Additional languages may be certified for compensation pursuant to this section by the Fire Chief.

3. EMT Pay

Employees who maintain certification as Emergency Medical Technicians ("EMTs") according to State of California regulations and Orange County EMS policy shall be eligible to receive fifty (\$0.50) cents per hour worked in "EMT Pay." *Effective July 1, 2013, EMT Pay shall increase to one dollar (\$1.00) per hour worked.* It is the employee's responsibility to have their current EMT Certification on file. Employees certified shall receive EMT Pay the first full pay period following certification.

4. Compensation for Overtime - Normal Overtime

Normal overtime is defined as any scheduled hours worked in excess of the basic work week. For the purposes of this section, the basic work week is 40 hours, or as determined by the Fire Chief and approved by the City Manager, which occurs between a fixed and regularly recurring period of 168 hours - 7 consecutive 24 hour periods.

Definition of Hours Worked - Hours worked are defined as hours which employees are required to be performing their regular duties or other duties assigned by the City.

Compensation - Normal overtime for all non-exempt employees shall be paid at one-and-one-half (1-1/2) times the *employee's regular rate of pay*. Reporting of overtime on payroll forms will be as prescribed by the Finance Director.

5. Temporary Upgrading of Employees

Temporary upgrading shall be defined as the temporary assignment of an employee to work in a job classification which is assigned to a salary schedule higher than his/her regular classification. Employees temporarily assigned to Lifeguard II or Lifeguard III job classifications shall receive a five percent (5%) pay differential over their regular rate of pay for all time worked in the higher classification, with a minimum of one hour required to receive the differential.

SECTION 3. - Work Hours and Staffing

A. Staffing

During "A" level staffing, Monday through Friday, two patrols (one each in divisions 1 and 2) shall be staffed with two persons. Saturday and

Sunday, four patrols (two each in divisions 1 and 2) shall be staffed with two persons. The staffing will consist of a unit operator and a mentored lifeguard. Staffing of the mentored lifeguard position will be placed on the regular schedule and staffed per Fire Department Policy, and will be eligible for temporary upgrade pay.

Based on availability, Lifeguard Towers will be staffed with Lifeguard II qualified personnel during "C" level staffing. Lifeguard I personnel staffing Towers during "C" staffing will receive temporary upgrade pay.

Upon request, declared at the beginning of each season, represented employees shall be scheduled for at least thirty-five (35) hours per week during "A" level staffing.

Represented employees will, during all staffing levels, be paid two (2) hours of pay if their scheduled shift is canceled later than 4:00 p.m. the day before the work is scheduled. The shift is considered canceled when the City provides notice to the employee at the number designated by the employee. Once reporting to work, employees will be afforded the opportunity to either work their scheduled shift or voluntarily leave work without pay if work is not available.

SECTION 4. – Fringe Benefits

A. Equipment Allotment

Represented employees in the Association shall be *paid Two Hundred (\$ 200) Dollars*, annually, towards the purchase of UVA/UVB compliant sunglasses, sweat pants, full brimmed or ball cap style hat, equipment carrying bag, water proof watch and replacement and/or repair of any work-related equipment. This payment will be made by the first full pay period in July of each season they are working. Sunglasses must be full coverage, have polarized lenses, and be worn whenever conditions warrant.

B. Sunscreen

Represented employees will be provided sunscreen and lip balm on an as-needed basis.

C. Skin Cancer Screening

Annual skin cancer examinations shall be provided for unit employees at a facility selected by the City. Employees who are scheduled to be screened off duty will be paid one (1) hour of compensation.

D. Binoculars

Represented employees shall be provided a pair of binoculars *in accordance with the Fire Department's Standard Operating Procedures*. Binoculars must be kept in good working order by the employee and must be brought to work for each Lifeguard Operations shift, which will be confirmed by inspection by the Division Supervisors. If the provided binoculars are lost or damaged, the employee shall replace them with a pair meeting the City's specifications. *Upon separation from the Fire Department, employee shall return the binoculars to their supervisor unless a purchasing agreement is made at time of separation.*

E. Other Equipment

One pair of uniform trunks and two uniform shirts, each season.

One jacket per career, replaced when unserviceable.

One pair swim fins, one mask and snorkel per career, replaced by City if lost or broken in the execution of work duties.

F. Gym

Represented employees will be provided access to the City Gym.

G. Parking Passes

Represented employees will be provided one parking pass that does the following:

- Allows "blue pole" parking year around.
- Allows "all meter" parking June 15 to September 30.

H. Identification Card

Upon request, represented employees who desire an Identification (ID) Card shall be provided with an official wallet-sized City of Newport Beach identification card.

I. Other Benefits Not Guaranteed

Employees represented by the Association of Newport Beach Ocean Lifeguards may, in the sole discretion of the City, be provided additional benefits/privileges.

J. PERS

Unit members enrolled in California Public Employees Retirement System (CalPERS) shall pay the full 9% "safety member" contribution of CalPERS reportable earnings and the Employer Paid Member Contribution will be 0%. This payment will be made on a pre-tax basis through payroll deduction pursuant to IRS Code Section 414(h)(2). This contribution will not be considered as part of employee's "compensation earnable" under Government Code section 20636.

SECTION 5. - Miscellaneous

A. Disciplinary Actions

Represented employees are afforded the opportunity to seek internal resolution of any disciplinary actions having a financial impact on the employee.

Represented employees may appeal any such actions to the Fire Chief, *or his/her designee*, within ten (10) calendar days of the disciplinary action. The Fire *Chief or designee* will meet with the employee and a representative of their choosing within ten (10) calendar days of the appeal. If the matter continues to be unresolved, the employee may, within ten (10) calendar days, appeal to the City Manager *or the City Manager's designee*. The City *Manager or designee* will meet with the employee and their representative. Within ten (10) calendar days, the City Manager *or designee* shall issue his/her decision. The decision of the City Manager *or designee* shall be final.

This is the only City appeal procedure for the term of this agreement.

B. Orientation

Association representatives will be allowed ten minutes at the end of training sessions to address newly hired trainees.

C. Work Access

ANBOL representatives shall have access to employees in the workplace through an ANBOL dedicated bulletin board in lifeguard headquarters.

ANBOL representatives shall be allowed 10 minutes at the beginning of class to address employees at every Lifeguard Recertification course.

D. Leave of Absence

Employees requesting a Leave of Absence for a summer season must do so by submitting the request in writing, as provided in the Fire Department Standard Operating Procedure. Leaves of absence will only be permitted once within a five year period.

E. Classification Study

At the time of adoption of this 2012-2014 MOU, the City is undergoing a comprehensive study of its classification and compensation program. The City agrees to review the classifications of Lifeguard I, II, and III for the purpose of assessing appropriate classification structure and assignment.

Executed this 13th day of August, 2013:


**ASSOCIATION OF NEWPORT BEACH OCEAN
LIFEGUARDS**

By: 
Chris Graham, President

CITY OF NEWPORT BEACH

By: 
Keith D. Curry, Mayor

ATTEST:

By:  FOR
Leilani Brown, City Clerk



APPROVED AS TO FORM:


Aaron C. Harp, City Attorney