

ARTICLE - DISCIPLINARY ACTIONS

Section 1. Authority of the Fire Chief.

~~A.—The Fire Chief shall have authority to demote and/or suspend a member for a period of time not to exceed thirty (30) calendar days, or indefinitely suspend (as provided for in Chapter 143 of Local Government Code) any member for the causes set forth in the Fire Fighters and Police Officers Civil Service Commission Rules. The member may appeal such actions, if any, as provided for herein.~~

~~B.—Members suspended for three (3) days or less who appeal the suspension shall not serve the suspension unless a suspension with loss of pay is awarded by an arbitrator.~~

Section 2. Disciplinary Action Process.

A. Honor Board Creation and Recommendations.

~~San Antonio fire fighters and paramedics believe that a strong and effective Fire Department requires oversight by uniformed peers who are invested in both the mission of the San Antonio Fire Department, the integrity and practices of its members, and the uniform application of the SAFD's progressive discipline policy. Toward that end, and effective with the execution of this contract, the parties agree to create an Honor Board comprised of five (5) uniformed members, two (2) appointed by Local 624 and two (2) appointed by the City, with the final board member chosen by a majority of the appointed uniformed members. The City will also provide a member of City staff to serve as a resource regarding prior disciplinary actions and to answer questions intended to provide for uniform application of the rules and procedural consistency.~~

~~The Honor Board shall meet as necessary to discuss pending disciplinary matters. The Honor Board may seek additional information regarding the matter as necessary to make an informed decision. A majority of the available board members, requiring the presence of at least three (3) members, will then decide on appropriate discipline, and make that recommendation to the Fire Chief.~~

~~The Fire Chief can accept the Honor Board's recommendation or reject the recommendation and impose discipline as deemed appropriate by the Fire Chief. The decision by the Fire Chief shall be final, subject to appeal as provided for in this agreement or under Chapter 143 of the Texas Local Government Code.~~

B.A. Contemplated Disciplinary Action.

Prior to any such disciplinary action, the member subject to discipline shall be given notice of contemplated disciplinary action by personal service. If the Fire Chief or his/her designee is unable to secure personal service of the proposed disciplinary action, service may be made by mailing the notice certified mail to the member's last known address along with delivery of the notice to the Union.

The contemplated disciplinary action shall state~~stating~~ the action or actions contemplated and the reasons therefore, and notifying the member that he/she may rebut the charges to the Fire Chief, either orally, or in writing, within seven (7) calendar days.

Section 3.B. Written Statement of Charges~~Final Discipline.~~

After the notice and opportunity for rebuttal provided in the preceding paragraph, the Fire Chief, or his/her designee, shall serve the final discipline on the member by personal service. ~~may demote, suspend, or indefinitely suspend a member by personal service in accordance with this Article on the member of a written statement of charges addressed to the Civil Service Commission.~~ A copy of the disciplinary statement shall be promptly filed with the Human Resources Director of the City.~~San Antonio Fire Firefighters' and Police Officers' Civil Service Commission.~~

The written statement shall point out the particular rule or rules alleged to have been violated by the member and the specific act or acts alleged to be in violation of the specific rule or rules. In the event of demotion, suspension, or indefinite suspension, the statement informing the member of disciplinary action and the reason(s) for the action shall also inform the member that an appeal may be made by filing an appeal in writing with the Human Resources Director, within fifteen (15) calendar days after receipt of this written statement.

If the Fire Chief or his/her designee is unable to secure personal service of the proposed disciplinary action, service may be made by mailing the notice certified mail to the member's last known address along with delivery of the notice to the Union. Service is complete upon placing the notice in the mail and the member has thirty (30) calendar days to appeal after the date it is placed in the mail.

Section 3. Agreed Discipline

Notwithstanding any other provision of this Agreement, an employee has the authority to enter into a written agreement with the Chief regarding disciplinary action. The agreed disciplinary action is an agreement between the employee and the Chief that may include, but is not limited to any one, or combination of, a suspension, demotion, or non-disciplinary actions such as professional counseling, re-training, or re-assignment as well as last chance agreements. In entering into such an agreement, the employee shall have no right to appeal such agreed disciplinary actions, and no administrative or judicial body shall have power to review such a suspension or alter the terms of the Agreement. If an agreed discipline is reached, the requirement to notify of a right to appeal is not necessary in the final disciplinary documentation.

Section 4. — Notice of Right to Appeal.

~~The written statement of suspension shall be deemed to have been delivered to the member when the written statement is hand-delivered to the suspended or demoted member by the Fire Chief, the Fire Chief's authorized designee, or by a designated messenger.~~

Section 4. Appeals

If a member appeals the disciplinary action to the Commission, the appeal will be conducted in accordance with Chapter 143 of the Texas Local Government Code.

If a member elects to appeal to an independent third party hearing examiner instead of the Commission, the appeal will be conducted in accordance with this Article.

Section 5. Arbitrator Defined.

For the purposes of this Article, the term “arbitrator” shall mean the same as an “independenta-third-party hearing examiner” as referred to in Chapter 143 of the Local Government Code. ~~Appeals from demotion, suspension or indefinite suspension shall be decided by one (1) arbitrator, selected according to this agreement. Upon receiving an appeal from the member, the Human Resources Director shall act promptly to notify the Association, the Fire Chief, and the City Manager of the appeal.~~

Section 6. Arbitration Selection and Scheduling.

~~The counsel for the member and the counsel for the Fire Chief shall attempt to mutually agree on an arbitrator. If the parties fail to agree on an arbitrator within fourteen (14) calendar days after the appeal is filed, Within fourteen (14) calendar days from the filing of an appeal, the Human Resources Director shall within five (5) business days from the expiration of the fourteen (14) calendar days request a list of seven (7) qualified neutrals from the American Arbitration Association. The parties may mutually agree on one of the seven (7) neutrals. If they do not agree, the parties shall alternatively strike the names on the list within seven (7) calendar days after receipt of the list, and the remaining name shall be the arbitrator. The member or his/her attorney shall strike first.~~

All parties shall act to complete the selection process at the earliest possible date. The arbitrator shall be promptly notified of his/her selection. The parties will not have ex parte communication

with the arbitrator. Communication with the arbitrator will be through the counsel for the Fire Chief and the counsel for the member jointly.

Section 7. Scheduling the Arbitration

~~The arbitrator shall convene the hearing at a place mutually agreeable to all parties no later than 120 calendar days from the date the arbitrator is notified of his/her selection. The hearing shall be commenced, but need not be completed, within ninety (90) calendar days of the arbitrator's selection. Delay in commencement of the hearing within these time periods may occur due to unavoidable conflicts between the arbitrator and the parties' schedules, or by mutual agreement of parties and for no other reason.~~ However, if the selected arbitrator ~~selected~~ cannot commence the hearing within ~~ninety (90)~~120 calendar days from his/her selection, and there is no agreement to extend the hearing to a later date by the parties, the parties shall attempt to agree on a substitute arbitrator. If the parties cannot agree upon a substitute within seven (7) calendar days of so learning, a new arbitrator shall be selected in accordance with the selection process set out in this article. ~~another arbitrator shall be selected from a new list of seven (7) names promptly requested from the American Arbitration Association, according to the procedure set out here.~~

The arbitrator shall make ~~a~~ reasonable effort to issue his/her award within thirty (30) calendar days of the close of evidence or after receipt of briefs if any in arbitration hearings, and within seven (7) calendar days of the close of evidence in expedited arbitration hearings under 143.057 of the Texas Local Government Code. Post hearing briefs shall only be permitted in standard arbitration hearings and must be mailed to the arbitrator within such time as is agreed to by the parties, or as directed by the arbitrator.

~~Section 8.~~

~~A stenographic transcription of the proceedings shall be made of the hearing, with the cost shared by the parties.~~

Section 98. Arbitration Rules

The following rules shall govern the conduct of arbitration hearings under this Section, and of certain preliminary matters.

A. Transcripts.

A stenographic transcription of the hearing shall be made, with the court costs shared equally by the parties.

B. Expenses

1. Each party will bear its own attorney's fees and costs.
2. The arbitrator's fees and expenses and the cost of the hearing transcript shall be shared equally by the parties.

~~A. Witnesses~~

1. Both parties shall provide, at least ~~seven~~ twelve (12) calendar days prior to the date of the hearing, the names and addresses of witnesses expected to be called at the hearing along with a brief statement as to the relevancy of his/her expected

testimony. In the absence of good or excusable cause, the arbitrator may exclude the testimony of a witness upon the failure of a party to disclose such a witness.

2. The City shall compensate all witnesses called by either party at their straight-time rate of pay provided:

i. The witness is an employee;

ii. The witness is scheduled for duty when called to appear; and

iii. The witness' identity and a brief statement as to relevancy of expected testimony has been provided to the City twelve (12) calendar days in advance of the hearing.

3. The member shall not be compensated for time spent at the hearing or in preparation therefore, nor shall he/she be entitled to administrative leave for such time.

C. Discovery

2.—The parties, in writing, may request discovery from each other concerning the case. Should the opposing party not agree to provide the requested information within fifteen (15) calendar days of the request, the request shall be deemed denied. The requesting party may then apply to the Arbitrator who shall order such discovery as is appropriate to the nature of the case, consistent with, but not bound by, the rules of discovery in Texas civil cases. In considering the application, the arbitrator shall consider the burden and expense of producing the information, the need of the requesting party, the amount of time available prior to the hearing, and such other matters as he/she may deem material. In no event shall discovery be requested less than thirty (30) calendar days prior to the hearing.

~~3.1.~~ -The arbitrator shall have the power to subpoena witnesses. Subpoena's shall be requested at least thirty (30) calendar days prior to the hearing. A brief statement on the relevancy of the expected testimony shall be included for each subpoena requested. A party seeking issuance of a subpoena shall notify the opposing party at the same time the request is made to the arbitrator. The non-requesting party shall have five (5) business days to object in writing. Where the subpoena request is not opposed by a party, the Human Resources Director shall issue the subpoena in the name of the Arbitrator and such issuance shall be considered the act of the arbitrator. If the subpoena is opposed, the moving party shall apply to the arbitrator for issuance of the subpoena. The City will serve subpoenas on any City employee; otherwise the party issuing the subpoenas shall be responsible for obtaining service.

~~D.C.~~ -All hearings shall be public unless it is expressly agreed in writing by the parties that the hearing shall be closed to the public. In any event, the final decision of the arbitrator shall be public, although public announcement may be reasonably delayed upon request of the parties.

D. -Unless otherwise provided in this Agreement, the conduct of the hearing shall be governed by the rules of the American Arbitration Association, as interpreted by the arbitrator.

Section 10.

E. Except as otherwise provided in this Agreement, the arbitrator shall have all those powers and only those powers vested in the Commission under Chapter 143 of the Local Government Code and the Commission Rules.

Section 11.

~~Any notice or statement required to be filed by the Fire Chief or the member in a disciplinary proceeding under Chapter 143 of the Local Government Code, under Commission Rules, or under this Agreement, shall be filed with the Human Resources Director of the City.~~

Section 12.

~~Hearings conducted by the Commission shall be in accordance with Chapter 143 of the Local Government Code, unless this article expressly modifies Chapter 143.~~

Section 139. Appeal of an Arbitrator's Award

~~Unless otherwise provided in this Agreement, with respect to demotions, suspensions, and indefinite suspensions as defined in Chapter 143 of the Local Government Code, the member shall have such right to appeal the arbitrator's decision to district court as they are given in Chapter 143 of the Local Government Code to appeal the Commission's decision, and no greater right. Either party may appeal an arbitrator's award to state district court on the grounds that it is not supported by substantial evidence as indicated in the record made before the arbitrator.~~

Section 1410.

Any deadline or time restrictions set out in this Agreement with respect to disciplinary proceedings may be modified by written agreement of the parties. However, neither party may be compelled to waive its right to insist upon the deadline and time restrictions provided by the Agreement.

Section 15.

~~A member shall have the right to representation of their choosing at any time during the disciplinary process, including any investigation initiated to determine whether discipline is warranted. The member will be made aware of this right prior to any other questions, oral or written, being provided to the member. If the member elects to have representation, and representation is not immediately available, the scheduled meeting will be continued until representation is available to attend the meeting with the member. This section does not diminish any rights under state or federal law that currently exist regarding disciplinary matters involving public safety employees.~~

Section 1611. Suspensions Forfeiting Leave.

~~Employees Members suspended up to a maximum of six (6) working days may, at the employee's Fire Chief's discretion, forfeit either accumulated vacation time or holiday leave equal to the suspension. The employee shall have ten (10) calendar days from her/his receipt of notice of the suspension to decide whether or not she/he wishes to forfeit accumulated leave or exercise her/his appeal rights pursuant to Local Government Code Chapter 143 or this agreement. The provisions of this Article shall apply solely to suspensions which are agreed to by the employee, and If the member is allowed to forfeit leave in lieu of serving the suspension, any right of appeal under Local Government Code Chapter 143 or this agreement is waived. ~~no appeal to the Commission or to arbitration may be instituted on suspensions where the employee has forfeited accumulated vacation or holiday leave.~~~~

Date:

For the City

For the Association