

ARTICLE 30.

GRIEVANCE AND DISCIPLINARY PROCEDURES

Section 1. Scope of Procedure.

The purpose of this Article is to provide a just, equitable, and expeditious method for resolving disputes between the City and the Union (or employees) concerning all aspects of the employment relationship between the City and bargaining unit employees, and concerning the bargaining relationship between the City and the Union. To that end, the parties hereby agree and stipulate as follows:

- A. All disputes concerning the interpretation and/or application of the terms of this Agreement shall be submitted, if at all, to the grievance/arbitration procedure as called for herein. Failure to initially pursue grievance/arbitration in these instances shall be the basis for a plea in abatement in response to any suit or claim filed with a court of law and/or administrative agency.
- B. Employee claims of violation of statutory or constitutional rights may be submitted to the grievance/arbitration procedure or may be pursued by means of judicial and/or administrative appeal; provided that once the employee has elected to file a lawsuit and/or administrative claim, all issues raised by the dispute or claim will be resolved in such lawsuit and/or administrative process, and no grievance may be filed concerning the same subject matter. It is recognized that claims falling under this subparagraph may be included with related claims of contract violations. In such circumstances, the City shall not be entitled to abatement of a suit involving the contract claims, related to the statutory or constitutional claims asserted, for failure to grieve such contract matters initially. If the employee elects to use the grievance/arbitration procedure to raise statutory or constitutional claims, such matters may not thereafter be appealed to court except as provided by this Article Agreement.
- C. Claims alleging violation of Article 11, Section 1, or state or federal laws prohibiting employment discrimination including discrimination for having initiated or filed a claim for workers' compensation benefits, as prohibited by Texas Labor Code Section 451.001, shall not be subject to the grievance/arbitration procedure.
- D. Disciplinary matters subject to the appeals procedure provided by Texas Local Government Code Chapter 143 shall not be subject to the grievance/arbitration procedure; provided that such matters, at the employee's election, will be subject to the Civil Service Commission or grievance/arbitration procedure under a just-cause standard, if Texas Local Government Code Section 143.057 is repealed or amended to eliminate the optional appeal of disciplinary matters to a Hearing Examiner. If the provisions of Chapter 143 are not repealed, and should the employee elect to proceed to the optional appeal of disciplinary matters to a Hearing Examiner, the examiner shall be selected as called for in Section 5(A) hereof. The powers, duties, and/or obligations of said arbitrator/hearing examiner shall

likewise be as provided for in this Agreement and applicable provisions of the Texas Local Government Code, Chapter 143.

Section 2. Grievance Time Limits.

The parties shall act diligently and exercise good faith to adhere to the time limits set forth in this Article, unless such time limits are waived or extended by mutual agreement. In the event the employee or Union fails to meet the time limit at any step of the grievance procedure, the grievance shall be considered satisfied and no further action need be taken; provided, that where the grievance concerns a matter within the jurisdiction of the courts, the employee may file suit if the grievance is rejected due to failure to comply with a time limit set forth in this Article. Failure by the City to meet the time limits at any step shall be considered a denial of the grievance which will allow the Union or employee, at their option, to proceed to the next step. Time limits begin to run on the date of a party's actual receipt of an appeal or response. When either party provides an appeal or response by mail, its timeliness shall be judged by the postmark on the envelope. When either party provides an appeal or response by facsimile transmission or via email, its timeliness shall be judged by the date printed by the facsimile transmission device or email. For any delivery of an appeal or response that is not hand delivered the parties are required to provide written confirmation to the other party. Where a deadline falls on a Saturday, Sunday, or legal holiday, the deadline will be extended to the next day which is not a Saturday, Sunday, or legal holiday.

Section 3. Relief through the Chain of Command.

The Union or any employee covered by this Agreement having a matter which is felt to be a grievance shall make a reasonable effort to resolve the matter through the appropriate chain of command via telephone, email or face to face meetings.

In the event the matter is not resolved through the Chain of Command, the employee may submit a grievance to the Union Grievance Committee.

Section 4. Steps of Grievance Procedure.

A. Initial Filing and Grievance Committee Review

1. In order to be considered, a grievance raising contractual issues must be submitted to the union grievance committee within thirty (30) calendar days of the grievant's actual or constructive knowledge of the event. A grievance raising non-contractual issues must be submitted with the union grievance committee within one hundred eighty (180) calendar days of the grievant's actual or constructive knowledge of the event.
2. Any employee covered by this Agreement having a matter which is felt to be a grievance shall submit the grievance in writing to the Union Grievance Committee. The grievance shall be submitted on a form to be provided by the City and must include:

(a) a brief statement of the grievance and the facts on which it is based; (b) the section of the Collective Bargaining Agreement which has been violated; (c) the remedy or adjustment, if any, sought; (d) the employee's signature; and (e) where "maintenance of standards" is a basis for the grievance, the specific standard(s) alluded to must be identified. As used herein, "maintenance of standards" includes all statutory or other non-contract provisions incorporated herein through the Maintenance of Standards Clause found at Article 9.

3. The Union may file a grievance on any matter covered by this Agreement that it feels the City has violated the terms of this agreement. However, the only remedy available to the Union is a change of policy or practice of the department to conform with the terms of this agreement.

3.4. Within three (3) business days after receipt of a grievance, the Union Grievance Committee shall provide a courtesy copy of the grievance to the Fire Chief. The copy may be delivered via hand delivery, facsimile transmission or email.

4.5. If the Union Grievance Committee decides in its sole discretion that no grievance is found to exist, no further action shall be required; provided, that if any employee grievance concerns matters appealable to court, e.g., statutory violations, the employee retains the option to file suit if her/his/her grievance is rejected.

5.6. The Union Grievance Committee shall review the grievance and if a grievance is found to exist for reasons stated by the employee or reasons known to the Committee, the Committee shall process the grievance by passing the grievance to the Fire Chief within fifteen (15) business days from receipt thereof.

B. Fire Chief's Response.

1. The Fire Chief or her/his designee shall respond to the grievance and shall render a decision to the Union Grievance Committee, in writing, within fifteen (15) business days from receipt thereof.

C. Appeal to City Manager.

1. If a grievance is not resolved the Union Grievance Committee shall submit the grievance, in writing, to the Director of Human Resources within fifteen (15) business days from receipt of the decision and a courtesy copy will be provided to the City Manager or her/his/~~her~~ designee.

2. The City Manager or her/his/~~her~~ designated representative shall review the matter and shall render a decision in writing to the Union Grievance Committee within fifteen (15) business days.

D. Submission to Arbitration.

1. If the grievance is not resolved the Union Grievance Committee shall have fifteen (15) business days from receipt of the City Manager's decision to submit the matter to arbitration.
2. Arbitration will be invoked by delivering a letter to the Director of Human Resources and a courtesy copy will be provided to the City Manager or her/his/~~her~~ designee.
3. If the Union or employee fails to arbitrate a grievance within 2 years, absent good faith, the matter will be considered abandoned and be dismissed with prejudice.

Section 5. Arbitrator Selection.

- A. The Human Resources Director or her/his/~~her~~ designee shall within five (5) business days from the date the grievance is submitted to arbitration, request a list of seven (7) qualified neutrals from the American Arbitration Association ~~that are able to begin the hearing within one hundred twenty (120) calendar days.~~ The representative for the grievant and the representative of the Fire Chief may mutually agree on one of the seven (7) qualified neutrals. If the representatives do not agree, the representatives shall alternatively strike the names on the list of seven (7) qualified neutrals within seven (7) calendar days after receipt of the list, and the remaining name shall be the arbitrator. The grievant's representative shall strike the first name. All parties shall act to complete the selection process at the earliest possible date. The arbitrator shall be promptly notified of her/his selection. The parties will not have ex parte communication with the arbitrator. Communication with the arbitrator will be through the parties, counsel for the parties, or the parties representative, jointly.
- B. At a date previously agreed upon, the arbitrator shall convene the hearing at a place mutually convenient to all parties. The arbitrator shall hear and take evidence of all issues presented as raised by timely-filed grievances. The hearing shall continue from day to day until all such evidence has been received and all parties have "rested." Transcripts and post-hearing briefs may be utilized at the discretion of the Arbitrator. If a transcript is utilized, a transcript by a duly-authorized court reporter will be taken of the hearing and shall be the only official transcript thereof. Both parties to the proceeding shall be entitled to representation of their own choosing, the expense of which must be borne by the respective party.
- C. The arbitrator shall make a reasonable effort to issue her/his/her award within thirty (30) calendar days after the date the hearing ends or, if transcripts and/or post-hearing briefs are required, within thirty (30) calendar days of receipt of the transcript or receipt of the parties' post-hearing briefs, whichever occurs later.

Section 6. Discipline

A. Authority of the Chief.

The Chief shall have authority to demote and/or suspend not to exceed forty-five (45) calendar days, or indefinitely suspend (as provided for in Chapter 143 of Local Government Code) any employee for the causes set forth in the Fire Fighters and Police Officers Civil Service Commission Rules.

B. Proposed Disciplinary Action.

Prior to any disciplinary action, the employee shall be given a notice proposed disciplinary action by personal service, in conformity with Chapter 143. If the Chief is unable to secure personal service of the proposed disciplinary action, service may be made by mailing the notice certified mail to the employee's last known address along with delivery of the statement to the Union.

C. Final Notice of Discipline.

Notice of the final discipline shall be served on the employee by (1) hand-delivery to the disciplined employee by the Chief or the Chief's designee; (2) delivery to an attorney representing the suspended employee, or (3) delivery by certified mail to the last known address of the disciplined employee. Service is complete upon mailing and the employee or employee's attorney has thirty (30) calendar days to appeal after service by mail.

D. 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.

Witnesses and Expenses.

A. _____ The following expenses shall be shared equally by the parties: arbitrator's fees and expenses and the cost of the hearing transcript. Each party will bear its own attorney's fees and costs; provided that:

1. _____ Should the arbitrator find that grievance upon which s/he rules is specious, s/he may in fact award the "prevailing party" (singularly) "reasonable attorney's fees" as defined in section 2 below.

2. _____ Should the matter proceed to court, the court shall have the discretionary authority to grant attorney's fees, including the costs of the arbitration proceedings (but not the grievance

proceedings). A reasonable attorney's fee for the City shall be eighty five dollars (\$85.00) per hour, and for the employee, shall not exceed the actual rate agreed and charged, not to exceed one hundred dollars (\$100.00) per hour.

B. ~~The City shall compensate all witnesses called by either party at their straight-time rate; provided, however:~~

1. ~~The witness called is scheduled for duty when called to appear.~~

2. ~~The individual's identity and a brief statement as to the relevancy of her/his expected testimony has been provided the City twelve (12) days in advance of the hearing.~~

~~Any witness called by the Union and/or the grievant who has not been identified and/or who is not scheduled for duty shall be due no compensation or administrative leave from the City.~~

C. ~~Witnesses shall be scheduled by agreement between the parties so as not to unduly interrupt the mission of the Department. The arbitrator shall have the authority, based upon the summary statement of the witnesses, to determine whether or not the testimony of the witness is required or is merely duplicitious or cumulative, then the City shall have no obligation to pay for the witness' appearance.~~

D. ~~The grievant shall not be compensated for time spent at the hearing and/or in preparation thereof, nor shall s/he be entitled to administrative leave for any such time.~~

Section 7. General Procedures for Grievance and Disciplinary Arbitrations

A. Witnesses and Expenses.

1. The following expenses shall be shared equally by the parties: arbitrator's fees and expenses, the cost of the hearing transcript.

2. Each party will bear its own attorney's fees and costs.

3. The City shall compensate all witnesses called by either party at their straight-time rate provided, however:

a. The witness is an employee.

b. The witness is scheduled for duty when called to appear.

c. The individual's identify and a brief statement as to relevancy of her/his expected testimony has been provided the City twelve (12) days in advance of the hearing.

B. Discovery

1. Both parties shall provide, at least 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 parties, in writing, may request discovery from each other concerning the case. Should the opposing party not agree to provide the requested information within seven (7) 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 the 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 within fourteen (14) calendar days prior to the hearing.

3. The arbitrator shall have the power to subpoena witnesses. Subpoenas shall be requested at least thirty (30) days prior to the hearing. A brief statement on the relevancy of the expected testimony must be included for each subpoena requested. A party seeking issuance of a subpoena shall notify the other party at the same time the request is made to the arbitrator. The non-requesting party shall have five (5) days to object in writing.

4. The arbitrator shall have full power to take steps necessary to ensure a fair hearing for all concerned, which power shall include, but is not limited to: ordering a party to provide information in its possession or control which is reasonably necessary to the other party's prosecution of its case; ordering a party to make available to testify a person within its control; and taking reasonable steps to ensure that no undue delays in the proceedings occur, consistent with the right of all concerned to a full and fair hearing.

5. Unless otherwise provided in this Agreement, the conduct of the hearing shall be governed by the rules of the American Arbitration Association.

Section 8. Arbitrator's Authority

A.—Contract CasesGrievances.

A. 1. This section applies to all issues involving the application or interpretation of this Agreement; provided, that where the sole issue of contract interpretation involves the Maintenance of Standards provision, and the underlying standard is a statute or constitutional provision, this section shall not apply.

B.A. 2. ~~For issues subject to this section, the award of the arbitrator shall be final and binding upon the City, Union and employees.~~ In making her/his award, the arbitrator shall be limited to interpreting and applying the provisions of this Agreement; s/he shall have no authority to add to, subtract from, or modify the terms of this Agreement as negotiated

between the parties.

~~C. The arbitrator shall have full power to take steps necessary to ensure a fair hearing for all concerned, which power shall include, but is not limited to: ordering a party to provide information in its possession or control which is reasonably necessary to the other party's prosecution of its case; ordering a party to make available to testify a person within its control; issuance of witness subpoenas; and taking reasonable steps to ensure that no undue delays in the proceedings occur, consistent with the right of all concerned to a full and fair hearing.~~

~~D. The provision of Section 6 of this Article are equally applicable to Section 7 cases.~~

~~E.~~ The arbitrator shall have the authority to provide in her/his award for such relief as is necessary to make the prevailing party whole for all economic losses suffered as a result of a violation of the terms of this Agreement.

~~Section 8. B. Arbitrator's Authority~~ Non-Contract Cases.

A. 1. In all cases which present issues, e.g., statutory claims which do not involve interpretation or application of the terms of this Agreement, the procedures specified in this section shall apply; ~~provided, that where a case raises both contract and non-contract claims, the arbitrator's award as to contract claims shall be final and binding on the City, Union, and the employee.~~

~~B. In cases subject to this section, the parties will be entitled to engage in discovery as provided in the Texas Rules of Civil Procedure, and the arbitrator is authorized to issue subpoenas, to resolve disputes concerning the appropriateness of a party's discovery requests, and to enter such other orders as may be necessary to effectuate the discovery process. As soon as practicable, after the arbitrator's appointment and agreement to serve, the arbitrator and the parties' representative shall hold a conference, by telephone or otherwise, to set a reasonable period for discovery and a hearing date. In no case shall the period for discovery exceed ninety (90) days, except by mutual agreement of the parties.~~

~~C. The provision of Section 6 of this Article are equally applicable to Section 7 cases.~~

~~D. 2.~~ For issues subject to this section, the award of the arbitrator (both as to facts and the law of the contract) shall be final and binding; ~~provided that either~~ Either party may appeal such award to state district court pursuant to Texas Local Government Code Chapter 174 on the grounds that it is clearly contrary to the provisions of a statute or the Constitution (state or federal), or is not supported by substantial evidence as indicated in the record made before the arbitrator. ~~Any such appeal must be filed within thirty (30) days of the date of arbitrator's award.~~

~~B.~~

~~E.~~ The arbitrator shall have the authority to provide in her/his/her award for such relief as a court with jurisdiction over such matter would be entitled to award, including injunctive and equitable relief, compensatory and exemplary damages.

C. Disciplinary Cases

1. The award of the arbitrator shall state whether the discipline is upheld, reversed or reduced. The award shall further state whether any restoration of benefits or compensation is due.

2. Either party may appeal such award to state district court pursuant to Texas Local Government Code Chapter 174 on the grounds that it is clearly contrary to the provisions of a statute or the Constitution (state or federal), or is not supported by substantial evidence as indicated in the record made before the arbitrator.

Date: _____

For the City

For the Association