

ARTICLE 31. EXHAUSTION OF REMEDIES

Section 1. Exhaustion.

The City, the Union, and the Fire Fighters covered herein, shall be required to exhaust all available remedies through grievance procedure, disciplinary procedure, grievance and/or the Civil Service Commission prior to proceeding to a court of law, state or federal administrative agency, or other regulatory body, except as provided in Article 30, Grievance Procedure. Failure to do so will act as a plea in abatement to any such court, administrative body, and/or regulatory agency proceeding until the exhaustion of remedies provided for in this Agreement have been completed to finality.

Section 2.

If, at any time after a decision and/or award of the Civil Service Commission and/or an arbitrator, any affected party contests or challenges the decision or award in any other legal proceeding, the following shall apply:

A. The decision and award of the arbitrator and/or the Commission must be upheld, unless the contesting party can establish the award was not supported in whole or in part by substantial evidence and/or that the award of the arbitrator and/or the Commission was capricious.

B. As a condition precedent to the filing of any subsequent action challenging the award of the arbitrator and/or the Commission, the affected party (as used here, "party" shall mean the Union and/or the City) must file a cost bond in the minimum amount of the sum of the arbitrator's fees and expenses and the fees of the court reporter who took the transcript of the arbitration proceeding.

B.C. Any such appeal must be filed within thirty (30) days of the date of the arbitrator's award.

Section 3.

Should any party be a part to any action by any other party contesting and/or challenging the award of the arbitrator and/or the Commission, the party may, pursuant to the terms of this Agreement, request the court or administrative body to which the action has been addressed to reimburse it/them for all costs of court, including but not limited to reasonable attorney's fees, for having to defend said action. This remedy shall be in addition to any other remedy to which the party may be entitled, including but not limited to those as specified above and/or elsewhere in this Agreement. Should either party, after having pursued grievance/arbitration or Civil Service Commission proceedings, sue in a court of law, then that court has the authority to grant as a portion of its award all costs including attorney's fees, including but not limited to the attorney's fees expended and/or generated as a result of the arbitration proceedings (but not the grievance proceedings). It is agreed that as used herein the term "reasonable attorney's fees", shall be in accordance with Article 30, Grievance Procedure, Section 6. Witnesses and Expenses (A)(2).

Date: _____

For the City

For the Association

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