

ARTICLE 26 GRIEVANCE PROCEDURE

Section I - Definitions

A grievance is defined as any dispute concerning the interpretation or application of this written MOU or departmental rules and regulations governing personnel practices or working conditions applicable to employees covered by this MOU. An impasse in meeting and conferring upon the terms of a proposed MOU is not a grievance.

Section II - Responsibilities and Rights

- a. Nothing in this grievance procedure shall be construed to apply to matters for which an administrative remedy is provided by the City Charter. Where a matter within the scope of this grievance procedure is alleged to be both a grievance and an unfair labor practice under the jurisdiction of the Employee Relations Board, the employee may elect to pursue the matter under either the grievance procedure herein provided or by action before the Employee Relations Board. The employee's election of either procedure shall constitute a binding election of the remedy chosen and a waiver of the alternative remedy.
- b. No grievant shall lose his/her right to process his/her grievance because of Management-imposed limitations in scheduling meetings.
- c. The grievant has the responsibility to discuss his/her grievance informally with his/her immediate supervisor. The immediate supervisor will, upon request of a grievant, discuss the grievance with him/her at a mutually satisfactory time. The grievant may be represented by a representative of his/her choice in the informal discussion with his/her immediate supervisor, and in all formal review levels; provided, however, that when more than one employee is aggrieved and the facts and issues of the alleged grievance are the same and if all affected employees agree to waive their right to discuss the grievance with their immediate supervisor, a single immediate supervisor will be designated to discuss the grievance at the informal level with one affected employee and the employee's representative. Such grievance will be processed as a single grievance through all formal levels of review.

All affected employees involved in the action must waive their respective right to discuss the grievance at the informal level with their immediate supervisor on a form provided by Management prior to the discussion with the designated supervisor.

- d. The time limits between steps of the grievance procedure provided herein may be extended by mutual agreement.
- e. Management shall notify Union of any formal grievance filed that involves the interpretation and/or application of the provisions of this MOU, and a full-time

Union Staff Representative shall have the right to be present and participate in the discussion at any formal grievance meeting concerning such a grievance. If the full-time Union Staff Representative elects to attend said grievance meeting, he/she shall inform the Department Management Representative of his/her intention. The Union is to be notified of the resolution of all other formal grievances.

Section III - Procedure

The grievance procedure for employees covered by this MOU shall be as follows:

Step 1 - Informal Discussion

The grievant shall discuss his/her grievance with his/her immediate supervisor on an informal basis in an effort to resolve the grievance and said grievance shall be considered waived if not so presented to the immediate supervisor within ten (10) calendar days following the day during which the event upon which the grievance is based occurred.

The immediate supervisor shall respond within five (5) calendar days following his/her meeting with the grievant. Failure of the immediate supervisor to respond within such time limit shall entitle the grievant to process his/her grievance at the next step.

Step 2 - First Level of Review

If the grievance is not settled at Step 1, the grievant may serve written notice of the grievance on a form provided by the Library Department upon the person designated to review the grievance at Step 2 within ten (10) calendar days of receipt of the grievance response at Step 1. Failure of the grievant to serve such written notice shall constitute a waiver of the grievance.

If such written notice is served, said person shall meet with the grievant, and a written decision or statement of the facts and issues shall be rendered to the grievant and his/her representative, if any, within fifteen (15) calendar days from the date of service. Failure of Management to respond within such time limit shall entitle the grievant to process his/her grievance at the next level of review.

Step 3 - General Manager Review (Second Level of Review)

If the grievance is not settled at Step 2, the grievant may serve written notice of the grievance on said form upon his/her General Manager or designee within ten (10) calendar days following receipt of the grievance response at Step 2. Failure of the grievant to serve such notice shall constitute a waiver of the grievance. If such notice is served, the grievance shall be heard by the General Manager or his/her designee. The General Manager or his/her designee will afford the parties an opportunity to present

oral and/or written arguments on the merits of the grievance and shall render a written decision within thirty (30) calendar days from the date said notice was submitted.

Step 4 - Mediation

If the written decision at Step 3 does not settle the grievance, within ten (10) calendar days of receipt of such response, the grievant and Union jointly may request mediation by letter to the Employee Relations Officer. This step is optional. Either the grievant/Union or Management may waive mediation and proceed directly to arbitration. Within ten (10) calendar days of receipt of a request for mediation, the Employee Relations Officer shall either return the request without action or request that the Employee Relations Board appoint a mediator. The Employee Relations Board shall attempt to obtain the services of a mediator from the State Mediation and Conciliation Service. If a State mediator is unavailable, Union and Management may jointly agree to a mediator selected by the Executive Director of the Employee Relations Board. The fees of such mediator shall be shared equally by Union and Management.

The primary effort of the mediator should be to assist the parties in settling the grievance in a mutually satisfactory fashion. The mediation procedure shall be informal. Court reporters shall not be allowed to be present, the rules of evidence shall not apply and no record shall be made. The mediator shall determine whether witnesses are necessary in the conduct of the proceedings.

If settlement is not possible, the mediator may be requested to provide the parties with an immediate oral opinion as to how the grievance would be decided if it went to arbitration. Such opinion shall be advisory only. Upon mutual agreement of the parties, the mediator may be requested to furnish such opinion in writing, along with a brief statement of the reasons for the opinion. Such opinion as well as anything said by the parties during mediation shall not be used during any subsequent arbitration. Notwithstanding the above, and Section 4.865 of the Employee Relations Ordinance, the parties may, upon mutual agreement, agree to accept the opinion of the mediator as binding, in lieu of arbitration.

Step 5 - Arbitration

If the written decision at Step 3 or mediation does not settle the grievance, the grievant and Union jointly may serve upon the General Manager of the Library Department a written notice that a written request for arbitration has been filed with the Employee Relations Board (ERB). The request for arbitration must be filed with the ERB within ten (10) calendar days following the date of service of the written decision of the General Manager or his/her designee. Failure of the grievant and Union jointly to serve a written request for arbitration with the ERB within said period shall constitute a waiver of the grievance.

If such written notice is served, the parties shall meet for the purpose of selecting an arbitrator from a list of seven (7) arbitrators furnished by the ERB, within seven (7) calendar days following receipt of said list.

- a. Arbitration of a grievance hereunder shall be limited to the formal grievance as originally filed by the employee to the extent that said grievance has not been satisfactorily resolved. The proceedings shall be conducted in accordance with applicable rules and procedures adopted or specified by the ERB, unless the parties hereto agree to other rules or procedures for the conduct of such arbitration. The fees and expenses of the arbitrator shall be shared equally by the parties involved, it being mutually understood that all other expenses including, but not limited to, fees for witnesses, transcripts, and similar costs incurred by the parties during such arbitration, will be the responsibility of the individual incurring same.
- b. The decision of an arbitrator resulting from any arbitration of a grievance hereunder shall be advisory only.
- c. The decision of an arbitrator resulting from any arbitration of grievances hereunder shall not add to, subtract from or otherwise modify the terms and conditions of this MOU.