Discipline within U.S. Local Government Fire Departments

Adam D. Howard

University of Cincinnati

November 2013

Author Note

This paper was prepared for Political & Legal Foundations of Fire Protection 3085, taught by Professor Larry Bennett.
Certification Statement

I hereby certify that this paper constitutes my own product, that where the language of others is set forth, quotation marks so indicate, and that appropriate credit is given where I have used the language, ideas, expressions, or writings of another.

Signed: ____________________________________

Adam D. Howard
Abstract

As a recently promoted Battalion Chief within the Fairborn Fire Department (FFD), I now have a higher level of responsibility for handling discipline and grievance issues. The purpose of this research was to develop a better understanding of FFD’s current disciplinary and grievance processes, as well as identify other influential elements that require consideration.

I commenced this research by seeking the underlying purpose of discipline within an organization. Then proceeded to inquire on the components associated with a properly designed disciplinary system, as well as supporting tactics for effective implementation. I quickly realized that there was a difference of employee rights between public and private employment. I further researched those differences and discovered several unique employee rights, which included: Weingarten, Garrity, and Loudermill Rights.

I performed a complete review of the FFD’s disciplinary and grievance processes. The City of Fairborn defines these processes for all city employees within the Personnel Rules and Regulations. However, the union Collective Bargaining Agreement provides a slightly different set of processes for union employees. Additionally, I reviewed the Collective Bargaining Agreement within the Cincinnati Fire Department (CFD) and discovered the inclusion of mediation within their grievance procedure. I concluded with recommendations for the FFD, regarding both the disciplinary and grievance processes.
Table of Contents

Certification Statement ................................................................................................................... 2
Abstract ........................................................................................................................................... 3
Table of Contents ............................................................................................................................ 4
Introduction ..................................................................................................................................... 5
Public vs. Private Employment ....................................................................................................... 6
Weingarten ...................................................................................................................................... 7
Garrity ............................................................................................................................................. 8
Loudermill ....................................................................................................................................... 9
Fairborn Fire Department Disciplinary Process and Grievance Procedure .................................. 11
Cincinnati Fire Department Grievance Procedure ........................................................................ 14
Recommendations .......................................................................................................................... 14
References ..................................................................................................................................... 16
Appendix A ................................................................................................................................... 17
   City of Fairborn Personnel Rules & Regulations
Appendix B ................................................................................................................................... 26
   The City of Fairborn and IAFF Local 1235 Collective Bargaining Agreement
Appendix C ................................................................................................................................... 34
   The City of Cincinnati and Cincinnati Fire Fighters Union Local 48 Collective Bargaining Agreement
Introduction

Discipline and control must exist within any successful organization. Management should foster an environment in which all employees, regardless of pay grade, know what is expected of them, as well as the penalties for non-compliance. Generally the word discipline is interpreted as being synonymous with punishment. However, discipline is really more about education, development, and perspective (Carter, 2013). The purpose of utilizing discipline is not to beat employees down, but rather to guide them back in line with the overall mission of the organization. The ultimate goal of any organization is to meet the mission in which it is currently pursuing. In order to obtain maximum efficiency toward that goal, all of the individual employees and processes need to be working in unison. In most cases, reasonable people will conform and seek success within the vision of a well-managed organization. Those that fail to learn and progress in a positive direction should not be permitted to needlessly drag the organization down. However, individuals must be provided with a fair and consistent opportunity to correct their behavior before coming to such a conclusion. A well-defined progressive discipline system is essential, which includes; informing the employee about problems in a timely manner, coaching them to meet the desired expectations, and providing them with an environment and opportunity in which to improve.

A positive disciplinary system must start at the top of the organization. Managers and supervisors must set the example and hold everyone within the organization accountable, including themselves. An effective leader will refrain from taking the administration of discipline personal or utilizing the process upon vindictive motives. Avoid dealing with
discipline on a case-by-case basis, as this can lead to inconsistencies and lack of trust. A properly developed progressive discipline system should actually increase professionalism, improve morale, improve manager/employee relations, and foster long-term positive change. The disciplinary system must look beyond individual behaviors and more at the global view of the organization as a whole (Cornell, 2003).

Throughout my research, I came across two different organizations that had created a matrix or chart to simplify their disciplinary process and provide a more transparent system. These included the Minneapolis Fire Department and the Fairfax County Fire and Rescue Department. Management began by identifying a core set of violations or rules that could be broken within their organization, which would impede the pursuit of their overall mission. Then management and the union worked together to determine the severity of each individual violation. This process allowed them to establish what level of discipline was appropriate for each violation, including the succession for repeat infractions. Of course, there must always be some flexibility within the disciplinary system to account for varying and extreme circumstances. Once the discipline matrix or chart was developed, both management and the employees clearly understood the expectations and penalties for non-compliance (Cornell, 2003).

Public vs. Private Employment

Public employers must understand and develop their progressive discipline systems differently than their private counterparts. Many fire departments within the United States are operated by the local government and therefore defined as a public employer. Due to the simple fact that the local government fire department is a government entity, it must comply with additional boundaries. These include rights that protect citizens from the actions of government,
which are found in the United States Constitution and the Bill of Rights. When action is taken against a public employee by their employer, they are essentially being acted upon by the government. In contrast, the U.S. Constitution and Bill of Rights do not protect citizens from the actions of private employers; therefore they do not fall within the same boundaries.

Public sector employees are protected, for example, from unlawful searches, from losing their jobs without due process, and from being forced to incriminate themselves in criminal misconduct (Schroeder & Younker, 2005). The U.S. Constitution and Bill of Rights establishes the laws and limits of government action. However, it is case law, which evolved as a result of written decisions of judges in various courts on specific situations that were challenged, that defines many of the unique processes that government employers must understand and abide by. Three distinct rights were established through case law, which directly affect the disciplinary process of public employers, including: Weingarten Rights, Garrity Rights, and Loudermill Rights. A detailed description of each will be presented in the following sections.

Weingarten

Weingarten Rights establish the right of unionized employees to request union representation for any discussion that could lead to disciplinary action. This is case law that was established, by the U.S. Supreme Court in 1975, in the decision of *NLRB v. J. Weingarten Inc*. The original decision was actually applied to a private sector employer. However, the federal government and many states have extended similar rights to public employees over time, through legislation, court decisions, and/or rulings by state labor boards (GarrityRights.org, n.d.). Weingarten simply allows a union employee the right to request representation if the employee feels that disciplinary action could result during an interview or investigation. This right also
establishes that management must inform the union representative and employee of the subject of the interrogation. However, there is no actual requirement for management to offer union representation within Weingarten, although this element is often included within collective bargaining agreements. Under Weingarten, the employee holds the responsibility to know and request representation. However, the employee also maintains the right to voluntarily waive the Weingarten Rights, which is typically discouraged (Center for Labor Education & Research, n.d.).

The U.S. Supreme Court established that the union representative role is not restricted to an observation mode, as they have the right to assist and counsel the employee during the interview. However, the union representative is not permitted to tell the employee what to say. The union representative is allowed to add information at the end of the interview to support the employee’s case. In 2004, the National Labor Relations Board ruled that Weingarten Rights cannot be extended to nonunion employees, by allowing their coworkers to accompany them during an interview which they believe might result in discipline (Center for Labor Education & Research, n.d.). Therefore Weingarten Rights apply to all union employees, regardless of employment with a public or private employer.

Garrity

Garrity Rights essentially identify the Fifth Amendment rights of public employees. The Fifth Amendment states that the federal government cannot compel a person to incriminate themselves. The Fourteenth Amendment extends the Fifth Amendment to state, county, and local governments. Garrity upholds this right, by establishing that a public sector employee cannot be compelled to incriminate themselves. This is case law that was established, by the U.S. Supreme
Court in 1967, in the decision of *Garrity v. New Jersey*. Garrity only applies when the matter at issue involves criminal misconduct (Schroeder & Younker, 2005). Beyond that, the key to Garrity focuses upon the word “compel”, within the Fifth Amendment. The word compel, in the context of employee discipline, is generally established when a public employer threatens an employee with severe administrative sanctions, which may include: termination, suspension, demotion, or any substantial economic penalty.

Garrity provides use immunity to a public employee in subsequent criminal prosecution, if they are forced to answer questions under threat of severe administrative sanctions for refusing to answer. Whenever an internal investigation touches on criminal behavior, management should direct the employee to answer the questions, as well as advise them that refusal to do so will lead to discipline, potentially including termination. Management should advise the employee that their answers will not be used against them in subsequent criminal prosecution. If the employee refuses to respond to the questions, they may be terminated for insubordination. However, statements made by complying with the line of questioning may also be used against the employee in supporting an internal disciplinary case. The use immunity provided by Garrity only provides the individual protection from criminal prosecution, as a result of the evidence they divulge (GarrityRights.org, n.d.).

**Loudermill**

Loudermill Rights establish that non-probationary public employees facing discipline are entitled to certain due process rights. The phrase “due process of law” appears twice in the U.S. Constitution; within the Fifth and Fourteenth Amendments. Due process of law establishes a person’s right to present reasons why the government should not deprive the person of life,
liberty, or property. An interest in employment can qualify as a property interest and therefore should not be deprived from a person without due process (Magee & Sette, n.d.). This is why there is an exception applied to probationary employees, as only permanent employment is generally viewed by the courts as a property interest. To reiterate, Loudermill Rights are based on the concept of U.S. law, which were written to protect citizens from the actions against them by the government. Therefore, these rights only apply to public employees, not private employees.

The principle Loudermill Rights is to ensure that essential elements of due process are afforded to a public employee, in a fair and impartial forum. Due process is not clearly defined, in a step-by-step formula, anywhere in the law. The essential elements of due process, as recognized in the U.S. judicial system today, have evolved through case law. Similar to how Loudermill Rights were established, by the U.S. Supreme Court in 1985, in the decision of Cleveland Board of Education v. Loudermill. However, the court’s written opinion of this particular case did not define the actual elements of due process but rather that due process, as established, is required when a public employer takes action against an employee. In the most elementary form, due process is essentially providing a person with a fair and timely opportunity to respond to the charges against them. Furthermore, due process has generally been defined by the courts to include three essential elements, which include providing the employee with: 1) notice of the proposed actions and reasons therefore, 2) a copy of the charges and materials upon which the actions are based, and 3) the right to respond, either orally or in writing, to the authority imposing the discipline (Mayer, 2011). The procedures of due process should ordinarily take place before disciplinary action is actually taken against the protected employee. However, in circumstances where the public health, safety, and welfare may be significantly at
risk, disciplinary action may be applied prior to the full procedures of due process. However, due process must be provided promptly after such action is taken (Magee & Sette, n.d.).

**Fairborn Fire Department Disciplinary Process and Grievance Procedure**

The Fairborn Fire Department (FFD) is a division of the City of Fairborn local government and therefore defined as a public employer. The FFD includes both union and non-union employees. The approximate 45 personnel that hold the ranks of Firefighter or Lieutenant are unionized within the Fairborn Firefighters IAFF Local 1235. While the three Battalion Chiefs, two Division Chiefs, and the Fire Chief are all non-union employees. The disciplinary process differs slightly between the union and non-union employees. Obviously, as mentioned above, Weingarten Rights apply to the union employees but not to the non-union chief officers.

In addition, the City of Fairborn has established a set of Personnel Rules and Regulations that apply to all employees, except when otherwise addressed in a collective bargaining agreement. Within the City’s Personnel Rule and Regulations they have established a section on Disciplinary Actions and a section for Appeals and Hearings (Appendix A).

The City of Fairborn Disciplinary Actions document states that “any action which reflects discredit upon the municipal service or is a direct hindrance to the effective performance of the municipal government functions shall be considered good cause for disciplinary action against [such employee]”. The City of Fairborn has established that “disciplinary action shall consist of one or more of the following: written reprimand, suspension, demotion, dismissal, or any other form of disciplinary action which is deemed appropriate”. The document further defines how a supervisor shall apply the various types of disciplinary measures. The guidance under each type of discipline ensures that due process, as established by Loudermill Rights, is utilized. A list of
offenses is also identified within the Disciplinary Actions document, however the level of discipline is left for interpretation based upon “the magnitude of the violation and any reoccurrence of rule infractions”. This document concludes with general guidelines for management personnel to utilize for assistance during administration of discipline.

The collective bargaining agreement (CBA) between the City of Fairborn and IAFF Local 1235 (Appendix B) further defines the disciplinary process for employees covered under the terms. The Discipline article within the CBA clearly states that the disciplinary process should “be applied in a progressive and uniform manner”. Above and beyond the basic Weingarten Rights, the CBA establishes that “the employer shall notify the affected employee of the right to have a Union representative be present” during a conference, when it is reasonably expected that discipline may result. There are a multitude of steps and time limits established within the CBA for cases that may result in a suspension of an employee, a demotion, or termination. This is clearly the level of discipline that was interpreted, by the parties involved, to cause depravation of the permanent employment property interest of the employee, as protected by Loudermill Rights. Therefore, these defined steps and time limits are designed to ensure that due process is achieved in a timely manner. The CBA also recognizes an additional type of disciplinary measure not specifically identified within the City’s Personnel Rules and Regulations, which is a verbal counseling with written record.

The Fairborn Fire Department has two different grievance processes; one for non-union employees that is found City’s Personnel Rule and Regulations, in a section titled Appeals and Hearings (Appendix A), and the other for union employees that is located within the CBA (Appendix B). The two grievance processes are essentially the same for the first three steps but vary within the fourth and final step. As stated in the CBA “a grievance is defined as an
allegation that there has been a breach, misinterpretation, or improper application of this Agreement, including the application of any work rules established and enforced by the City, or the issuance of discipline of an employee”. A grievance for a non-union employee is defined essentially the same, except the reference documents are the City Charter, Personnel Rules and Regulations, and other applicable department rules and regulations.

The Step One for aggrieved employees, either union or non-union, is to present and discuss the matter, in an informal manner, to their immediate supervisor. The immediate supervisor for fire department union employees is the Operations Chief for issues involving the grievance process. If the grievance remains unresolved after completing Step One, the employee may pursue Step Two. Step Two, for either union or non-union employees, involves presenting the grievance in writing to the Fire Chief. The Fire Chief will respond to the grievance in writing within a defined time frame. If the employee is not satisfied with the answer provided by the Fire Chief, the employee can pursue Step Three. Step Three of the grievance process, either union or non-union employees, is to forward the case to the City Manager for a further investigation and hearings. The City Manager will provide a written answer to the alleged grievance within a defined time frame. If the employee is not satisfied with the answer provided by the City Manager, then they may pursue Step Four of the grievance process. If the grievance involves a union employee, then Step Four involves appealing the grievance at arbitration. However, if the grievance involves a non-union employee, then Step Four involves appealing the grievance to the Personnel Advisory Board. The resulting ruling provided by Step Four, for both union and non-union employees, shall be final and binding. Throughout the grievance procedure there are strict time frames established, which ensure a mutually fair and timely process.
As a result of my research I discovered that the City of Cincinnati and the Cincinnati Fire Fighters Union Local 48 included a different step within their CBA grievance procedure (Appendix C). Instead of pushing Step Three to the City Manager, for a second internal decision, Cincinnati established Step Three as the Mediation Level. However, both parties have the opportunity in which they can mutually agree to bypass mediation and to proceed directly to Step Four, which is arbitration. Within the Cincinnati CBA it states “in recognition of the desirability of resolving disputes…the parties mutually agree to…mediation of grievances pending arbitration”.

The parties are to mutually agree to a mediator and establish a date and time for a mediation conference. Each party may have no more than three representatives, not counting the grievant, attend and participate at the mediation conference. Neither party may be represented by an attorney at this step. The mediation efforts are to be informal with the ultimate goal of reaching a mutually agreeable resolution to the dispute. If the mediation process does not resolve the dispute, no reference of the mediation process may be used in arbitration. If a settlement is reached, it will be entered into in writing at the mediation conference. All encumbered fees and expenses for grievance mediation shall be equally paid by the City and the Union.

Recommendations

The Fairborn Fire Department’s disciplinary and grievance processes are similar to those of comparable local government fire departments. However, there is still room for some improvements to both processes. FFD management should support and display a disciplinary
process that is positive in nature, with the ultimate goal consistently focused on meeting the overall mission of the department. The FFD should also develop a matrix which better defines the disciplinary process, through a joint labor/management initiative. While there is indirect reference to Weingarten and Loudermill Rights within the defined disciplinary processes, there should be inclusion of Garrity Rights as well. While it is understood that investigations involving criminal misconduct are rare, they still may occur and the FFD should be prepared to properly handle them. Lastly, the FFD should consider adopting a mediation process much like Cincinnati Fire Department. Mediation can likely provide a more productive forum for grievance resolution, as opposed to the City Manager investigation directly following the Fire Chief’s internal investigation and ruling.
References


Appendix A

City of Fairborn Personnel Rules & Regulations

Section 6.7* - Disciplinary Actions

Any action which reflects discredit upon the municipal service or is a direct hindrance to the effective performance of the municipal government functions shall be considered good cause for disciplinary action against any employee of the City of Fairborn under the direction of the City Manager. The tenure of all employees shall be during good behavior and efficient service and no such employee shall be disciplined, suspended or removed except for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, misuse or abuse of City material, property or equipment, neglect of duty, violation of Personnel Rules and Regulations or any other failure of good behavior or any other acts of misfeasance, malfeasance or nonfeasance in the performance of his duties. In conjunction with Rule V, Section 5.20 of these rules and regulations, no employee shall be reduced in pay or position, laid off, suspended, demoted or discharged or otherwise discriminated against because of age or sex or for political, racial or religious reasons. Disciplinary actions shall consist of one or more of the following: written reprimand, suspension, demotion, dismissal or any other form of disciplinary action which is deemed appropriate by the management personnel involved in such action. All supervisory and management personnel including Police Sergeants, Fire Lieutenants and Foremen are responsible for identifying any need for disciplinary action of employees. Disciplinary actions which may result in the reprimand, suspension, demotion or dismissal of an employee must be reviewed by the appropriate supervisor and approved by the City Manager. All disciplinary actions shall be promptly reported to the Personnel Manager. Temporary and provisional personnel may be discharged at any time without application of or recourse to any of the provisions of this rule or any of the other provisions of these rules and regulations.

A. The various types of disciplinary measures which can be applied for just cause against any City employee are specified as follows:

1. Written reprimands for which the supervisor shall:
   a. Recognize that a written reprimand is a formal disciplinary action for significant misconduct, inadequate performance or repeated lesser infractions.
   b. Gather all the facts concerning the infraction.
   c. If under a union contract, allow the employee to have a union representative present during the meeting.
   d. Review with the employee the infraction that has taken
e. Allow the employee opportunity to express his views and explain the circumstances.

f. If a written reprimand is warranted, approval must be first obtained from the City Manager prior to issuing the written reprimand.

g. Give the employee the written reprimand and advise him that it has been made a matter of record.

2. Suspension for which the supervisor shall:

a. Recognize that a suspension is a temporarily enforced absence from duty in a non-pay status which may be imposed upon an employee as a penalty for significant misconduct or repeated lesser infractions.

b. Gather all the facts concerning the infraction.

c. If under a union contract, allow the employee to have a union representative present during the meeting.

d. Review with the employee the infraction that has taken place.

e. Allow the employee opportunity to express his views and explain the circumstances.

f. If a suspension is warranted, approval must be first obtained from the City Manager prior to initiating the suspension, except for conditional suspensions.

g. Give the employee a written reprimand which specifies the reasons for and duration of the suspension and advise him that the reprimand implementing the suspension has been made a matter of record.

3. Demotions for which the supervisor shall:

a. Recognize that a demotion is a change of an employee from a position of one class to a position of a different class with a lower pay grade and that such action is normally taken because of inefficiency or an employee's inability or lack of qualifications to perform the duties of the position in which he is presently working.

b. Gather all the facts concerning the infraction.
c. If under a union contract, allow the employee to have a union representative present during the meeting.

d. Review with the employee the infraction that has taken place or the circumstances that warrant the demotion action.

e. Allow the employee opportunity to express his views and explain the circumstances.

f. If a demotion is warranted, approval must be first obtained from the City Manager prior to initiating the demotion.

g. Give the employee a written reprimand which specifies the reasons for and effective date and duration of the demotion and advise him that the reprimand implementing the demotion has been made a matter of record.

4. Dismissal for which the supervisor shall:

a. Recognize that dismissal is the more severe type of adverse action since it not only removed the employee from the job but will likely bar him from future City employment.

b. Gather all the facts concerning the infraction.

c. If under a union contract, allow the employee to have a union representative present during the meeting.

d. Review with the employee the infraction(s) that have taken place.

e. Allow the employee opportunity to express his views and explain the circumstances.

f. If the dismissal is warranted, approval must be first obtained from the City Manager prior to initiating the dismissal.

g. Give the employee a written notification which specifies the reasons for and effective date of the dismissal.

5. Any employee may be demoted to a lower rated position due to a physical incapacity, loss of required licenses, certifications or failure to perform as specified in the job description for the position in which he is working.

6. Disciplinary actions other than those specified in items #1 through #5 may be issued against an employee, however, the supervisor must first review the
intended action with the Personnel Manager and appropriate supervisor and obtain approval from the City Manager in order to determine that the action is appropriate and within the framework of the City Charter, these rules and regulations, departmental rules and regulations and any applicable Union Agreement.

B. The following list of offenses shall be used in identifying offenses for which employees shall be given the appropriate penalty or disciplinary measure. However, since this list is not all inclusive, management personnel may identify offenses other than those listed and subsequently initiate the appropriate disciplinary action. The application of discipline shall be based on the magnitude of the violation and any reoccurrences of rule infractions.

1. Material violation of the laws of the United States of America or State of Ohio, the City Charter, the Code of Ordinances, the rules of the City Manager, these Personnel Rules and Regulations, and/or Departmental Rules and Regulations;

2. Falsification, misstatement, exaggeration or concealment of material fact in connection with the employment application, promotion, any record, investigation or other proper proceeding or claim for benefit payments;

3. Failure to follow, obey or comply with the orders, directions or instructions of a supervisor, department head or the City Manager;

4. Unexcused or unauthorized absence or failure to report for work without giving advance notice, unless the employee can provide documentation to the satisfaction of the department head that circumstances beyond the employee's control prevented him/her from reporting. (An employee absent from duty without authorization or notice for three (3) consecutive work days will be deemed to have automatically terminated his/her employment as of the last day of active service);

5. Habitual or excessive absenteeism;

6. Abuse or fraudulent use of approved leaves such as sick leave, injury leave, funeral leave or other similar leave;

7. Failure to start work at the designated time, quitting work before the proper time or leaving work during working hours without permission from the appropriate supervisor;

8. Failure to perform assigned work in an acceptable manner or within a reasonable period of time. The abstinence in whole or in part from the full, faithful and proper performance of the duties of employment;
9. Waste of material, property or work time;

10. Unauthorized possession of, loss, negligent use of, or damage to equipment or other City property; unauthorized possession of, loss of, negligent use of, or damage to property of another employee or the public;

11. Permitting any unauthorized person to enter or ride in a City vehicle without express authorization from a supervisor or department head unless such action is taken in the interest of the health, safety and welfare of the citizens;

12. Sleeping, resting with eyes closed or resting in a prone or supine position during working hours;

13. Inability to get along with fellow employees so that work is hindered or does not meet required standards.

14. Disorderly conduct, assaulting, fighting, threatening, intimidating, coercing or harassing employees, supervision, any City officer or the public;

15. Negligence, carelessness or engaging in horseplay;

16. Discriminatory or disrespectful conduct or use of insulting, abusive, profane or obscene language toward or about other personnel, City officials or the public;

17. Making irresponsible statements which are slanderous or which substantially misrepresent the position of the City or City officials;

18. Immoral, indecent or other conduct unbecoming an employee;

19. Conviction based upon any felonious or criminal act;

20. Drinking while on the job or reporting for or being on duty while under the influence of intoxicants or controlled substances which are not taken under the supervision of a qualified physician; unauthorized possession of intoxicants or controlled substances;

21. Participation in any strike, slowdown, picketing or another job action which interferes with or impedes the operation of the City;

22. Knowingly punching or marking another employee's timecard, having one's timecard punched or marked by another, improperly altering a timecard for any reason or inaccurately recording time at work.

23. Unauthorized disclosure of privileged or confidential information;

24. Engaging in personal activities during working hours;
25. Dishonesty; theft or embezzlement; acceptance of kickbacks or bribes; acceptance of money or gifts without authorization;

26. Receipt of citations for parking or traffic violations while operating a City vehicle or while on official City business;

27. Unauthorized possession of weapons;

28. Engaging in sexual harassment;

29. Unauthorized use of bulletin board; removing or posting material without permission.

C. The following guidelines shall be used by management personnel to assist them in determining the most appropriate disciplinary action to be applied if an infraction occurs:

1. In many situations which may call for corrective action, a wide variety of such actions are available ranging from a discussion or warning to a reprimand, suspension or dismissal from service. In choosing a disciplinary action, the supervisor shall not demand that the employee resign or retire to keep from being disciplined, nor shall the supervisor intimate that resignation or retirement would clear the record.

2. When establishing discipline, a supervisor must consider the circumstances carefully when evaluating offenses and discipline. He must take into account the nature of the infraction, the work history of the individual, his total contribution to the City and the opportunity for rehabilitation of the employee as well as considering the possible elements of enticement and provocation and the consequences of the offense. Also, the supervisor must consider the extent to which the discipline will serve as a constructive example to other employees. He must weigh each case individually.

3. In arriving at the appropriate degree of discipline, only offenses for which discipline was imposed with two (2) years preceding the infraction(s) shall be used to determine whether a second or third offense has occurred. Before the disciplinary action is taken for a second offense, it must be determined that disciplinary action was taken for the first offense. Likewise, before disciplinary action is taken for a third offense, it must be determined that disciplinary action was taken for the first and second offenses. Nothing in this paragraph shall prohibit the City Manager from using a disciplinary measure that appropriately fits the offense committed.
Section 6.8* - Appeals and Hearings

Non-union permanent City employees regularly scheduled to work 30 hours or more per week may, in response to a personnel action considered by the employee or employees to be in violation of the merit principle and/or the City Charter, Personnel Rules and Regulations, departmental rules and regulations, or applicable union contract, appeal this matter in accordance with the following provisions. In those cases where an applicable grievance procedure exists, all necessary steps in the grievance procedure must be either taken or properly waived.

Step 1. The aggrieved employee or employees will make an earnest and honest effort to settle the differences and disputes with their immediate supervisor without filing a written grievance. In the event that an agreement cannot be reached, then the subsequent steps shall be taken with respect to any grievance. Any grievance not initiated, taken to the next step or answered within the time limit specified herein will be considered settled on the basis of the last answer by the City if the aggrieved employee(s) does not move it to the next step within the time limits or on the basis of the aggrieved employee's last demand if the City fails to give its answer within the time limit.

Step 2. A grievance involving any matter relating to a specific event or personnel action must be initiated within seven (7) calendar days of its occurrence, not including the day of occurrence, after the employee(s) have knowledge of the facts which give rise to the grievance, or with reasonable diligence should have acquired such knowledge. Grievances involving matters not relating to a specific incident or personnel action must be initiated within a reasonable period of time. The aggrieved employee or group of employees will present the grievance in writing to the department head. The grievance shall be prepared in detail, be dated, and be signed by the aggrieved employee or group of employees. The department head shall investigate the matter and hold a grievance meeting within five (5) calendar days after receipt of the grievance, not including the day of the presentation of the written grievance. Both the aggrieved employee and the City shall have the right to call such witnesses as are necessary to the investigation and explanation of the grievance. The department head will reply to the grievance in writing within five (5) calendar days of the date of the grievance meeting, not including the day of the meeting. If the aggrieved employee or group of employees is not satisfied with the written answer of the department head, the grievance may be referred to the third step of the grievance procedure within five (5) calendar days.

Step 3. If the matter if not satisfactorily resolved at Step 2, the grievance may be appealed and presented, along with all pertinent correspondence to date, to the City Manager. The City Manager shall investigate the matter and hold a grievance meeting within nine (9) calendar days after receipt of the grievance, not including the date of the presentation of the written grievance. If the grievance is being appealed by a group of employees, the City Manager shall meet with no more
than three (3) representatives from the aggrieved employees. The City Manager will reply to the grievance in writing within five (5) calendar days of the date of the grievance meeting not including the day of the meeting.

Step 4. If the matter is not satisfactorily resolved at Step 3, the grievance may be appealed to the Personnel Advisory Board. Appeals to the Personnel Advisory Board for hearings must be presented in writing, properly signed and dated by the aggrieved employee or group of employees, along with all pertinent materials and correspondence to date, to the Personnel Advisory Board within seven (7) calendar days following the date that final notification was presented by the City Manager to the aggrieved employee or employees.

a. If the subject of the grievance is any subject other than the demotion, discharge, or a suspension in excess of five (5) working days, the Personnel Advisory Board, if it decides to do such, will hold a hearing within ten (10) calendar days following the day of the appeal to the Personnel Advisory Board but not including the day of the appeal presentation, or at such other future time as may be mutually agreed upon by all parties concerned. Within five (5) calendar days following the hearing, but not including the last day of the hearing, the Personnel Advisory Board shall issue its findings of fact and recommendation with respect to the issues and evidence presented and shall forward such to the City Manager. The City Manager shall have the right to accept, reject or modify the recommendations of the Personnel Advisory Board and the decision of the City Manager following receipt of such findings of fact and recommendation shall be final.

b. If the subject of the grievance is the demotion, discharge or suspension in excess of five (5) working days, the Personnel Advisory Board shall hold a hearing within ten (10) calendar days following the date of the appeal to the Personnel Advisory Board, but not including the day of the appeal presentation, or at such other future time as may be mutually agreed upon by all parties concerned. Within five (5) calendar days following the hearing, but not including the last day of the hearing, the Personnel Advisory Board shall render a judgment with respect to the issues and evidence presented. In this regard, the Personnel Advisory Board may:

1. Uphold the decision of the City Manager.

2. Restore the employee to his/her former position without pay or with any portion of lost wages. Such judgment of the Personnel Advisory Board shall be final and shall be certified to the City Manager who shall enforce such judgment.

3. The Personnel Advisory Board shall
determine the manner in which their hearing shall be conducted.

A. Any employee who believes that he or she has been discriminated against because of age, race, sex, political or religious opinions or affiliations, or disability may file a grievance in accordance with the following appeal and hearing provision.

The aggrieved employee shall review the matter first with the City's Equal Employment Opportunity Officer (Personnel Manager). In the event the matter cannot be resolved in this manner, then the employee shall have the option of applying the regular grievance procedure.

B. Except in the case of grievances involving matters not relating to a specific incident of personnel action, any grievance which is not filed within seven (7) working days of its occurrence, not including the day of occurrence, after the employee has knowledge of the facts which give rise to the grievance or with reasonable diligence should have acquired such knowledge, shall not be considered a grievance. Any matter which is not timely processed by the aggrieved employee or employees shall not be subject to further processing as a grievance.
Appendix B

The City of Fairborn and IAFF Local 1235 Collective Bargaining Agreement

ARTICLE 7

DISCIPLINE

7.01 No non-probationary employee shall be reduced in pay and/or position, suspended, removed, or discharged except for just cause.

Except in instances where an employee is charged with a serious offense, discipline will be applied in a progressive and uniform manner. Progressive discipline shall take into account the nature of the violation, the employee's record of discipline and counseling and the employees' record of performance and conduct.

7.02 When Management deems necessary a disciplinary meeting, or to bring disciplinary action against an employee, Management shall, within fifteen (15) full scheduled tours of duty where the employee works the first eight (8) hours, after they have knowledge of the fact(s) which give rise to the disciplinary action, or with reasonable diligence should have acquired such knowledge, hold a disciplinary hearing or meeting with the employee. However, in the event the employee is on a schedule other than the traditional shift schedule, then Management shall have a maximum of forty-five (45) calendar days in which to hold a disciplinary hearing or meeting with the employee.

7.03 In any conference between a bargaining unit employee and the Employer or designee, once it is reasonably expected that discipline of the employee being interviewed may result, the Employer shall notify the affected employee of the right to have a Union representative be present. There is no entitlement to the presence of a representative prior to such determination.

7.04 Whenever the Employer or designee determines that an employee may be suspended without pay for one (1) tour or more, reduced in rank or classification, or terminated from employment for just cause, a predisciplinary hearing will be scheduled to give the employee an opportunity to offer an explanation of the alleged misconduct. The following procedures shall apply:

A. Not less than seventy-two (72) hours prior to the scheduled starting time of the predisciplinary hearing, the Employer will provide to the employee a written outline of the charges, along with a summary of the evidence in support of the charges, which may be the basis for disciplinary action together with written notification of the date, time, and place of the predisciplinary hearing. The employee must choose to: (1) appear at the conference to present oral or written statement in the employee's defense; (2) appear at the conference and have one [1] chosen representative present an oral or written statement in defense of the employee; or, (3) elect in writing to waive the opportunity to have the predisciplinary hearing. Failure to elect and pursue one of these three options or
failure to appear at a scheduled predisciplinary hearing will be deemed a waiver of the employee's right to the predisciplinary hearing.

B. No later than twenty-four (24) hours prior to the scheduled starting time of a predisciplinary hearing, the employee may present a written request for a continuance of not more than five (5) calendar days, unless mutually agreed. Such request shall contain the reason for requesting a continuance. The Employer shall not unreasonably deny such request.

C. At the predisciplinary hearing the Employer may present any testimony, witnesses, documents, or other evidence in support of the charges, and the employee may present any testimony, witnesses, documents, or other relevant evidence which explain whether or not the alleged misconduct occurred. The employee shall provide a list of witnesses and the name of the Union representative, if any, to the hearing officer as far in advance as possible, but not later than twenty four (24) hours prior to the predisciplinary hearing. It is the employee's responsibility to notify any witnesses that the employee desires their attendance at the hearing. The Employer may require the attendance of employee witnesses requested by the employee within reason. Predisciplinary hearings held outside the employee's scheduled working hours shall be considered time worked.

D. Failure to testify truthfully by any employee, including employees who are serving as witnesses, may result in disciplinary action.

E. The employee or Union representative will be permitted to question any witnesses present, subject to the Employer's right to reasonably limit the length and extent of such examination.

F. The hearing officer shall prepare a written report, and submit the hearing report to the Fire Chief within fourteen (14) calendar days following the date of the hearing. The Fire Chief shall determine whether or not the misconduct occurred and whether discipline is warranted. Any discipline resulting in a suspension, loss of pay or position, or discharge shall be issued by the City Manager within fourteen (14) calendar days following the issuance of the hearing officer’s report.

7.05 In lieu of a suspension, an employee of the City may offer forfeiture of accrued vacation leave on an hour for hour basis. Should the City and the employee agree to a forfeiture of leave, it shall constitute disciplinary action of record. Such forfeiture shall be noted in the employee’s personnel file and shall finally resolve the charges. The resolution shall not be grievable.

7.06 An employee may be placed on paid administrative leave pending a hearing when the nature of the employee’s action requires immediate removal from work.

7.07 The time limits imposed in this Article may be extended by mutual written consent.

7.08 Supervisors have the authority to issue a verbal counseling (written record). The purpose of the written record is to document the discussion and clarify any agreement between the
supervisor and employee. This record will not be included in the employee’s personnel file. The supervisor shall maintain this written record with the employee’s quarterly appraisal and notify the Operations Chief. Grievances concerning a verbal counseling (written record) may be appealed through Steps 1 and 2 of the grievance procedure, but may not be appealed to Arbitration.

Grievances concerning the disciplinary actions of written reprimand, suspension without pay, and termination from employment, or any disciplinary action that results in the loss of pay, shall be submitted directly to Step 2 of the grievance procedure, and may be submitted to Arbitration pursuant to Article 10, Section 10.06, herein.

7.09 Records of verbal and written warnings shall cease to have force and effect or be considered in future progressive disciplinary matters twenty-four (24) months after the date the warning is issued, provided the employee receives no intervening discipline. Records of suspensions and reductions in pay or position shall cease to have force and effect or be considered in future progressive disciplinary matters thirty-six (36) months after the date the suspension or reduction is issued, provided the employee receives no intervening discipline. Upon request of the employee, records of inactive discipline will be removed from all the employee’s personnel files and may be placed in an inactive personnel file.

7.10 Management shall send to the Union a copy of any disciplinary action issued to any member covered in the bargaining unit.

ARTICLE 10
GRIEVANCE PROCEDURE

10.01 Effort to Settle. There shall be an earnest, honest effort to settle disputes and controversies promptly. The procedures of this Article shall serve as a means of settlement of all grievances.

10.02 General Provisions

A. A "grievance" is defined as an allegation that there has been a breach, misinterpretation, or improper application of this Agreement, including the application of any work rules established and enforced by the City, or the issuance of discipline or discharge of an employee.

B. A "grievant" is defined as an employee or group of employees allegedly harmed by Management's non-compliance with a specific provision of the Agreement, including the application of any work rules established and enforced by the City, or the issuance of discipline of an employee. In order for a group grievance to be recognized as such, any written grievance must be signed by those persons of the group allegedly harmed or by the Union President or Grievance Chairman Chief Steward listing the names of all affected employees. Union grievances affecting all employees may be filed by the Union President or Grievance Chairman Chief Steward.
C. No grievance may be filed concerning a matter which may be subject to a charge with a state or federal agency. This provision in no way limits or impairs the ability of employees or Union to file charges with the State Employment Relations Board.

D. The limits in days under each step shall be counted as calendar days unless otherwise specified herein. The number of days indicated at each step shall be considered as maximum.

E. Any grievance which is not filed at Step 1 within nine (9) calendar days of its occurrence, not including the day of occurrence, after the employee and/or grievant has knowledge of the facts which gave rise to the grievance, or with reasonable diligence shall have acquired such knowledge, shall not be considered a grievance under the Agreement, and may not be processed as such. In no event, however, may a grievance be filed more than thirty (30) calendar days following the date of the occurrence from which the grievance arose. Any matter which is not timely processed by either the employee or the Union, as set forth below, shall not be subject to further processing as a grievance and shall not be subject to Section 10.04.

10.03 Steps

Informal Step:

A grievant is encouraged to first discuss any matter with the Operations Chief or designee, and may discuss with other levels of supervision up to and including the Fire Chief, without invoking the formal grievance procedure. In the event an agreement cannot be reached, then the following steps shall be taken with respect to any grievance.

Step 1. Fire Chief

A. Any grievant with an alleged grievance shall present his/her grievance in writing to the Fire Chief or his/her designee within nine (9) days as provided in 10.02 (E) above. The Fire Chief or his/her designee shall schedule a meeting within seven (7) calendar days following receipt of the grievance and shall answer the alleged grievance in writing within five (5) working days thereafter. Upon request of either party, a steward may be present during said meeting.

B. If the grievant is not satisfied with the answer provided in this Step, the grievant may appeal the grievance in writing to Step 2 within nine (9) calendar days following receipt of the Step 1 answer. If the grievance is not referred to Step 2 as provided herein, it shall be deemed to have been satisfactorily resolved.

Step 2. City Manager

A. If the alleged grievance is appealed to Step 2, the City Manager, or designee, shall investigate and hold such hearings as they deem necessary within ten (10) calendar days following receipt of the appeal and shall answer the alleged grievance in writing within
ten (10) work days thereafter.
If the grievant is not satisfied with the answer provided in this Step, the Union may appeal the grievance in writing to Grievance Arbitration within ten (10) days following the receipt of the Step 2 answer. If the grievance is not referred to Grievance Arbitration as provided herein, it shall be deemed to have been satisfactorily resolved.

10.04 Grievance Arbitration

A. The grievance, if not satisfactorily resolved at Step 2, may be appealed by the Union to arbitration. Notice of the appeal to arbitration must be served on the City Manager in writing within ten (10) calendar days after the written answer was given at Step 2. A failure to invoke arbitration as set forth herein shall deem the matter to be satisfactorily resolved.

B. (1) Upon receipt of such notification, the City Manager or his/her designee and the Union will jointly request the American Arbitration Association (AAA) to provide the parties with a panel of fifteen (15) arbitrators. Within ten (10) days of the mailing of the panel, each party shall cross off any names from their respective lists and number the remaining names indicating the order of preference. The lists shall be mailed separately to AAA. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, AAA shall appoint an Arbitrator. If the parties fail to agree upon any persons named or if those named decline or are unable to serve, or if for any other reason the appointment cannot be made from the submitted list, AAA shall submit one additional panel of fifteen (15) arbitrators to the parties.

(2) If no arbitrator has been selected through AAA, the City and the Union will discuss the appointment of an arbitrator outside of the auspices of AAA.

(3) If the parties are unable to agree on an arbitrator, the City Manager or his/her designee and the Union will jointly request AAA to provide the parties with a panel of three (3) arbitrators. Within ten (10) days of the mailing of the panel, each party shall notify AAA and the City or the Union, whichever the case may be, of any strikes for cause, as defined by the Voluntary Labor Arbitration Rules of the AAA. At the expiration of ten (10) days, AAA will appoint an arbitrator from the list of three.

C. The City and the Union shall each be responsible for the fees and expenses of its representatives. The City and the Union shall equally share any expenses incidental to the arbitration proceeding, except that the City will provide a court reporter for a hearing involving suspension in excess of two (2) tours, demotion or termination. Either party requesting a transcript of the hearing shall be responsible for the cost of the transcription and related fees, if both parties request a copy of the transcript the transcription fee shall be split equally.
D. Unless contrary to law, the decision of the arbitrator shall be final and binding upon the City, the Union and any employee involved in the matter.

E. The arbitrator shall not have the power to add to, subtract from, or modify this contract and shall only have the authority to interpret the provisions of this contract in light of applicable law as the same relate to the specific grievance appealed to arbitration.

10.05 Procedures

A. A grievant and appropriate witnesses shall be entitled to be present at any step of the grievance procedure and shall not lose pay as a result of necessary attendance at a meeting during scheduled working hours.

If more than one grievant is involved at any meeting, one of their members shall be selected as spokesman.

B. The time limits imposed in this Article may be extended at any step by mutual written consent.

C. Any step of this procedure may be waived by the mutual written consent of both parties.

D. Either party shall have the right to have a Union representative present at any of the steps of the grievance procedure.

E. At all steps of the grievance procedure, the failure of the City to answer on time shall give the union and the grievant the right to automatically take the grievance to the next step, at the option of the Union and the grievant, except where time limits have been extended by mutual written consent by the parties.

F. Nothing in this contract shall require the Union to pursue any grievance at any level or prohibit the Union from exercising discretion in determining whether or not to pursue an alleged grievance.

G. Any matter submitted as a grievance involving the discipline or discharge of any employee may be initiated at 10.03 Step 2 within the time limits set forth in 10.03 Step 1. Verbal counselings may be grieved, but are not subject to the arbitration procedure.

H. A Union Representative may be present at 10.03 Steps 1 - 2 of the grievance procedure to see that the terms and conditions of the agreement are adhered to.
ARTICLE 6

GRIEVANCE PROCEDURE / REVIEW PANEL

A grievance is an allegation that a term or terms of this Agreement have been violated by the City of Cincinnati, the Cincinnati Fire Department or their respective agents or officers. The Union is the sole and exclusive bargaining agent for all members, and the City has expressed its prior intent to refuse to recognize any grievance beyond Step 1 not previously reviewed, approved and filed by the Union. The Union further agrees that it has a duty to represent fairly all bargaining unit members during the administration and enforcement of this Agreement and shall not act in an arbitrary, discriminatory or capricious manner or in bad faith.

Step One: Company Officer or Appropriate Supervisor Level

The grievance must be presented in writing to the Company Officer or appropriate supervisor within ten (10) calendar days of the date on which the grievant became aware of the incident causing the grievance. The Company Officer or appropriate supervisor will attempt to adjust the grievance and must render his decision within ten (10) calendar days of the date the grievance was presented to him. In the event a Company Officer or appropriate supervisor has no authority to adjust the grievance, he shall forward said grievance to the next level of command that does have the authority to adjust the grievance.
In the event the Company Officer or appropriate supervisor fails to adjust the grievance to the satisfaction of the grievant, the grievance shall be presented at Step Two within thirty (30) calendar days from the date on which the grievant became aware of the incident causing the grievance.

Procedure for grievances beyond Step One:

If the grievant is not satisfied with the adjustment, if any, in Step One, and wishes to carry his grievance further, the following provisions shall be observed. The grievance shall be submitted on a Union Grievance Form, with a full statement of particulars, and each succeeding step of the grievance procedure must be initiated within ten (10) calendar days of receipt of the decision being appealed. When any grievance goes beyond Step One, the Union and the City shall meet within ten (10) calendar days after the grievance has been submitted, unless both parties agree that a meeting is not necessary. Once the grievance has been submitted at the Step Two level, no additions or changes may be made to the original statement of particulars as the grievance progresses through additional steps of the grievance procedure.

A written decision shall be made by the higher level of supervisor at each step within ten (10) calendar days of the meeting between the parties.

**Step Two: Fire Chief Level.**

If the Union is not satisfied with the decision or adjustment at Step One, it shall present the grievance on the Union Grievance Form to the Fire Chief or his designee. The Fire Chief or his designee shall issue a written response within ten (10) calendar days of the date the grievance was presented if there is no meeting between the parties, or, if there is a meeting, within ten (10) calendar days thereafter.
Step Three: Mediation Level.

If the Union is not satisfied with the decision or adjustment at Step Two, the Union may, within ten (10) calendar days after receipt of the Step Two decision, submit the grievance for grievance mediation in accordance with the procedures in Appendix C. However, parties may mutually agree not to mediate a particular grievance and advance the grievance directly to Step 4 Arbitration Level. If either party requests grievance mediation, the parties shall mediate the grievance in accordance with the procedures in Appendix C.

Step Four: Arbitration Level.

If the Union is not satisfied with the decision or adjustment at Step Two or Step Three, whichever is applicable, it may submit the grievance to the Director of Human Resources or his designee with notice that the grievance is being posted for arbitration, and a copy of a "Request for Arbitration Panel" signed by the appropriate Union officials.

The Director of Human Resources or his designee may adjust the grievance in favor of the Union or submit the matter to arbitration. If the Director of Human Resources or his designee fails to adjust the grievance or sign the "Request for Arbitration Panel," the "Request for Arbitration Panel" shall be filed by the Union, in writing, with the American Arbitration Association ("AAA") or the Arbitration and Mediation Service (AMS) within twenty (20) calendar days from the date the grievance was presented to the Director of Human Resources or his designee, with a copy of said notice to the Director of Human Resources or his designee. The AAA or AMS shall forward a list of nine (9) arbitrators to the parties, and the selection and conduct of the arbitration shall be in accordance with AAA or AMS rules.
The arbitrator shall have no authority to amend, modify, nullify, ignore, add to, or subtract from the specific provision of this Agreement. He shall only consider and make a decision with respect to the specific issue submitted to him by the parties, and shall have no authority to make a decision on any other issue not so submitted. To the extent that the arbitrator's decision is in accordance with the provisions of this Section, it shall be final and binding on all parties. The cost of the arbitrator shall be paid by the party whom the arbitrator rules against.

Grievances not filed within stated time limits: Any grievance not filed within the stated limits or grievances not pursued by the Union shall be deemed settled on the basis of the City's last answer. Any grievance not taken up by Management within the stated time limits will be moved to the next step. However, time limits may be extended by mutual agreement between parties if exceptional or unusual circumstances or conditions exist.

Grievances concerning pay step denials: If a grievance on a pay step denial is granted, a gross pay adjustment shall be made to the date the pay step should have gone into effect.

Lawsuits or Administrative Charges: A member filing a lawsuit or administrative charge waives his right to file a grievance or to seek arbitration on the matter in dispute.

Disciplinary Actions: Disciplinary actions that are appealable to the Civil Service Commission may, at the option of member, be appealed to either the Civil Service Commission or taken through the above grievance and arbitration procedure, but not both. If the grievance and arbitration procedure is selected, the grievance may be advanced directly to Step Three or Step Four by mutual agreement of the parties.
Legal Representation and Witnesses: The Union shall be permitted to have legal representation at any level of the Grievance Procedure beyond Step Two. The Union and/or grievant shall have the right to have witnesses at any level of the grievance hearing or Review Panel. However, only one (1) on-duty witness shall receive full pay and benefits for all on-duty time spent at the hearing.

Disciplinary actions up to and including twenty-four (24) hours: shall be submitted to either; The Review Panel or where applicable, the Civil Service Commission ("CSC"). A list of members for the Review Panel shall be established. The list shall consist of members of the Fire Department who are covered by this Labor Management Agreement. They shall volunteer to serve for a period of one (1) year.

The city shall not be required to back-fill on overtime for the presence of a member/grievant, witness, or panelist while they are in attendance at a Review Panel hearing.

For each day that reviews are scheduled, three (3) panelists shall be selected by lot by drawing names in the presence of the Fire Chief and the President of Local 48, or their designated representatives. No member who is assigned to the same company or who is related by blood or marriage to a member/grievant shall be eligible to serve on that day’s panel. No member who signed off on the members discipline or who is related by blood or marriage to any member who signed off on the discipline shall be eligible to sit on that day’s Review Panel.

All cases to be heard by a particular panel shall be identified prior to the selection of the panel. The Panel shall hear all of the cases within fourteen (14) calendar days after it’s selection and shall determine if there was just cause for the disciplinary penalty. The
Panel may affirm, reverse or reduce the disciplinary penalty and shall issue its written
decision within seven (7) calendar days. The decision of the Review Panel shall be final
and binding.

Eligibility to be a member of the Review Panel shall be limited to members with
at least three (3) years experience in the Fire Department. Panelists may not have any
sustained suspensions or demotions within the previous three (3) calendar years. Each
prospective panelist must undergo two (2) hours of mutually developed mandatory
training.

The member shall be entitled to a representative of his/her choice and to call
witnesses. The Review Panel shall be entitled to review all investigative records,
interviews, or any other records relating to the issue to be decided.

All Review Panel members shall be free from coercion, intimidation,
discrimination, threats or other detrimental actions based on their activities on the
Review Panel.

The Review Panel Rules are outlined in the mutually agreed upon side letter.
Changes to the side letter may be made only with mutual agreement between the City and
the Union.

GRIEVANCE MEDIATION PROCEDURES

In recognition of the desirability of resolving disputes by mutual agreement, the Union and the
City, hereinafter referred to as the “parties,” mutually agree to the following policies and
procedures for the mediation of grievances pending arbitration, pursuant to the provisions of
Article 6 of the collective bargaining agreement between the parties.
1. Grievance mediation is available to the parties at Step Three of the grievance procedure.

2. A grievance will be referred to mediation at the request of the Union unless the parties mutually agree to not mediate a particular grievance.

3. The parties shall mutually agree to a mediator to serve in the capacity of grievance mediator. The mediator must be an experienced mediator and/or arbitrator with mediation skills. The mediator may serve as an arbitrator for the same issue for which he or she is a mediator only with the agreement of both parties.

4. The mediator will be asked to provide a schedule of available dates. Cases will be scheduled in a manner which assures that the mediator will be able to handle multiple cases on each date, unless otherwise mutually agreed.

5. The grievant shall be represented by the Union and shall have the right to be present at the mediation conference. The City and the Union may each have no more than three (3) representatives (not counting the grievant) as participants in the mediation effort. Neither party shall be represented by an attorney. On the day of the mediation, persons representing the parties shall be vested that day with full authority to resolve the issues being considered.

6. The mediator may employ all of the techniques commonly associated with mediation, including private caucuses with the parties. The taking of oaths and the examination of witnesses shall not be permitted, and no verbatim record of the proceeding shall be taken. The purpose of the mediation effort is to reach a mutually agreeable resolution of the dispute. There will be no procedural constraints regarding the review of facts and arguments. There shall be no formal evidence rules. Written materials presented to the
mediator will be returned to the party presenting them at the conclusion of the mediation conference.

7. Mediation efforts will be informal in nature and shall not include written opinions or recommendations from the mediator unless mutually agreed to by the parties and the mediator. In the event that a grievance which has been mediated is appealed to arbitration, there shall be no reference in the arbitration proceeding to the fact that a mediation conference was or was not held. Nothing said or done by the mediator or the parties may be referenced or introduced into evidence at the arbitration hearing.

8. At the mediation conference the mediator shall first seek to assist the parties in reaching a mutually satisfactory settlement of the grievance which is within the parameters of the collective bargaining agreement. If a settlement is reached, a settlement agreement will be entered into in writing at the mediation conference. The mediator shall not have the authority to compel the resolution of a grievance.

9. If a grievance remains unresolved at the end of the mediation conference the mediator may, if requested by either party, render a verbal opinion as to how the grievance is likely to be decided if it is presented at arbitration. This opinion is non-binding and inadmissible in any subsequent arbitration proceeding.

10. If a settlement is not reached, the matter may go forward to Step Four Arbitration Level. All applicable time limits for appealing a grievance to arbitration contained in the collective bargaining agreement shall commence on the day of the mediation conference.

11. The dates, times and places of mediation conferences will be determined by mutual agreement of the parties. Each party shall designate a representative responsible for scheduling mediation conferences.
12. The parties agree to timely schedule grievance mediations when a grievance is advanced to mediation.

13. The fees and expenses to be charged by the mediator shall be negotiated between him or her and the parties. Fees and expenses for grievance mediation shall be paid equally by the City and the Union.

14. The parties agree to mutually examine and review the grievance mediation process and procedures adopted herein twelve (12) months from the date of execution of the collective bargaining agreement. The purpose of said examination and review is to revise, alter, correct or otherwise improve the grievance mediation process and procedures if such is deemed necessary.