

AMENDMENT No. 1
MEMORANDUM OF UNDERSTANDING
BETWEEN AND FOR
THE CITY AND COUNTY OF SAN FRANCISCO
AND
THE MUNICIPAL EXECUTIVES ASSOCIATION

The parties hereby agree to amend the Memorandum of Understanding as follows, subject to approval by the San Francisco Board of Supervisors:

I.H. Grievance Procedures

29. The following procedures are adopted by the Parties to provide for the orderly and efficient disposition of grievances and are the sole and exclusive procedures for resolving grievances as defined herein.
1. Definition
30. A grievance shall be defined as any dispute which involves the interpretation or application of, or compliance with this Agreement. Grievances may be filed only by the Association. ~~Discipline may not be grieved under this section.~~ **The Association may only grieve discipline for permanent civil service employees who have passed probation.**
31. The Association and the City agree that grievances must include the following:
- a. The specific reason or reasons for the grievance, including the date of the incident giving rise to the grievance, an explanation of the harm that occurred, and the name, classification, and department of the affected employee or employees;
 - b. The section(s) of the contract which the Association believes has been violated; and
 - c. The remedy or solution being sought by the Grievant.
32. The City will return any grievance that does not include the information specified above. The Association may resubmit a new grievance with the missing information, with all dates and other provisions triggered off the new submission date.
33. Written reprimands are not subject to the grievance procedure; provided however, that employees shall be entitled to submit a written rebuttal to any written reprimand within thirty (30) days from the date of the reprimand. The City will attach a timely rebuttal to the reprimand and place it in the employee's official personnel file with the reprimand.

34. In the event that an individual or a group of individuals elect(s) to file a complaint with any governmental agency or court alleging a factual basis which is also the basis of a grievance, the Association agrees that any grievance filed on behalf of the individual(s) will be held in abeyance pending the individual's election of remedies. If an individual or group of individuals elect(s) another remedy the grievance shall be deemed withdrawn.

2. Time Limits

35. The time limits set forth herein may be extended or waived by mutual agreement of the parties. Any such agreement must be confirmed in writing. For purposes of calculation of time a "day" is defined as a "calendar day," including weekends and holidays.

36. Any deadline date under this procedure that falls on a Saturday, Sunday or holiday shall be continued to the next business day.

3. Steps of the Procedure

37. Except as otherwise specifically provided, all grievances must be initiated at Step 1 of the grievance procedure. In the event the City disagrees with the level at which the grievance is filed the City may submit the matter to the Step it believes is appropriate for consideration of the dispute. The step procedures set forth herein may be modified or waived by mutual agreement of the parties. Any such agreement must be confirmed in writing.

38. Except as otherwise **specifically** provided in subsection 10, a grievance affecting more than one employee shall be filed at Step 2 with the appointing officer. In such event, the Association must provide a list of all employees, their classifications, department and the nature of the grievance, including the specified injuries.

39. Grievances affecting more than one department shall be filed at Step 3 with the Employee Relations Division and include the same information as in the preceding paragraph.

40. **Grievances related to discipline of an employee must be submitted initially at Step 3 of this procedure within fifteen (15) calendar days of the final notice of discipline.**

41. An employee shall first attempt to resolve the alleged violation informally with the employee's immediate supervisor.

42. Step 1: If the alleged violation is not resolved informally with the immediate supervisor, the Association will submit the grievance on behalf of the represented employee in writing to the immediate supervisor within thirty (30) calendar days of the date of the occurrence of the act or the date the represented employee might reasonably have been expected to have learned of the alleged violation.

43. The immediate supervisor shall respond in writing within ten (10) days following receipt of the written grievance.

44. Step 2: If dissatisfied with the supervisor's response at Step 1, the Association, on behalf of the individual grievant, may appeal to the Appointing Officer, in writing, within fifteen (15) calendar days of receipt of the Step 1 response. **The Step 2 grievance shall contain a specific description of the basis for**

the grievance, the resolution desired, and specific reason(s) for rejecting the lower step response and advancing the grievance to the next step.

The Appointing Officer may convene a meeting within fifteen (15) days with the grievant and the grievant's Association representative. The Appointing Officer shall respond in writing within twenty (20) days of the meeting or receipt of the appeal, whichever is later.

45. Step 3: If dissatisfied with the Appointing Officer's response at Step 2, the Association, on behalf of the individual grievant, may appeal to the Director, Employee Relations, in writing, within fifteen (15) days of receipt of the Step 2 response. **The Step 3 grievance shall contain a specific description of the basis for the grievance, the resolution desired, and specific reason(s) for rejecting the lower step response and advancing the grievance to the next step.** The Director may convene a grievance meeting within fifteen (15) days with the Association and the represented employee. The Director shall respond to the grievance in writing within twenty (20) days of the meeting or, if none is held, within twenty (20) days of receipt of the appeal.
46. Step 4: If the Association is dissatisfied with the Step 3 response it may appeal by notifying the Director, Employee Relations, in writing, within twenty (20) days of the Step 3 decision that arbitration is being invoked. The ERD Director shall issue a letter referring the Association to the City Attorney's Office. The Association shall contact the City Attorney's Office by letter, copied to the Employee Relations Director, via US mail, within thirty (30) days of the date of the ERD Director's letter referring the Association to the City Attorney's Office. **If the Association fails to contact the City Attorney's Office within thirty (30) days of that letter, the grievance is deemed withdrawn.**
4. Selection of the Arbitrator
47. The parties shall select an arbitrator from the list of panelists attached hereto as Appendix B. When a matter is appealed to arbitration the parties shall first attempt to mutually agree on an arbitrator. In the event no agreement is reached within seven (7) days the arbitrator shall be selected from the permanent panel by utilizing a strike-off procedure.
5. Authority of the Arbitrator
48. The arbitrator shall have no authority to add to, ignore, modify or amend the terms of this Agreement.
6. Fees and Expenses of Arbitrator
49. **a. Arbitrator Fees**
The fees and expenses of the Arbitrator and court reporter shall be shared equally by the Association and the City. Mutual agreement is required for payment of fees when either party is requesting a Court Reporter. Transcripts shall not be required. If a party requests a transcript, that party shall be solely responsible for the cost.
50. **b. Attorney's Fees and Costs**
The parties shall bear their own legal expenses and costs for grievances. Each party expressly waives any right to an award of attorney's fees or costs in any grievance proceeding.

7. Hearing Dates and Date of Award

51. Hearings shall be scheduled within forty-five (45) days of selection of an arbitrator. Awards shall be due within forty-five (45) days following the receipt of closing arguments.

8. Monetary Relief

52. Any claim for monetary relief shall not extend more than twenty (20) days prior to the filing of a grievance, unless considerations of equity or bad faith justify a greater entitlement.

9. Failure to Respond

53. Except as otherwise provided herein, a grievance shall be void in the event a grievance is not initiated or appealed through the steps in accordance with the time periods set forth above. Failure of the City to timely reply to a grievance shall authorize appeal to the next grievance step.

10. Immediate Dispute Resolution

54. In the event there is a dispute regarding the interpretation or application of this Agreement that imminently affects the Association or a substantial number of members represented by the Association, and that will result in harm for which monetary relief would be an insufficient remedy, either the City or the Association may request suspension of the grievance process as described in section 3 of this Section and proceed to immediate dispute resolution discussions with the Director of Employee Relations. The Director shall schedule and conclude discussions within twenty (20) days of receipt of a written request by either party and the action triggering the request for immediate dispute resolution may be stayed upon mutual agreement.

55. Should the dispute still not be resolved it may be submitted directly to an arbitrator selected in accordance with the procedure detailed below.

56. If the parties cannot otherwise agree, an arbitrator shall be selected by the parties from an arbitrator provided in Appendix B. The first arbitrator, selected at random by the parties, available within a two week period shall be selected.

57. There will be no post-hearing briefs in an immediate arbitration unless such briefs are requested by the arbitrator.

58. This section may not be invoked for disciplinary grievances.

11. Petitions to Compel Arbitration

59. The prevailing party in any petition to compel arbitration shall be awarded reasonable attorneys' fees and costs.

12. Expedited Arbitration

- 59a** **Grievances for disciplinary suspensions of ten (10) days or less shall be resolved through an expedited arbitration process.** *By mutual written agreement the parties may submit other grievances to this expedited arbitration process. In order to provide*

for prompt hearings under this process, the parties agree to strike from the arbitrators listed in Attachment B, except that when an expedited arbitration case arises, the parties shall first limit the list to those arbitrators who have identified availability within six (6) months of the parties' inquiry. Whether the Association or City deletes the first name in the alternating process shall be determined by lot.

59b *Each expedited arbitration hearing **for five days suspension or less** will last a maximum of two hours. **Each expedited arbitration hearing for six through ten days suspension will last a maximum of four hours.** The parties agree not to utilize court reporters or electronic transcriptions, nor to permit post-hearing briefs. These decisions will be final and binding, and shall not be used in any other cases except those of the grievant involved, unless otherwise agreed.*

59c *Each party shall bear its own expenses in connection with the expedited arbitration. All fees and expenses of the arbitrator shall be shared equally by the parties.*

59d *In the event that an expedited arbitration hearing is canceled resulting in a cancellation fee, the party causing the cancellation shall bear the full cost of the cancellation fee, unless a mutually agreed upon alternative is established.*

ARTICLE II: EMPLOYMENT CONDITIONS

II.C. Discipline

80. ~~Discipline shall continue to be implemented pursuant to San Francisco Charter Section A8.341 and A8.342. However, pursuant to Charter Section A8.341 (b), the Association and the City agree to modify the disciplinary rights provided in those sections as follows:~~

Rights of Permanent Civil Service Employees

81. All discipline shall be for just cause.
82. A permanent civil service employee subject to suspension or discharge, shall be entitled, prior to the imposition of that suspension or discharge, to a Skelly meeting and to the following:
83. a. A notice of the proposed action;
84. b. The reasons for the proposed discipline;
85. c. A copy of the charges and the materials upon which the action is based; and
86. d. The right to respond, either orally or in writing, to the authority initially imposing the discipline.

The employee's department shall provide a copy to the Association of all the materials provided to the employee.

87. A management representative who is not the employee's immediate supervisor or part of the investigative process shall preside over the Skelly meeting.

The City shall provide the Skelly decision to the Association within two (2) weeks of the Skelly meeting. The City may request an extension of up to thirty (30) calendar days from the Association to comply with this provision.

88. Employees subject to Public Safety Officers' Procedural Bill of Rights Act shall be entitled to administrative appeal when subject to written reprimand.
89. ~~Eligible, represented employees may appeal disciplinary suspensions, demotions and terminations to a hearing officer selected from Appendix B. The hearing officer shall be mutually selected pursuant to the striking procedure set forth in Article I.H.4. If no appeal is available, the employee will be provided the opportunity to respond in writing, with such response maintained in the employee's personnel file. An employee who requests the opportunity for a "name clearing hearing" before the Appointing Officer or designee is entitled to a response to the request within five (5) working days of the employee's request. An employee who has had a name clearing hearing is not entitled to appeal the termination.~~

- (1) The employee must file the request with the Appointing Officer within five (5) working days of the receipt of the written notice of separation.
- (2) At the hearing, the employee may be represented by a representative of the employee's choosing.

Representation of Permanent Civil Service Employees

90. If a permanent civil service employee has designated ~~the Association~~MEA to provide representation in the disciplinary process, ~~the Association~~MEA shall be notified of the identity

of the Skelly Officer and receive all of the materials used to support the disciplinary actions. After the discipline decision, the City shall also provide the Association ~~MEA~~ with the Skelly Officer's report. the Association ~~MEA~~ will also receive any written recommendation from the Skelly ~~hearing officer~~ to the appointing officer. As to such disciplinary action, an employee may respond in writing, and such response will be maintained in the employee's personnel file, if the Appointing Officer imposes suspension or termination.

91. ~~The fees and expenses of the hearing officer shall be shared equally by the Association and the City. Transcripts shall not be required, except that either party may request a transcript, provided, however, that the party making such a request shall be solely responsible for the cost, unless otherwise agreed. Direct expenses of the hearing officer shall be borne equally by the parties.~~
92. ~~Upon the completion of 2080 hours of continuous service in a current represented job code, employees in non exempt job codes covered by this agreement with temporary status shall be subject to discipline for just cause only, and shall be entitled to the post disciplinary appeal rights set forth in Charter Sections A8.341 and A8.342 as modified in the sub sections herein.~~

Expedited Arbitration

93. ~~Upon mutual agreement, appeals of suspensions of eligible represented employees shall be processed through an expedited arbitration proceeding. *By mutual written agreement the parties may submit other grievances to this expedited arbitration process. In order to provide for prompt hearings under this process, the parties agree to strike from the arbitrators listed in Attachment B, except that when an expedited arbitration case arises, the parties shall first limit the list to those arbitrators who have identified availability within six (6) months of the parties' inquiry. Whether the Association or City deletes the first name in the alternating process shall be determined by lot.*~~
94. ~~*Each expedited arbitration hearing will last a maximum of two hours. The parties agree not to utilize court reporters or electronic transcriptions, nor to permit post hearing briefs. These decisions will be final and binding, and shall not be used in any other cases except those of the grievant involved, unless otherwise agreed.*~~
95. ~~*Each party shall bear its own expenses in connection with the expedited arbitration. All fees and expenses of the arbitrator shall be shared equally by the parties cancellation fee, the party causing the cancellation shall bear the full cost of the cancellation fee, unless a mutually agreed upon alternative is established.*~~
96. ~~*In the event that an expedited arbitration hearing is cancelled resulting in a cancellation fee, the party causing the cancellation shall bear the full cost of the cancellation fee, unless a mutually agreed upon alternative is established.*~~

Personnel Files

97. Materials relating to disciplinary actions for conduct which is three (3) or more years old shall not be used for the basis of future discipline, provided there has been no reoccurrence of the same or similar conduct upon which the discipline was based. At the request of the employee or ~~MEA~~ the Association, materials related to disciplinary actions which are three (3) or more years old shall be sealed to the extent permissible by law, provided that there has been no reoccurrence of the conduct on which the discipline was based during that period. The envelope containing the sealed documents will be retained in the employee's personnel file and may only be opened for the purpose of assisting the City in defending itself in legal or administrative proceedings, or as

otherwise required by federal, state, or local law. An employee or ~~MEA~~ the Association may request sealing prior to the end of the three year period.

98. There shall be one (1) official personnel file. Supervisors' informal notes and records relating to their supervisory responsibilities shall not be maintained any longer than necessary for supervision and evaluation purposes. After such time, such notes and records shall either (1) be made a part of the official personnel file or (2) destroyed, subject to applicable law.
99. With the written permission of the employee, a representative of the Association may review the employee's personnel file when in the presence of a departmental representative and obtain copies of the contents upon request.
100. Employees may cause to be placed in their personnel files materials reasonably related to their assigned job duties.
101. An employee shall have the opportunity to review, sign and date any adverse material to be included in the employee's personnel file except routine matters chronicling job and pay changes.
102. The employee may attach a response to adverse material within 30 days of receipt of such material.

Appendix B

Norman Brand

Alexander "Buddy" Cohn

Matthew Goldberg

Carol Vendrillo

Katherine Thomson

Barbara Kong-Brown

~~Christopher Burdick~~ Martin Gran

*This list may be amended by mutual agreement. Such agreement must be confirmed in writing.

FOR THE CITY

Carol Isen

Digitally signed by Carol Isen
DN: cn=Carol Isen, o=Department of Human
Resources, ou=Employee Relations Division,
email=carol.delorio@dcgov.org, c=US
Date: 2020.09.15 12:50:17 -0700

9/15/2020

CAROL ISEN
Employee Relations Director

Date

FOR THE UNION

DocuSigned by:
RAQUEL SILVA
E0D00632127640B...

9/15/2020

RAQUEL SILVA
Municipal Executives Association

Date

APPROVED AS TO FORM:

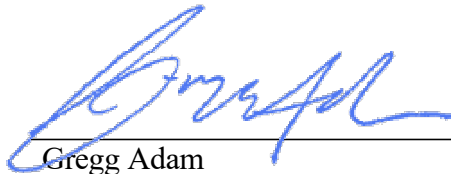
DENNIS J. HERRERA
City Attorney

MESSING, ADAM & JASMINE

9/15/2020

Katharine Hobin Porter
Chief Labor Attorney

Date



09-15-2020

Gregg Adam
MEA Counsel

Date