

<b>TITLE</b> A D M I N I S T R A T I O N M A N U A L	<b>STANDARD INSTRUCTION</b> 04	<b>DEPARTMENT</b> F I R E	
<b>SUBJECT</b> EMPLOYER/EMPLOYEE RELATIONS	<b>SECTION</b> I	<b>PAGE</b> 1 OF 1	<b>EFFECTIVE DATE</b> 04/01/90

I. POLICY

It is the policy of the City of San Diego to maintain and enhance its administration of employer/employee relations.

A. Employee Rights:

1. Employees of the City shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer/employee relations, including but not limited to wages, hours, and other terms and conditions of employment.
2. Employees of the City also shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the City.
3. No employee shall be interfered with, intimidated, restrained, coerced, or discriminated against by the City or by any employee organization because of his/her exercise of these rights.
4. No employee shall be prohibited from exercising his/her right to resign from City employment at any time and nothing in this policy shall be construed as to abrogate that right.

B. City Rights:

The rights of the City include but are not limited to the exclusive right to determine the mission of its constituent departments, commissions, and boards; set standards of service; determine the procedures and standards of selection for employment and promotion; direct its employees, take disciplinary action for just cause; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means, and personnel by which government operations are to be conducted; determine the content of job classifications; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work. The exercise of such rights shall not preclude employees or their representatives from consulting with management representatives about the practical consequences that decisions on these matters may have on wages, hours, and other terms and conditions of employment.

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## II. GRIEVANCE PROCEDURE

### A. Authority:

Council Policy 300-6, Employer-Employee Relations Policy, Section XIV.

### B. Grievances:

"The City shall maintain a formal written grievance procedure for use by all departments and employees, provided that nothing herein shall preclude the adoption by the City of a universal modified or supplemental grievance procedure pursuant to a Memorandum of Understanding. The grievance procedure shall be available to every employee without fear of reprisal and regardless of his/her membership or non-membership in an employee organization."

### C. Purpose

1. To state the policy and provide the means for employees, formally recognized employee organizations and management together to solve grievances in an orderly manner within a reasonable time period.
2. To strengthen merit, Civil Service and other methods of administering employer/employee relations, through the establishment of uniform and orderly methods of communication between employees and management.

### D. Definition

1. A grievance is a claim or charge of misunderstanding, or difference in interpretation, or violation of provisions of the Civil Service Rules, the Personnel Manual, the Memorandum of Understanding, or management policy or regulations including but not limited to Administrative and Departmental Regulations, which affect wages, hours or other terms and conditions of employment.
2. Actions which are covered in the Management Rights Article of the Memorandum are not grievable, but this shall not preclude employees or their representatives from consulting with Management about the practical consequences such actions may have on wages, hours, and other terms conditions of employment. In addition, actions covered by another appeals process as described in the Civil Service Rules, Personnel Manual, or the Memorandum are not grievable and shall not be processed through this Grievance Procedure.

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3. Wherever applicable, the term "working days" means the actual work days of the employee who filed the grievance. In grievances filed by the Union on behalf of a group of its members, "working days" means calendar days, excluding Saturdays, Sundays, and recognized City holidays. For 56-hour employees each working shift shall constitute two (2) "working days" for the purpose of determining time limits for this Grievance Procedure.
4. If the grievance system is abused by an unreasonable number of submittals by one individual or group obviously designed to thwart orderly processing or if the grievances are patently irrelevant, or incomprehensible, they shall be rejected as "non-grievable" and returned to the grievant.

E. Policy

The provisions of the grievance procedure as stated in the Personnel Manual, Index Code K-1 apply to employees in all classes which are not in a representation unit and all classes in representation units which are not covered by a ratified Memorandum of Understanding.

1. Employees have the right to file grievances without jeopardizing their positions.
2. Employees may represent themselves or select whomever they wish to represent them at any or all steps in the grievance procedure.
  - a. The employee has the right to the assistance of a Local 145 representative in the investigation, preparation, and presentation of a written grievance.
  - b. Employees may have no more than one City employee and one non-City employee as representatives for grievance hearings.
  - c. Battalion Chiefs and Fire Captains may not represent Fire Fighters and Fire Engineers. Battalion Chiefs may not represent Fire Captains. Members of the Board of Directors may represent employees in all Fire classifications in grievances.
3. If an employee chooses to have representation on any formal grievance concerning a matter that directly involves the interpretation or application of the specific terms and provisions of the Memorandum of Understanding, such representation must come from Local 145.

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4. The employee's or employee organization's first contact regarding job and working conditions is with the immediate supervisor who shall attempt to settle grievances informally at this level.
5. A grievance will normally be presented and processed on City time, and a grievant attending a grievance meeting in his/her own behalf on City time will not lose pay. In scheduling the time, place and duration of any grievance meeting, the employee, a steward and Management will give due consideration to all the participant's responsibilities in the essential operations of the department. However, the final decision for scheduling hearings rests solely with Management. No overtime pay will be given to the grievant. Representatives, witnesses, or other participants will receive overtime pay if ordered to be present by the appointing authority.
6. Waivers and Time Limits
  - a. Failure by Management to reply to the employee's grievance within the time limits specified automatically processes the grievance to the next level. Such automatic referral to the next level shall not be construed as removing the responsibility of management at the next level from hearing the grievance and responding within applicable time limits, if it is within the authority of that level to settle such grievance.
  - b. Any level of review, or any time limits established in this procedure, may be waived or extended for good cause and only by mutual agreement confirmed in writing.
  - c. If an employee fails to appeal from one level to the next level within the time limits established in this grievance procedure, the grievance shall be considered settled on the basis of the last decision and the grievance shall not be subject to further appeal or reconsideration.
  - d. By mutual agreement, the grievance may revert to a prior level for reconsideration.
  - e. If a grievant fails to appear for a scheduled grievance meeting, such failure without an excuse approved by the appointing authority shall entitle Management to decide on the grievance without the presence of the grievant, or to schedule another meeting at that level (in which case the time requirements for hearing and decision are automatically waived). Failure to appear at two meetings on

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the same grievance without an approved excuse automatically terminates that grievance and it is deemed denied. The grievance shall then not be subject to further appeal or reconsideration.

- f. When a grievant is on approved leave the time limits established in this procedure shall be suspended for the period of the leave.
  - g. No grievance shall be finally dismissed for an unexcused failure to appear at a scheduled hearing unless the grievant had been given 24 hours notice of the hearing.
7. The Union agrees to pursue all claims of violation of the Memorandum of Understanding through the grievance procedure. Resort to other remedies shall not be pursued until all steps of the grievance procedure have been exhausted.
  8. The Management Team shall provide the Union with copies of all grievances regarding the Memorandum filed by employees, within the Union bargaining unit, who choose to represent themselves.

F. Procedures

1. Management of the Department (i.e., Captains and higher officers) has the responsibility to inform an employee of any limitation of a given level of Management's authority to fully resolve the grievance. In this regard, Management shall:
  - a. Determine, at any time during the processing of a grievance, if the grievance requires modification or interpretation of Civil Service Rules or Personnel Manual provisions and forward such grievance immediately to the Personnel Director for resolution or referral to the Civil Service Commission.
  - b. Supply the employee with the necessary information to process the grievance to the proper agency or authority.
  - c. Advise an employee when any matter under submission is determined by Management as not grievable according to the definitions in Section 4. II D. The "grievance" paperwork submitted by the employee shall be returned to the employee along with a memorandum explaining why the matter is not grievable and what alternative procedures, if any, the employee may follow to process

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his/her complaint. If a grievance is determined to be non-grievable, that decision may be grieved. A decision favorable to the employee or the Union in this latter grievance shall serve to reinstate the original grievance in whole.

2. When a group of identical grievances develop, only one grievance form shall be submitted. The grievants may select not more than two (2) spokespersons who thereafter will be their representative "grievants." The acceptance of the decision by the spokespersons at any step (or final decision if the grievance moves to the fifth step) will be binding on all parties.
3. A grievance shall be recognized if it is brought to the attention of the immediate supervisor either informally or formally within ten (10) working days, excluding Saturdays, Sundays and recognized City holidays, of the incident's occurrence.
4. If the grievance is between the employee and the immediate supervisor, the initial step may be to the next higher level supervisor.
5. If the Union wishes to process a grievance on behalf of a class of represented employees which will require resolution by the Chief, it may submit the grievance directly to the Chief or his/her designee, pursuant to Step 5 of this grievance procedure. Thereafter, should this grievance not be resolved, then the remaining steps of this grievance procedure may be implemented by the Union. However, the Union shall meet with the Chief to discuss the matter prior to submitting the matter as a formal grievance.
6. To be recognized, a grievance must state which policy, rule, regulation, etc., is involved in the matter and the nature of the remedy sought by the employee or the Union.

### Steps

- Step 1: At the employee's or employee organization's sole option, grievances may be presented to the supervisor either orally or in writing. If the complaint is presented orally, the procedure is informal and may be settled by an oral answer given within five (5) working days. If the grievance is presented in writing, the procedure is formal and the answer must be given in writing within five (5) working days after submission.
- Step 2: If the grievance cannot be solved at Step 1, the employee or employee organization may present the complaint in writing to the second level

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supervisor (if not done at Step 1) within five (5) working days. Within ten (10) working days of the receipt of the grievance, a hearing shall be held and the Management representative shall give a written decision to the employee or the Local 145 representative.

- Step 3: If the grievance is not resolved at Step 2, the employee or employee organization may submit the grievance to the Division Head within five (5) working days. Within ten (10) working days of the receipt of the grievance, a hearing shall be held and the Division Head shall give written decision to the employee or Local 145 representative.
- Step 4: If the grievance is not solved in Step 3, the employee or employee organization may present the grievance to the Department Head within five (5) working days. Within ten (10) working days of the receipt of the grievance, a hearing shall be held and the Department Head or his/her designee shall give a written decision to the employee or Local 145 representative. In nonmanagerial departments this shall constitute the final resolution of a grievance involving management policy or regulations.
- Step 5: Final Resolution of Grievance: If the grievance is still in dispute after Step 4, the employee or employee organization may request a further hearing, which at the discretion of the Management Team will take place before the Civil Service Commission, on matters over which the Commission has authority, or before the City Manager or his/her designee, by submitting the grievance within five (5) working days. (If it is determined that the hearing should be held before the Civil Service Commission, a fact-finding hearing to define the issues in the grievance will be held by the Health and Human Resources Director with the employee and/or employee organization, prior to the date set for the Commission hearing. The grievance may be settled during such fact-finding hearing, if a mutually acceptable solution is developed.) Within thirty (30) working days a hearing shall be held and the written decision issued. The employee or employee organization may only request a hearing before the Civil Service Commission in matters solely involving Civil Service Rules or the Personnel Manual.
- Step 6: Grievances arising out of the disagreement on interpretation or application of this Memorandum shall follow the City-wide grievance procedure. Local 145 may formally request to continue the grievance, not later than ten (10) days following receipt of the answer at the final step of the grievance (provided it was heard by the City Manager), by serving written notice upon the Management Team. The Management Team will refer the grievance to the City Council for hearing and decision.