

2015 Negotiations between
City of Corpus Christi &
Corpus Christi Fire Fighters Association

TENTATIVE AGREEMENT

**ARTICLE 25
APPEALS FROM DISCIPLINARY ACTIONS**

Section 1. Preemption.

The procedures provided herein preempt contrary provisions of the Civil Service Act to the extent of any conflict. Otherwise, the procedures provided in the CSA remain applicable.

Section 2. Disciplinary Actions.

A. **Fire Chief's Authority.** The Fire Chief shall have the authority to suspend, demote or dismiss (indefinitely suspend) a Fire Fighter for violations of civil service rules. The Fire Chief also retains his/her authority to take lesser corrective actions (e.g., reprimands, letters of counseling, performance improvement plans, etc.). Such lesser corrective actions are not considered "discipline" and are not subject to the disciplinary appeal process specified in this Article.

B. **Allowable Involuntary Suspensions.** The Fire Chief may suspend a Fire Fighter for a period of not more than 30 calendar days, or indefinitely. An "indefinite suspension" constitutes a dismissal from the Department.

C. **Dismissal Creates Vacancy.** A dismissal (indefinite suspension) results in the creation of a vacancy.

1. In the case of promotional ranks, the vacancy occurs as of the date of the indefinite suspension. Promotions into the vacancy will follow requirements established by the Civil Service Act.

2. If an indefinitely suspended Fire Fighter's appeal is sustained and the Fire Fighter is then reinstated but the position has been filled, the Fire Chief shall request that a provisional position be temporarily added in that rank for the remainder of the fiscal year in which this occurs. That request may be granted, denied or modified based on the needs and budgetary constraints of the Fire Department and the City.

3. Nothing in this section shall be construed to divest or otherwise limit the City's right to implement a reduction in force, as authorized in Section 143.085 of the Civil Service Act. However, if the City implements a reduction in force rather than creating a provisional position, any resulting reinstatement lists will remain in effect for two years unless earlier exhausted.

D. **Allowable Agreed Suspensions.** The Chief may also suspend a Fire Fighter for 31-90 calendar days if the Fire Fighter provides written agreement accepting the suspension, and waiving any and all rights to appeal the agreed suspension. No administrative or judicial body will have the power to review an agreed suspension or alter its terms. However, if the terms of an agreed suspension allow termination for a violation thereof, an arbitrator may decide whether or not a Fire Fighter has violated the terms of the agreed suspension.

Section 3. Disciplinary Investigations & Procedures.

A. **Gov't Code Chapter 614, Subchapter B Not Applicable.** The parties agree that the provisions of this Article satisfy Texas Government Code §614.021(b) and render Texas Gov't Code Chapter 614, Subchapter B inapplicable to disciplinary actions undertaken by the Department.

B. **Investigation Techniques.** During the term of this Agreement, the Department's investigations of complaints against Fire Fighters will be conducted following policies and practices currently in effect. If a Fire Fighter is interviewed as part of the investigation, s/he will be notified in advance of the allegations being investigated, and, upon request to the Fire Chief or designee, be allowed to have an Association representative present at the interview.

C. **Notice of Contemplated Action.** Prior to taking disciplinary action, the Fire Chief will provide the Fire Fighter a written notice stating the action(s) contemplated and the reasons therefore. The notice will also specify a reasonable deadline by which the Fire Fighter must provide the Chief with any written or oral rebuttal to the charges.

D. **Written Statement of Charges.** After the opportunity for rebuttal has passed, the Fire Chief may demote, suspend or dismiss a Fire Fighter by personally providing the Fire Fighter a written statement of charges. If the Chief is unable, despite due diligence, to secure personal service on the Fire Fighter, s/he may serve the written statement of charges by certified mail, return receipt requested, to the Fire Fighter's last known address. Proof of such service upon the Fire Fighter shall be sufficient to support any disciplinary action. Where service is by certified mail, a copy of the statement will be delivered to the Association. A copy of the statement of charges, along with a copy of the notice of contemplated action, shall be promptly filed with the City's Director of Human Resources.

E. **Contents of Disciplinary Action Notice.** The Fire Chief's written statement of charges shall point out the particular civil service rule(s) alleged to have been violated by the Fire Fighter, and describe the specific act(s) alleged to constitute a violation. Said statement shall inform the Fire Fighter that s/he has 10 days after receipt of the written statement of charges to file a written appeal with the City's Director of Human Resources.

F. **Time Limit for Disciplinary Action.** A Fire Fighter may not be disciplined for alleged violation of civil service rules that occurred more than 6 months prior to his/her receipt of the written statement of charges. Exceptions to this time limit are as follows:

- If the Fire Fighter's conduct would constitute a felony, the Fire Chief may take disciplinary action by the earlier of the following dates: (i) within 6 months of discovering the felonious conduct; or (ii) the date the criminal statute of limitations runs.
- The Fire Chief may take disciplinary action against a Fire Fighter based upon his actual conviction of a felony within 30 days after the conviction.

Section 4. Appeals of Disciplinary Actions to Arbitration.

A. **Agreement Procedure Governs.** Appeals initiated by a fire fighter following a suspension, demotion, or dismissal (indefinite suspension) shall be determined by the arbitration procedure provided in this Agreement, rather than by the Civil Service Commission.

B. **Initiating Appeal.** A Fire Fighter may appeal a disciplinary action by filing a written appeal with the Director of Human Resources. To be considered timely, the appeal must be filed:

- Within 10 days of receipt of the written statement of charges, if they are delivered personally; or
- Within 13 days from the date of mailing, if alternate service by certified mail was made.

In either case, if the last day for appeal falls on a Saturday, Sunday, or City-observed holiday, the deadline shall be extended to the first day thereafter that is not a Saturday, Sunday, or a City-observed holiday.

C. **Selection of Arbitrator to Hear Appeal.** One arbitrator selected in the following manner will hear Fire Fighter appeals of suspensions, demotions and dismissals. Upon receiving a Fire Fighter's written appeal, the Director of Human Resources, or designee will immediately notify the Association and Fire Chief of the appeal to arbitration. The Fire Fighter and City (the parties) shall attempt to mutually agree on an arbitrator. If they fail to agree within 14 calendar days after the appeal is filed, the Director, or designee, shall immediately request a list of 7 qualified neutrals from the American Arbitration Association (AAA). The parties may mutually agree on one of the 7 arbitrators. If they cannot do so within 5 working days after receiving the list, they will select an arbitrator by alternately striking the names on the list. The parties shall flip a coin in front of the Director, or Designee to determine who strikes first. The last name remaining shall be the arbitrator. The parties will promptly notify the AAA of the arbitrator's selection. The AAA will notify the chosen arbitrator who, together with the parties' representatives, will select a time, place and date for the arbitration hearing.

D. **Hearing Date.** The arbitrator and parties will confer to select a mutually agreed hearing date to occur within 60 days of the arbitrator's selection. The arbitrator will resolve any conflicts concerning establishment of a hearing date. If the arbitrator cannot make him- or herself available to conduct the hearing within 60 days, either party may request selection of a new arbitrator within 2 days of learning that fact. In such case, the Director will request a new list of 7 arbitrators from AAA, and the parties will alternately strike from the new list in the manner set forth in Subsection C. The hearing will be scheduled to take place on consecutive days (excluding weekends and City-observed holidays) without break.

E. **Hearing Transcript.** An official stenographic transcription of the proceedings shall be made only upon written agreement of the parties prior to the commencement of the hearing, and the cost of the transcript will be shared equally. If there is no agreement on this point, a party desiring to do so may have a transcript made at that party's sole expense. However, in that case, the arbitrator will determine whether s/he will receive a copy of the transcript. If the party not ordering the transcript wishes to have a copy, that party will have to obtain and pay for the copy through the court reporter who prepared the official stenographic transcription.

F. **Pre-Hearing & Hearing Procedures.** The following rules shall govern the conduct of hearings and certain preliminary matters:

(1) Upon request of either party addressed to the opposing party at least two calendar weeks prior to the hearing date, the parties shall exchange the names of witnesses they expect to call at the hearing. Except for true rebuttal witnesses whose testimony could not reasonably have been anticipated, the arbitrator may exclude the testimony of a witness that a party failed after timely request to identify.

(2) The parties are responsible for any cost necessary to secure the presence of their witnesses at hearing, except that the Fire Department will make subpoenaed Fire Fighters who are scheduled to work available to testify.

(3) The arbitrator shall have the power to subpoena witnesses, records, and other evidence. At least 2 calendar weeks prior to the hearing, the party requesting the subpoenas shall prepare the subpoenas and ask the Arbitrator to sign them. Each party will be responsible for serving its subpoenas upon witnesses. Either party may request that the Arbitrator quash subpoenas issued at the request of the other.

(4) The burden of proof shall be upon the City to establish the facts by a preponderance of the evidence.

(5) The parties, in writing, may request discovery from each other before the hearing. A party's failure to provide requested information within 2 calendar weeks of the request will be deemed a denial of the discovery request. The requesting party may then petition the arbitrator to order such discovery as appropriate to the nature of the case. In considering the application, the arbitrator shall consider the burden and expense of producing the information, the need of the requesting party, the amount of time available prior to the hearing, and such other matters as s/he may deem material. The arbitrator's decision as to appropriate discovery will be final. In no event shall discovery be permitted to delay the hearing, and in no event shall discovery be requested within 5 calendar weeks prior to the hearing.

(6) Upon request of either party addressed to the opposing party at least two calendar weeks prior to the hearing date, the parties will exchange documents they intend to use as exhibits at the hearing. A party's failure to disclose an exhibit at this time will preclude its use at hearing, unless the document is used as a rebuttal exhibit, and its use at hearing could not reasonably have been anticipated.

(7) All hearings shall be open to the public unless the parties expressly agree otherwise in writing. In any event, the final decision of the arbitrator shall be public, although public announcement may be reasonably delayed upon request of the parties.

F. **Arbitrator's Authority.** The Arbitrator shall have all powers vested in the Civil Service Commission under the Civil Service Act, and the Commission's rules governing demotions, suspensions and discharges, but shall have no power to amend such rules. Unless

otherwise stated in this Agreement, the provisions of this Agreement control over conflicting provisions of the Civil Service Act and Civil Service Commission Rules.

G. **Arbitrator's Award.** The arbitrator shall render an Award within 30 days of the close of the hearing. Post-hearing briefs must be mailed to the arbitrator within seven (7) days of the close of hearing. The arbitrator's Award shall state which particular factual charges s/he finds to be true, if any, and the particular rules s/he finds such conduct to have violated, if any. Where some or all charges are upheld, the Award shall state whether the discipline imposed is upheld, or whether some lesser discipline is substituted. A Fire Fighter shall be entitled to recover backpay for any part of a suspension not upheld by the arbitrator.

H. **Arbitration Expenses.** Except as regards the expenses of subpoenas, the City and Fire Fighter shall share equally the fees and expenses of the AAA and arbitrator.

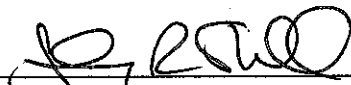
Section 5. Judicial Appeals.

With respect to dismissals, temporary suspensions and demotions, the City and Fire Fighter may appeal the arbitrator's Award to district court on the same grounds s/he is given in the CSA to appeal the Civil Service Commission's decision, and no greater right.

Section 6. Agreed Modifications of Contractual Time Periods.

Any deadlines or time periods set out in this Agreement with respect to disciplinary proceedings may be modified only by written agreement of the parties. However, neither party may be compelled to waive his/her/its right to insist upon the deadlines and time restrictions provided by this Agreement.

Agreed this 16th day of April, 2015:



Johnny R. Stobbs



Roxana I. Pérez Stevens