

Proposal made by IFPTE Local 21 to the City of San Jose

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Originally Submitted on: 04/08/2021

Revised on: 4/23/2021

Article 21 Grievance Procedure(For AEA, CAMP and AMSP)

~~21.1 Any dispute between the City and an employee, or, where provided, the appropriate representative of the Union, regarding the interpretation or application of the written Memorandum of Agreement, or the interpretation or application of the Employer/Employee Resolution No. 39367, as amended, shall be considered a grievance. For any disciplinary action a grievance may be initiated only by the employee directly affected except as otherwise provided herein. Where the dispute directly affects a significantly large group of employees in the representation unit, the Union representative may file a grievance on behalf of such employee(s).~~

1. For any disciplinary action under Article 17 of the current MOU, a grievance shall be filed in writing with the Municipal Employee Relations Officer and shall be processed in accordance with Article 21.

21.3 Grievances under the unit 41/42 and 43 of AEA, involving the interpretation or application of this Agreement shall be processed in accordance with the procedures set forth in this Article.

21.3.1 STEP I

21.3.1.1 An employee may present the grievance orally either directly or through the Union representative to the immediate supervisor. The grievance must be presented within ten (10) working days following the event or events on which the grievance is based. The immediate supervisor shall make whatever investigation is necessary to obtain the facts pertaining to the grievance. Within ten (10) working days after receiving the oral grievance, the immediate supervisor shall give the employee an oral reply.

21.3.1.2 If the employee is not satisfied with the reply of his/her immediate supervisor, he/she may appeal the grievance to Step II.

21.3.2 STEP II

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21.3.2.1 If the employee desires to appeal the grievance to Step II, the grievance shall be reduced to writing and presented to the Department Director or his/her designated representative, within five (5) working days following the receipt of the immediate supervisor's oral reply.

21.3.2.2 To ensure clear communication and assist in resolving the grievance, the written grievance shall contain the following information:

- A clear statement of the problem
- The alleged facts upon which the grievance is based
- The section of the MOA claimed to have been violated and the specific violation claimed
- The remedy requested by the grievant
- The grievance shall be signed and dated by the employee

21.3.2.3 The Department Director, or his/her designated representative, may arrange a meeting between himself/herself, the employee, the appropriate Union representative, and the immediate supervisor to attempt to resolve the grievance. In any event the Department Director, or his/her designated representative, shall give a written decision to the employee within ten (10) working days following receipt of the written appeal to Step II.

21.3.2.4 If the employee is not satisfied with the decision, he/she may appeal the grievance to Step III.

### 21.3.3 STEP III

21.3.3.1 If the employee desires to appeal the grievance to Step III, the employee shall indicate in writing the reason for the appeal and present it along with the original written grievance to the Municipal Employee Relations Officer, or his/her designee, within five (5) working days following receipt of the written decision at Step II.

21.3.3.2 Within fifteen (15) working days after receipt of the appeal to Step III, the Municipal Employee Relations Officer, or his/her designee, shall hold a meeting with the employee, the appropriate Union representative, and the Department Director or his/her designated representative to discuss the matter. A written decision shall be given to the employee or the appropriate Union representative within ten (10) working days following the meeting.

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21.3.3.3 If the decision of the Municipal Employee Relations Officer, or his/her designee, is unsatisfactory, the appropriate Union representative may appeal the grievance to Step IV-Arbitration.

#### 21.3.4 STEP IV - ARBITRATION

21.3.4.1 If the grievance has been properly processed through the previous steps of the procedure and is not resolved, the appropriate Union representative may appeal the grievance to Arbitration. The appropriate Union representative shall notify the Municipal Employee Relations Officer, or his/her designee in writing, within ten (10) working days following receipt by the employee of the written answer at Step III.

21.3.4.2 Within fourteen (14) working days following the receipt of the notice of appeal to Step IV, a meeting shall be arranged by the Municipal Employee Relations Officer, or his/her designee, with the appropriate Union representative to prepare a joint statement of the issue, or issues, to be presented to the arbitrator. The employee may also be permitted to attend. If the parties are unable to agree upon the issue or issues, each party will prepare its statement of the issue, or issues, and jointly submit the separate statement of issue, or issues, to the arbitrator. At the beginning of the hearing referred to herein, the arbitrator shall determine what the issue, or issues, is.

21.3.4.3 The parties may mutually agree upon the selection of the arbitrator or shall jointly request the State of California Mediation and Conciliation Service to provide a list of seven (7) persons qualified to act as arbitrators. Any costs associated with the mutually agreed upon joint request for a list of persons qualified to act as arbitrators from the State of California Mediation and Conciliation Service shall be divided equally between the parties. The City will process the joint request after receiving the Union's share of the cost for obtaining the list.

21.3.4.4 Within ten (10) working days following receipt of the above referenced list, the parties shall complete the arbitration selection process. The right to strike the first name shall be determined by lot and the parties shall alternately strike one name from the list until only one (1) name remains, and that person shall be the arbitrator.

21.3.4.5 The parties shall hold a discussion at least ten (10) working days prior to the arbitration hearing date to narrow issues for arbitration, determine possible stipulations and exchange documents intended for use at the hearing. The parties shall contact the selected

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arbitrator within ten (10) working days in order to schedule the arbitration hearing at the earliest mutually convenient date.

21.3.4.6 The arbitrator shall hold a hearing on the issue, or issues, submitted, or as determined by the arbitrator, if the parties have not mutually agreed upon the issue, or issues, and render a written decision and reasons for the decision as soon after the hearing as possible. The decision shall be binding on both parties, and shall be limited to the issue, or issues, involved.

21.3.4.7 The decision shall be sent to the Municipal Employee Relations Officer, or his/her designee, and to the employee or appropriate representative of the Union.

21.3.4.8 Each of the parties shall pay for the time and expenses of its representatives and witnesses through all stages of the arbitration procedure and shall contribute equally to the fee and expenses of the arbitrator. The arbitrator's fee shall be determined in advance of the hearing. Court reporter fees are also shared equally among the parties.

21.3.4.9 The parties agree that the arbitrator shall not add to, subtract from, change or modify any provision of this Agreement and shall be authorized only to apply existing provisions of this Agreement to the specific facts involved and to interpret only applicable provisions of this Agreement, except that in the event it is a dispute concerning the arbitrability of the grievance, the arbitrator shall have the authority to rule on the issue of arbitrability, to wit: Whether or not the grievance involved an interpretation of the Agreement. However, the arbitrator will have no authority to rule on the issue of whether or not the grievance is a matter that is within the scope of representation, as defined under the Meyers-Milias-Brown Act.

### 21.3.5 General Provisions

21.3.5.1 Any grievance not filed or appealed within the time limits specified shall be considered settled on the basis of the last disposition given. In the event the grievance is not answered within the time limits set forth herein, either the employee, except for appeals to Step IV, or the appropriate Union representative may appeal the grievance to the next higher step within the time limits provided.

21.3.5.2 The Union agrees that it will not initiate or pursue any other avenue of redress on any matter properly within the scope of representation until the provisions of this Article, including arbitration, have been utilized.

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21.3.5.3 Working days as used in this Article shall be defined as the Monday thru Friday regularly scheduled working days of the employee or appropriate Union representative filing or appealing the grievance and the regularly scheduled working days of the appropriate representative of the City responsible for replying to the grievance.

21.3.5.4 If an employee desires to file a grievance involving separation from City employment pursuant to the application of Section 8.11, Leaves of Absence, the employee shall file the grievance in writing at Step II within ten (10) calendar days following the date of separation.  
21.3.5.5 The parties agree that the time limits set forth herein are of the essence of this procedure and are to be strictly complied with. Any of the time limits specified in Steps I through IV may be extended by written mutual agreement of the parties.