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6/4/2019
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COBEA Counter to City
May 16, 2019
Time: _____

ARTICLE 11 – GRIEVANCE PROCEDURE

Section 11.1 Grievance Defined. A grievance for the purpose of this Agreement is defined as a dispute between the parties to this agreement regarding the terms of this Agreement, and shall include such a dispute between ~~an individual COBEA-member(s) of the COBEA bargaining unit~~ and the City. Probationary terminations in Article 9 are excluded from the grievance procedure as provided for in that Article.

Section 11.2 Representation. ~~COBEA or Any-any~~ employee, with COBEA representation, may pursue a grievance under this Article. It is the intent of both the City and COBEA, that whenever possible, grievances between the parties to this Agreement shall be resolved informally and in an amicable manner. When informal discussions have not resulted in a resolution of the grievance, the parties agree to the procedures outlined in this Article.

For grievance process purposes, days shall mean "Business Days" and be counted on a Monday through Friday workweek and shall exclude Saturdays, Sundays, and City recognized holidays.

Any settlement of a grievance under this Article, which would alter or amend the terms of this agreement or memorandum of understanding or similar shall not be binding on either party unless approved in writing by both parties. ~~the COBEA President or designee.~~

Section 11.3 Grievance Procedure. The employee and/or COBEA steward/officer shall, subject to work requirements and approval of the department head or designee, be granted release time with pay for investigation of potential grievances. Release time requests shall be submitted in writing to the work area supervisor and shall specify dates and time periods. Permission for release time shall not be unreasonably withheld. The supervisor shall forward a copy of the approved release time request to Human Resources. All City-paid work time authorized by this agreement spent performing COBEA related grievance activities shall be recorded as such on the employee's time record. Regular work time spent performing COBEA related grievance activities but not authorized as City-paid in this agreement shall be charged against the employee's accrued leave.

Section 11.4 Grievance Steps. COBEA may pursue a grievance on ~~the-an~~ employee's or employees' behalf following the steps of the grievance procedure as outlined below:

Step I. Supervisor Discussion. The grievant shall discuss the grievance with the immediate supervisor outside the bargaining unit within fifteen (15) days from the occurrence thereof, or of knowledge thereof. The supervisor shall respond to the grievance as quickly as possible, but no later than ten (10) days after the grievance is first discussed.

Step II. Written Submission. If, after ten (10) days from the date of receipt of the immediate supervisor's reply, the grievance remains unresolved, ~~the-the grievance may be advanced by submitting a written grievance~~ shall may be submitted written notice to the supervisor with a copy to COBEA including: (1)

a statement of the grievance and relevant facts upon which it is based; (2) specific provision(s) of the contract violated; and (3) the remedy sought. The supervisor shall respond to the grievance in writing within ten (10) days of receipt of the written grievance. The supervisor's response shall include a statement of the supervisor's decision and the relevant facts and contract provisions upon which it is based.

Step III. Department Head. If the grievance is unresolved at Step II, it may be submitted within ten (10) days from the date of receipt of the supervisor's reply, to the appropriate Department Head. Within ten (10) days of receipt of the unresolved grievance, the Department Head shall meet with the immediate supervisor and the grievant(s) and/or COBEA steward/officer, who may request a COBEA representative at the hearing. The Department Head shall respond to the grievance in writing within ten (10) days of the meeting.

Step IV. City Manager. If the grievance remains unresolved at Step III, it may be submitted within ten (10) days from the receipt of the Department Head's written reply to the City Manager. Within ten (10) days of receipt of the grievance, the City Manager shall meet with the grievant(s) and/or COBEA representative, and the Department Head. The City Manager shall respond in writing within ten (10) days of the meeting. If the grievance is related to a performance evaluation, the City Manager may designate the Human Resources Director to act in their behalf.

Step V. Mediation. If the Association is not satisfied with the decision provided by the City Manager at Step IV, the Association will submit the grievance to mediation within fourteen (14) calendar days from either the City Manager's response or fourteen (14) calendar days from the due date of the response. The parties may mutually agree to a local mediator or use a mediator provided by the Employment Relations Board (ERB). Parties agree to share the costs of the mediator. Unless otherwise agreed by the parties, the period for mediation will be limited to 120 days, starting from timely notice of mediation by the moving party. The parties agree to promptly schedule mediation, with the goal of agreeing within thirty (30) days of advancement to Step V to a mutually available date. The parties must meet at least one time and agree to meet in good faith to resolve the dispute. Termination cases are not subject to the mediation process and may move to the next step. The parties may mutually agree to forego mediation.

Step VI. Arbitration. If the grievance remains unresolved after mediation Step V, or for termination cases, is not resolved at Step IV, the grievant with COBEA's approval, shall have fifteen (15) days from termination of mediation to serve notice to the City Manager, in writing, of its intent to arbitrate. The arbitrator shall be selected by mutual agreement of the parties. If the parties cannot agree on an arbitrator, the arbitrator shall be chosen in the following manner:

(1) A list of seven (7) members of the Oregon State Conciliation Services with the ERB who reside in Oregon or Washington shall be requested and the parties shall alternately strike one name from the list, until only one is left. The arbitrator list shall include only those arbitrators who are permanent full-time residents of Oregon. The first strike shall be determined by lot. The remaining name shall be the arbitrator selected. Parties will strike names within ten (10) days of receipt of the list from the ERB.

(2) The arbitrator shall hold a hearing promptly and shall issue a decision within thirty (30) days of concluding the hearing or receiving final post-hearing briefings, whichever occurs later. The arbitrator's decision shall be in writing and shall set forth finding of fact, reasoning, and conclusions on the issues submitted. ~~The arbitrator's decision may also provide retroactivity to the original date of the Agreement. The powers of the arbitrator shall be limited to interpreting this Agreement and determining if it has been violated;~~ The arbitrator shall have no authority to render a decision that will add to, subtract from, or alter, change or modify, vacate, or amend any terms of the agreement Agreement, or to decide on any condition which is not specifically treated in this Agreement. Insofar as the decision of the arbitrator is within the scope of their authority, as described above, and is based on substantial evidence, their The arbitrator's decision shall be final and binding on both parties, subject to the PECBA.

(3) The costs of the arbitrators shall be borne equally by the parties. Each party shall be responsible for costs of presenting its own case to arbitration.

(4) Both parties shall in good faith disclose Aany information, material or testimony of witnesses ~~not previously made known by one party to the other party to the conclusion of the City Manager's deliberations in Step IV may not be used in arbitrations~~ as early as possible in the grievance procedure in order to encourage early settlement of contract disputes.

Section 11.5 Time Limits. Any time limits specified in the grievance procedure may be waived in writing by mutual consent of the parties. Failure to submit the grievance in accordance with these time limits without such waiver shall constitute abandonment of the grievance. Failure by the City to submit a reply within the specified time will permit the Association to proceed to the next step.

A grievance may be withdrawn at any time upon receipt of a signed statement from ~~the~~ grievant COBEA.

