

ARTICLE 28.
Disciplinary Actions Authority

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Section 9.

The award of the Arbitrator shall state whether the Chief's disciplinary decision, which includes the original written statement and charges, is supported by substantial evidence considering the reliable and probative evidence in the record as a whole. If the Chief's decision is supported by substantial evidence, the Arbitrator may not substitute the Arbitrator's judgment for the judgment of the Chief on the appropriate level of discipline and shall make no recommendation reversing, overruling, or otherwise modifying the Chief's discipline unless there is a finding that the discipline was arbitrary or capricious. If the Arbitrator finds the Chief's decision was arbitrary or capricious, which particular factual charges he finds to be true, if any, and the particular rules he finds such conduct to have violated, if any. Where the charges are upheld, the award shall state whether the discipline imposed is upheld, or whether some lesser discipline is substituted. This this agreement authorizes an arbitrator to reduce an indefinite suspension to a period greater than 45-days.

Section 10.

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~~C. In all hearings under this Section, the City shall prove its case by a preponderance of the evidence.~~

CD. All hearings shall be public unless it is expressly agreed in writing by the parties that the hearing shall be closed to the public. In any event, the final decision of the arbitrator shall be public, although public announcement may be reasonably delayed upon request of the Parties.

DE. Unless otherwise provided in this Agreement, the conduct of the hearing shall be governed by the rules of the American Arbitration Association.

Section 11.

~~Unless~~ Except otherwise provided in this Agreement, the Arbitrator shall have all those powers and only those powers vested in the Commission under Chapter 143 of the Local Government Code and the Commission Rules, ~~with respect to suspensions, indefinite suspension, and demotions, with the sole exception of the power to amend such rules.~~

Section 12.

Any notice or statement required to be filed by the Chief or the Officer in a disciplinary proceeding under Chapter 143 of the Local Government Code, under Commission Rules, or under this Agreement, shall be filed with the Human Resources Director of the City.

Section 13.

Hearings conducted by the Commission shall be in accordance with Chapter 143 of the Local Government Code except that the Commission's jurisdiction is similarly limited as an arbitrator's jurisdiction in Section 9 and may not substitute its judgment for the judgment of the Chief on discipline.

Section 14.

Unless otherwise provided in this Agreement, with respect to demotions, suspensions, and indefinite suspensions as defined in Chapter 143 of the Local Government Code the Officer shall have such right to appeal the arbitrator's decision to district court as he is given in Chapter 143 of the Local Government Code to appeal the Commission's decision, and no greater right.

Section 15.

Unless otherwise provided in this Agreement, in cases of conflict, the provisions of this Agreement will control over Chapter 143 of the Local Government Code, and any other civil service provision or rule, and American Arbitration Association Rules; and Chapter 143 of the Local Government Code, and any other civil service provision, and Civil Service Rules promulgated pursuant to it shall control over American Arbitration Association Rules. Once an Officer receives a formal notification from Internal Affairs, the officer may initiate a written request to the Chief to waive the normal investigative track through Internal Affairs for the investigation to be submitted to an expedited disciplinary track, however in no event can the expedited disciplinary track be requested within thirty (30) calendar days of the expiration of the complaint's one-hundred-and-eighty (180) calendar day timeline in Chapter 143 of the Local Government Code. Both the Officer and the Chief must agree to submit a matter to the expedited disciplinary track for an expedited disciplinary finding. An expedited disciplinary finding is an agreement by the Officer and the Chief that disciplinary action is warranted and enacted, but did not proceed through the conventional track. Any disciplinary action resulting from the expedited disciplinary track must be agreed upon by the Officer and the Chief, and must be enacted within thirty (30) calendar days of the parties' agreement to expedite the disciplinary process, but under no circumstances later than the time limitation as expressed ~~and proscribed in Chapter 143 of the Local Government Code, as applicable~~ in Section 19. Absent an agreement by both the Chief and the Officer, the matter will continue through the regular investigative procedure.

Section 16.

Notwithstanding any other provision of this Agreement, the Chief shall have authority to suspend

an Officer for a period of not more than one hundred and twenty (120) calendar days only where the Officer agrees to the disciplinary action in writing. An agreed disciplinary action is an agreement between the Officer and the Chief that may include, but is not limited to, any one, or combination of, a suspension, demotion, or non-disciplinary actions such as professional counseling, re-training, or re-assignment. The Officer shall have no right to appeal such agreed disciplinary actions, and no administrative or judicial body shall have power to review such a suspension or alter the terms of the Agreement.

Section 17.

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

Section 18.

Officers suspended up to a maximum of forty-five working days may, at the Chief's discretion, forfeit either accumulated compensatory time, vacation, bonus time or holiday leave equal to the suspension. Approval of forfeiting time by the Chief shall not be unreasonably withheld and may only be denied because of a consistent overall pattern of substandard performance. The Officer shall have ten (10) calendar days from receipt of notice of the suspension to decide whether or not he wishes to forfeit accumulated leave or exercise his appeal rights pursuant to Chapter 143 of the Local Government Code or the Grievance and Arbitration Procedures of this Agreement. The provisions of this Section shall apply solely to suspensions which are agreed to by the Officer, and no appeal to the Commission or to arbitration may be instituted on suspensions where the Officer has forfeited accumulated compensatory, vacation, bonus time or holiday leave pursuant to the terms of this Article.

Section 19.

A. Minor Misconduct. Minor misconduct is defined as slight variances to Department policies, procedures, responsibilities, and expectations. Except as provided in this section of this Article, the Chief and City are precluded from the introduction of evidence or otherwise complaining of any acts or occurrences earlier than the one hundred and eightieth (180th) calendar day immediately preceding the date on which the Chief suspends or demotes the Officer. ~~The Chief may introduce evidence or otherwise complain of any felony Penal Code violation, a felony violation of the Controlled Substance Act, a Class A or B Misdemeanor committed by an officer so long as the evidence or complaint is filed within one hundred and eighty (180) calendar days of the Department's first knowledge of the act, provided however, that the statute of limitation for criminal judicial action against the officer involved has not expired. This amendment language shall not be applied retroactively. Only upon written notice in the original written statement of the Chief may any act or occurrence be admissible in a disciplinary hearing in accordance with this section.~~

B. Major Misconduct. Major Misconduct is significant variance(s) to Department policies, procedures, responsibilities, and expectations ~~to include~~ including, but not limited to, serious behavior infractions, excessive/unnecessary use of force, acts showing lack of good moral character, discrimination, harassment, abuse of official position, improper/unauthorized use of City property, failure to timely report a Major Misconduct, acts causing inability to testify, and use of unauthorized intoxicants or unauthorized medications while on duty. In the original written statement of charges and in any disciplinary hearing conducted pursuant to this Agreement, the Chief may not complain of an act that is discovered earlier than the 180th day preceding the date the Chief suspends the Officer. The act is deemed discovered when Internal Affairs or a supervising officer of the rank of Deputy Chief ~~Sergeant~~ or above has actual knowledge of the act.

C. Certain Criminal Conduct. The Chief may order an indefinite suspension based on an act classified as a felony or a Class A or B misdemeanor after the 180-day period following the date of the discovery of the act by the department if the department head considers delay to be necessary to protect a criminal investigation of the person's conduct. If the Chief intends to order an indefinite suspension after the 180-day period, the Chief must file with the attorney general a statement describing the criminal investigation and its objectives within 180 days after the date the act complained of occurred.

~~D~~E. Evidence. Solely to aid the Commission or arbitrator in the assessment of appropriate discipline and not to prove a charge of a violation of Civil Service Rules or for any other purpose, the Chief and the City may introduce evidence of any prior disciplinary actions, ~~which have not been set aside on appeal as follows:~~

~~A. — Where the Chief's original written charges include alleged violations of Civil Service Rules constituting acts of intentional violence, the Chief and the City may introduce prior discipline on such other violations found to have been committed within five (5) years immediately preceding the date of said written charges;~~

~~B. — Where the Chief's original written charges include alleged violations of Civil Service Rules concerning drug or alcohol abuse, any prior discipline on such violations found to have been committed within ten (10) years immediately preceding the date of said written charges;~~

~~C. — Where the Chief's original written charges allege acts of incompetence, all prior discipline for acts of incompetence may be introduced by the Chief or the City so long as adequate records are maintained in accordance with Section 20 below, at the time of the act for which discipline was assessed; and~~

~~D. — Where the Chief's original written charges allege a violation of any other Civil Service Rule, the Chief and the City may introduce prior discipline for a violation(s) of the same rule within two (2) years immediately preceding the date of said written charges, so long as adequate records are maintained in accordance with Section 20 below, at the time of the act for which discipline was assessed.~~

E. ~~Upon execution of this Agreement, suspensions of three (3) days or less that were not appealed by the Officer shall be automatically reduced to a written reprimand two (2) years after the date the suspension was served on the Officer if the Officer did not have a sustained complaint for the same rule within two (2) years from the date the suspension was served on the officer. Suspensions that were appealed to the Commission or Arbitrator by the Officer are not eligible to be reduced to a written reprimand under this Section. The original suspension paperwork sent to the Commission will reflect the conditions of this Section to reduce the applicable suspension to a written reprimand. The reduction of any suspension contained within this subsection does not qualify for any form of reimbursement to the employee.~~

Date: _____

For the City

For the Association