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City of Cupertino Counter Proposal to OE3

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Disputed 5/2/2016

SECTION 24: GRIEVANCE PROCEDURE

Definition and Procedure: a grievance is a dispute or difference of opinion raised by an employee against the City involving the meaning, interpretation or application of the express provisions of this Agreement or the Rules on Conditions of Employment or existing work rules. A grievance shall be processed in the following manner:

Step 1: Any employee who has a grievance shall submit it designated as a grievance to the employee's immediate supervisor within ten (10) calendar business days of the occurrence of the dispute, who is designated for this purpose by the City.

The supervisor shall give the employee an oral answer within ten (10) calendar business days after such presentation.

Step 2: If the grievance is not settled in Step 1 and the employee wishes to advance the grievance to Step 2 of the grievance procedure, it shall be referred in writing to the employee's next highest supervisor within ten (10) calendar business days after the supervisor's oral answer, or answer due in Step 1, and shall be signed by both the aggrieved employee and the Union Representative or Union Business Agent. The written grievance shall contain a complete statement of the facts, the provisions or provisions of this Agreement or work rules which the City is alleged to have violated and the relief requested. The supervisor or other person designated for this purpose shall discuss the grievance within ten (10) calendar business days with the employee and the Union Representative at a time mutually agreeable to the parties. If no settlement is reached, the supervisor or other person designated for this purpose shall provide the employee a written answer within ten (10) calendar business days following their meeting.

Step 3: If the grievance is not settled in Step 2 and the employee wishes to appeal the grievance to Step 3 of the grievance procedure, it shall be referred in writing to the employee's Department Head within ten (10) calendar business days after the supervisor's answer in Step 2 and shall be signed by both the aggrieved employee and the Union Representative or Union Business Agent. The Department Head shall discuss the grievance within ten (10) calendar business days with the employee and the Union Steward at a time mutually agreeable to the parties. If no settlement is reached, the Department Head shall give the City's written answer to the employee within ten (10) calendar business days following their meeting.

Step 4: If the grievance is not settled in Step 3 and the employee wishes to appeal the grievance to Step 4 of the grievance procedure, the Union may refer the grievance to advisory mediation as described below within fourteen (14) calendar business days after the decision is provided at the third step.

- 1) The parties shall attempt to agree upon an advisory arbitrator within seven (7) calendar business days after receipt of the notice of referral. In the event that parties are unable to agree upon an advisory arbitrator within said seven (7) business day period, the parties shall immediately jointly request the State Mediation and Conciliation Service to submit a panel of five (5) advisory arbitrators. Each party retains the right to reject one panel in its entirety and request that a new panel be submitted. Both the Union and the City shall have the right to strike two (2) names from the panel. The person remaining shall be the advisory arbitrator.
- 2) The advisory arbitrator shall be notified of his/her selection and shall be requested to set a time and place for the hearing, subject to the availability of Union and City representatives.
- 3) The City or the Union shall have the right to request the arbitrator to require the presence of witnesses or documents. The City and the Union retain the right to employ legal counsel.
- 4) The advisory arbitrator shall submit his/her recommendation in writing within thirty (30) calendar days following the close of the hearing or the submission of briefs by the parties, whichever is later.
- 5) More than one grievance may be submitted to the same advisory arbitrator if both parties mutually agree in writing.
- 6) The fees and expenses of the advisory arbitrator and the cost of a written transcript shall be divided equally between the City and the Union; provided, however, that each party shall be responsible for compensating its own representatives and witnesses.

Limitations on Authority of Advisory Arbitrator: The advisory arbitrator shall have no right to amend, modify, nullify, ignore, add to, or subtract from the provisions of this Agreement. The advisory arbitrator shall consider and decide only the question of fact as to whether there has been a violation, misinterpretation, or misapplication of the specific provisions of this Agreement. The advisory arbitrator shall be empowered to determine the issue raised by the grievance as submitted in writing at the Second Step. The advisory arbitrator shall have no authority to make a recommendation on any issue not so submitted or raised. The advisory arbitrator shall be without power to make recommendations contrary to or inconsistent with, in any way, applicable laws or rules and regulations of administrative bodies that have the force and effect of law. The advisory arbitrator shall not in any way limit or interfere with the powers, duties and responsibilities of the City under law and applicable court decisions. The recommendation shall be advisory only.

5.2.16

Dania Woy

5/2/16
Mary Blaw