

office memorandum



Date: March 1, 2010
To: Butch Crawford, President IAFF 2067
From: Steve Lewis, City Manager
Subject: Scott Simpson Grievance

I have received and reviewed a grievance concerning discipline imposed on Firefighter Scott Simpson for a violation of the City/IAFF Collective Bargaining Agreement. The grievance states, "[t]he Union believes this discipline is without just cause and the employees due process rights were violated." The remedy requested is reinstatement of all "benefits (sic) seniority and back pay."

In addition to the grievance, I have reviewed Deputy Chief Bailey's grievance response. In his response, Deputy Chief Bailey asserts that "[t]he broad allegation of 'due process violations' makes it difficult for [] to respond to [the] grievance" and asks that the Union "state with specificity the alleged due process violations" so a response can be drafted which appropriately addresses the Union's concerns. Instead of providing Deputy Chief Bailey with specific due process violations, the grievance was moved to Step 3. I agree with Deputy Chief Bailey's conclusion that it is virtually impossible to respond to the grievance because it does not specify the "due process" alleged to have been violated.

Under Article 8, Section 1 of the City/IAFF CBA, the City Manager will consider all information presented in a grievance in reaching a decision. The function of the grievance procedure is to facilitate a satisfactory accommodation of the parties' differences. The normal expectation is that there will be a free exchange of information to facilitate a better understanding of each party's position concerning the facts and governing principles of a grievance. Labor and Employment Arbitration § 2.02[1]. The Union's decision not to freely exchange information makes it impossible to adequately respond to the broad allegation of due process violations.

Notwithstanding the Union's failure to state with specificity the alleged due process violations, my review of the January 25, 2010 memo from Chief Fullingim shows that there was just cause for disciplinary action and that Union's allegation that Firefighter Simpson was denied due process is unfounded. Section 4 of Article 21 of the City/IAFF CBA states:

"False or fraudulent use of sick leave may be cause for disciplinary action against the offending employee. Such disciplinary action may include dismissal."

The facts set forth in Chief Fullingim's memo support a conclusion that Firefighter Simpson falsely used sick leave on January 7, 2010. This is unmistakably prohibited by Section 4 of Article 21.

The facts set forth in Chief Fullingim's memo also show that Firefighter Simpson received all the process he is due. In particular, Firefighter Simpson was permitted to have a Union representative present at his pre-disciplinary conference and was given written notice of the charge against him, an explanation of the City's evidence, and an opportunity to tell his side of the story. I know of no other process that Firefighter Simpson is due.

For the reasons set forth above, the grievance is denied. Please consult the City/LAFF CBA for any further rights the Union may have.

cc: James Fullingim, Fire Chief
James Bailey, Deputy Fire Chief
Gala Hicks, Human Resources Director
Rickey J. Knighton II, Assistant City Attorney
Rebecca Frazier, Assistant City Attorney