

**CHAPTER THREE**  
**GRIEVANCE PROCEDURES**

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Personnel Administrative Instruction 3.1 – Guidelines for Third Step Grievance Meetings

# **CHAPTER THREE**

## **GRIEVANCE PROCEDURES**

### **I. General Policies**

Prompt and objective review of employee dissatisfactions and sincere attempts to resolve them in an equitable manner are essential to productive and mutually beneficial employee-management relationships. Employees shall have an opportunity to express concerns on matters related to employment and working conditions, and to have them promptly and fully considered. Every reasonable effort shall be made to resolve employee complaints and grievances on an informal basis at the lowest level of management possible. Therefore, both managers/supervisors and employees are expected to work together to achieve this objective. Members of the Department of Human Resources staff shall be available to provide advice and assistance to both management and employees at any stage of these procedures in the effort to resolve differences on the issues under consideration. The Director of Human Resources may develop and implement alternative processes for resolving problems. These processes may be offered as a means of creative and non-adversarial problem resolution. However, the processes shall not preclude an employee from exercising formal grievance rights. The procedures contained herein provide the principles and instructions for presenting, considering, and resolving grievances. The presentation of a grievance shall not, in itself, be considered as reflecting unfavorably on the employee's good standing, loyalty, or value to the City. Therefore, an employee shall be free to pursue the procedures without fear of restraint,

interference, coercion, discrimination, or reprisal on the part of management at any level.

All stages of the grievance beyond the first step shall be in writing on forms supplied by the Department of Human Resources. Personal face-to-face meetings are required at all steps of the Grievance Procedure. At the first and second steps, the only persons who may normally be present at the meeting are the grievant, the appropriate manager at the level at which the grievance is being heard, and appropriate witnesses for each side. Witnesses may be heard at all steps, but shall be present only while actually providing testimony. At the third step, the grievant may have present a self-selected representative. If the grievant is represented by legal counsel, management may be represented by counsel. If the employee is represented by an attorney, it shall be at the employee's expense. The grievant's representative or attorney shall be designated at the time the employee presents the grievance in writing under appropriate procedures. This designation shall be changed only by written notification to the official considering the grievance and shall be signed by the employee concerned. As a grievance moves through the levels of appeal, an employee may not materially change the basic nature or content of the grievance after it is reduced to writing, nor the relief sought. If another City employee is chosen as a representative and that person is willing to represent the employee, the chosen employee representative shall not be denied permission to do so unless the representation would contribute appreciably to the neglect of that person's regular duties, or would constitute a clear conflict of interest with regular duties. For example, staff members of the Department of Human Resources whose regular duties require advising management and employees on matters related to grievances shall not be allowed to act as employees' representatives. In no case will managerial or supervisory personnel act as

an employee representative for rank and file employees against management.

## **II. Definition of a Grievance**

A grievance shall be a complaint or dispute by a permanent employee, who has completed the probationary period, relating to employment with the City of Hampton including, but not necessarily limited to:

- disciplinary actions involving dismissals, suspensions, and demotions provided that dismissals and demotions shall be grievable whenever resulting from formal discipline or unsatisfactory job performance;
- the application, meaning, or interpretation of personnel policies, procedures, rules, and regulations;
- acts of reprisal as a result of using the grievance procedure, or of participation in the grievance of another City employee;
- complaints of discrimination on the basis of race, disability, creed, color, national or ethnic origin, age, religion, sex, or political affiliation, and acts of retaliation because the employee has complied with any law of the United States or of the Commonwealth of Virginia, has reported any violation of such law to a governmental authority, or has sought any change in law before the Congress of the United States or the Virginia General Assembly.

Management reserves the exclusive right to manage the affairs and operations of local government. Accordingly, complaints shall be non-grievable where they involve:

- separation without prejudice, establishment and revision of wages or salaries,

- assignment of or placement on a pay range, or general benefits;
- work activity accepted by the employee as a condition of employment or work activity which may be reasonably expected to be part of the job content; the measurement and assessment of work activity through a performance evaluation shall not be grievable;
  - the contents of this manual, statutes, or established personnel policies, procedures, rules, and regulations;
  - failure to promote except where the employee can show established promotional policies or procedures were not followed or applied fairly;
  - the methods, means, and personnel by which such work activities are to be carried on, except where such action affects an employee who has been reinstated within the previous six (6) months as a result of the final determination of a grievance, termination, lay off, demotion, or suspension from duties because of lack of work, reduction in workforce, or job abolition;
  - the hiring, promotion, transfer, assignment, and retention of employees within the City;
  - the relief of employees from duties of the City during emergencies.

In any grievance brought under the exception described above pertaining to employees who are reinstated within the previous six (6) months as a result of the final determination of a grievance, the City's action shall be upheld upon a showing by the City that: (1) there was a valid business reason for the action, and (2) the employee was notified of such reason in writing prior to the effective date of the action.

### **III. Grievability**

The issue of grievability may occur at any step of the procedure prior to the panel hearing, but once raised the issue must be finally resolved as provided herein before further processing of the grievance. Decisions regarding grievability and access to the procedure shall be made by the City Manager or designee at the request of management or the grievant. In all cases, the issue of grievability must be resolved prior to the panel hearing or it shall be deemed to have been waived by management and the grievance shall be processed to conclusion. The grievant shall have fifteen (15) calendar days to appeal a decision of non-grievability prior to the panel hearing step of the procedure. Such appeal must be in writing and directed to the City Manager, who shall have fifteen (15) calendar days to render a written decision to the grievant. Decisions of the City Manager may be appealed by the grievant to the Circuit Court of the City of Hampton, Virginia for a hearing de novo on the issue of grievability. Proceedings for review of the decision of the City Manager shall be instituted by filing a notice of appeal with the Director of Human Resources within fifteen (15) calendar days from the date of receipt of the decision and giving a copy thereof to all other parties. Within fifteen (15) calendar days thereafter, the Director of Human Resources shall transmit to the Clerk of the Court to which the appeal is taken: a copy of the decision of the City Manager, a copy of the notice of appeal, and the exhibits. A list of the evidence furnished to the Court shall also be furnished to the grievant. The failure of the Director of Human Resources to transmit the record within the time allowed shall not prejudice the rights of the grievant. The Court, on motion of the grievant, may issue a writ of certiorari requiring the Director of Human Resources to transmit the record on or before a certain date. Within thirty (30) days of receipt of such

records by the clerk, the court, sitting without a jury, shall hear the appeal on the record transmitted by the Director of Human Resources and such additional evidence as may be necessary to resolve any controversy as to correctness of the record. The Court may affirm the decision of the City Manager or may reverse or modify the decision. The decision of the Court shall be rendered no later than fifteen (15) calendar days from the date of the conclusion of the hearing. The decision of the Court is final and is not appealable. The classification of a complaint as non-grievable shall not be construed to restrict any employee's right to seek or management's right to provide customary administrative review of complaints outside of the scope of the grievance procedure.

#### **IV. Management Rights**

Nothing in this manual is intended to circumscribe or modify the existing management right of the City of Hampton to do the following: (1) direct the work of its employees as well as establish and revise wages, salaries, position classifications, and general employees benefits; (2) hire, promote, transfer, assign, and retain employees within the City organization; (3) maintain the efficiency of City governmental operations; (4) relieve employees from duties with the City during emergencies; and (5) determine the methods, means, and personnel by which operations are to be carried on.

#### **V. Coverage of Personnel**

All permanent employees who have completed the City's prescribed probationary period are eligible to file grievances except the City Manager, City Attorney, Clerk of Council, Assistant City Managers, Assistants to the City Manager, Senior Deputy, Deputy,



Senior Assistant and Assistant City Attorneys, Council appointees, Department Heads, and personnel assigned to the Executive Compensation Pay Plan, and any other employees who may be excluded under Section 15.2-1507(A)(3) of the Code of Virginia. The Director of Human Resources shall maintain an up-to-date list of the positions excluded from the grievance procedure. Uniformed police officers may elect to use the grievance procedures prescribed in this manual or proceed pursuant to Section 9.1-500 et seq. of the Code of Virginia in the resolution of the grievance. The selection of which grievance procedure will be followed shall be made by such law enforcement officer at the time a formal written grievance is filed, shall be in writing, shall be signed by the grievant, and shall not be changed thereafter.

## **VI. Relief Sought**

An employee is required to specify in writing on the appropriate form the relief sought through this process. The relief sought shall be personal to the grievant and may not be the dismissal or discipline of another employee. The relief sought must be consistent with those issues determined to be grievable under this procedure, may not be in conflict with the management rights contained in this manual and shall be consistent with provisions of law and written policy. In the case of reinstatement subsequent to a dismissal, the official hearing the grievance and/or the grievance panel may grant whole, partial, or no back pay for the period of separation. An award of back pay shall be offset by interim earnings the employee received during the period of separation. The employee may accept the relief granted at any step of the procedure and the grievance shall be considered resolved. However, prior to the Panel Hearing step, if the employee finds any

part of the relief granted unacceptable, the employee must advance the entire grievance and remedy sought to the next step of the procedure. The decision of the grievance panel shall be final and binding.

## **VII. Failure to Comply with Procedural Requirements**

After the initial filing of a written grievance, failure of either party to comply with all substantial requirements of the grievance procedure including the panel hearing, without just cause will result in a decision in favor of the other party on any grievable issue, provided the party not in compliance fails to correct the non-compliance within five (5) work days of receipt of written notification by the other party of the compliance violation. Such written notification by the grievant shall be made to the Director of Human Resources. The City Manager, or designee, may require a clear written explanation of the basis for just cause extensions or exceptions. The City Manager, or designee, shall determine compliance issues. Compliance determinations made by the City Manager shall be subject to judicial review by filing petition with the Circuit Court of the City of Hampton, Virginia within thirty (30) days of the compliance determination.

## **VIII. Use of Official Duty Time**

An employee and the employee's representative, if such representative is a City employee, shall be given a reasonable amount of official duty time with pay for the preparation and presentation of a grievance if the employee is in a duty status. The time allowed shall be determined by the individual's Department Head on the basis of facts and circumstances in each individual case. All employees, whether grievants, representatives,

or witnesses, shall make advance arrangements with the respective managers/supervisors for the use of official time.

## **IX. Remedial Action**

When a grievance is resolved in favor of the employee, appropriate remedial action shall be taken promptly to the degree permitted by law and regulation as interpreted by the Director of Human Resources.

## **X. Cancellation or Withdrawal of a Grievance**

### **A. Cancellation of a Grievance**

A grievance under investigation or review shall be canceled by the official considering it: upon notification that the remedy sought has been granted; when the employee does not furnish required information according to the compliance requirements of this procedure and duly proceed with the advancement of the case; upon death of the employee, or separation from employment for reasons not connected with the grievance. The canceling official shall promptly notify all parties, including the Director of Human Resources, in writing of the action to include the reasons therefore.

### **B. Withdrawal of a Grievance**

The grievant's written request to withdraw a grievance shall be accepted by the official considering it. The official shall promptly notify all parties, including the Director of Human Resources, in writing of the withdrawal action to include the reasons therefore.

## **XI. Extension of Prescribed Time Limits**

The parties of the grievance, by mutual agreement, may extend any or all of the time periods established in this procedure up to and through the third step. The Grievance Panel, on its own recognizance, or at the request of either party to the grievance, may extend any or all of the prescribed time periods applicable after the grievance is received by the Grievance Panel from the Director of Human Resources.

## **XII. Steps in the Grievance Procedure**

### **A. First Step-Immediate Manager/Supervisor Level**

A first step grievance must be initiated within thirty (30) calendar days of the occurrence or condition giving rise to the alleged problem. An employee, who has a grievance, shall discuss the problem directly with the immediate manager/supervisor or the Department Head if the grievance is in connection with a suspension, dismissal, or policy decision. The grievance need not be reduced to writing until this step has been completed.

It is incumbent upon the employee at the first step of the procedure to inform the manager/supervisor or Department Head of the intention to formally grieve. An employee's problem does not become an official grievance for the purpose of this procedure until the employee identifies it as such in a face to face meeting. The manager/supervisor or Department Head shall give the employee a verbal response with respect to the grievance within fifteen (15) calendar days after its presentation and shall make written documentation of the date the meeting took place, the decision made, and date the decision was given to the employee.

## **B. Second Step - Department Head Level**

If the grievance is not resolved at the first step, the employee shall have fifteen (15) calendar days to reduce the grievance to writing on a Second Step Grievance Form obtained from the Department of Human Resources. The fully completed grievance form shall be delivered by the grievant to the immediate manager/supervisor or Department Head. In cases where discrimination is alleged, the grievance shall be filed with the Department Head, if appropriate, or the Director of Human Resources (See Section XIII, for process and time frames). The immediate manager/supervisor and/or the Department Head shall meet with the grievant within fifteen (15) calendar days of receipt of the grievance form. A written reply to the grievance signed by the Department Head shall be provided to the employee within fifteen (15) calendar days after the second step meeting.

## **C. Third Step - City Manager Level**

If the reply from the second step meeting is not acceptable, the grievant shall have fifteen (15) calendar days after receipt of the reply in which to request, in writing on a Third Step Grievance Form obtained from the Department of Human Resources, a meeting with the City Manager or designee(s). The fully completed grievance form shall be submitted to the Director of Human Resources or designee who shall record its submission and forward the grievance and any related documents to the City Manager who may designate one or more individuals to administer the third step grievance (see Section XIII for administration of grievances alleging discrimination). The designated individual(s) and such other individuals as deemed appropriate, under this procedure, shall meet with the grievant within fifteen (15) calendar days of receipt of the grievant's request and shall reply in writing

to the grievance within fifteen (15) calendar days following the third step meeting.

#### **D. Fourth Step - Citizen Grievance Panel**

If the City Manager's or designee's reply from the third step meeting is not acceptable, the grievant may submit the grievance to a fourth step panel hearing. The request for a fourth step panel hearing shall be submitted by the employee on a Panel Hearing Request form obtained from the Department of Human Resources. Requests for panel hearings must be submitted to the Director of Human Resources or designee within fifteen (15) calendar days after receipt of the third step reply.

#### **E. Waiver of Steps**

Any of the steps in the grievance procedure, except the fourth step panel hearing, may be waived based upon the mutual written agreement of the grievant and the City Manager or designee. The Director of Human Resources shall develop a format for waivers, which may be executed in connection with any step or steps prior to the fourth step panel hearing. Such waiver must be signed by the employee and the official administering the grievance prior to the required meeting(s) between the grievant and management. The waiver form shall be reviewed for compliance by the Director of Human Resources or designee prior to submission to the City Manager or designee. The waiver form shall be included in the official grievance file maintained in the Department of Human Resources.

### **XIII. Allegations of Discrimination and/or Sexual Harassment**

When an employee alleges discrimination because of race, color, sex (including sexual harassment), religion, national or ethnic origin, age, political affiliation, or disability, in connection with a written grievance, the normal grievance process will take place, except that the grievant may request that the City's Employee Relations Manager perform an independent investigation. The Employee Relations Manager shall be responsible for providing 1) a statement of disposition to the complainant and 2) a written report of the investigation to the City Manager or designee, the City Attorney or designee, the Department Head and/or the official administering the grievance in accordance with the following guidelines:

The Department Head, or at the third step of the procedure, the Director of Human Resources or designee, shall upon the grievant's request, immediately forward a copy of the grievance to the Employee Relations Manager who shall conduct an independent investigation relative to the charge(s) of discrimination and file a written report with the official considering the grievance. In such cases the time frame for conducting the second or third step meeting shall be extended to allow time to conduct the investigation as described below.

In cases where the Department Head is the subject of the charge of discrimination, the second step grievance meeting shall be bypassed and the grievance shall be submitted to the Director of Human Resources or designee on a Third Step Grievance Form. The Director of Human Resources or designee shall forward it to the City Manager and shall upon the grievant's request forward a copy of the grievance to the Employee Relations

Manager for investigation and report as outlined above. A third step meeting shall be conducted in accordance with Section XII, Paragraph C. It shall be the responsibility of the individual considering the grievance at the second or third step to hear the grievance within fifteen (15) calendar days after receiving the Employee Relations Manager's report and to determine whether or not discrimination occurred, make a ruling, and grant a remedy, if appropriate.

The Employee Relations Manager, if requested, shall conduct an investigation in accordance with the guidelines established in Chapter 2, Section III, G. Such investigations shall be completed within 30 work days; however, if an investigation involves extensive interviewing and/or research which may take a longer time, the Employee Relations Manager and the grievant may agree in writing to any extensions to the time allotted for completion of the investigation. In the absence of mutual written agreement on the extension of time frames, the official administering the grievance shall schedule the required meeting and proceed in accordance with normal procedures.

#### **XIV. Make-Up of the Grievance Board**

An impartial Grievance Board consisting of ten (10) regular members shall be appointed by the Council of the City of Hampton from citizens at large to serve four (4) year terms. A break of one (1) calendar year is required after the completion of two (2) consecutive four (4) year terms. Three (3) Board members shall comprise the Grievance Panel to hear the complaint and shall not be composed of any persons having direct involvement with the grievance being heard, or with the complaint or dispute giving rise to the grievance. The following relatives of a participant in the grievance process or a



participant's spouse are prohibited from serving as panel members: spouse, parent, child, grandchild, sibling, niece, nephew, and first cousin. No attorney having direct involvement with the subject matter of the grievance, nor a partner, associate, employee, or co-worker of such an attorney shall serve as a panel member. Each Grievance Panel member shall receive compensation consistent with the daily jury duty reimbursement rate established by Commonwealth of Virginia. A Board member can be removed from the Grievance Board for not responding to three (3) separate requests to serve in a two (2) year period.

## **XV. Panel Rules and Procedures**

The Grievance Panel shall be notified by the Director of Human Resources or designee within fifteen (15) calendar days after receipt of an employee request for a Fourth Step Panel Hearing. At that time the panel shall select a chairperson, set the time for the hearing which shall be held as soon as practicable, but no more than fifteen (15) calendar days after the panel has been initially notified by the Director of Human Resources or designee and shall notify the grievant or the grievant's representative of the date and time of the hearing. A copy of the grievance file shall be provided to the panel members by the Director of Human Resources or designee. The Director of Human Resources or designee shall provide the grievant with a list of the documents furnished to the panel, and the grievant and the grievant's representative, at least ten (10) days prior to the scheduled panel hearing, shall be allowed access to and copies of all relevant files intended to be used in the grievance proceedings.

## **XVI. Conduct of the Panel Hearing**

Panel hearings are not intended to be conducted like court proceedings, and the rules of evidence are not required to be followed. The conduct of the hearing shall be as follows:

1. The presence of three (3) panel members shall constitute a quorum. The panel has the specific and final authority to determine the propriety of attendance at the hearing of all persons not having a direct involvement in the hearing, provided that at the request of the grievant, the hearing shall be private.
2. The panel may at the beginning of the hearing ask for statements clarifying the issues involved.
3. Exhibits, when offered by the grievant or the City of Hampton, may be received in evidence by the panel, and when so received, shall be marked and made part of the record.
4. The grievant and management, or representatives, shall then present the claims, proofs and witnesses, who shall testify under oath or affirmation and who shall submit to questions or other examinations. The panel shall have authority to determine the admissibility of evidence without regard to the burden of proof, or the order of presentation of evidence, so long as a full and equal opportunity is afforded to all parties for the presentation of evidence.
5. Documents, exhibits, and lists of witnesses shall be exchanged between the

parties in advance of the hearing.

6. The parties may offer evidence and shall produce such additional evidence as the panel may deem necessary to an understanding and determination of the dispute. The panel shall be the judge of relevancy and materiality of the evidence offered. All evidence shall be taken in the presence of the panel and of the parties.
7. The panel has no subpoena power to compel the attendance of witnesses. The panel may, however, at the request of either party, or in its own discretion, request the voluntary appearance of witnesses or the submission of documents.
8. The panel chairman shall specifically inquire of all parties whether there are any further proofs to offer or witnesses to be heard. Upon receiving negative replies, the chairman shall declare the hearing closed.
9. The hearing may be reopened by the panel on its own motion or upon application of a party for good cause shown at any time before the award is made.

## **XVII. Panel Decision**

The panel shall have the responsibility to interpret the application of appropriate City of Hampton policies and procedures in the case. It shall not have the prerogative to formulate or to change policies or procedures. The majority decision of the panel shall be final and binding and consistent with law and written policies as determined by the City Manager and/or the Director of Human Resources. The Director of Human Resources or

designee or the City Manager or designee shall review the panel's decision before it is issued and shall return it to the panel for revision if it is determined to be inconsistent with law and/or written policies. The decision shall be filed in writing by the panel chairperson with the Director of Human Resources or designee not later than fifteen (15) calendar days after the completion of the hearing. Copies of the decision shall be transmitted by the Director of Human Resources or designee to the grievant, the grievant's representative, and the grievant's Department Head. The panel shall use the following guidelines during the decision-making process.

1. The panel may consider mitigating circumstances and modify management's action consistent with written policy.
2. The panel is to decide cases on the merits, not on compliance matters occurring prior to or during the panel hearing. All compliance questions should be referred to the Director of Human Resources or designee, and the panel may consult with the Director of Human Resources or designee on procedural questions arising during the hearing.
3. The panel, in rendering its decision, shall be guided by but not necessarily bound by the relief specified by the employee. However, the relief granted must be consistent with written policy.
4. The panel by majority vote may uphold or reverse the action of management or, in appropriate circumstances, may choose a modified remedy.
5. When the panel directs reinstatement, subsequent to a dismissal, the panel has the authority to award full, partial, or no back pay for the period of

separation. An award of back pay shall be offset by interim earnings the employee received during the period of separation.

### **XVIII. Implementation of the Decision of the Panel**

Either party in the grievance may petition the Circuit Court of the City of Hampton for an order requiring implementation of the decision of the panel.

### **XIX. Maintenance of Grievance Records**

When a grievance is reduced to writing, a grievance case file shall be initiated by the Department Head handling such grievance. This file shall contain copies of all forms, memoranda, letters, waivers, and/or summaries of all meetings and decisions rendered concerning the case. As the case progresses through the various steps of the grievance procedure, copies of all additional data shall be added to the file until the grievance is resolved. When the grievance is resolved the grievance case file shall constitute the official record of the case and shall be forwarded to the Department of Human Resources for appropriate maintenance and disposition.

### **XX. Implementation**

This procedure shall apply to all grievances initiated on and after July 1, 2017. Any grievances in process prior to that date shall be administered under the policies and procedures in effect at the time the grievance was initiated at the first step.