

*Step 3:* If the grievance is not settled at Step 2, the Association may, within fifteen (15) work days of receipt of the Chief, or his designee, refer the grievance to arbitration.

### **3.7 Arbitration Procedure**

**3.7.1** Should the Association desire that an unresolved grievance be submitted to arbitration, the notice of the demand for arbitration, together with the copy of the grievance, shall be sent by the Association by registered or certified mail to the Corporation Counsel of the City of Albany and to the Public Employment Relations Board, who shall select the arbitrator according to the provisions of 3.7.2. Effective May 6, 2017, the Public Employment Relations shall select the arbitrator according to its Rules of Procedure for Arbitration or the parties may agree upon a mutually acceptable Arbitrator.

**3.7.2** Each member of the arbitration panel shall be assigned a number in rotation. The first arbitrator who is able to schedule a hearing within thirty (30) calendar days of his appointment shall serve as the arbitrator. The arbitrator shall be governed by the Voluntary Grievance Arbitration Rules of the Public Employment Relations Board. Effective May 6, 2017, this section shall be deemed null and void and deleted.

**3.7.3** Arbitrators shall be requested to render their decisions on any matter submitted to arbitration within fifteen (15) calendar days of the date that the arbitration hearing was held, or within fifteen (15) calendar days of the submission date of any written briefs, should such be required. Effective May 6, 2017, arbitrators shall be requested to render their decisions on any matter submitted to arbitration within thirty (30) calendar days of the date that the arbitration hearing was held, or within thirty (30) calendar days of the submission date of any written briefs, should such be required

**3.7.4** No arbitrator functioning under this step shall have the power to amend, modify or delete any provision of this Agreement. The decision of the arbitrator shall be final and binding of both parties.

**3.7.5** The expenses and fees of the arbitrator shall be shared equally by the parties. Arbitrators selected for the permanent panel shall agree to a seventy-two (72) hour cancellation or adjournment notice without charge. Effective May 6, 2017, the second sentence of this section shall be deemed null and void and deleted.

**3.7.6** Appendix "A" to this contract constitutes the permanent arbitration panel. There shall be a review of Appendix "A" for any additions or deletions as requested by either party. Effective May 6, 2017, this section shall be deemed null and void and deleted.

## **ARTICLE 4: DISCIPLINE**

### **4.1 Exercise of Rights**

**4.1.1** No permanent employee shall be disciplined or otherwise removed except in accordance with the provisions of this Article.

**4.1.2** An employee against whom a disciplinary action or measure is pending may elect to follow Sections 75 and 76 of the Civil Service Law or the procedure set forth hereunder. The employee's selection of one shall preclude the use of the other.

**4.1.3** The parties to this Agreement recognize that a certain amount of discipline is necessary for the efficiency of the operation of the Department. It is therefore agreed that the following disciplinary measures may be imposed on an employee for misconduct or incompetence:

- Oral Reprimand/Warning
- Written Reprimand/Warning
- Loss of Leave Credits
- Suspension Without Pay
- Demotion
- Discharge

**4.1.4** The Commanding Officer may impose summary discipline for the violation of the following rules and regulations:

- a. Absent Over Leave
- b. Absent Without Leave
- c. Grooming Code
- d. Uniform or Dress Code
- e. Any and All Offenses by Agreement of the Parties in Writing

**The procedure for Commanding Officer discipline shall be:**

- For the first incident, the discipline shall be an oral reprimand;
- For the second incident, occurrence within a reasonable period but not to exceed twelve (12) months, the discipline shall be a written reprimand;
- For the third incident, occurrence within a reasonable period but not to exceed twelve (12) months, the discipline shall be a suspension or loss of leave credits of up to three (3) work days.

**4.1.5** The procedure of 4.1.4 is optional, but shall be encouraged to correct deficiencies in an employee's work habits. If formal written charges are filed pursuant to this Article, the formal disciplinary procedure set forth in this Article shall be followed. The Association will be given a copy of any actions taken under this Section.

**4.1.6** Any discipline administered pursuant to the procedure set forth in 4.1.4 shall be subject to the grievance and arbitration procedure. An employee shall be entitled to Association representation during all stages of the disciplinary process.

**4.1.7** Whenever the Employer seeks imposition of discipline beyond the Commanding Officer level, the employee shall be served a written notice of the specific charges being brought against him and the proposed penalty. The notice of discipline shall contain a detailed description of the charges, including dates, times and places. A copy of the charges shall be sent to the Association at the same time it is sent to the employee.

**4.1.8** No disciplinary action or measure beyond Step 2 of 4.1.4 shall be imposed upon an employee prior to the exhaustion of the appeal procedure set forth herein. An employee may, however, be suspended without pay pending the outcome of such proceedings only if the Employer determines that there is probable cause to believe that the employee's continued presence on the job represents an actual danger to persons or property, or would severely interfere with operations. Suspensions without pay may not exceed thirty (30) calendar days. An employee shall not be entitled to pay, however, during any period in which the Association or the employee is not ready to proceed, or the hearing is adjourned at the request of the Association or the employee, or the Association or the employee obtain a stay of arbitration. If the employee is suspended without pay, the determination shall be reviewable by an arbitrator. Before any suspension begins, the disciplined employee, upon his request, will be allowed to discuss the matter with his Association Steward or other authorized representative of the Association before he may be required to leave the premises or his duty assignment. The Employer will make an area available for this purpose. Disciplinary charges shall be served within ten (10) work days of any official verbal notification.

The demand for arbitration filed by the Association shall list two separate proposed dates for the arbitration hearing during a period from fourteen (14) calendar days to and including thirty-five (35) calendar days from the date of filing its demand. Within seven (7) calendar days from the receipt of the demand, the City shall select one of the proposed dates.

## **4.2 Appeals Procedure**

**4.2.1** An employee against whom disciplinary charges are brought shall have the right to appeal such action. Upon receipt of such notification, an employee shall have eight (8) calendar days to file with the Chief of Police a written response to the charges, a copy of which shall be sent to the Association. Effective July 1, 2020, an employee shall have fifteen (15) calendar days to file with the Chief of Police a written response to the charges, a copy of which shall be sent to the Association. The employee, in his response, may deny the charges and accept the penalty proposed, or admit the charges but reject the penalty proposed. Should the employee deny the charges, or admit the charges but reject the penalty proposed, he shall also include in his response whether he desires to utilize Sections 75 and 76 of the Civil Service Law or the procedures set forth in this Article, and whether he desires to be represented by the Association or his own attorney.

**4.2.2** Except as provided in 4.1.4 of this Article, it is understood that any penalty proposed may not be implemented until the employee:

- a) fails to file a response within eight (8) calendar days or fifteen (15) calendar days effective July 1, 2020, of the service of notification of discipline, or
- b) having filed a disciplinary grievance response, fails to file a timely appeal to arbitration, or a request for a Civil Service hearing, whichever the case may be, or
- c) having appealed to arbitration, until and to the extent that it is upheld by a disciplinary arbitrator.

**4.2.3** In any case where an employee, in his response to the charges, disagrees with the penalty proposed or denies the charges brought against him, the Chief of Police, or his designee, shall meet with the Association Grievance Committee within ten (10) work days of receipt of the employee's response in an effort to resolve the matter. Any settlement shall be reduced to writing. Under no circumstances may an employee be required to execute a settlement without being afforded a reasonable opportunity to have a representative of the Association or his own attorney present. A copy of any settlement shall be provided to the Association.

**4.2.4** If the matter is not resolved at the meeting with the Chief of Police or his designee, then the employee, within ten (10) work days of the date the meeting is held, may file for arbitration as provided for under Article 3.7 of this Agreement, or request a Civil Service hearing, whichever the case may be.

**4.2.5** Disciplinary arbitrators shall confine themselves to determinations of whether an employee is guilty or innocent of the charges being brought against him, and whether the proposed penalty is arbitrary or capricious. Such arbitrator shall neither add to, subtract from, nor modify any provisions of this Agreement. The disciplinary arbitrator's decision with respect to guilt or innocence, penalty, or probable cause for suspension pursuant to 4.1.3 of this Article, shall be final and binding upon the parties. If the arbitrator, upon review, finds probable cause for the suspension, he may consider such suspension in determining whether the proposed penalty is arbitrary.

**4.2.6** In a disciplinary arbitration, the burden of proving the employee's guilt by a preponderance of evidence shall be that of the Employer.

**4.2.7** Upon request of either party, the disciplinary arbitrator shall schedule a pre-hearing conference reasonably in advance of the arbitration date.

### **4.3 Rights of the Parties**

**4.3.1** Either party may inspect and copy, upon written request, any written or recorded oral statements of witnesses or records which are relevant to the disciplinary charges and which are in the possession of the other party, in advance of the date of such proceeding and no later than five (5) workdays from the request. The parties will acknowledge in writing receipt of these materials.

**4.3.2** The Grievance Committee Chairman, the Local Association President, or his designee, the aggrieved employee, and necessary employee witnesses, shall not suffer any loss of time or pay, or be required to charge accrued leave credits as the result of time spent in any disciplinary hearing or arbitration proceeding during their regular working hours.

**4.3.3** No employee shall be coerced or intimidated, or suffer any reprisal, either directly or indirectly, including changes that may adversely affect his hours, wages or working conditions, as the result of his exercising the rights guaranteed by this Agreement.

**4.3.4** Work shift changes or reassignments shall not be considered a disciplinary measure but may be made by the Chief, or his designee, in the exercise of his sound discretion, pending the determination of serious disciplinary charges.

**4.3.5** No employee shall be brought up on disciplinary charges for acts which occurred more than one (1) year prior to the serving of disciplinary charges upon him, except that the above limit shall not apply to acts which, if proved in a court of appropriate jurisdiction, would constitute a crime.

#### **4.3.6 Time Out on Suspension**

Notwithstanding the provisions of subsections 10.1.1, 12.1.3, 13.1.2 and 17.1.3 of this Agreement, bargaining unit members shall not accrue vacation credits or receive roll call pay, holiday pay, and uniform cleaning allowance for any period of time during which the bargaining unit member is out on suspension pending the outcome of criminal charges and/or internal departmental charges. In the event that the bargaining unit member should subsequently be found not guilty of all pending criminal and departmental charges related to the suspension, then he or she shall be reimbursed for that portion of the vacation credits, roll call pay, holiday pay, and uniform cleaning allowance not paid during the suspension.

## **ARTICLE 5: DEPARTMENTAL INVESTIGATIONS**

### **5.1 Responsibilities of the Employer**

**5.1.1** Because of the important public trust exercised by all members of the Albany Police Department and the importance of maintaining that trust and the integrity of the Department, it is the responsibility of the Department to investigate promptly and thoroughly every complaint and accusation made against a police officer in order to protect that officer, the Department and the residents of the City of Albany. Written notice shall be given to an employee of any and all investigative findings or conclusions.

**5.1.2** All investigations shall be conducted in a manner conducive to good order and discipline.

### **5.2 Responsibilities of Employees**

**5.2.1** All employees shall have the responsibility to assist and expedite such investigations and, when requested, to furnish information or to give statements as witnesses. It is the responsibility of any employee who is the subject of the investigation to give a responsive accounting of his public trust. Any employee failing to do so may be subject to disciplinary action.

### **5.3 Questioning of Employees**

**5.3.1** Any questioning of an employee shall be at a reasonable hour and, if possible, during the employee's regular tour of duty. The questioning, if possible, shall take place at a police facility. Effective August 26, 2015, an interview of an employee will be held at a date and time established by agreement between the Chief of Police or designee, and the Association's designee, unless there are exigent circumstances requiring the Chief of Police to proceed at a date and time selected in the sole discretion of the Chief of Police.

**5.3.2** Before any questioning begins, the employee shall be informed, in writing, if the employee is a potential witness or target and who will be in attendance. If the employee is a potential target; he shall be informed of the specific purpose of the investigation. If the investigation could lead to criminal charges, the employee shall be apprised of his constitutional rights.

**5.3.3** All questioning of an employee shall be conducted in a reasonable manner free of any threats, promises and intimidation.

**5.3.4** In all cases where an employee is to be questioned concerning an alleged violation of Department Rules and Regulations which, if proven, may result in a criminal action or departmental charges against the employee, he shall be afforded an opportunity to consult with an attorney or a representative of the Association for a reasonable period of time before any questioning begins.

**5.3.5** An attorney or Association representative may, upon request of the employee, be present where the questioning could result in criminal charges against the employee, but only for the purpose of counseling the employee.

**5.3.6** The questioning of an employee who is a target shall be either recorded electronically or by a stenographer, unless waived by mutual request. If recorded, the employee shall receive a copy of such recording.

**5.3.7** The procedural requirements set forth above shall not apply to circumstances relating to ordinary supervisory inquiries into the official duties and responsibilities of any employee.

**5.3.8** No employee shall be requested to sign a statement of an admission of guilt to be used in any disciplinary proceedings without having a reasonable opportunity to have Association representation or an attorney present.