

## ARTICLE XVIII -- GRIEVANCE PROCEDURES

### Section 1. Purpose

It is recognized that complaints and grievances may arise between the Union and the Employer or between the Employer and any one or more employees concerning the application or interpretation of the wages, hours, and terms and conditions of employment, as defined in this Agreement. The Employer and the Union desire that these grievances and complaints be settled in an orderly, prompt, and equitable manner so that the efficiency of the M-DCPS may be maintained and the morale of employees not be impaired. Every effort will be made by the employer, employees, and the Union to settle the grievances at the lowest level of supervision. The initiation or presentation of a grievance by an employee will not adversely affect his/her standing with the employer. No reprisals of any kind will be made by the School Board or its representative or any member of the administration against any party in interest, any Union representative, or any other participant in the grievance procedure by reason of such participation. All documents, grievance forms (sample forms attached hereto), communications, and records dealing with the processing of a grievance shall be filed separately from the personnel files of any party in interest, including final disposition, except for and exclusively for awards resulting from arbitration.

It is agreed that the Union reserves the exclusive right to process grievances at any step of the grievance procedure, including arbitration, except that any member of the bargaining unit may process a grievance through representation of his/her own choosing, only if the Union has refused to process the grievance solely, through Step III, because the unit member is not a dues-paying member of the Union. The Union retains its right to preclude the processing of non-meritorious grievances through the steps of this grievance procedure inclusive of arbitration, including grievances advanced by non-dues paying members.

### Section 2. Definitions

- A. Grievance -- formal allegation by an employee and/or the Union that there has been a violation, misinterpretation, or misapplication of any of the terms and conditions of employment set forth in this Contract or its Appendices.
- B. Union Representative -- the individual designated by the Union to represent the aggrieved employee.
- C. Aggrieved Employee -- any full-time employee who is a member of the bargaining unit, as certified, pursuant to Florida Statutes, Section 447.307.
- D. Party in Interest -- any person who might be required to take action or against whom action might be taken in order to resolve the grievance.
- E. Supervising Administrator -- the individual having immediate administrative authority over the aggrieved employee(s), who is not a member of the bargaining unit.
- F. Immediate Supervisor -- the individual having immediate administrative authority over the unit employee(s) and who may or may not be a member of the bargaining unit.
- G. Immediate Superintendent -- the Assistant or Associate Superintendent having

## ARTICLE XVIII (cont.)

immediate administrative authority over the Supervising Administrator.

- H. Days -- as referred to in the time limits herein, days shall mean working days.
- I. Letter of Inquiry -- a request in writing, on proper M-DCPS form, by the Union, to Labor Relations, seeking clarification of M-DCPS Rules, state law, or this Agreement.

### **Section 3. Special Provisions**

The time limits set forth herein may be extended and/or modified by mutual agreement, using the stipulated Request for Extension of Time Form in Appendix C.

In the event a grievance is filed at such time as it cannot be processed through all steps in the grievance procedure by the end of the aggrieved employee's contract year and, if left unresolved until the beginning of the following year, could result in irreparable harm to a party in interest, the time limits set forth herein will be reduced so that the grievance procedure may be exhausted as soon as practicable.

If the employer violates any time limits, the Union may advance to the next step without waiting for the employer response.

The parties acknowledge that, as a principle of interpretation, employees are obligated to work, as directed, while grievances are pending.

The Employer and the Union shall have the right of free choice in designating representatives for the purpose of resolving grievances. The Union shall have a representative at a formal grievance hearing.

Aggrieved employees, or employees who are called as witnesses, will be allowed released time without loss of pay to process or assist in the processing of a grievance.

The Union, in accordance with its own non-discriminatory internal rules, shall have the sole and exclusive right to determine whether any grievance warrants processing through this procedure. In the event the Union determines at any step of the grievance procedure that a grievance does not warrant processing, a written notification of that determination, using the stipulated Grievance Form, shall be sent to Labor Relations, and to the employee(s) involved.

If the Union has declined to process or further process any grievance presented to it, solely because the unit member is not a dues-paying member of the Union, such unit member may process his/her own grievance through this procedure and the Union shall be sent copies of all written communications sent by the employer or the employee(s) involved. Further, an employee is authorized to process his/her own grievance in person or through legal counsel only if the Union has declined to provide representation in processing a grievance because the unit member is not a dues-paying member of the Union. If an employee processes his/her own grievance in person or through legal counsel, the employee may not adjust the grievance in a manner inconsistent with the terms of the collective bargaining agreement then in effect and, provided further, that the Union has been given notice and a reasonable opportunity to be present at any meeting called for the resolution of such grievances.

## ARTICLE XVIII (cont.)

The Union shall not be responsible for any costs attendant to the resolution of any grievance it has not processed.

The parties acknowledge that multiple grievances may be combined with mutual agreement of the Employer and the Union.

Applicable School Board Rules at each work location shall be made available to the Union representative upon request for the purpose of reference and information, as well as, for the purpose of expediting the provisions of this grievance procedure.

Suspension, dismissal, non-reappointment and demotion will be subject to the provisions in Article VII.

The use of tape recorders or other mechanical devices is expressly prohibited.

### **Section 4. Letter of Inquiry**

Either the immediate superintendent or Union may send a Letter of Inquiry on the stipulated Letter of Inquiry Form (sample form attached hereto) to Labor Relations for the purpose of seeking a clarification of a M-DCPS Rule, state law and/or terms and conditions of employment, as set forth in this Agreement.

Labor Relations shall respond within 10 days of receipt of the Letter of Inquiry. If the interpretation of the Letter of Inquiry is not satisfactory, a formal grievance may be filed.

### **Section 5. Implementation**

The aggrieved employee shall discuss the dispute with the immediate supervisor of the aggrieved employee(s) in an effort to satisfactorily resolve the dispute at the lowest possible level. The aggrieved employee shall request an informal discussion with the immediate supervisor within 10 days of becoming aware of the alleged violation, misinterpretation, or misapplication of the terms and conditions of employment as defined in this Agreement. No grievance will be processed until the employee has informally discussed his/her dispute with the immediate supervisor. The requested informal discussion shall be held within five days of the request. In the event the dispute cannot be resolved informally, the aggrieved party, through the Union, shall file on Step I within five days of the informal discussion. No M-DCPS employee other than the aggrieved employee's pro-representatives representing and assisting the aggrieved employee and employees who are called as witnesses, shall be allowed released time without loss of pay to participate in the processing of a grievance.

#### **STEP I**

- A. A formal grievance shall be filed within 30 days of the alleged violation, misinterpretation, or misapplication of the terms and conditions of employment set forth in this Agreement, if the grievance or dispute is not resolved informally.
- B. The grievance shall be filed, in writing, stating the specific article, section and language alleged to have been violated, misinterpreted, or misapplied to the supervising administrator of the aggrieved employee(s). It is further understood and agreed that the

## ARTICLE XVIII (cont.)

aggrieved employee(s) shall be granted released time to attend formal proceedings, as described herein, which are held during working hours. No M-DCPS employee(s) other than the aggrieved employee(s) shall be granted released time to either represent the aggrieved employee(s) or to observe the proceedings as representatives of the Union. A M-DCPS employee serving as the representative of the aggrieved employee, shall be granted release time with approval of his/her immediate supervisor.

- C. The appropriate supervising administrator or his/her designee shall note the date of receipt of the grievance and shall seek to meet with the aggrieved employee(s) at a mutually agreeable time within five days of receipt of the grievance.
- D. The Union shall be advised, in writing, as to the date of the proposed meeting and shall have the right to represent the aggrieved employee(s) or send one observer to the proceedings if the agent is not involved in the actual representation of the aggrieved employee.
- E. Within five days of the meeting, the appropriate supervising administrator or his/her designee shall render a decision and shall immediately communicate that decision, in writing, to the aggrieved employee and the immediate superintendent or his/her designee. Additional copies of the decision shall be sent to Labor Relations and to the Union.
- F. The Union may appeal the decision of the appropriate supervising administrator within five days of its rendering.
- G. The notice of intent to appeal shall be communicated, in writing, to the immediate superintendent. Failure to appeal the decision of the supervising administrator within 10 days shall constitute acceptance by the aggrieved employee(s) and the Union of the decision as being a satisfactory resolution of the issues raised.

### STEP II

- A. If the Union appeals the decision, the immediate superintendent or his/her designee who is not a member of the unit, shall schedule a meeting to take place at a mutually agreeable time, not more than 10 days after receipt of notice of appeal. The immediate superintendent shall immediately communicate notice of appeal to Labor Relations.
- B. The Union shall be advised, in writing, as to the date of all proposed meetings on Step II and shall have the right to send one observer to the proceedings if the agent is not involved in the actual representation of the aggrieved employee(s).
- C. Within 10 days of the meeting, the immediate superintendent or his/her designee shall render a decision and shall immediately communicate that decision, in writing, to the Union. Copies of the decision shall be sent to the aggrieved employee(s) and to Labor Relations. A copy is to be retained by the immediate superintendent.
- D. The Union may appeal the decision of the immediate superintendent within five days of its rendering. The notice of intent to appeal shall be communicated, in writing, to Labor Relations. Failure to appeal the decision of the immediate superintendent within five days shall constitute acceptance, by the aggrieved employee(s) and the Union, of the decision

## ARTICLE XVIII (cont.)

as being a satisfactory resolution of the issues raised.

### STEP III

- A. If the Union appeals the decision, the appropriate chief officer or his/her designee shall schedule a meeting to take place at a mutually agreeable time, not more than 12 days after receipt of notice of appeal.
- B. Within 12 days of the meeting, the appropriate chief officer or his/her designee who is not a member of the unit, shall render a decision and shall immediately communicate that decision, in writing, to the aggrieved employee(s). Copies of the decision shall be sent to the aggrieved employee(s), the appropriate supervising administrator, the immediate superintendent, and to Labor Relations.
- C. Failure to appeal the decision rendered in Step III within five days by notice of intent to submit to arbitration shall deem the decision at Step III to be final and no further appeal will be pursued.

### ARBITRATION

If the Employer and the Union fail to resolve the grievance, the grievance may be submitted to final and binding disposition by an impartial neutral, mutually selected by the parties.

Nothing contained in this Article or elsewhere in this Agreement shall be construed to permit the Union to file an issue initially at arbitration unless, by mutual consent, the grievance has not been processed through applicable steps of the grievance procedure.

- A. Notice of intent to submit the grievance to arbitration shall be communicated, in writing, by the Union to Labor Relations within five days of the decision at Step III.
- B. Prior to the submission of the appeal to arbitration, the arbitrator may hold a pre-hearing conference to consider and determine:
  - 1. the simplification of the issues;
  - 2. the possibility of obtaining stipulation of facts and documents that will avoid unnecessary proof;
  - 3. such other matters as may aid in the disposition of the grievance; and
  - 4. matters of jurisdiction or applicability.

## ARTICLE XVIII (cont.)

- C. The Union reserves the exclusive right to institute the arbitration procedures under this Agreement. An employee may process a grievance through Step III only if the Union refuses to institute the grievance procedures solely because the unit member is not a dues paying member of the Union.
- D. Within 10 days after written notice of submission to arbitration, the parties will attempt to agree upon a mutually acceptable arbitrator and obtain a commitment from said arbitrator to serve. If the parties are unable to agree upon an arbitrator or to obtain such a commitment within the specified time, a request for a list of arbitrators may be made to the Federal Mediation Conciliation Service (FMCS) or the American Arbitration Association (AAA) by either party. The parties will be bound by the rules and procedures of the FMCS in the selection of an arbitrator and the holding and conducting of an arbitration hearing.
- E. The arbitrator, selected by the parties, or pursuant to the rules of the FMCS, will issue a decision not later than 20 days from the date of the close of the hearings or, if oral hearings have been waived, then from the date final statements and proofs are submitted. The arbitrator's decision will be in writing and will set forth findings of fact, reasoning, and conclusions on the issues submitted and, where permitted by law, may include a monetary award. The arbitrator will be without power or authority to make any decision which requires the commission of an act prohibited by law, or which adds to, subtracts from, modifies, or alters the terms of this collective bargaining agreement.  
  
The decision and award of the arbitrator shall be final and binding.
- F. All arbitration costs, including the cost of stenographic reporting of the arbitration hearing, if agreed to by the parties, shall be divided equally between the Employer and the Union. Each party will pay the cost of presenting its own case; however, the aggrieved employee(s), designated delegates or pro-representatives or the employee(s) who is called as witness for an arbitration hearing will be allowed released time to process or to assist in the processing of his/her own grievance or to testify.
- G. It is understood and agreed by the Employer, members of the unit, and the Union, that the resolution of complaints which are grievable under this Contract shall be pursued through the grievance procedure until such remedy is exhausted.

Alleged violations of this Agreement, which may also constitute an unfair labor practice case, may be subject to arbitration if referred by PERC. If referred to arbitration by PERC, then the decision of the arbitrator shall be final and binding.