



CITY OF PHOENIX, ARIZONA
GRIEVANCE APPEAL & RESPONSE FORM

DISTRIBUTION
(after response)
- Department HR Liaison
- Labor Relations
- Grievant

This form is to be used to appeal a grievance decision. It is also used for management response. Complete and distribute as noted above. Refer to A.R. 2.61 or Unit Memorandum of Understanding for proper grievance procedures and time limits. If you have any questions, see your supervisor.

A. EMPLOYEE NAME AND EMPLOYEE I.D.# Cliff Ivey#3854, Michael Jessie#4662, and Barry Jacobs #5604	DATE: 09/27/2012
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WORK LOCATION Mountain View Precinct	JOB TITLE Police Officers
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DEPARTMENT / DIVISION Police	REPRESENTATIVE Will Buvidas
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Grievance # []	I wish to have a meeting with the Department Head <input type="radio"/> Yes <input type="radio"/> No	I wish to meet with the Labor Relations Administrator <input type="radio"/> Yes <input type="radio"/> No
I wish to appeal to: <input type="radio"/> Step II <input checked="" type="radio"/> Step III		

4th Step, A.R. Grievance: A.R. Grievance Committee

- or -

4th Step, M.O.U. Grievance: M.O.U. Grievance Committee Arbitration

B. MANAGEMENT'S RESPONSE AT Step II Step III **DATE RECEIVED:** 10-9-2012

DECISION
FILL IN HERE - DO NOT JUST TYPE "SEE ATTACHED"

Denied

BASIS FOR DECISION
FILL IN HERE - DO NOT JUST TYPE "SEE ATTACHED"

On October 8, 2012, at 1030 am Commander Geary Brase, Lieutenant Mark Cousins and I met with PLEA representatives Will Buvidas and Jerry Gannon for the purposes of discussing the above grievance. Mr. Buvidas reiterated his assertions regarding the MOU and making work assignments, and he directed us to MOU Section 4-2 C. on seniority. Mr. Buvidas indicated he felt the deployment to Washington DC was a "work assignment". Mr. Buvidas also clarified that the grievants were not told they would be missing out on overtime by not working this event as the original grievance states. Mr. Bouvidas indicated he added that language to the grievance. After hearing Mr. Buvidas' concerns, management's decision at level III is documented below.

Police management denies this grievance based on several factors. First, management does not believe the deployment of officers to the Presidential Inauguration is subject to the grievance process. Second, even it is subject to the grievance process, the MOU provides that the City of Phoenix and the Chief of Police have the authority and discretion to determine work assignments, work schedules, and other procedures regarding the administration of the Police Department. Third, even if it is subject to the grievance process, the MOU provides that seniority will be "a" factor in the choice of work assignments, not "the" factor. Finally, seniority was used a factor in the selection process.

1. This decision is not subject to the grievance process
Management contends this deployment decision is not subject to grievance, as set forth by the express terms of the MOU. In addition, although this is not an Administrative Regulation 2.61 Grievance, A.R. 2.61 further supports management's contention that this decision is not subject to grievance. The MOU does not expressly restrict what factors will be considered, and in fact the MOU is silent on this issue.

MOU Article 1 – Rights, Section 1-2: City and Management Rights, K states:

K. The inherent and express rights of the City and the Chief of Police, including those herein specifically referred to, which are not expressly modified or restricted by a specific provision of this Memorandum, are not in any way, directly or indirectly, subject to the Grievance Procedure herein.

Administrative Regulation 2.61 2.C. states:

C. Certain actions which are totally within the managerial discretion of a Department Head, such as employment selections are not subject to this grievance procedure.

2. Management discretion

Assuming that this matter was subject to the MOU grievance procedure, management has the authority to make this deployment decision, as set forth by the express terms of the MOU.

MOU Article 1 – Rights, Section 1-2: City and Management Rights, A, B and E state:

A. The association recognizes that the City and the Chief of Police retain, whether exercised or not, solely and exclusively, all the express and inherent rights and authority pursuant to law with respect to determining the level of and the manner in which the city's law enforcement activities are conducted, managed, and administered, and the association recognizes the exclusive right of the Chief of Police to establish and maintain departmental rules and procedures for the administration of the Police Department during the term of the his memorandum provided that such rules and procedures do not violate any of the specific express provisions of this memorandum.

B. The City and the Chief of Police have the exclusive right and authority to schedule work and/or overtime work as required in the manner most advantageous to the city.

E. The City and the Chief of Police shall determine assignments and establish methods and processes by which assignments are performed.

3. Seniority as a factor

Assuming that this matter was subject to the MOU grievance procedure, it would be important to note that the MOU states seniority shall be used as a factor in three specific areas; work assignments, scheduling of vacations, and layoffs. Personnel Rule 14b2 further supports management's right to consider seniority as a factor. Neither of these policies state seniority will be used as the only factor.

MOU Article 4 – Hours of Work/Working Conditions, Section 4-2: Seniority subsection C States:

C. Seniority shall be used as a factor consistent with established Civil Service procedures in choice of work assignments, vacation schedules and in the determination of layoffs.

Personnel Rule 14 – SENIORITY, Section 14b – Use of Seniority States:

14b2 – City-wide class seniority shall be used as a factor in choice of work assignments and vacation schedules. The use of seniority in determining the order of vacation of employees shall be by class. In choice of work assignments within a class, seniority shall determine the choice of assignment when qualifications of employees concerned for a kind of assignment are equal in the sound discretion of the department head, except that a department head may rotate employees to provide training and experiences in all tasks with in a class.

Qualifications for an assignment pertain to aptitude, ability, skill, knowledge, physical fitness, interest, enthusiasm, and other pertinent qualifications. Nothing in this Rule shall prevent or hamper the appointing authority in assigning each employee of a class to any assignment within a class for which the employee is the best fitted, nor shall the appointing authority be restricted from assigning any employee with a change in pay to another class for brief periods for purposes of training and to meet emergencies.

4. Seniority was used as a factor.

Seniority was used as one of several factors in determining who would be assigned to work this special detail. Although it has yet to be determined if overtime will be incurred by employees working this detail, the City and the Chief of Police have the exclusive right and authority to schedule work and/or overtime work as required in the manner most advantageous to the city. In addition to seniority, factors such as TRU certification, current work assignment, desire to participate, suitability to participate, etc., were also considered.

It should be also noted that no officers from Mountain View Precinct were selected to work this special detail. No officers with less seniority were selected from Mountain View to attend instead of the grievants.

MANAGEMENT DECISION:

For the reasons set forth in this Step III Grievance Response, the grievance is denied.

[DISTRIBUTE IN ACCORDANCE WITH LIST IN UPPER-RIGHT CORNER OF FORM]

MANAGEMENT RESPONDENT

Tracy L. Montgomery

TITLE

Assistant Police Chief

DATE

10-9-2012