

# GRIEVANCE

October 31, 2003

This grievance concerns the events of late surrounding Fire Prevention Inspector Duanne Anderson. Chief Welker conducted a Formal Investigation of Inspector Anderson, who was subsequently demoted to Life Hazard Safety Inspector. This was in lieu of his original recommendation of termination. There are several inconsistencies surrounding the events and circumstances of Inspector Anderson's situations. One problem is that nobody followed up with his thirty-day intervals concerning his Action Plan, although he did not have any other like instances. Another instance is that Chief Welker deviated from the AGREEMENT as to which course he took via a Formal Investigation as opposed to an Informal Inquiry to the detriment of the employee. Inspector Anderson has abided by the Action Plan and has bettered himself by attending such things as the Citizen's Academy. He has also obtained a certificate from Fire Findings in Michigan for Fire Investigation of Gas and Electric Appliances and has received email accolades from Kevin Garriott, a building official with the City of Clearwater. It is felt that the punishment was too harsh and did not fit the charges. Therefore, this grievance is being file for the following violations of the AGREEMENT between CITY OF CLEARWATER and INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, AFL-CIO Local 1158:

1. Preamble;
2. Article 6;
3. Article 19, Section 5E;
4. Article 19, Section 5F;
5. Article 26, Section 4; and
6. Article 32.

As to the first violation:

This Article states, "...The Agreement has been negotiated in good faith for the purpose of promoting harmonious relations, establishing an orderly and peaceful procedure to settle differences which might arise, and setting forth the basic and full agreement between the parties concerning wages, rates of pay, hours of work, and all other terms and conditions of employment." The City has maintained that they do not violate this section of the AGREEMENT and work to maintain harmonious relations with the Union. However, the number of grievances filed within the last twenty-four months alone, coupled with the nearly one hundred percent denial of said grievances and strained contract negotiations, contradicts their position.

As to the second violation:

This Article states, "The City and the Union agree that any system of discipline or performance management should be continually reviewed for its effectiveness. The

system may be modified from time to time to better meet the needs of the employees and the City. Any changes will be consistent with sound personnel practices. All discipline will be for just cause and consistent with due process. Employees have the right to Union representation any time they believe a meeting may lead to disciplinary action...The City recognizes that members of the Fire Department are protected by the "Firefighter Bill of Rights" and any disciplinary action will conform to the guidelines of that law." It is believed that there has been no review of the current PBMP system to determine its effectiveness. Due process was ignored and acknowledged by Chief Welker when he stated that "...we are doing a formal investigation because I have information that is damning." Regardless of any information, an Informal Inquiry should have taken place. F.S. 112.81 (3) "Informal inquiry" means a meeting by supervisory or management personnel with a firefighter about whom an allegation of misconduct has come to the attention of such supervisory or management personnel, the purpose of which meeting is to mediate a complaint or discuss the facts to determine whether a formal investigation should be commenced. This event never occurred. Chief Welker initiated his own style of investigating, which is contrary to the Firefighter Bill of Rights.

As to the third violation:

This Article states, "An employee promoted to a class within the bargaining unit shall serve a probationary period of six (6) months of active service during which he/she shall have the opportunity to demonstrate to the satisfaction of the Fire Chief his/her suitability for the job. In the event the employee is absent from duty for any reason other than scheduled leave or on Light Duty for an accumulated period equal to one week's scheduled work hours or more, then all such time shall be added to and thereby extend the probationary period." Chief Welker indicates that the actions taken against Inspector Anderson were "2 calendar days prior to his probationary period elapsing." As a chief officer with the department, Chief Welker should know the difference between a newly hired employee and a newly promoted employee. The one-year probation is for newly hired employees. Since Inspector Anderson is a newly promoted employee, he has only to serve a six-month probationary period, which was satisfied in mid April of this year.

As to the fourth violation:

This Article states, "A promoted employee who, during the probationary period, does not demonstrate suitability for the class, as determined by the Fire Chief, shall be notified in writing and shall be demoted to his/her former classification..." Inspector Anderson received satisfactory ratings by his supervisor demonstrating enough suitability to successfully complete his six month probationary period. At no time prior to that was he notified in writing or otherwise of any unsuitability warranting demotion.

As to the fifth violation:

This Article states, "All rights and working conditions, enjoyed throughout the Department by the employees at the present time which are not included in this Agreement shall be presumed to be reasonable and proper and shall not be changed by the City in an arbitrary or

capricious manner...” Chief Welker arbitrarily and capriciously changed the manner of who would deal with Inspector Anderson’s situation. Normally, the Fire Marshal would handle instances such as these. However, the Fire Marshal had “retired” and an acting Fire Marshal was in place. Chief Welker took it upon himself to handle this situation due to possible legal actions between A/FM Joel Gray and Inspector Anderson. If there is an integrity issue at hand where A/FM Gray could not conduct himself in a professional manner and deal with Inspector Anderson, then maybe that should also be addressed. Chief Welker also stated that in the Formal Investigation that “the first week of August, this information hits my desk.” That same week, August 6<sup>th</sup> to be exact, Inspector Anderson received an evaluation where the box was marked Certification Recommended. This was, of course, a moot point. He should have already received that status in mid April of this year.

As to the sixth violation:

This Article states, “...This Agreement contains the entire contract, understanding, undertaking, and agreement of the parties hereto, and finally determines and settles all matters of collective bargaining for and during its term, except as may be otherwise specifically provided herein.” Chief Welker’s flair for violating the AGREEMENT by his own reasoning is no justification at all. This is also extended to the Florida Statutes, specifically the Firefighter’s Bill of Rights, 112.80-84.

## **REMEDY**

The solutions are very simple. First, stop violating the contract. Reviewing the AGREEMENT from time to time can remedy this. Second, make Life Hazard Safety Inspector whole by reinstating him to Fire Prevention Inspector with all back pay, benefits, etc. associated with that position.

Respectfully submitted,

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