

Grievance Procedure

1006.1 PURPOSE AND SCOPE

The Barstow Police Department promotes the effective communication by all employees in the resolution of complaints or indifferences at the lowest possible level. Occasionally the need may arise for an employee to file a written allegation of a violation of current policy or procedure. The purpose of this policy is to establish a procedure for the filing of written complaints by members of the Barstow Police Department.

1006.1.1 GRIEVANCE DEFINED

A grievance is any difference of opinion concerning terms or conditions of employment or the dispute involving the interpretation or application of any of the following documents by the person(s) affected:

- The employee bargaining agreement (Memorandum of Understanding)
- This Policy Manual
- City rules & regulations covering personnel practices or working conditions

Grievances may be brought by any affected employee or by a group representative.

Complaints related to alleged acts of sexual, racial, ethnic or other forms of unlawful harassment, as well as complaints related to allegations of discrimination on the basis of sex, race, religion, ethnic background and other lawfully protected status or activity are subject to the complaint options set forth in Policy Manual § 328, and personnel complaints consisting of any allegation of misconduct or improper job performance against any department employee that, if true, would constitute a violation of department policy, federal, state or local law set forth in Policy Manual §1020.

1006.2 PROCEDURE

The below listed Grievance Procedure shall be consistent with the City of Barstow Grievance Procedure. In the case of conflict between this manual and the City of Barstow Grievance Procedure, the City procedure shall take precedent.

1) Informal Grievance Procedure

The grievant and the immediate supervisor of the grieved employee shall make every effort to resolve the grievance at the lowest level of supervision. However, if the grievant is unable to resolve the grievance informally before the time period for filing a Formal Grievance expires (15 days from the date the grievance allegedly occurred), the grievant may proceed to the Formal Grievance Procedure in accordance with the time limits therein.

2) Formal Grievance Procedure

a) First Level of Review

The grievant shall present the formal grievance in writing to the immediate supervisor of the grieved person within fifteen (15) days from the alleged occurrence of the violation. The written grievance shall contain the following information:

(a) Name of grievant and job title

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- (b) Name of grieved person and job title
- (c) Department / Division
- (d) Clear and concise statement of the nature of the grievance including the circumstances and dates involved
- (e) The specific provision(s) of the MOU, City Policy or Rule, or the provisions of this manual alleged to have been violated
- (f) Requested remedy
- (g) Name of the grievant's representative, if any
- (h) Date and signature of the grievant

The supervisor shall render a decision and comments in writing and return them to the grievant within fifteen (15) days after receiving the written grievance. If the grievant does not agree with the supervisor's decision or if no answer has been received within the specified time period, the grievant shall present the grievance in writing to the Department Head or the Department Head's designee within fifteen (15) days of the date the supervisor's decision is rendered or should have been rendered pursuant to the specified time period.

b) Second Level - Department Review

The Department Head or his/her designee shall discuss, upon request, the grievance with the grievant, the grievant's representative, if any, and with other appropriate persons. The Department Head or designee shall render his/her decision and comments in writing and return them to the grievant within fifteen (15) days after receiving the formal written grievance or after the meeting with the grievant, whichever is later. If the grievant does not agree with the decision reached or if no answer has been received within the specified time period, the grievant may appeal the formal grievance to the next level of the grievance procedure. In order to do so, the grievant must submit the grievance to the City of Barstow Human Resources Department, along with a written request that the grievance be considered at the Third Level, within fifteen (15) days of the date the Department Head's decision is rendered, or should have been rendered, pursuant to the specified time period.

c) Third Level - Advisory Arbitration

To activate advisory arbitration, the grievant must, within the time period specified above, present the grievance in writing to the City of Barstow Human Resources Department for further processing. Failure of the grievant to take this action will constitute a waiver and bar further processing of the grievance.

- (a) The scope of advisory arbitration of grievances shall be limited to discharges, demotions, reduction in pay, or suspensions of three (3) days or more without pay. The grievant may waive the right to go to advisory arbitration and instead go directly to the Fourth Level (City Manager). All other grievances shall bypass the Third Level of the grievance procedures and advance to the Fourth level.
- (b) The City of Barstow Human Resources Department and the grievant shall request a list of five (5) arbitrators from the California State Mediation and Conciliation Service.
- (c) By mutual agreement of the grievant and the City, advisory arbitration may be waived. In such case, the grievance shall be reviewed by the City Manager in accordance with the procedures outlined in the Fourth Level.
- (d) An arbitrator shall be selected by the following procedure:
 1. The grievant and/or a representative of the grievant, along with the City's representative, shall select the arbitrator from the California State Mediation

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and Conciliation Service list by eliminating names until one name remains. The one remaining name shall be the arbitrator. All grievances reaching the arbitration level shall be numbered consecutively for the current fiscal year. The odd-numbered grievances will give the grievant first elimination; the even-numbered grievances will give the City first elimination. No arbitrator shall be used twice during the same grievance procedure, should a second arbitration hearing be needed.

2. Once the arbitrator has been selected, hearings shall commence at the convenience of the arbitrator. The technical rules of evidence shall not apply during the arbitration hearing.
3. The arbitrator shall be strictly bound by the time limits set forth in the grievance procedure and shall not entertain any grievance in which the grievant has not adhered to such time limits.
4. Employees called as witnesses shall be scheduled to be released from duty to testify at the hearings. The parties recognize that due to the essential nature of the services performed by the employees, scheduling of time for each employee to testify at arbitration shall be in such a manner so that normal operations are not disrupted.
5. The jurisdiction of the arbitrator shall be confined to a determination of the facts and the interpretation of the provisions of the MOU, City Policies or Rules, or the provisions of this manual. the arbitrator will have no power to add to, subtract from, or modify the terms of any Agreement or the written policies, rules, regulations, or procedures of the employer.
6. Within thirty (30) days after the conclusion of the hearing, the arbitrator shall render an advisory decision in writing to the parties (including the City Manager).
7. The arbitrator's fees and expenses shall be paid by the City. All other costs shall be borne by the party incurring such costs or expenses.

d) Fourth Level - City Manager

If the grievance is submitted to the City Manager for review and settlement, the Personnel Officer, in non-arbitrable cases, may elect the methods he/she considers appropriate for the study of the issues and shall render a written decision to the parties within fifteen (15) days. Notwithstanding the above, upon the grievant's request, the matter shall be submitted to mediation prior to the Personnel Officer's determination.

- (a) For all cases involving advisory arbitration recommendations, the Personnel Officer shall review the entire matter within fifteen (15) days after receipt of arbitrator's recommendations and render a decision.
- (b) The City Manager may amend, modify, or revoke the recommendation of the arbitrator. This includes, but is not limited to, the City Manager's right to reduce or increase the degree and type of discipline imposed. In all cases, the decision of the City Manager shall be final and binding.

3) General Provisions

- a) The grievant is entitled to representation of his/her choice at any point in the grievance procedure.
- b) Failure by the grievant to meet any of the specified time lines shall constitute a withdrawal and waiver of the grievance. Failure by the City to meet any of the specified time lines shall entitle the grievant to appeal to the next level of review.

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- c) Since it is important that grievances be processed as rapidly as possible, the number of days indicated at each level shall be considered as maximum, and every effort should be made to expedite the process. If the last day of the specified time period falls on the weekend or a City observed holiday, it shall be moved to the next working day, otherwise the time specified may be extended only by mutual written consent.
- d) Probationary employees may not grieve a rejection from probation.
- e) Employees shall be assured freedom from reprisal for using the grievance procedures.
- f) The City of Barstow Human Resources Department shall act as a central repository for all grievance records.
- g) Any decision or finding involving an unbudgeted expenditure must be submitted to the City Council for ratification before that decision can become final and binding.
- h) Failure on the part of an employee or his/her representative to appear in any case before an arbitrator without good cause shall result in forfeiture of the case and responsibility for payment for all associated costs by the employee.

1006.3 GRIEVANCE AUDITS

Each grievance found to be sustained shall be evaluated to determine whether or not any policy or procedure violation or training topic may need to be implemented or changed to avoid conflict in the future resulting from potential grievances for the same issue(s). The Chief of Police shall review the outcome of any grievance involving the Barstow Police Department and make a determination as to any necessary changes to policy or procedure. If the grievance involves a Memorandum of Understanding or City Policy and Procedure, the Chief of Police shall recommend changes or corrections to those documents to the appropriate City official.