

DISCIPLINE

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement is entered into by and between the City of Lockport ("the City"), the Lockport Professional Firefighters Association, Local 963 ("Association").

WHEREAS, a dispute arose between the City and the Association as to the interpretation of certain provisions of the parties' collective bargaining agreement and their applicability to disciplinary procedures and hearings; and

WHEREAS, the Association and the City determined to resolve these disputes through the negotiation of a procedure for the hearing and determination of disciplinary charges and the implementation of discipline and discharge; and

WHEREAS, the parties entered into meaningful negotiations over such procedures; and

NOW, THEREFORE, in consideration of the mutual promises set forth below, to be performed, one for the other, the City and the Association agree to a procedure as follows:

This agreement is subject to ratification by the membership of the Union prior to implementation.

DISCHARGE AND DISCIPLINE PROCEEDURE

1. Nothing in this Section shall diminish any right afforded any employee by N.Y. Civil Service Law § 75.

2. If there is just cause, as determined by the procedures set forth herein, the Employer may discharge or discipline an employee.

3. If an employee is suspended while he is working, he must be given an opportunity, if he requests it, to consult with a Union representative before he is required to leave the Employer's premises, unless his continued presence is likely to result in injury to himself, to others, or to property.

4. An employee may not be temporarily suspended, pending the informal and formal hearings as set forth in paragraphs 6, 7, and 8, for a period longer than three (3) calendar days.

5. A written notice of each disciplinary charge must be hand delivered or sent by registered or certified mail to the employee concerned at the time the action is taken, if practicable, but, in any case, not later than the tenth working day following the day on which the action is taken. The employee must acknowledge receipt of the notice by signing the Employer's copy thereof. A copy of each notice must be served on a Union representative on the same day that the employee is served with the notice. The notice shall specify what disciplinary action is sought and shall give a detailed statement (including dates, times, places and witnesses) of the conduct for which disciplinary action is to be imposed.

6. a. A person holding a position by appointment or permanent employment shall not be removed or otherwise subjected to any disciplinary penalty provided in this Article except for incompetence, misconduct, violation of departmental rules and regulations, or for committing or having been convicted of a felony or any crime involving moral turpitude, and then only after a formal hearing upon stated charges pursuant to paragraph 8 of this Agreement. The Union is entitled to be present at such formal hearing. Any member against whom any disciplinary action is contemplated may agree to an oral informal hearing, at which

time he may elect to accept the findings and/or penalties as directed by the Fire Chief thus waiving the procedures contained in paragraph 8.

b. Disciplinary action or measures shall consist only of the following:

Reprimand, transfer, a fine not to exceed \$100 to be deducted from the employee's salary or wages, a suspension without pay for a period not to exceed thirty (30) days, demotion in grade and title, or permanent dismissal from the department; provided, however, that the time during which the accused employee was suspended without pay shall be considered as part of the penalty. Any disciplinary action shall be expunged from an employee's record after three (3) years of the employee being without disciplinary action taken against him.

7. a. A person against whom disciplinary action is proposed shall be served with a copy of the charges, as per paragraph 5 and shall have ten (10) working days to answer the same in writing, said answer to be served upon the Fire Chief or upon the Office of the City Clerk, by hand delivery or by registered or certified mail. Where the accused employee defaults in answering, he shall be permitted to show matters in mitigation of any punishment that may be imposed.

b. Within ten (10) working days after the receipt of the written answer to the charges preferred, or, if the accused defaults in answering, then within ten (10) working days after his time to answer has expired, the Fire Chief shall conduct an oral informal hearing upon the charges. At such informal hearing, the accused shall have the right to be represented by the Union, and, if he desires, by private legal counsel. He may, if he desires, present witnesses in his behalf. The Fire Chief shall have the power to dismiss, withdraw, or amend the charges if the informal hearing so warrants. As an alternative to a hearing before an impartial arbitrator as per paragraph 8 below, the accused employee may have the issue of guilt and the measure of punishment determined by the Fire Chief.

8. In the event that the charges are not withdrawn, or dismissed, or the punishment accepted, after such informal hearing, and in the event that the Union and/or the employee is unsatisfied with the determination of the Fire Chief after said informal hearing, a request for an arbitration hearing may be brought only by the Union by making a demand for arbitration with PERB, within thirty (30) calendar days from the date the Union receives the

decision of the Fire Chief from the informal hearing. The Arbitrator will be chosen by ranking the names of arbitrators on a list supplied by PERB. Each party may strike only one PERB list per dispute.

9. Such disciplinary arbitrator shall confine himself to a determination of guilt or innocence and the appropriateness of any proposed penalty. If the arbitrator finds the employee guilty, he may impose the penalty stated in the notice of charges or a lesser penalty or combination of penalties, but he may not impose a greater penalty. The decision or award of the arbitrator shall be final and binding on both parties.

10. a. Notwithstanding any other provisions of law, no removal or disciplinary proceedings shall be commenced more than eighteen months after the occurrence of the alleged incompetency or misconduct complained of and described in the charges.

b. The disciplined employee shall have the right to representation by the Union and, if he desires, by private legal counsel at each step of the proceeding.

11. a. The burden of proving the charges preferred shall be upon the person alleging same. The compliance with technical rules of evidence shall not be required.

b. The time limits in this procedure may be extended by mutual agreement of the Employer and the employee, a Union representative, or legal counsel.

c. The parties agree that the use of progressive discipline is beneficial to the interests of all parties.

d. After said arbitration hearing, the penalty or punishment imposed shall be as set forth in paragraph 6(b).

e. If the charges are not sustained, the accused person shall be restored to his position with full pay for any period of suspension.

f. If a hearing is held before a disciplinary arbitrator, a verbatim stenographic transcript of the hearing shall be made, and a copy furnished to the arbitrator, to the Employer, and to the Union. The expense of such transcript shall be borne by the Employer.

g. The Employer and the employee may at any time agree upon the disposition of disciplinary charges. Such disposition need not be limited to the matters

specified in paragraph 6(b). The disposition shall be in writing and signed by an Employer representative, the employee, and a Union representative.

12. Whenever an employee is subject to an interview, interrogation and/or investigation that could result in disciplinary charges, the employee shall be informed of the nature of the investigation at the onset of the interview along with the allegations against him. The employee shall have the right to have present as his representative an attorney or representative of the Union. If no attorney or representative of the Union is available, the employee shall be given forty-eight (48) hours to obtain representation prior to the an interview, interrogation and/or investigation continuing. An employee may waive such representation in writing which must be executed prior to the start of the interview. If the employee waives such representation, he has the right to revoke that wavier at any point during the an interview, interrogation and/or investigation. Any violation of the employee's rights under this paragraph shall result in exclusion of any statements or evidence obtained through the interview, interrogation, or investigation from any arbitration or hearing.

INTERNATIONAL ASSOCIATION
OF FIRE FIGHTERS, LOCAL 963

CITY OF LOCKPORT

Dated: 01/05/11

Dated: 01/05/11

By: Kevin W Pratt
Kevin Pratt,
President

By: Michael W. Tucker
Michael W. Tucker, MAYOR

APPROVED AS TO FORM:

Tracy D. Sammarco
Tracy D. Sammarco

David E. Blackley
David E. Blackley
Deputy Corporation Counsel

