

MEMORANDUM OF AGREEMENT

The purpose of this Agreement is to set out a procedure to settle any grievances or complaints that might arise out of the classification actions resulting from the 2000-01 COPPEA Classification and Compensation Study ("Classification Study"). This Agreement is subject to ratification by the Portland City Council.

1. Personnel Rule 2-035 (or the successor Human Resources Administrative Rule) provides: *"Unless otherwise provided by a collective bargaining agreement, any employee adversely affected by a change in classification or whose request for a change in classification was denied, and any appointing authority who disagrees with a classification decision by the Director, may have the final decision of the director reviewed by the [Civil Service] Board."*

Any appeal under the Personnel Rules (or the successor Human Resources Administrative Rules) must be made in the time period and manner prescribed by the Personnel Rules (or the successor Human Resources Administrative Rules).

2. The City of Portland (City) and The City of Portland Professional Employees Association (COPPEA) have bargained to completion and agreed to a Grievance Resolution Process to settle any grievances or complaints that might arise out of the classification actions resulting from the Classification Study.
4. The City and COPPEA agree to the Grievance Resolution Process (Attachment "A") to resolve any and all grievances or complaints that might arise out of the classification actions resulting from the Classification Study. The parties further agree:

\$ that compensation actions are not appealable;

\$ that compensation will be a subject of bargaining during 2001 contract negotiations; and

\$ that Article 22 of the COPPEA contract does not apply to any part of the Classification Study or actions resulting from the Classification Study.

5. The City and COPPEA agree to certain amendments to the Personnel Rules (or the successor Human Resources Administrative Rules) which are set out in Attachment "B".
6. The Notice of Final Allocation shall provide the sole opportunity to grieve or appeal classification actions resulting from the Classification Study.

7. Upon notification to the Association of filing for redress of any classification action resulting from the Classification Study in another recognized legal forum (including the Civil Service Board), any grievance filed by an employee or Association under this Letter of Understanding will be withdrawn.

8. This Agreement is expressly executed as an addendum to the labor agreement between

the City of Portland and the City of Portland Professional Employees Association. The Grievance Resolution Process is effective upon approval by City Council and will expire at the conclusion of the last grievance hearing resulting from a grievance filed under this grievance process.

9. This agreement becomes effective on February 13, 2002, upon City Council's adoption of the COPPEA classification structure resulting from the Classification Study.

FOR THE CITY OF PORTLAND:

Yvonne L. Deckard, Director of Human Resources

Date

FOR COPPEA:

Doug Bloem, President, COPPEA

Date

APPROVED AS TO FORM:

Lory Kraut, Deputy City Attorney

Date

2000-01 COPPEA CLASSIFICATION STUDY PANEL FORMAT APPEALS

To promote the success of the 2000-01 COPPEA Classification Study ("Classification Study"), all parties pledge their immediate cooperation to settle any grievances or complaints that might arise out of the classification actions resulting from the Classification Study. The parties agree that compensation actions are not appealable. Compensation will be a subject of bargaining during the current 2001 contract negotiations. The parties agree that Article 22 of the COPPEA contract does not apply to any part of the Classification Study or actions resulting from the Classification Study. The parties agree that the grievance/appeal processes outlined below shall be the sole means of appeal of classification actions as a result of the Classification Study, and shall be in lieu of any other grievance/appeal processes. The parties agree that these processes do not cover appeals from classification actions made outside of the Classification Study.

Upon notification to the Association of filing for redress of any classification action resulting from the Classification Study in another recognized legal forum (including the Civil Service Board), any grievance filed by an employee or Association under this Letter of Understanding will be withdrawn.

Procedure for Classification Allocation to Adopted Classification Structure.

- A. Proposed Allocation. The City will notify the Employee, Bureau and Association of the proposed allocation of the employee's position. ***(Completed 11/02/01)***
- B. Informal Review. The Employee, Association or Bureau shall be able to provide additional information to the City and request an informal review of the proposed allocation, following the procedure prescribed in the notice of proposed allocation. ***(Completed 11/19/01)*** The City shall review the information and, if necessary discuss it with the Employee, Association or Bureau.
- C. The recommended classification structure will be presented to City Council for them to either adopt or reject. If City Council does not adopt the classification structure, the COPPEA Class/Comp Study ends. ***(Anticipated 02/13/02)***
- D. Final Allocation. Once the classification structure has been adopted by City Council, the City shall notify the Employee, Bureau and Association of the final allocation of the employee's position. The Notice of Final Allocation shall provide the sole opportunity to grieve or appeal classification actions resulting from the Classification Study. ***(Anticipated 02/13/02)***

Procedure for Grievance Appeal to Panel

A. If an employee feels adversely affected by the Final Allocation, the employee or Association shall file a grievance in writing **within 20 working days of the date on the Notice of Final Allocation**.

B. Time Limits. It is important that grievances be processed as rapidly as possible. The number of days indicated is a maximum. The time limits specified may, however, be extended by written mutual agreement.

C. Grievances shall be filed on the appropriate form. The grievance must contain a detailed statement specifying:

- (1) The date of the Notice of Final Allocation;
- (2) The reasons why the employee or Association believes the action was without a rational basis, or contrary to a provision of rules promulgated by the Director of the Bureau of Human Resources for classifications, or was for a political reason, or was in violation of law;
- (3) The corrective action being requested.

D. Hearing and Decision. Grievances of Final Allocations shall be heard by a panel consisting of a labor representative, a management representative, and a neutral agreed upon by the Association and the City. The panel shall consider evidence presented by the Association and the City and shall make a decision, limited to classifications in the structure adopted by Council as part of this study, based solely on this evidence. The decision shall be made by a majority vote, rendered in writing, and will be final and binding.

E. Expedited Hearing Process. Hearings conducted under this Grievance Resolution Process will be expedited in nature and will follow the format below.

- (1) Grievants will be notified of the hearing date by the Bureau of Human Resources. There will be at least 10 working days notice prior to any hearing date.
- (2) Hearings shall be informal in nature.
- (3) No party may be represented by legal counsel at the hearing.
- (4) Each side shall be allowed up to 45 minutes to present its case including the presentation of any witnesses. Cross-examinations shall be limited to 10 minutes per side. Each side shall be allowed five (5) minutes to present closing arguments.
- (5) A party wishing to have documents considered by the panel must provide

a copy for each of the three panel members and one copy for the opposing side no later than five (5) calendar days prior to the scheduled hearing. The panel is not required to review the documents prior to the scheduled hearing. The time which the panel takes to review the documents will be deducted from the time available to the party to make its case. The panel, in its sole discretion, may waive this requirement at the hearing upon good cause being shown.

(6) At the conclusion of the hearing, the panel, after deliberation, shall normally render a “bench” decision, limited to classifications in the structure adopted by City Council as part of this study, and the standard of review detailed in subsection (9), which will then be recorded in writing by a designated member of the panel.

(7) The panel, at its sole discretion, may extend the time limits for either party.

(8) Burden of Proof. The party filing the grievance shall have the burden of proof and the burden of going forward with the evidence. The party who has the burden of proof shall present its case first following a brief introduction of the issue by a member of the Bureau of Human Resources.

(9) Standard of Review. The panel will review the Final Allocation to determine whether the allocation, as alleged by the appellant, was without a rational basis, contrary to law or rule, or taken for political reason.

(10) Conduct of Witnesses, Parties and the Public. All parties, their representatives, witnesses and spectators shall conduct themselves in a respectful manner. Demonstrations of any kind will not be permitted. Failure to comply with this rule or with the panel’s effort to maintain order and proper decorum are grounds for removal from the hearing. Refusal of a witness to answer any question ruled to be proper shall, in the discretion of the panel, be grounds for striking all testimony previously given by the witness.

F. Settlements. Any settlement of a grievance between the Association and the City shall be binding on all parties. Any settlement by the City must be approved by the Bureau Head, Director of the Bureau of Human Resources and City Attorney. The employee and the Association must approve any settlement.

G. Costs. The City and the Association shall divide equally the neutral’s fee. If the labor advocate on the panel is a City of Portland employee, Article 6, section 4 of the COPPEA contract regarding shall apply. If the labor advocate is the COPPEA President, Vice-President, Secretary or Treasurer, he/she shall be eligible to use up to the forty (40) reimbursable hours per month as provided in Article 6, section 4. If the labor advocate is not the COPPEA President, Vice-President, Secretary or Treasurer, he/she shall be

allowed a leave of absence as provided for in Article 6, section 4. All other expenses (if

any, for the grievant and panel members) shall be paid by the party incurring them.

NOTICE OF GRIEVANCE/APPEAL OF CLASSIFICATION ACTION
Resulting From The 2000-01 COPPEA Classification Study

Name of Employee _____

Date on Notice of Final Allocation _____

(Attach a copy of the Notice of Final Allocation)

Statement of Appeal (you may use some or all of the following:)

1. ____ I believe the allocation of my position was without rational basis because:

2. ____ I believe the allocation of my position was contrary to a provision **of Personnel Rules (or the successor** Human Resources Administrative Rule – Civil Service Board) for classification actions. The reason I believe Rule(s) _____ was/were violated

3. ____ I believe the allocation of my position was for a political reason because ____

4. ____ I believe the allocation of my position was in violation of the following law

because _____

The corrective action I request is to have my position allocated to the classification of

Signature

Date

PROVIDE A COPY OF THIS GRIEVANCE TO YOUR ASSOCIATION

Amendments to the Personnel Rules (or the successor Human Resources Administrative Rules) to Implement this Grievance Procedure

The Association and the City agree on the following amendment to the Personnel Rules (or successor Human Resources Administrative Rules). The City will give public notice and submit the amendment to the City Council for approval.

When adopted by Council via Resolution, the following rules shall be adopted as amended and filed with the Director of the Bureau of Human Resources.

[Ref: City Charter Section 4-401; Personnel Rule 1-005 (or the successor Human Resources Administrative Rule)]

“Section 5-026 (or the successor Human Resources Administrative Rule) Appeal of Classification Actions from the 2000-01 COPPEA Classification Study

This process shall apply to classification appeals resulting from the 2000-01 COPPEA Classification Study (AClassification Study@). Sections 2-045 – 2-070 and Chapter 5 (with the exception of Section 5-026) of the Personnel Rules (or the successor Human Resources Administrative Rules), do not apply to classification actions resulting from the Classification Study.

(1) An employee may appeal classification actions resulting from the Classification Study either as a grievance under the terms of the Letter of Understanding Between the City and the COPPEA *or* under this Rule.

- (a) Proposed Allocation. The City shall notify the Employee, Bureau and Association of the proposed allocation of the employee=s position.
- (b) Informal Review. The Employee, Association or Bureau shall have an opportunity to provide additional information to the City and request an informal review of the proposed allocation, following the procedure prescribed in the notice of proposed allocation. The City shall review the information and, if necessary discuss it with the Employee, Association or Bureau.
- (c) Classification Structure. The recommended classification structure will be presented to City Council for them to either adopt or reject. If City Council does not adopt the classification structure, the Classification Study stops.
- (d) Final Allocation. Once the classification structure has been adopted by City Council, the City shall notify the Employee, Bureau and Association of the final allocation of the employee=s position. The Notice of Final Allocation shall provide the sole opportunity to appeal classification actions resulting from the Classification Study.
- (e) Requests for Reconsideration. The Employee, Bureau or Association may file a written request for reconsideration of the allocation with the Director. The request for reconsideration must be filed within 20 working days of the letter of notification by the City of the final allocation, and must specify the reasons for the request and the relief being sought. The Director shall respond in writing to the request for reconsideration as quickly as is practical, given the number of other requests.

(f) Appeal of Allocation. The Employee, Bureau or Association may have the Director's decision reviewed by the Civil Service Board under Rules 2-015, 2-035, and Subsection (G) below (or the successor Human Resources Administrative Rules).

(g) Board Review.

1. The Board will review the Director of the Bureau of Human Resource's decision to determine solely whether the decision, as alleged by the appellant in the Notice of Appeal, was without a rational basis or contrary to law or rule or made for political reason. The review will be conducted based solely on written information submitted by the appellant and the Director. No hearing shall be conducted or permitted.
2. The Board shall issue a written decision as quickly as is practical, given the number of other appeals.
3. If the Board concludes that the allegations in the appeal are correct, the Board shall set aside the Director=s decision and remand the decision back to the Director for further review. The Board=s order shall specify and explain the reasons for the Board=s action.

(h) The final decision of the Board or any appeal to the Board shall be subject to review by the Circuit Court in the manner provided by statute for review of quasi judicial decisions of lower tribunals.

(i) The record of the appeals process shall be limited to: (a) a statement identifying the dispute; (b) all written materials submitted to the Board, unless withdrawn by the offering party with the approval of the Board; and (c) the Board=s final written decision.

(2) This Personnel Rule (or the successor Human Resources Administrative Rule) expires at the conclusion of the last appeal hearing resulting from an appeal resulting from the Classification Study.