

Chapter 46

PERSONNEL*

* **Cross References:** Any personnel or other departmental manual saved from repeal, § 1-17(15); administration, ch. 2; law enforcement, ch. 38.

State Law References: Local officers and employees, Code of Virginia, § 15.2-1500 et seq.; dissemination of criminal history record information, Code of Virginia, § 19.2-389; labor and employment, Code of Virginia, title 40.1; application of Code of Virginia, title 40.1, to political subdivisions, etc., by the commissioner of labor and industry or the safety and health codes board, Code of Virginia, § 40.1-2.1; Virginia Retirement System, Code of Virginia, § 51.1-124.2 et seq.

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ARTICLE I.

IN GENERAL

Secs. 46-1--46-25. Reserved.

ARTICLE II.

GRIEVANCE PROCEDURE

Sec. 46-26. Purpose.

The purpose of the grievance procedure in this article is to:

(1) Afford an immediate and fair method for the resolution of disputes which may arise between the town and its employees.

(2) Encourage employees to express themselves about the conditions of work which affect them without fear of reprisal.

(3) Ensure that personnel actions are taken in accordance with fair and uniform policies and procedures.

(Ord. of 10-14-1997, § I)

Sec. 46-27. Definition of grievance.

(a) A grievance shall be a complaint or dispute by an employee relating to his employment, including but not necessarily limited to the following:

(1) Disciplinary actions, including dismissals, demotions and suspensions, provided that dismissals shall be grievable whenever resulting from formal discipline or unsatisfactory job performance;

(2) The application or interpretation of personnel policies, procedures, rules and regulations, including the application of policies involving the contents of ordinances, statutes or established personnel policies, procedures, rules and regulations;

(3) Acts of reprisal as a result of utilization of the grievance procedure or of participation in the grievance of another town employee; and

(4) Complaints of discrimination on the basis of race, color, creed, political affiliation, age, handicap, national origin or sex.

(b) Management reserves the exclusive right to manage the affairs and operations of the town government. Accordingly, the following complaints are nongrievable:

(1) Establishment and revision of wages or salaries, position, classifications or general benefits.

(2) Work activity accepted by the employee as a condition of employment or work activity which may reasonably be expected to be part of the job content.

(3) The contents of ordinances, statutes or established personnel policies,

procedures, rules and regulations.

(4) Failure to promote except where the employee can show established promotional policies or procedures were not followed or applied fairly.

(5) The methods, means and personnel by which such work activities are to be carried on.

(6) Except where such action affects an employee who has been reinstated within the previous six months as the result of the final determination of a grievance, termination, layoff, demotion or suspension from duties because of lack of work, reduction in work force, or job abolition.

(7) The hiring, promotion, transfer, assignment and retention of employees within the town government.

(8) The relief of employees from duties of the town in emergencies.

(c) In any grievance brought under subsection (b)(6) of this section, the action shall be upheld upon a showing by the town that:

(1) There was a valid business reason for the action; and

(2) The employee was notified of such reason in writing prior to the effective date of the action.

(d) The classification of a complaint as "nongrievable" shall not be construed to restrict any employee's right to seek or the manager's right to provide customary administrative review of complaint outside the scope of the grievance procedure.

(e) Once an employee reduces his grievance to writing, he must specify on the appropriate form the specific relief he expects to obtain through the use of the grievance

procedure.

(Ord. of 10-14-1997, § II)

Cross References: Definitions generally, § 1-2.

Sec. 46-28. Resolution of issue of grievability; qualification for panel hearing.

(a) Decisions regarding whether or not a matter is grievable shall be made by the town manager or other department head authorized by the town manager to decide the issue of grievability. Decisions of the town manager or the designated department head as to grievability shall be made within five days of the receipt of a request, and a copy of the decision shall be transmitted to the grievant. If the town manager does not qualify the grievance for a panel hearing following the completion of the management steps, the grievant may appeal the decision to the circuit court of the county for a determination of grievability as provided in this section.

(b) Proceedings for review of the decision of the town manager or designated department head shall be instituted by filing a notice of appeal with the town within ten days after the date of the decision and giving a copy thereof to all other parties. Within ten days thereafter, the department head shall transmit to the clerk of the court to which the appeal is taken: a copy of the decision of the town manager or designated department head, and a copy of the notice of appeal and the exhibits. The failure of the department head to transmit the record within the time allowed shall not prejudice the rights of the grievant. The court, on motion

of the grievant, may issue a writ of certiorari requiring the department head to transmit the record on or before a certain date. Within 30 days of receipt by the clerk of such records, the court, sitting without a jury, shall hear the appeal of the record transmitted by the department head and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. The court, in its discretion, may receive such other evidence as the ends of justice require. The court may affirm the decisions of the town manager or designated department head or may reverse or modify the decision. The decision of the court shall be rendered no later than the 15th day from the date of the conclusion of the hearing. The decision of the court is final and is not appealable. Such determination of grievability shall be made subsequent to the reduction of the grievance to writing but prior to the panel hearing provided for in this article. The issue of grievability shall be decided prior to the panel hearing or it shall be deemed to have been waived.

(Ord. of 10-14-1997, § III)

Sec. 46-29. Coverage of personnel.

All permanent employees of the town, including law-enforcement officers, but excluding probationary employees, are eligible to file grievances except for department heads appointed by the town council.

(Ord. of 10-14-1997, § IV)

Sec. 46-30. Employee rights.

(a) An employee filing a grievance will have the right to follow all of the steps of the grievance procedure as set forth in section 46-34(a) with complete freedom from reprisal. This does not, however, confer the right upon anyone to make slanderous or libelous statements.

(b) At all steps beyond step 2 in the procedure, the grievant shall be permitted to be accompanied or represented by legal counsel or other representative of his choice, provided that, if the grievant is represented by legal counsel, management may likewise have legal counsel present. Representation of the grievant shall be at his own expense; however, if the hearing is held during regular working hours and the grievant's representative is another town employee, the town will authorize him to attend the hearing charged to leave.

(Ord. of 10-14-1997, § V)

Sec. 46-31. Management rights.

Nothing in the grievance procedure is intended to circumscribe or modify the existing management right of the local government to do the following; provided, however, that none of these rights may be exercised in an arbitrary or capricious manner:

- (1) Direct the work of its employees as well as establish and revise wages, salaries, position classifications and general employee benefits;
- (2) Hire, promote, transfer, assign and retain employees in positions with the town;
- (3) Maintain the efficiency of governmental operations;
- (4) Relieve employees from duties because of lack of work or in an emergency; and
- (5) Determine the methods, means and personnel by which operations are to be carried on.

(Ord. of 10-14-1997, § VI)

Sec. 46-32. Waiver of time limits.

All time periods listed in the grievance procedure may be extended by mutual agreement of the grievant and the town.

(Ord. of 10-14-1997, § VII)

Sec. 46-33. Compliance with procedural requirements.

Failure of either party to comply with all substantial requirements of the grievance procedure without just cause will result in a decision in favor of the other party on any grievable issue, provided that the party not in compliance fails to correct the noncompliance within five days of receipt of written notification by the other party of the compliance violation. Such written notification by the grievant shall be made to the town manager. Failure of either party without just cause to comply with all substantial procedural requirements at the panel hearing shall result in a decision in favor of the other party.

(Ord. of 10-14-1997, § VIII)

Sec. 46-34. Steps.

- (a) Grievances as defined in this article shall be processed in the following manner:

(1) *Step 1.* An employee who has a grievance shall discuss the problem with his immediate supervisor within 30 calendar days after the event giving rise to the grievance. The grievance may be presented orally with the objective of resolving the matter informally. The immediate supervisor shall give the employee an answer within five workdays of the time the grievance is presented to him and shall report the result to his immediate supervisor. In all cases the supervisor shall make a record of the grievance presented.

(2) *Step 2.* If the grievance is not settled by the immediate supervisor to the satisfaction of the aggrieved employee, the grievant may file a written notice to his department head within five working days of receipt of the answer of the immediate supervisor, setting forth the facts on which the grievance is based. The department head shall hear the appeal within five workdays of receipt of the written grievance and give a written answer within five workdays of the hearing. If the immediate supervisor is the department head, steps 1 and 2 are consolidated into a single step.

(3) *Step 3.* If the grievant is not satisfied with the decision of the department head, he may within five workdays file a written appeal with the town manager, who shall act as the town manager and shall hear his appeal within five workdays. With the exception of this third management step, the only persons who may be present in the management step meetings are the grievant, the appropriate manager at the level at which the grievance is being heard, and appropriate witnesses for each side. At the third and final management step, however, the grievant, at his option, may have present a representative of his choice, and if the grievant is represented by legal counsel, management likewise has the option of being represented by counsel.

(4) *Step 4.* If the town manager's response does not resolve the grievance, the grievant may proceed with the grievance by requesting qualification for a panel hearing. The request shall be made in writing to the town council within five working days of receipt of the step 3 response. The town manager shall respond to this request within five working days of receipt of the request. If the town manager does not qualify the grievance for a panel hearing, the grievant may appeal that decision to the circuit court of the county, as provided in section 46-28 pertaining to resolution of grievability; qualification for a panel hearing. Such appeal by the grievant shall be made within five working days of receipt of the decision of nonqualification. If the town manager qualifies the grievance for a panel hearing, the town manager shall convene a panel within seven working days of receipt of the request for a panel hearing.

(b) The panel shall be composed of three members chosen as follows: one member appointed by the grievant, one member appointed by the town manager, and a third member elected by the first two members. If that agreement cannot be reached as to the final panel member, the chief judge of the 26th judicial circuit shall select such third panel member. The decision of such panel shall be final and binding and consistent with law and written policies. In all cases, the third member shall be chairperson of the panel.

(c) Such panel shall not be composed of any persons having direct involvement with the grievance being heard by the panel or with the complaint or dispute giving rise to the grievance. Managers who are in a direct line of supervision of a grievant and the following relatives of a participant in the grievance process or a participant's spouse are prohibited from serving as panel members: spouse, parent, child, descendants of a child, sibling, niece, nephew and first cousin. No attorney having direct involvement with the subject matter of the grievance nor a partner, associate, employee or co-employee of such an attorney shall serve as a panel member. The town shall not be required to have an administrative hearing officer in employee termination cases, but may do so at its option.

(d) The panel shall set the time for the hearing, which shall be as soon as practicable, but no more than ten full workdays after the panel has been selected, and notify the employee.

(e) The panel may determine its own procedure for conduct of the hearing, in accordance with the rules for the conduct of panel hearings, as promulgated by the state department of employee relations counselors and incorporated in this article, and further providing that it shall afford full and equal opportunity to all parties and witnesses for presentation of any material or relevant proofs. The panel, however, has the specific and final authority to determine the propriety of attendance at the hearing of all persons not having a direct involvement in the hearing, provided that at the request of the grievant, the hearing shall be private.

(f) The decision of the panel shall be filed in writing by the panel chairman with the town clerk within ten workdays of the final hearing, with copies to the mayor, the grievant, and the grievant's immediate supervisor and/or department head. The facts found and the reasons for the panel's decision must be set forth therein.

(g) If a written request to reconsider the panel decision is submitted by either party within five workdays of receipt of the decision, the panel, by a majority vote, may elect to review its decision and/or reopen the hearing for good cause shown.

(h) The town manager shall implement any remedy to the extent that it is consistent with the provisions of law and written policies. If either party believes the panel decision not so consistent, he shall inform the panel and the other party within five workdays of receipt of the decision. Either party may petition the circuit court for an order requiring implementation of the panel decision.

(i) The question of whether a panel decision is consistent with written policy shall be determined by the town manager unless such person has a direct involvement with the grievance, in which case the decision shall be made by the attorney for the commonwealth of the jurisdiction in which the grievance is pending.

(Ord. of 10-14-1997, § IX)

Sec. 46-35. Rules for panel hearings.

(a) Panels hearing grievances do not have authority to formulate policies or procedures or to alter existing policies or procedures.

(b) Panels have the discretion to determine the propriety of attendance at the hearing of persons not having a direct interest in the hearing, and, at the request of either party, the hearing shall be private.

(c) The town shall provide the panel with copies of the grievance record prior to the hearing and provide the grievant with a list of the documents furnished to the panel; and the grievant and his attorney, at least ten days prior to the scheduled hearing, shall be allowed access to and copies of all relevant files intended to be used in the grievance proceeding.

(d) The panel has the authority to determine the admissibility of evidence without regard to the burden of proof or the order of presentation of evidence, so long as a full and equal opportunity is afforded to all parties for the presentation of their evidence.

(e) All evidence shall be presented in the presence of the panel and the parties, except by mutual consent of the parties.

(f) Documents and exhibits and lists of witnesses shall be exchanged between the parties in advance of the hearing.

(g) The majority decision of the panel, acting within the scope of its authority, shall be final, subject to existing policies, procedures and law.

(h) The panel decision shall be provided within ten days to all parties.

(i) Hearings are not intended to be conducted like proceedings in courts, and the rules of evidence do not necessarily apply to hearings.

(Ord. of 10-14-1997, § X)