

January 5, 1995

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

ALLAN A. MACDONALD GRIEVANCE

A hearing will be conducted before the City Council regarding the denial of the grievance filed on October 14, 1994, on behalf of Fire Captain Allan MacDonald. This report will outline what options are available to Council as it relates to this matter. First, Council may uphold the denial of the grievance by the City Manager. Second, it may overturn the denial and direct the City Manager to determine what actions should take place as they relate to Mr. MacDonald. Third, it may continue the matter to a later date. The following is a brief factual and legal analysis of the issue.

On September 2, 1994, Mr. MacDonald was transferred from the position of Community Education Officer to Operations. This transfer prevented him from serving as the Straight Day Trustee of International Association of Fire Fighters Local 145 ("Local 145"). On October 14, 1994, the grievance was filed on behalf of Mr. MacDonald. Mr. MacDonald alleges that the Fire Department violated Article 6, "Discrimination" of the Memorandum of Understanding ("MOU"), as well as Council Policy 300-6 "Employee-Employer Relations." Pursuant to the MOU, on November 28, 1994, a hearing was held before the Labor Relations Manager on the grievance. The grievance was subsequently denied the following day by memorandum from Cathy Lexin, Labor Relations Manager. On December 2, 1994, a letter was sent to Cathy Lexin from Local 145, requesting a hearing pursuant to Step 6 of the Grievance Procedure set forth in Article 25 of the MOU between Local 145 and the City on behalf of Allan A. MacDonald. Step 6 provides that after timely notice has been provided, the grievance will be referred "... to the City Council for hearing and decision."

The hearing is an administrative hearing not a full evidentiary appeal. Therefore, it is appropriate that Mr. MacDonald have an opportunity to present the facts substantiating the basis of this grievance within a given allocation of time. The Fire Department and/or the City Manager's office should be given an equal amount of time to present the basis of the denial of the grievance. No examination of witnesses or opening and

closing arguments are necessary. The Council may however question any individual regarding clarifications or additional questions. The Council does not have the authority to grant Mr. MacDonald's request to return to the Community Education Officer position or a vacant Facilities Maintenance Officer position as set forth in the analysis below.

Charter Section 28 provides in part, "the Manager may direct any Department or Division to perform work for any other Department or Division. Such powers to transfer employees or to direct the performance of work shall not apply to the Police or Fire Departments (emphasis added)." Thus, the City Manager does not have the authority to "direct the performance of work" in the Fire Department.

Charter Section 58 provides in part, "the Chief of the Fire Department, with the approval of the City Manager, shall direct and supervise the personnel (emphasis added)." Consequently, although the City Manager does not have authority to "direct the performance of work" in the Department, the Fire Chief cannot direct the performance of work within the Department without the approval of the City Manager. Therefore, the Fire Chief "directs the performance of work" in his Department with the approval of the City Manager.

In conclusion, if Council decides that Mr. MacDonald's grievance appeal should be granted, then the City Manager should be directed to resolve the issue. If Council decides to deny the appeal, no further action is necessary.

Respectfully submitted,
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City Attorney

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