

# **TEMPE SUPERVISOR'S ASSOCIATION (TSA)**

*Fair Representation and Legal Policy*

## **FAIR REPRESENTATION AND LEGAL POLICY**

Adopted: November 2011

To meet its duty of fair representation, the TSA Board has adopted the following policy:

As the duly elected and exclusive bargaining agent for **Tempe Supervisor's Association (TSA)** has the responsibility of representing members in employment matters. Our organization has done this with a large measure of success. Members have the right to use legitimate grievance procedures when other avenues of redress have failed. It is TSA's job to stand behind members to ensure they receive fair representation. In that sense, where a conflict arises between members' respective interests, the board and its Representatives will, in good faith, determine whether representation is appropriate by weighing the member's interests against those of the membership.

A substantial amount of Association members' dues goes toward legal costs and grievance representation. The law firm of Napier, Coury & Baillie, P.C., which handles nearly all of TSA's organizational and group legal work, prides itself on representing police officers and civilian employees in labor issues, disciplinary cases, grievances, and personal matters; subsequent to the Board's approval and the amount of cost associated with the representation. When you need to be represented by an attorney, you want the best. TSA believes it offers its Association members the best in legal services. Representation also may be provided by the Representative members trained by the legal staff.

Any fees and all related expenses for legal representation on behalf of an Association member which has been approved by the Representative or Board shall be borne by the Association. Non-Association members will not be given free legal representation. Member's personal matters may require outside counsel and the cost will be borne by the member.

### **TRUTHFULNESS**

Complete and candid disclosure of all facts relating to any matter being grieved or appealed on a member's behalf by the Association is absolute. The failure to be completely truthful, or the discovery of a member's untruthfulness to Association representatives, officers, or agents will be sufficient cause to immediately cease TSA's involvement in its representation. The member's grievance or appeal will be deemed not to have merit and further involvement in the matter by

TSA shall end. If a question of truthfulness arises, a meeting shall be called to determine continued representation.

### **NON-MEMBERS**

Employees who are not dues-paying Association members during an incident or departmental investigation, who subsequently join TSA and request representation related to the incident or matter which had been investigated will not be entitled to free legal representation, nor will they be represented by a Representative member at the administrative hearing. Supplies, copying and incidental expenses of representation are benefits of membership in the Association. Employees who are not dues-paying Association members will be required to pay these expenses not necessary to representation.

### **TIME LIMITS**

It shall be the member's responsibility to adhere to all time limits imposed under any grievance or appeal procedures.

### **NOTIFICATION PROCEDURE**

Any member who desires grievance or legal assistance from the Association shall always notify his/her TSA Rep first. The Rep will assist the member and notify the Board. Members who are unable to contact their Rep should contact the appropriate Representative directly, or the President if the matter is urgent. The Representative will make a timely report monthly to the Board of all activity.

Members may not contact the Association's attorneys without prior authorization from the Board or President, unless the member sought an appointment to discuss a personal matter which is a membership benefit under TSA's Legal Plan.

### **CONTINUATION OF DUES**

Association Members who have obtained authorized representation for a grievance, appeal, or other legal action shall keep their dues current as required in the By-laws.

**CONTRACT (MOU) GRIEVANCES or**  
**ADMINISTRATIVE GRIEVANCES**

A contract or Memorandum of Understanding (MOU) grievance is an allegation claiming violation/s of the terms of the MOU between TSA and the City for which there is no specific method or review provided by the Hearing Official and Arbitrator, or applicable federal, state, or local law.

A grievance is a complaint by an employee concerning interpretation or application of rules and regulations governing personnel practices, departmental work rules, working conditions, or alleged improper treatment of an employee, in which the complaint has not been resolved satisfactorily in an informal manner between the employee and his/her immediate supervisor.

The Association is obligated to represent all members in the enforcement of the contract. If, in the decision of the Board and President, a grievance has merit and seeks a proper remedy, the Association shall undertake representation of a member who requests assistance through an Association Representative.

Otherwise, the Association is not obligated to represent members who fail to provide notice. The Association will not represent members who are charged criminally for non-work related conduct. In the context of two members involved in a marriage or domestic relationship, the Association will not represent members who receive disciplinary action against them for domestic violence when such charge or discipline arises from both members claiming domestic violence against each other. However, the Board of Trustess shall have the sole discretion to approve member representation for claims of domestic violence when such claims do not involve another member.

The Board shall have the sole discretion to approve arbitration costs for any grievance. If time limits preclude board approval, the President may authorize arbitration costs. That action shall be reported to the board at the next monthly board meeting. Through TSA's Legal Plan, Association members may have legal representation for these matters when approved by the Board.

The Association is not obligated to represent non-Association members with grievances or matters not covered under the enforcement of the existing MOU or the Meet and Confer Ordinance.

The Association is not obligated to represent or pay the cost for legal representation to members for family law matters and personal matters. TSA has several referral attorneys that a member may retain at a discounted rate.

The Association will not tolerate a member who causes discord within the Association, or intentionally creates dissension within the City and/or the Association. An Association member may be removed from the Association or denied representation if he/she has filed and/or submitted excessive, retaliatory, harassing, personal vendetta complaints with their department against another Association member. The Association's legal plan does not offer representation to the complainant who has filed a complaint against another member within the Association. Legal representation shall be reserved for the principle/accused/defendant officer in order to ensure a fiscally responsible Association – attempting to avoid the cost of a conflict attorney.

At the discretion of the Association, a member may be entitled to legal representation for an order of protection and an injunction against harassment.

### **HEARINGS & PERSONNEL BOARD CASES**

When an Association member receives a suspension, demotion or dismissal, TSA will furnish an attorney, upon the member's request subject to the conditions below:

1. To protect the member's rights prior to any formal charges and to make course of action recommendations to the member after the member has received approval from the President or Board.
2. To appeal disciplinary action to the Tempe Personnel Hearing Board after an appearance before and on the approval of the Board.
  - a. The Board will meet to hear a member's request as soon as practical. For suspensions involving minor infractions, the Board, or President, may approve representation, after examination of the investigation and supporting material.
  - b. During urgent circumstances, the President or a Board may approve conditional representation subject to the final authorization.
  - c. The Board will examine the appellant's prior service record, his/her culpability, actions and/or inactions, potential for performance improvement or rehabilitation, the member's candor and truthfulness with the committee or other TSA representatives, the accuracy of the investigation and Separation Notice, comparisons of similar cases, and the excessiveness of the discipline to determine whether the appeal has merit in the opinion of the committee. The Board may hear from any source it deems appropriate. If there is any doubt in the mind of the Board

members as to whether or not to underwrite the legal representation of a member, the doubt shall go in favor of the member.

- d. If the Board denies representation, the appellant will immediately be advised of the reason/s for the denial. If the appellant desires to proceed with appeal without representation, he/she will receive assistance in filing a letter of appeal with the Personnel Board.

Upon denial of representation, the appellant may appeal the decision to the Board at its next regularly scheduled meeting or a meeting called for that purpose. The appellant may appear before the Board and present evidence. After considering the any new evidence, the Board may alter the decision. The decision of the Board is final.

- e. At the discretion of the TSA Board, a member may be represented before the Hearing Official and/or Personnel Board by a TSA Representative who may receive assistance from the TSA attorney.
- f. It is the member's responsibility to comply with all appeal time limits imposed under the City of Tempe Personnel Rules. In order to allow adequate notice to convene Representation, the Association shall not be obligated to represent a member who does not notify the Board or Representative in a timely manner upon receipt of the Separation Notice. Timely should be considered as forty-eight (48) hours if an Association Representative did not represent the member during the Steps procedures, and four (4) days if there was representation.
- g. An individual is entitled to TSA representation for hearing matters only if he/she was a dues-paying member throughout the time period of the incident and subsequent administrative investigation and if he/she presently is a member in good standing.

### **AFFIRMATIVE CIVIL LITIGATION**

TSA may, with the approval of the Board, furnish an attorney to an Association member to file civil suits (Equal Employment Opportunity - EEO - complaints, Civil Rights complaints, etc.), including declaratory actions, (to obtain court interpretation of prevailing statutes or contract rights), where the outcome potentially would benefit the membership as a whole, not just an individual. Otherwise, TSA has several attorneys that may be retained by the individual member,

to bare the cost at a discounted rate, in order for the member to file an individual action for an adjudication which may personally benefit the individual member.

When appropriate, the Board may support a member in a "class action" type lawsuit provided that the issue affects the Association as a whole.

Damages awarded by a judgment shall go to the individual members as appropriate. Attorney's fees, when awarded, shall go to the Association's legal counsel. Costs awarded in an action shall go to reimburse the Association.

### **ADDITIONAL COVERAGE**

Any additional legal coverage may be provided by TSA as determined by the Board or, when an emergency exists, by the President, after consultation with the Association's legal advisor.

### **EXCEPTIONS**

Where extraordinary circumstances warrant, the Board may approve exceptions to any portion of this legal policy on a case-by-case, non-precedent-setting basis.

### **LIMITATION OF RIGHTS**

Neither the establishment of the Fair Representation Policy, nor any modifications thereof, nor the creation of any fund or account, nor the payment of any benefits, shall be construed as giving any Participant or other person any legal or equitable right of action or recourse against TSA or TSA's legal counsel or their respective employees or agents, any other sponsoring organizations except as provided in the Fair Representation Policy or by State law.

### **POLICY DISTRIBUTION**

This policy shall be distributed to all unit members and every new unit member.