

ARTICLE 16
PROMOTIONS, DEMOTIONS, & REINSTATEMENTS

PROMOTIONS

Section 1. Purpose and Objective.

The Association hereby agrees to the deviations from Chapter 143 promotion procedures specifically authorized by this Article. Except as allowed by this Article, the City will comply with the promotion procedures specified in Chapter 143, and retains all prerogatives granted to it by the statutory procedures.

Section 2. Promotional Examinations – General Provisions.

A. Scheduled Examination Dates & Rescheduling Exams.

Scheduled promotional examinations shall be held as provided in Appendix B of this Agreement unless the prior eligibility list is earlier exhausted, in which case the provisions of subsection F apply. The Department may require members to sign up to take the examination according to the terms specified in the notice of the exam. The actual date of the exam may be rescheduled for up to sixty (60) days in the event of circumstances beyond the City's control, including but not limited to extraordinary weather events or other emergencies. In the event of a rescheduling, no further notice of the examination is required other than the new time, place, and date of the rescheduled examination, notwithstanding section 143.029. Only members eligible as of the original posted date of the examination shall be eligible to sign up for and take the examination.

B. Effective Date of Promotions, Back Pay Liability.

With the exception of the initial scheduled examination dates for each rank, meeting the scheduled examination dates provided for in Appendix B or the re-scheduled date of an exam as allowed in Subsection A, precludes any liability for back pay for that position, provided that the promotion occurs within sixty (60) days after the scheduled examination date or within sixty (60) days after the date of an un-scheduled examination under Subsection F. The right to backpay shall not be affected as to the initial examinations given under the schedule in Appendix B. The right to a retroactive promotion date and seniority shall not be affected as to any examination given during the life of this Agreement.

C. Eligibility.

Subject to Subsection A above and Section 4 below, all candidates for promotion must meet the requirements of Local Government Code §§143.028 and 143.030.

D. Pass Not Promote Points.

If a fire fighter takes a promotional exam for the rank of fire specialist or lieutenant after the effective date of this Agreement and passes it but does not promote from the resulting eligibility list, the fire fighter will receive one (1) point on his/her

written exam score in future promotional examinations for the same rank. A maximum of two (2) PNP points may be awarded.

E. Seniority Points.

Seniority points will be awarded to each promotional candidate as per Local Government Code §143.033, and shall be credited in accordance with the testing design approved by the fire chief and the promotional testing consultant, as applicable.

F. Unscheduled Tests Necessitated by Exhausted Eligibility Lists.

If a promotional eligibility list for a rank is exhausted more than 90 days prior to the next scheduled promotional exam for that rank, the City may conduct an unscheduled promotional exam for that rank as follows:

1. The date of the unscheduled written examination and the list of source materials for the examination shall be posted in accordance with the provisions of Local Government Code Chapter 143.

2. The unscheduled exam, including any Assessment Center, will be conducted in accordance with the requirements of this Article.

3. The resulting Eligibility List will be created in accordance with the requirements of this Article, and will last for twenty four (24) months from the date of the written examination.

4. The date of the next scheduled exam will be during the month which is two years after the date of the unscheduled exam, if the new exam date would occur before the expiration of this Agreement.

5. If the new date for the scheduled exam is less than one year prior to the expiration of this Agreement, the Eligibility List created as a result of the exam will expire six (6) months after the Agreement's termination date.

Section 3. Promotional Process for Captains & Battalion Chiefs.

A. Structure of Process.

1. Vacant positions in the rank of Battalion Chief shall be filled from an eligibility list created by a promotional procedure consisting of a Written Examination and an Assessment Center conducted in accordance with this Article. Beginning with the second promotional examination given after the effective date of this Agreement, vacant positions in the rank of Captain shall be filled from an eligibility list created by a promotional procedure consisting of a Written Examination and an Assessment Center conducted in accordance with this Article.

2. The Fire Chief, with the assistance of the Promotional Process Consultant (third party vendor), will develop and implement the testing procedures, which will include a written test and an Assessment Center, covering subject matters as determined by the Chief.

3. The Promotional Process Consultant (third party vendor) will develop and implement the Promotional process to select highly qualified candidates (evidence will be accumulated to support an inference of job relatedness), to have a high degree of validity, and to minimize adverse impact.

4. The Promotional Process Consultant (third party vendor) shall certify that the testing process used meets these underlying criteria with the methodologies utilized and results achieved. This certification shall serve as conclusive evidence of validity and full compliance with the assessment procedures and, accordingly, preclude an appeal from the scores and/or ranking of an assessment center list in the absence of fraud, substantive integral compromise or material manipulation.

B. Written Examination

1. The date of the Written Examination and the list of source materials for the examination shall be posted in accordance with the provisions of Local Government Code Chapter 143.

2. The Promotional Process Consultant will determine whether to have a passing cut off score, or not, as a condition of proceeding to the Assessment Center portion of the examination.

C. Assessment Center.

1. Parties Devising & Conducting Assessment Center.

(a) The Assessment Center process shall be administered by a Promotional Process Consultant (third party vendor) designated in accordance with this Article. The third party vendor shall be a professional vendor who is not a current or former employee of the City of Austin.

(b) The assessments themselves shall be performed by an Assessment Center Panel consisting of three (3) members designated in accordance with this Article.

2. Oversight Committee.

(a) An Oversight Committee ("OC") shall be appointed in accordance with this Article and shall have the responsibilities set forth below. The purpose of the OC is to identify the criteria (scope of work) to be used to select the third party vendor, and to assist the purchasing department in the development of the Request for Proposal (RFP). The OC will endeavor to reach consensus on a recommendation on the scope of work, the development of the RFP, and the selection of the vendor. The failure to reach consensus shall not be a grievable matter and shall not delay the selection process. The OC shall evaluate proposals (which may include interviewing applicants and checking references), and score proposals pursuant to purchasing department procedures which include a recommendation for its choice of vendors to the Fire Chief. The Association may appoint two voting members to the OC. The remaining three voting members of the OC will be appointed by the Fire Chief and the Human Resources Department. The Human

Resources Department may also add two additional non-voting members from persons in departments that regularly are a part of the RFP process. HRD will draft the Request for Proposal and participate with the OC in all phases of the process. No employee who is then a candidate for promotion to Captain or Battalion Chief shall serve on the Oversight Committee.

(b) The third party vendor (once awarded), upon request of two or more members of the OC, will meet with them and discuss the methods used in developing the testing processes.

3. Assessment Process Panel. The Assessment Process Panel (the "Panel") shall consist of three (3) members. The Promotional Process Consultant shall be responsible for the recruiting, training, and selection of the Panel members. None of the Panel members may be current, former, or retired employees of the City of Austin. None of the Panel members may have any relationship with any candidate participating in the Assessment Center. All members of the Panel shall have at least one (1) year's experience, within the last five (5) years immediately preceding the Assessment Center, as a fire service professional in the same or higher rank being assessed in a fire department having a minimum staffed strength of four hundred (400) fully paid career fire fighters. The same Panel of three (3) members will assess the entire candidate pool for any given scenario or discrete portion of the assessment center. This provision shall not apply to any candidate taking a promotional examination by virtue of rights granted under USERRA.

4. Posting and Orientation. The date(s) of the Assessment Center shall be posted at least ninety (90) days prior to the date(s) specified for the Assessment Center. If the date(s) of the Assessment Center are postponed, the new date(s) shall be posted at least ten (10) days prior to the new date(s). A brief description of the criteria and subject areas for the Assessment Center will be posted at least ninety (90) days prior to the date of the Assessment Center. All candidates will be invited to attend a classroom orientation concerning the Assessment Center process. The invitation will be posted on FireNet at least ten (10) days prior to the date of the orientation.

5. Debriefing Opportunity for Candidates. After the Assessment Center process has been completed, there will be a process for a voluntary, individual debriefing for each promotional candidate and each of the other participants in the process, at which time candidates will receive information concerning any scores and weighing of the components of the testing process.

D. Composite Scores from Written Examination and Assessment Center.

A candidate's total score resulting from the promotional procedure shall be based on a composite of scores combining the final Written Examination and the Assessment Center scores, as determined by the Promotional Process Consultant. The total credit for all combined exam components will be 100% of the candidate's total score, and will be allocated as part of the test design. The maximum number of points available for any single examination component will be determined through the test design, with the promotional consultant, which may include the job analysis process with Subject Matter

Expert (SME) input. The allocation between the two procedures will be published in the promotional announcement.

E. Creation of Eligibility List.

1. Candidates who successfully complete all of the Assessment Center testing processes will be placed on an eligibility list in rank composite score order. A final composite score list will be issued by the Promotional Process Consultant for each Assessment Center completed. HRD shall produce the eligibility list from which vacant positions shall be filled in rank order. The eligibility list shall rank all candidates based on the candidate's composite scores from the Written Examination and the Assessment Center, together with any seniority points.

2. If, after the expiration of the deadline to file an appeal, no appeals have been filed, the Civil Service Office shall post the eligibility list and the list shall become effective immediately. If, during the time to file an appeal, an appeal has been filed, the Civil Service Office shall then submit the list for certification to the Civil Service Commission.

3. If, for any reason, an effective eligibility list needs to be corrected, the Civil Service Office shall correct the list and submit the corrected list for certification to the Civil Service Commission. If the Commission chooses to certify a corrected list, the effective date of the list shall remain the same as the original effective date.

Section 4. Life of Eligibility Lists Created Under This Agreement.

Notwithstanding the provisions of Local Government Code §143.036, the life of each promotional eligibility list created during the life of this Agreement will be twenty-four (24) months from the date of the written examination, notwithstanding any pending disputes, appeals or litigation concerning an applicant's score or right to promotion.

Section 5. Existing Promotional Eligibility Lists.

Promotional eligibility lists that exist on the effective date of this Agreement will be used to fill promotional vacancies in the ranks for which they were created until they expire. Division Chiefs promoted from Civil Service promotional lists may not be demoted involuntarily except in accordance with Local Government Code §143.054.

Section 6. Eligibility to Promote to Fire Specialist.

Fire Fighters wishing to take the civil service promotional examination for the rank of Fire Specialist must be an approved Relief Driver. All Fire Fighters will be provided an opportunity to take the Relief Driver course at some point prior to the date they become eligible to take the Fire Specialist promotional examination.

Section 7. Unlawful Impact.

The City agrees that it will not change the promotional process for any rank, once adopted for a promotional cycle, unless a court or the EEOC/TWC determines that the process outcome is unlawful under Title 7 or Chapter 21 of the Texas Labor Code. The third party vendor may also make this determination for a testing process formulated by

it, and the Chief may implement any changes or adjustments proposed by such vendor, which otherwise comply with applicable law.

Section 8. Promotions to Division Chief and Assistant Chief.

A. Promotions by Appointment Allowed; Appointment Procedure.

1. Promotions to the ranks of Division Chief and Assistant Chief will be made by use of the appointment procedure specified in Local Government Code §143.014. Fire fighters appointed to such positions must have all the qualifications specified, and will have all rights and remedies afforded them under §143.014, including but not limited to the appeal rights provided in §§143.014(g)-(h).

2. The total number of Division Chief and Assistant Chief positions may not exceed ten (10), but the Fire Chief may allocate the number of appointed positions in each rank as he/she deems appropriate as long as the total number of positions does not exceed ten (10), except as provided under Section 9 below. The number of positions in the ranks of Assistant Chief and Division Chief will be subject to approval of the City Council.

B. Qualifying Criteria.

1. The Fire Chief shall establish, in writing, required qualifying criteria for persons to be appointed which are in addition to the qualifications listed in Local Government Code §143.014, which may include management experience, education, training, and special experience.

2. The Fire Chief may not make an appointment until the required qualifying criteria are established and approved as prescribed by this Subsection.

3. The Fire Chief may remove without cause a person appointed under this section, subject to the person's rights under Local Government Code §143.014(g).

Section 9. Shift Commander Assignment.

The Fire Department will maintain a minimum of three (3) Shift Commander assignments which will be filled by a Division Chief with a minimum of two (2) years experience in Operations in the rank of Battalion Chief, or who attained the rank of Division Chief through competitive examination. If it becomes necessary to appoint a Battalion Chief to Division Chief in order to provide three Division Chiefs who meet the qualifications to fulfill the Shift Commander assignment, the number of positions under Section 8.A shall increase to eleven (11). The requirement to fill the Shift Commander assignment in this manner will extend beyond the expiration date of this Agreement for six (6) months, or until every promotional list created under this Agreement has expired, whichever is later. This provision may also be extended as a result of any extension of this Agreement under Article 30.

WRITTEN PROMOTIONAL EXAMINATION APPEAL PROCESS

Section 10. Application of this Process.

The appeal process specified in this Article applies to appeals by individual candidates regarding the grading of their written promotional examinations. Any challenges to the administration of a written promotional examination shall be made in accordance with the provisions of Chapter 143 of the Texas Local Government Code.

Section 11. Appeals Criteria.

A. In appeals from written promotion examinations, criteria will be applied to judge the merits of an appeal. The criteria are established in this Section, but may be modified by the Appeals Criteria Committee ("ACC") as provided in Section 12.C of this Article. In judging the merits of an appeal the Employee Review Committee ("ERC") described in Section 14 of this Article shall apply only the criteria listed in this section. If, however, the ACC has modified the criteria, the modified criteria will be used by the ERC. The Civil Service Commission must apply the criteria as well, but may add any other criteria it deems relevant to judge the merits of an appeal. All appeals must be on the form prescribed by the Director of Civil Service and must meet the following criteria for the appeal to be submitted to the Civil Service Commission:

1. The form must be completed in the fire fighter's own handwriting, must be legible and must contain the following:
 - (a) Fire fighter's name and TXFIR number
 - (b) Name of the exam
 - (c) Question # being appealed
 - (d) The reason(s) why the question or exam is being appealed
 - (e) The date.
2. The form must be completed so that it challenges a specific question.
3. The form must state or list clearly the specific reason(s) for the appeal and must refer only to the approved source material list used to formulate the questions.
4. All support materials cited in or attached to the appeal form must come only from the approved source material list.
5. Unless the criteria for appeals are altered or modified by the Appeals Criteria Committee, appeals must be based on at least one of the following reasons:
 - (a) There is more than one correct answer.
 - (b) There are no correct answers.

- (c) The question is not clearly stated or there is an error so that the correct answer could not be determined.
 - (d) The question is not from the listed source material.
 - (e) The correct answer scored is not the correct answer.
 - (f) The context of the source material was not used properly in the question or answer.
6. The following contains examples of appeals that will not be submitted to the Civil Service Commission for its review:
- (a) Punctuation marks are missing or incorrect.
 - (b) The exact wording in the source materials was not used.
 - (c) The question is not job relevant. (All materials included on the approved source materials list are deemed job relevant.)

Section 12. Appeals Criteria Committee.

A. Role of Appeals Criteria Committee. An Appeals Criteria Committee (ACC) shall be appointed to review and modify, as necessary, the criteria for what may be appealed to the Civil Service Commission following all written promotional examinations. The ACC shall review the appeal criteria contained in this Agreement following the first written examination appeal conducted under this Agreement to determine whether the criteria should be modified. Thereafter, the ACC shall meet to review the criteria prior to each examination appeal process.

B. Appointment of Members. The ACC, composed of seven (7) individuals, shall be appointed as follows:

- (1) Three (3) members appointed by the Association, each having taken at least one (1) promotional exam;
- (2) Two (2) members appointed by the Fire Chief, each having taken at least one (1) promotional exam;
- (3) One (1) member appointed by the Director of Human Resources; and
- (4) One (1) member appointed by the Chair of the Civil Service Commission.

C. Approval of Criteria. A simple majority of the ACC shall approve the criteria. The criteria approved by the ACC shall not be appealable to either the Civil Service Commission or to the district court.

Section 13. Appeal Process After Written Examination.

A. Appeal. Any fire fighter who has taken a written promotional examination may, within five (5) City of Austin business days of posting of the written promotional

examination results, review his/her examination results. In a process established by the Human Resources Department, each candidate who has taken a written promotional examination may have a time period to review his/her examination, write, and submit an appeal. A candidate may submit his/her written appeal at any time before the close of business on the fifth (5th) City of Austin business day after the posting of the written promotional examination results. Any appeal must be based on the appeal criteria as provided in this Agreement or as altered or modified by the Appeals Criteria Committee. Each candidate will receive a copy of the Human Resources Department process at the conclusion of his/her examination.

There shall be no appeal from the results of an Assessment Center process unless an individual fire fighter alleges that the results of the process were tainted by fraud, substantive integral compromise or material manipulation on the part of the City, the Promotional Process Consultant or the Assessment Center Evaluation Board. If such allegation is made, the fire fighter may appeal only to the Civil Service Commission. The Commission's decision on such appeal may be overturned only if it was procured by fraud, collusion or other unlawful means, or it is not supported by substantial evidence as judged from the administrative record made before the Commission.

B. Review of Examination. The Human Resources Department will be responsible for providing dates, times, and locations for members to sign up to review their examinations. Each fire fighter will be responsible for signing up for a specific time period to review his/her examination. The fire fighter will be permitted to stay beyond his/her scheduled time period, if needed, to complete his/her review and to write and submit an appeal. Copies of source materials will be provided for a fire fighter's use during this review period *only* if the fire fighter specifically requested the materials on the Sign Up form. During the period designated for the fire fighter to review his/her examination, the fire fighter may bring self-prepared materials such as notes, flash cards, or outlines. The only published materials a fire fighter may bring are the source materials upon which the examination was based.

Section 14. Review By Employee Review Committee.

A. Role of ERC. An Employee Review Committee (ERC) will be appointed to screen written examination appeals for the ranks of Fire Fighter through Battalion Chief to the Civil Service Commission, applying the criteria described in Section 11.A(5) of this Article to determine if any appeals should not be advanced to the Civil Service Commission because they do not meet the criteria.

B. Appointment of ERC Members. The ERC shall be comprised of five (5) members, as follows:

- (1) For promotional examinations for Specialist rank:
 - (a) Four (4) Specialists or higher rank, two (2) each appointed by the Association and the Fire Chief; and
 - (b) One (1) non-voting member appointed by the Human Resources Department.

- (2) For promotional examinations for Lieutenant rank:
 - (a) Four (4) Lieutenants or higher rank, two (2) each appointed by the Association and the Fire Chief; and
 - (b) One (1) non-voting member appointed by the Human Resources Department.
- (3) For promotional examinations for Captain rank:
 - (a) Four (4) Captains or higher rank, two (2) each appointed by the Association and the Fire Chief; and
 - (b) One (1) non-voting member appointed by the Human Resources Department.
- (4) For promotional examinations for Battalion Chief rank:
 - (a) Four (4) Battalion Chiefs or higher rank two (2) each appointed by the Association and the Fire Chief; and
 - (b) One (1) non-voting member appointed by the Human Resources Department.

C. Conflicts of Interest. To prevent conflicts of interest, a member of the ERC must not have a personal relationship or conflict of interest with any candidate whose appeal will come before them. The Fire Chief and the Association President shall appoint alternates to the ERC for each rank, who shall substitute for a member of the ERC who cannot review the appeal of a candidate because of a personal relationship or conflict of interest. The Fire Chief shall determine whether such a personal relationship or conflict exists. In a process established by the Human Resources Department, each candidate who has taken a written promotional examination may appear before the ERC and present information on each question appealed. Only source material may be used to support the candidate's appeal.

D. Decision on Appeals. Appeals may be denied advancement from the ERC to the Civil Service Commission by a vote of a simple majority of the voting members on the ERC. The ERC will make one of the following decisions:

- (1) The appeal meets the applicable criteria and should be passed on to the Civil Service Commission.
- (2) The appeal does not meet the applicable criteria and should not be passed on to the Civil Service Commission.

E. Appeal of Commission Decisions. There will be no state District Court appeal of the ERC's examination appeal determinations or from the Civil Service Commission's written examination appeal decisions, except an appeal alleging the City's failure to validate the written examination, fraud, collusion, or unlawful means.

F. Nothing in this article is to be construed as limiting a fire fighter's right to speak and present argument in support of or against an appeal that has been advanced to the Civil Service Commission.

DEMOTION AND REINSTATEMENT

Section 15. Demotions due to return from military leave of absence.

In accordance with the provisions of Local Government Code §143.072, when a fire fighter returns from a military leave of absence, is reinstated to active duty in the department and is restored to his/her former position, thus creating a surplus in his/her rank, the last person promoted to that rank will be demoted and placed on the reinstatement list for that rank.

Section 16. Reinstatement List.

A. Placement on List. Any person placed on the reinstatement list (and there shall be only one list for each rank) by virtue of demotion shall remain on the list indefinitely. This section shall apply to all demotions other than voluntary demotions and those made for discipline on civil service charges, which circumstances do not give rise to any right to be placed on a reinstatement list. Persons on the list shall be entitled to reinstatement in the reverse order of demotion. This results in last demoted first reinstated. Reinstatements must occur off of the reinstatement list before any promotions from a promotional eligibility list. Until such reinstatements occur and the reinstatement list is exhausted, there shall be no "vacancy" created for the purpose of any promotional eligibility list.

B. Promotional eligibility after reinstatement. Once reinstated, a fire fighter's eligibility for promotion shall be determined from cumulative time in rank, rather than continuous time in rank.

C. Special Pre-emption. This section alone shall control any right to reinstatement from a reinstatement list, and all provisions of Chapter 143 are preempted, whether or not expressly inconsistent with this provision.

Section 17. Vacancy Created by Extended Absence.

Notwithstanding any provision in this Article or any provision in Local Government Code Chapter 143, a continuous absence from duty for more than six (6) months because of illness, injury, or authorized leave, or an external internship shall create a vacancy, but shall not expand the size of the classified service. When the fire fighter whose absence created the vacancy returns to active duty, the last person promoted to that rank will be demoted, with such rights as are prescribed in Section 15 of this Article. Any prior continuous absence as defined herein shall resume as of the effective date of this Agreement.

OTHER PROVISIONS

Section 18. Duty to Bargain; Mutual Objectives.

Neither the City nor the Association concede or waive any legal positions or rights as to future bargaining cycles by bargaining and reaching agreement on this Article.

Section 19. Controlling Article/Pre-emption.

The Maintenance of Standards language of Article 24, Section 2 is inapplicable to promotions, which shall be governed solely by this Article and Chapter 143 as modified by this Article. Any provisions in Chapter 143 that are inconsistent with any provisions of this Article, including but not limited to any conflicting provisions of Subchapter B, are expressly modified and pre-empted by this Agreement.

Article 17

RECRUITING, HIRING & CADET TRAINING

Section 1. Application of Chapter 143 Processes

The Association, recognizing the City's need for flexibility in the hiring of Cadets for the Department's regular Training Academy program, hereby agrees to the deviations from Chapter 143 hiring procedures specifically authorized by this Article. The City recognizes the Association's need to uphold high professional standards by agreeing to a deviation in hiring while still seeking to select highly qualified candidates. The parties agree to a Cadet Training Standard which will ensure that those who graduate from the Cadet Training Academy have met or exceeded all the requirements of the training academy. Both parties agree that all these needs will be best met by hiring a third party vendor and allowing the flexibility to design a process intended to have a high degree of validity, a direct job relationship, and to seek highly qualified candidates while minimizing adverse impact in hiring.

Section 2. Recruiting

The Association, recognizing the value civilian recruiters can bring to the hiring process, hereby agrees the City may use civilian contractors and/or "non-civil service employees" to recruit applicants to the Fire Department. The City agrees that the use of civilian recruiters shall not cause a reduction in authorized force.

Section 3. Initial Hiring Process

A. Submission of Proper Application

(1) In order to be considered for the position of cadet, each applicant must first submit a proper application as reasonably defined by the Department. A proper application shall include, but not be limited to, information on personal history, criminal history, driving record and age. The information submitted shall be used by the Fire Department to determine whether the applicant meets the minimum qualifications to proceed to the testing phases of the process.

(2) The Fire Chief shall establish the eligibility and posting requirements for applicants for the position of fire cadet, which shall not be less than the requirements made in Local Government Code Sections 143.022 through 143.024.

(3) Any testing procedure ultimately used to create an eligibility list for beginning positions must be open to each person who makes a proper application in accordance with this Section.

B. Oversight Committee

(1) The purpose of the Oversight Committee (OC) is to identify the criteria (scope of work) to be used to select the third party vendor, and to assist the purchasing department in the development of the Request for Proposal (RFP). The OC will endeavor to reach consensus on a recommendation on the scope of work, the development of the RFP, and the selection of the vendor. The failure to reach consensus shall not be a grievable matter and shall not delay the selection process. The OC shall evaluate proposals (which may include interviewing applicants and checking references), and score proposals pursuant to purchasing department procedures which includes a recommendation for its choice of vendors to the Fire Chief. The Association may appoint two voting members to the OC. The remaining three voting members of the OC will be appointed by the Fire Chief and the Human Resources Department. The Human Resources Department may also add two additional non-voting members from persons and departments that regularly are a part of the RFP process. The third party vendor shall be a professional vendor who is not a current or former employee of the City of Austin,

(2) The third party vendor (once awarded), upon request of two or more members of the OC, will meet with them and discuss the methods used in developing the testing processes. The third party vendor, with the assistance of the Fire Chief, shall design a Hiring Process based on criteria described in this Article.

C. Screening and Testing of Applicants

(1) The Fire Chief, with the assistance of a third party vendor, will develop and implement the screening and testing procedures used to determine whether an applicant will be offered a position as a fire cadet in a fire academy class. The screening and testing procedures will include, at a minimum, a written cognitive test, an interview or assessment process, a physical ability test and a background investigation; and may include points for military service as determined by the third party vendor. Nothing in this Agreement or in Chapter 143 will restrict the nature of the tests administered to applicants, the procedures used to administer those tests, or the procedures used to determine the rank ordering system used to establish the eligibility list.

(2) The third party vendor shall certify that the hiring process followed the "Principles for the Validation and Use of Employees Selection Procedures" (SIOP). This certification shall serve as conclusive evidence of validity and compliance with these principles, in the absence of fraud, substantive integral compromise, or material manipulation.

(3) Once a hiring process has been identified, the City will provide the process to the Association prior to accepting applications for entry level fire cadets. The City agrees not to change the hiring process for that hiring cycle unless a court, the third party vendor, or the EEOC/TWC determines that the process outcome is unlawful under Title 7 or Chapter 21 of the Texas Labor Code.

(4) Applicants who successfully complete all of the screening and testing procedures will be placed on an eligibility list in the rank order determined from their composite score on all scored selection devices used in that hiring cycle. Applicants on the eligibility list may be offered a position as fire cadet in any upcoming Fire Academy class in rank order during the life of the eligibility list.

(5) Life of Eligibility Lists. Notwithstanding the provisions of Section 143.025, the life of each eligibility list created during the life of this Agreement will be designated a life of no less than twelve (12) months and not more than twenty-four (24) months from the date that the list is effective as a final eligibility list. The duration of the list shall be specified in the notice to submit applications. An eligibility list in existence on September 30, 2013 (the expiration date of this Agreement) may continue to be used until the latter of the following dates: (a) six months beyond the expiration date of this Agreement, or (b) the last day the parties remain in good faith negotiation of a successor Agreement without declaration of an impasse. Any applicant hired under a list in effect on the expiration date of this Agreement shall continue to be trained utilizing the training standards in this Article.

D. Lateral Entry.

(1) Applicability

The lateral entry process applies only to the hiring of certified fire fighters.

(2) Eligibility Requirements

(a) The Fire Chief shall establish the eligibility requirements for applicants for the lateral entry process. The requirements need not be the same as those established by Chapter 143 or those applicable to applicants for the position of Cadet in the Department's regular Training Academy. The requirements may be modified by the Fire Chief, but shall include at least the following:

(b) At the time of application, each applicant must have been actively employed as a structural fire fighter for one or more municipalities, ESDs, military or county fire departments within the two years prior to the date of application, and must have a total of at least three years of active service as a fire fighter for one or more municipalities, ESDs, military or county fire departments. Austin-Travis County EMS employees who have structural fire fighting certification and three or more year's prior experience with a fire department also qualify for the lateral entry program.

(c) Each applicant will be subject to a background investigation.

(3) Selection and Placement

(a) The Fire Chief shall use the selection criteria and procedures set out in Article 17, Section 3A-C to establish an eligibility list, except that the age limits of §143.023 shall not apply.

(b) Applicants who successfully complete all of the screening and testing procedures will be placed on an eligibility list in the rank order determined from their composite score on all scored selection devices used in that hiring cycle. Applicants on the eligibility list may be offered a position as fire cadet in any upcoming Fire Academy class in rank order during the life of the eligibility list.

(c) Notwithstanding the provisions of 143.025, the life of each eligibility list created during the life of this Agreement will be designated a life of no less than twelve (12) months and not more than twenty-four (24) months from the date that the list is effective as a final eligibility list. The duration of the list shall be specified in the notice to submit applications for lateral entry. A list in existence on September 30, 2013 (the expiration date of this Agreement) may continue to be used until the latter of the following dates: (a) six months beyond the expiration date of this Agreement, or (b) the last day the parties remain in good faith negotiation of a successor Agreement without declaration of an impasse. Any applicant hired under a list in effect on the expiration date of this Agreement shall continue to be trained utilizing the training standards in this Article.

(d) Upon hire, each lateral entry candidate must complete a modified training academy of not less than ten (10) weeks, as determined by the Chief.

(e) The probation period for lateral entry candidates is twelve months from the date of hire.

(f) Each lateral entry candidate must successfully complete all Training Standards established in this Agreement.

(4) Civil Service Status

Upon successful completion of the Modified Training Academy and probationary period, each fire fighter hired through this process shall immediately become a full-fledged Civil Service employee.

(5) Pay and Seniority

(a) The Fire Chief may determine the pay rate for each lateral entry hire during the Modified Training Academy. Upon completion of the Academy, the Fire Chief may determine the pay rate for each fire fighter hired through this lateral entry process. Any pay rate established by the Chief shall not exceed that of a fire fighter with two years' experience in the Austin Fire Department. Each lateral entry hire shall be placed in the rank of fire fighter.

(b) Regardless of the pay rate established for each lateral entry hire, seniority for purposes of longevity pay shall begin from the date of hire.

(6) Promotional Eligibility

Fire fighters hired through the lateral entry process must meet the same promotional eligibility requirements as Austin Fire Department fire fighters hired through the Department's regular initial hiring process.

(7) **Implementation**

The lateral entry process described by this Article may be used at any time, for any number of candidates, as authorized by the Fire Chief.

Section 4. Cadet Training,

A. Cadets.

Every applicant hired in accordance with this Article must attend an Austin Fire Department Training Academy. Every applicant selected for a Training Academy must successfully complete the training program established for that Academy.

B. Training Manual.

(1) The Fire Chief shall issue a Cadet Manual prior to the beginning of each Academy class. Subject to the Fire Chief's authority described in Section 4.E below, the provisions of the Cadet Manual shall be published and enforced as written.

(2) The Cadet Manual must include the following:

(a) academic and performance criteria no less stringent than those for Class 110, unless the third party vendor, a court, or the EEOC/TWC determines that the application of those standards are unlawful under Title 7 or Chapter 21 of the Texas Labor Code;

(b) minimum passing scores not less than 70%.

(c) the following rules for re-test opportunities:

(i) **Announced written tests:** A Cadet shall be permitted only one (1) re-test opportunity for each announced written test and shall not be permitted more than two (2) re-test opportunities for announced written tests during the entire Academy.

(ii) **Announced skill evaluations:** A Cadet shall be permitted only one (1) re-test opportunity for each announced skill evaluation and shall not be permitted more than five (5) re-test opportunities for announced skills evaluations during the entire Academy. All re-tests of announced skill evaluations will be videotaped.

(d) the composition and role of the Cadet Oversight Committee for the Training Academy to which the Manual applies. The Association will be entitled to have a non-participating observer attend Cadet Oversight Committee meetings unless prohibited by law or in the event of confidential privacy issues, as determined by the Chief. In the event the Cadet Oversight meeting occurs on short notice due to unforeseen circumstances, the Association's observer will be briefed as soon as possible. The observer will use ABL if scheduled to work and will not otherwise be compensated.

(e) definitions of the terms "announced written tests" and "announced skill evaluations."

C. Termination Recommendation for Test or Evaluation Failure

(1) The Cadet Oversight Committee or the Training Academy staff shall make a written detailed recommendation that the Fire Chief terminate the employment of a Cadet based on the Cadet's failure(s) of written test(s) or skill evaluation(s).

(2) The Fire Chief may review whether the conditions of the test or evaluation were set up properly and determine whether the test should be re-administered. The Fire Chief shall convene a Chief's Review Committee to assist him/her in reviewing information regarding the issue. The Association will be entitled to have a non-participating observer attend all Chief's Review Committee meetings, unless prohibited by law or in the event of confidential privacy issues, as determined by the Chief.

(3) If the Fire Chief determines a test should be re-administered, he/she shall provide written reasons to the Association President for his/her decision. The Association agrees to indemnify the City for any amounts awarded against the City due to a breach of confidentiality or release of this information that is demonstrated to be due to the Association's actions.

D. Extenuating Life Circumstances.

During a Training Academy, the Fire Chief shall have authority to consider extenuating life circumstances that may be related to a Cadet's failure of a written test(s) or skill evaluation(s). "Extenuating Life Circumstances" are events which are beyond the control of both the Cadet and the Training staff. If the Fire Chief finds that extenuating life circumstances justify an exception to the Cadet Training Manual, the Fire Chief may direct that the Cadet be retested. The Fire Chief shall notify the Association President, in writing, of his/her (the Chief's) decision and the extenuating life circumstances that justify his/her decision. The Association may challenge the Fire Chief's decision to retain the Cadet by filing a grievance in accordance with Article 20. In any arbitration resulting from the grievance, an arbitrator shall determine whether the extenuating life circumstances justified the Fire Chief's decision. If the arbitrator determines that the Fire Chief's decision was not justified, the arbitrator shall order that the Cadet's employment be terminated, even if the Cadet has graduated from the Academy and/or completed probation at the time of the order. The arbitrator's decision shall be final.

E. Actions by the Fire Chief.

(1) Once a hiring cycle has begun, the Fire Chief may update the Cadet Training Manual, at any time, to implement any criteria required by law, regulation, or industry standard such as the Texas Commission on Fire Protection, Texas Department of Health, American Heart Association, and the Office of the Medical Director or the National Registry of Emergency Medical Technicians.

(2) This Article shall not affect the Chief's existing authority to make determinations about cadets on issues of attendance, discipline, personality, suitability or other such matters not covered by the performance and academic standards established for each cadet class.

(3) This Article shall not affect the Chief's authority to make any determination concerning the continued employment of probationary fire fighters.

(4) No grievance or other remedy shall apply in the event of termination of a cadet by the Fire Chief.

(5) This agreement does not create any rights in continued employment for cadets, as third party beneficiaries or otherwise.

Section 5. Additional Provisions

A. Shared Goals

The Association and the City share the goals of recruiting and hiring the most qualified applicants to become Austin Fire Fighters while minimizing adverse impact in hiring. The Association acknowledges the degree of flexibility incorporated into this Article is of benefit to both parties in achieving their shared goals of hiring the most qualified applicants and minimizing adverse impact in hiring.

B. Indemnification/Defense of Actions.

(1) To the extent allowed by law, the City shall indemnify the Association and hold it harmless against any and all claims, demands, suits, or other forms of liability that may arise out of, or by reason of, any actions taken in compliance with this Article.

(2) The Association has entered into this Agreement in good faith and understands and agrees that the provisions of this Article are in compliance with the authority granted the parties under Chapter 174 of the Local Government Code that allows the City and the Association to mutually alter provisions of Chapter 143 of the Local Government Code. In the event that the provisions of this Article are challenged, the Association will file an amicus curiae brief supporting the City's ability to implement the provisions of this Article.

(3) In the event an applicant files an action against the City, or against the City and the Association on account of the operation of this Article, the City agrees to and is expressly authorized to represent the Association to jointly defend, on behalf of both parties, in mutual cooperation with the Association, the validity of this provision adopted by both parties, with counsel of the City's choice. This provision does not preclude the Association from retaining and designating its own defense counsel to participate. If both parties are sued and the Association does not retain its own counsel, the City is expressly authorized to represent the Association in such suit. The Association will not petition, support, cooperate with or otherwise assist any person, applicant, or member of the bargaining unit in any action, formal or informal, attacking the procedures in this Article. However, this does not preclude the Association from bringing or supporting a grievance for alleged violations of this Article.

C. Preemption

It is expressly understood and agreed that the provisions of this Article supersede the provisions of any State statute, executive order, local ordinance, Civil Service Commission Rule or other rules with which they conflict. This Article specifically preempts the provisions of Chapter 143 pertaining to the selection and hiring

of applicants for initial positions, including, but not limited to Sections 143.021 through 143.027, except as specifically provided herein to the contrary.

ARTICLE 18 INVESTIGATION & DISCIPLINARY ACTIONS

Part A. INVESTIGATIONS

Section 1. Definitions. In Part A of this Article, the following terms and phrases have these meanings:

A. "Complainant" means a person claiming to be the victim of misconduct by a fire fighter or any other individual who files a complaint regarding a fire fighter.

B. "Investigation" means an administrative investigation, conducted by the municipality, of alleged misconduct by a fire fighter that could result in disciplinary action against the fire fighter.

C. "Investigator" means any agent or employee of the municipality who is assigned to conduct an administrative investigation.

D. "Normally assigned working hours" includes those hours during which a fire fighter is actually at work or at the fire fighter's assigned place of work, but does not include any time when the fire fighter is off duty on authorized leave, including sick leave.

E. "Disciplinary action" means temporary disciplinary suspension, indefinite suspension, demotion in rank, or any combination of those actions.

Section 2. Interview of Subject Fire Fighter.

A. An investigator may interview a fire fighter who is the subject of an investigation only during the fire fighter's normally assigned working hours, unless:

- (1) the seriousness of the investigation, as determined by the Fire Chief, or designee, requires interview at another time; and
- (2) the fire fighter is compensated for the interview time on an overtime time basis.

B. The Fire Chief may not consider work time missed from regular duties by a fire fighter due to participation in the conduct of an investigation in determining whether to impose disciplinary action or in determining the severity of disciplinary action.

C. An investigator may not interview a fire fighter who is the subject of an investigation or conduct any part of the investigation at the fire fighter's home without the fire fighter's permission.

D. Not less than forty-eight (48) hours before an investigator begins the initial interview of a fire fighter who is the subject of an investigation, the investigator must inform the fire fighter in writing of the allegations in the complaint.

E. An investigator may not interview a fire fighter based on a complaint by a complainant who is not a fire fighter unless the complainant verifies the complaint in writing before a public officer who is authorized by law to take statements under oath. An investigator may interview a fire fighter about events or conduct reported by a witness who is not a complainant without disclosing the name of the witness. An interview may be based on a complaint from an anonymous complainant if the departmental employee receiving the anonymous complaint certifies in writing, under oath, that the complaint was anonymous. The provisions of this Subsection E do not apply to an on-the-scene investigation that occurs immediately after an incident being investigated, except that the fire fighter under investigation must be furnished, as soon as practicable, a written statement of the allegations in the complaint.

F. An interview session of a fire fighter who is the subject of an investigation may not be unreasonably long. In determining reasonableness, the gravity and complexity of the investigation must be considered. The investigator shall allow reasonable interruptions to permit the firefighter to attend to personal physical necessities.

G. An investigator may not threaten a fire fighter who is the subject of an investigation with disciplinary action during an interview. An investigator may inform a fire fighter that failure to answer truthfully reasonable questions directly related to the investigation or to cooperate fully in the conduct of the investigation may result in disciplinary action.

H. If prior notification of intent to record an interview is given to the other party, either the investigator or the fire fighter who is the subject of an interview may record the interview.

I. A fire fighter who is the subject of an investigation or administrative inquiry shall have the right to be represented by an attorney or Association representative of the fire fighter's choice during an interview. The attorney or representative cannot be a fire fighter who has any involvement with the matter under investigation, other than the fire fighter's role as representative of the fire fighter who is the subject of the investigation.

Section 3. Statements.

A. All recorded interviews of a fire fighter who is the subject of an investigation will be transcribed by the Professional Standards Office and signed by the fire fighter.

B. A fire fighter is entitled to a copy of his/her statement to the Professional Standards Office at the time when the statement is finalized and signed by the fire fighter.

but the statement remains confidential in the hands of the fire fighter and his/her attorney or representative, pursuant to 143.089(g), and any orders of non-communication about internal investigations, except for consultations with the fire fighter's legal counsel.

Section 4. Investigators.

A. A person may not be assigned to conduct an investigation if the person is the complainant, the ultimate decision-maker regarding disciplinary action, or a person who has any personal involvement regarding the alleged misconduct.

B. A fire fighter who is the subject of an investigation has the right to inquire and, on inquiry, to be informed of the identity of each investigator participating in an interview of the fire fighter.

Section 5. Polygraph Examinations.

A. A fire fighter may not be required to submit to a polygraph examination as part of an administrative investigation regarding the conduct of the fire fighter unless:

- (1) the complainant submits to and passes a polygraph examination; or
- (2) the fire fighter is ordered to take an examination under Subsection E below.

B. Subsection A above does not apply if the complainant is physically or mentally incapable of being polygraphed.

C. For the purposes of this Section, a fire fighter passes a polygraph examination if, in the opinion of the polygraph examiner, no deception is indicated in the examination regarding matters critical to the subject matter under investigation.

D. The results of a polygraph examination that relate to the complaint under investigation are not admissible in a proceeding before the Civil Service Commission or a Hearing Examiner.

E. The Fire Chief, or designee, may order a fire fighter to submit to a polygraph examination if the Fire Chief, or designee considers the circumstances to be extraordinary or believes that the integrity of a fire fighter or the Fire Department is in question.

Section 6. Violation of Fire Fighter Rights.

A violation of this Part of Article 18 may be considered by the Civil Service Commission or a Hearing Examiner during a disciplinary appeal hearing if the violation substantially impaired the fire fighter's ability to defend against the allegations of misconduct.

PART B. DISCIPLINARY ACTIONS.

Section 1. Alternative Discipline.

The Fire Chief shall have the authority to impose alternative disciplinary actions or enter into alternative discipline agreements under this Article when the Fire Chief determines that the use of alternative discipline is in the best interest of the Fire Department. Nothing in this Article shall diminish or otherwise affect the Fire Chief's authority to take other disciplinary actions under Chapter 143.

Section 2. Alternative Discipline by Fire Chief.

In considering appropriate disciplinary action, the Fire Chief may require that a fire fighter be evaluated by a qualified professional designated by the Fire Chief. If that professional recommends a program of counseling and/or rehabilitation for the fire fighter, the Fire Chief may, as an alternative to temporary or indefinite suspension, or in combination with a temporary suspension, require that the fire fighter successfully complete the recommended program. The program of counseling and/or rehabilitation will be completed on the fire fighter's own time, unless the Fire Chief approves the use of vacation time. The fire fighter shall be responsible for paying all costs of the program of counseling and/or rehabilitation which are not covered by the fire fighter's health insurance plan. If the fire fighter's misconduct involves alcohol and/or drug related behavior, the Fire Chief may require that the fire fighter submit to mandatory alcohol and/or drug testing, upon order by the Fire Chief, for a specified period of time. If, after entering the program of counseling and/or rehabilitation, the fire fighter fails or refuses to complete the program, the fire fighter may be indefinitely suspended. The fire fighter has the right to appeal to the Civil Service Commission or to a third-party hearing examiner any discipline imposed under this Section by filing an appeal notice in accordance with the provisions of Chapter 143. On appeal, the Civil Service Commission's or hearing examiner's authority shall be limited to determining the facts, whether the facts reflect a policy violation, and the appropriate length of suspension, if any. Neither the Commission nor a hearing examiner may substitute a program of counseling and/or rehabilitation different than the program imposed by the Fire Chief or to substitute any period of suspension for the required program of counseling and/or rehabilitation.

Section 3. Alternative Discipline by Agreement.

In considering appropriate disciplinary action, the Fire Chief may require that a fire fighter be evaluated by a qualified professional designated by the Fire Chief. If that professional recommends a program of counseling and/or rehabilitation for the fire fighter, the Fire Chief may, as an alternative to temporary or indefinite suspension, or in combination with a temporary suspension, offer the fire fighter the opportunity to enter into an alternative disciplinary agreement under which the fire fighter would accept a temporary suspension of up to ninety (90) days and agree to successfully complete the program of counseling and/or rehabilitation recommended by the qualified professional designated by the Fire Chief. The program of counseling and/or rehabilitation will be completed on the fire fighter's own time, unless the Fire Chief approves the use of vacation time. The fire fighter shall be responsible for paying all costs of the program of counseling and/or rehabilitation which are not covered by the fire fighter's health insurance plan. If the fire

fighter's misconduct involves alcohol and/or drug-related behavior, the Fire Chief may require that the fire fighter submit to mandatory alcohol and/or drug testing, upon order by the Fire Chief, for a specified period of time. If the fire fighter accepts the opportunity for agreed alternative discipline, the fire fighter may not appeal any terms of the agreement. If the fire fighter fails to successfully complete the program of counseling and/or rehabilitation, the fire fighter may be indefinitely suspended without right of appeal.

Section 4. Last Chance Probation Agreement.

In considering appropriate disciplinary action, the Fire Chief may require that a fire fighter be evaluated by a qualified professional designated by the Fire Chief. If that professional recommends a program of counseling and/or rehabilitation for the fire fighter, the Fire Chief may offer the fire fighter, as an alternative to indefinite suspension, the opportunity to enter into a "Last Chance Probation" agreement. The agreement may include the following provisions in addition to any other provisions agreed upon by the fire fighter and the Fire Chief.

(a) The fire fighter will successfully complete the program of counseling and/or rehabilitation recommended by the qualified professional designated by the Fire Chief.

(b) The program of counseling and/or rehabilitation will be completed on the fire fighter's own time, unless the Fire Chief approves the use of vacation time. The fire fighter shall be responsible for paying all costs of the program of counseling and/or rehabilitation which are not covered by the fire fighter's health insurance plan.

(c) The fire fighter will agree to a probationary period not to exceed one year, with the additional requirement that if, during the probationary period, the fire fighter commits the same or a similar act of misconduct, the fire fighter will be indefinitely suspended without right of appeal.

If the fire fighter's misconduct involves alcohol and/or drug-related behavior, the Fire Chief may require that the fire fighter submit to mandatory alcohol and/or drug testing, upon order by the Fire Chief, for a specified period of time. If the fire fighter accepts the opportunity for a "Last Chance Probation" agreement, the fire fighter may not appeal any terms of the agreement. If the fire fighter fails to successfully complete the agreed program, the fire fighter may be indefinitely suspended without right of appeal.

Section 5. Publishing Notice of Discipline.

The Fire Chief must publish and circulate within the Department a communication which informs fire fighters of disciplinary suspensions imposed by the Fire Chief or disciplinary suspensions agreed to by the Fire Chief and a fire fighter. The communication may include the fire fighter's rank; each policy or rule which was violated; any extenuating or mitigating circumstances; a brief factual description if the policy or rule violation is not self-explanatory; and the discipline imposed or agreed to by the fire fighter. The communication shall not identify the fire fighter by name.

Section 6. Extending Disciplinary Deadline by Agreement.

A. A fire fighter and the Chief, or his/her designee, may agree to extend the 180-day statutory deadline for disciplinary action for a period not to exceed thirty (30) days. Either the fire fighter or the Fire Chief may offer or request the extension. The agreement to extend the statutory deadline shall be in writing and shall be signed by both the fire fighter and the Chief, or his/her designee.

B. Any disciplinary action taken by the Fire Chief before the extended deadline shall be considered timely. An agreement to extend the deadline does not affect a fire fighter's right of appeal from the disciplinary action.

Section 7. Written Response to Disciplinary Action.

If a fire fighter is temporarily or indefinitely suspended, the document imposing the suspension may not be placed in the fire fighter's Civil Service Commission file unless the fire fighter is first given an opportunity to read and sign the document. If the fire fighter refuses to sign the document, it may be placed in the personnel file with a notation that the person refused to sign it. A fire fighter who receives a temporary or indefinite suspension and who elects not to appeal the action may file a written response by submitting a written response to the Director of Civil Service not later than the 10th day after the date the fire fighter is given written notice of the disciplinary action.

Section 8. Transfers Related to Discipline.

The Fire Chief retains all right and authority to direct the assignment or placement of fire fighters. If any fire fighter is transferred in relation to a disciplinary action, the Fire Chief shall make every attempt to place the transferred fire fighter in a vacant assignment. If a fire fighter, other than the fire fighter being disciplined, is displaced because of a transfer related to discipline, the Fire Chief will make every attempt to help the displaced individual move to a more desirable location, which may not necessarily be the location from which the disciplined fire fighter was moved.

Section 9. Use of Leave.

Any fire fighter who is suspended from duty for up to fifteen (15) days may request approval of the Fire Chief to use accrued vacation leave to cover all or part of the suspension. The Fire Chief may, in his/her or her sole discretion, determine whether to approve the fire fighter's request and the number of days' vacation leave that may be used. The fire fighter must request the use of vacation leave within ten (10) days after receipt of notice of the disciplinary suspension. By requesting the use of vacation leave to cover all or part of the suspension, the fire fighter waives all right to appeal the disciplinary suspension to the Civil Service Commission or a Hearing Examiner.

Section 10. Non-disciplinary corrective action.

A. This Section does not apply to non-disciplinary corrective actions issued by the Fire Chief.

B. Verbal counseling, written counseling, and written reprimands are not discipline, and are not subject to grievances or appeals as to the substance of the decisions