



Administrative Supervisory Professional & Technical Employees Association

ASPTEA FAIR REPRESENTATION AND LEGAL POLICY

Revised: 04/16/2020

Approved: 05/14/2020

General

To meet its duty of fair representation, the Administrative, Supervisory, Professional & Technical Employees Association (ASPTEA) Board of Directors has adopted the following policy:

As the duly elected and authorized employee association for City of Phoenix Administrative, Supervisory, Professional, and Technical employees (Unit 7), ASPTEA has the responsibility of representing unit members in employment matters.

In addition, ASPTEA members have access to the Association's legal resources provided by the Law Offices of Napier, Coury & Baillie, P.C., for other legal matters specifically outlined in this policy.

Any fees and all related expenses for legal representation on behalf of a unit member, which has been approved by the Representation Committee and/or the Board of Directors shall be borne by the Association. Non-members will not be given free legal representation.

Representation Committee

In accordance with the ASPTEA Constitution and By-Laws, the President shall appoint a standing Representation Committee that shall consist of the President, Vice President and Chief Representative.

A Representation Committee member will be assigned to assist on the unit member's behalf during periods of investigation or legal representation and will work closely with the organization's legal counsel. A member who accepts legal representation consents to disclosure of communication occurring between the attorney, the member, and the Association's Board of Directors. In exigent situations and with approval of the Representation Committee, a member may be represented by an Executive Board member other than a Representation Committee member.

The Representation Committee shall meet as needed to review member representation matters and determine a course of appropriate action. The committee will make monthly reports to the Board of Directors and at all general membership meetings. The Chief Representative will be responsible for compiling and presenting this report.

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 required. 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 ASPTEA's involvement in the case. The members' grievance or appeal will be deemed to have no merit and ASPTEA's involvement in the matter shall terminate. If a question of truthfulness arises, a Representation Committee meeting shall be called to determine whether representation will continue.

Non-Members

To be entitled to ASPTEA's legal representation benefits, unit members must be dues paying members at least one month prior to the occurrence of the incident or subject being investigated. Upon approval of the Representation Committee, Unit members will be represented by a Representation Committee member at-Grievance Committee only (except violations of the written agreement/contract) or other City processes.

With the approval of the Representation Committee, non-members may be referred to the ASPTEA attorney; however, a retainer by the attorneys will be required. The purpose of this policy is to prevent abuse of membership privileges by employees who join ASPTEA to obtain grievance or legal representation without previous financial support (dues) to the organization.

Notification Procedure

Any active member wishing to obtain representation, grievance or legal assistance from the Association's legal counsel, shall notify the ASPTEA office directly to establish eligibility and obtain approval. The Chief Representative, President or Vice President will assist eligible members with their incident.

Members with pending discipline matters shall not contact the Association's Attorney without prior authorization or approval from ASPTEA. Violation of this policy shall hold harmless the Association from any financial obligations or responsibility in relationship to the legal matter.

Continuation of Dues

Members who have obtained authorized representation for a grievance, appeal, or other legal action shall keep their dues current. Hardship cases may be brought before the Representation Committee which may elect to waive dues pending the disposition of the representation. The Board may require complete repayment of waived dues. A member in good standing may appeal this decision to the Board of Directors. This action shall be coordinated through the Representation Chairperson and Treasurer.

Grievances (AR 2.61)

An AR 2.61 grievance is a complaint by an employee concerning interpretation or application of rules and regulations governing personnel practices, departmental policies and work rules, working conditions, the ASPTEA written agreement, meet and discuss ordinance or alleged improper or unfair treatment of an employee, in which the complaint has not been resolved satisfactorily in an informal manner between the employee and his or her immediate supervisor.

It shall be the responsibility of the grievant to adhere to all time limits imposed under any grievance or appeal procedure. The initial time limit for filing an AR 2.61 grievance is 15 days from the time an employee becomes aware an infraction has occurred.

If, in the decision of the Representation Committee, a grievance has merit and seeks a proper remedy, the Association shall undertake representation of a unit member who requests assistance through the Association. The Association will represent all Unit 7 employees in enforcing the ASPTEA written agreement (contract). The Association may consult with its legal staff for guidance in grievance handling.

Civil Service Appeals

When an ASPTEA member receives a suspension, demotion or dismissal, upon the member's request, the Association will provide legal representation, subject to the procedures and conditions outlined below:

It is the responsibility of the member to contact the Association prior to or immediately after receiving a Discipline Notice. The Association shall not be obligated to represent a member who does not do so. The Representation Committee will schedule a meeting to hear a member's request for legal assistance. It is the member's responsibility to comply with all appeal time limits imposed under the City of Phoenix Personnel Rules. Civil Service appeals must be filed within 14 calendar days after receiving a Notice of Discipline. The Association will prepare Civil Service appeals on behalf of members.

The Representation Committee will examine the member's prior service record, culpability, actions or inactions, potential for performance improvement or rehabilitation, the member's candor or truthfulness with the Representation Committee, the accuracy of the investigation and discipline or separation notice, comparisons with similar cases, and the excessiveness of the discipline to determine whether or not the appeal has merit. The Committee may hear from any source it deems appropriate.

Should the Representation Committee deny legal representation, the member will be immediately advised of the reasons for the denial. If the member so desires, they will receive assistance in filing a letter of appeal with the Civil Service Board and guidance on how to appeal the Committee decision to ASPTEA Board of Directors.

Upon denial of legal representation, the member may appeal the Representation Committee's decision at the next regularly scheduled Board meeting. The member may

appear before the Board and present evidence. After considering the Committee's decision and any new evidence, the Board may alter the decision of the Committee and decide to underwrite representation, or it may decide to let the Committee's decision stand. The Board's decision is final.

The Board of Directors may, in its sole discretion, provide representation to appeal Civil Service Board decisions in accordance with this policy to State Court.

Civil Action

ASPTEA may, with approval of the Board of Directors, furnish an attorney to a member to file a civil suit, including a declaratory action to obtain court interpretation of statutes, when the outcome could potentially benefit the membership. When appropriate, the Board of Directors may support a member in a class action lawsuit, if the litigated issue affects the Association and the membership as a whole.

Damages awarded by a judgment shall go to the individual members. Attorney fees, when awarded, shall go to the Association's legal counsel. Litigation costs, when awarded, shall be used to reimburse the Association for its expenses related to the litigation.

Additional Coverage

Any additional legal coverage may be provided by ASPTEA if deemed appropriate by the Board of Directors, or, when an emergency exists, by the President, after consultation with the Association's legal advisor.

Exceptions

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

Policy Distribution

This policy shall be made available to current members and to every new member.

Law Offices of Napier, Coury & Baillie, P.C.

Napier, Coury & Baillie has been representing ASPTEA members since 1978. The firm is well known for their expertise in Labor Law and City of Phoenix employment. Our primary attorney with this firm is Eric R. Wilson.

Additional Legal Benefits

The following additional legal services are provided to ASPTEA members only:

Representation in disciplinary proceedings

Legal advice on any matter affecting employment

Estate Document Preparation - wills, living wills, and healthcare powers of attorney (extends to any family member)

Representation at 25% reduced contingency fee rate for personal injury and property damage claims (extends to any family member)

Free one-hour consultations and representation at discounted hourly rate on other legal matters handled by Napier, Coury & Baillie, P.C. (extends to any family member)

Note: The representation of individual association members in matters attendant to their employment relationship with the City of Phoenix is subject to approval by the ASPTEA Board.