

## GRIEVANCES (HANDLING OF ...)

A-CORP (90-2010) CM 2010/08/26	HUMAN RESOURCE MANAGEMENT AND DEVELOPMENT: REPORT ON THE MANAGEMENT GUIDELINES FOR THE HANDLING OF GRIEVANCES
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### RESOLVED:

1. **That** the contents of the report on the handling of grievances **BE NOTED**.
2. **That** the management guidelines in respect of the handling of grievances as outlined in the report **BE APPROVED**.

## **PURPOSE**

To develop management guidelines for the handling of grievances in the municipality.

## **POLICY STATEMENT**

It is a matter of policy that the handling of grievances should be viewed as a means through which employees are able to communicate their dissatisfaction with the manner in which they are been treated in organization. This places an obligation on management to seriously tackle the grievances of employees in a manner that genuinely seeks to attain a resolve of the issues so raised. The impact of the grievance process can be profound on the livelihood of the Council and should thus be afforded the respect it deserves. It is through acknowledging the impact of the process that each person in a supervisory function will ensure that the hearings are not mere gatherings with no impetus to the issues raised. The grievance hearing should be given as much importance as a disciplinary process is accorded.

## **BACKGROUND**

The handling of grievances in the Ekurhuleni Metropolitan Municipality has proved to be a challenge due to the lack of consistency in respect of the processes involved and manner in which decision of the grievance hearings are dealt. In this regard particular emphasis needs to be looked at in respect of the following key issues:

- The Role of the Labour Relations division in the hearing of grievances;
- The Role of management in the grievance process;
- The authority vested in the grievance processes;
- The implementation of grievance decisions.

The following guidelines will shed light on the above challenges and provide management with a working tool on the manner in which the grievances are to be handled. The guidelines are in line with the Grievance Procedure as outlined in the Main Collective Agreement Part C Section 5.

## **DISCUSSIONS**

### **ROLE OF LABOUR RELATIONS DIVISION IN THE GRIEVANCE PROCESSES**

The Labour Relations Division provides a critical role before, during and after the grievance hearing. The division is entrusted with the responsibility of ensuring that there is compliance with the Council's policies that relate to all matters impacting on the employer-employee relationship. In this regard the division has to ensure fairness, expeditious resolution of problems and management of conflict in the workplace. This role is ensured in the following manner:

#### **A. BEFORE THE GRIEVANCE HEARING**

The challenge starts with the manner in which grievances are submitted in the municipality. In this regard the following is procedure is proposed:

- That the aggrieved employee(s) submits the grievance in terms of clause 5.2 of the Grievance Procedure to his immediate supervisor;
- That the employee(s) submits a copy of the grievance to the nearest Labour Relations Office;

- That the immediate supervisor verifies that the Labour Relations office has received a copy of the grievance;
- The Labour Relations Division ascertains the nature of the grievance and the appropriate channel to handle same;
- The Labour Relations Division conducts research on the implications of the grievance on the Council's policies, resolutions and applicable collective agreements;
- The Labour Relations Division advises the immediate supervisor and the employee, where necessary, of the channel to be followed in dealing with the matter;
- The advice so given shall always be in writing and shall take into account previous processes that handled similar fact matters;

## **B. DURING THE GRIEVANCE HEARING**

At the grievance hearing the role of the Labour Relations Division has on occasion been regarded as been more of an observer status. This approach is fundamentally flawed as both the management and employee require assistance with respect to:

- The interpretation of policies, resolutions, and collective agreements;
- The availability of legislative imperatives governing the issue that gave rise to the grievance;
- The availability of previous internal decisions via grievances and/or managerial determinations on the matter;
- The availability of arbitration awards and court judgments that deal with a similar issue.

The above puts the Labour Relations Division in a key position to influence the trajectory of the grievance hearing. The outcome of the grievance hearing is thus vested in the advice that the Labour Relations Division brings to the process. It is thus imperative that the chairperson of the hearing seeks advice from the Labour Relations practitioner at the hearing on the implications of the above-mentioned issues on the grievance hearing. The Labour Relations practitioner at the hearing is thus charged with the responsibility of both protecting the Council's interests as well as ensuring that fairness prevails.

## **C. AFTER THE GRIEVANCE HEARING**

The decision taken at the grievance hearing inevitably requires implementation. In this regard Labour Relations needs to play both the role of the implementer and monitor. This requires the following steps to be taken:

- That the Labour Relations be consulted on the outcome of the grievance prior to the issuing of the outcome;
- That the Labour Relations Division has to ensure that the outcome is communicated to the employee (s);
- That the Labour Relations Division monitors the implementation of the outcome by having follow up visits/discussions with the employee and supervisor within a reasonable time period to ensure a prevention of the recurrence of the conflict situation;
- Monitor any dispute that may arise out of the non-resolution of the grievance and ensure that the Council is appropriately represented at the said dispute resolution process;

These steps will ensure that the interests of all parties to the grievance are protected.

## THE ROLE OF MANAGEMENT IN THE GRIEVANCE PROCESS

The source and core of any grievance is departmental in its very nature. This immediately calls upon the departmental management to take a pro-active and involved role in the handling of grievances stemming from within their departments.

This role requires the following from management:

- That management ensures that the grievance is properly received and acknowledged;
- That the grievance is properly recorded in the department's books;
- That the grievance has been appropriately submitted to Labour Relations;
- That the grievance is investigated and assessed on the merits;
- That the results of the investigation are communicated to Labour Relations in order to obtain advice on the viability of the investigation results;
- That the grievance hearing is arranged in consultation with Labour Relations;
- That at the hearing a genuine attempt is made to resolve the grievance;
- That at the hearing the policies and resolutions of the Council are respected and not contravened;
- That the outcome of the grievance is prepared in writing citing both the decision and reasons thereof;
- That the outcome is communicated to the affected employee(s);
- That, where necessary, appropriate post hearing processes are implemented, e.g. counselling in cases of conduct grievances and/or disciplinary measures;

**NB: THE GRIEVANCE SHALL NOT BE "PASSED-ON" TO THE NEXT LEVEL WITHOUT PROVIDING TANGIBLE REASONS WHY IT COULD NOT BE RESOLVED AT THE FIRST LEVEL. ALL GRIEVANCES SHALL ONLY REACH THE LEVEL OF THE CITY MANAGER UPON THE HEAD OF DEPARTMENT HAVING GENUINELY ATTEMPTED TO RESOLVE THE MATTER AND SUCH ATTEMPTS HAVING PROVEN TO BE FUTILE. THE LABOUR RELATIONS DIVISION SHALL SUBMIT SUPPORTING MOTIVATION FOR THE GRIEVANCE TO PROCEED TO THE LEVEL OF THE CITY MANAGER.**

## THE AUTHORITY VESTED IN THE GRIEVANCE PROCESS

The authority vested in the grievance process has come under scrutiny in a number of grievances. In this regards the following issues need to be clarified:

- Does the grievance chairperson have the authority to decide outside the policy framework of Council?
- Can a grievance hearing impact on the processing of a disciplinary process against an employee?

The grievance hearing chairperson is authorized to make decisions that are in line with the policies of Council. The chairperson is thus enjoined to ensure that the Council policies are implemented. The fact that the Grievance Procedure provides that the process has to ensure fairness does not mean the interests of Council and its policies have to be ignored by chairpersons of grievance hearings. It must be stated that the grievance chairperson's authority can only be exercised in relation to the policy that regulates the matter. Should the policy provide that the power to effect a particular benefit rests with a committee of Council and not a functionary, the chairperson of the hearing can only recommend that the matter be submitted to the relevant committee to make a determination on the matter. If the chairperson decides the matter and usurps the powers of the committee of Council, possible charges of misconduct may be investigated against that chairperson.

It must also be noted that on numerous occasions employees have attempted to divert attention from disciplinary processes by lodging grievances that relate to the disciplinary processes that have been instituted against them. The employee would then take the outcome of the grievance hearing and submit same to the disciplinary tribunal. This then weakens the case of the Council in the tribunal.

This conduct should be totally disallowed. No grievance hearing should be used to subvert a disciplinary process. No chairperson of a grievance hearing has authority to make a determination on any matter that is before a Disciplinary Tribunal.

The decision of the chairperson in instances where no power is vested in him/her to make a determination is reviewable at the instance of the Director Labour Relations submitting the appropriate report to the City Manager and the relevant committee of Council that is empowered to make the determination. The review of the decision of chairperson would thus render the grievance unresolved and the affected employee would have to take the requisite steps to have the matter resolved as provided for in the requisite policy, collective agreement and/or legislation.

## **THE IMPLEMENTATION OF GRIEVANCE DECISIONS**

It has to be ascertained from the outset that grievance decisions are implemented in the final analysis. The implementation of grievance decisions has been taken to be a challenge that employees raise at the level of disputes in the Bargaining Council (SALGBC). The most common derivative in this challenge is that decisions get taken without the implementation challenges been factored into the decision making process. This invariably results in employees been frustrated and resorting to the alternative dispute resolution mechanisms of the SALGBC.

The bulk of grievances in the municipality relate to policy matters as opposed to conduct of personnel. The implementation processes in respect of the two categories of grievances would thus differ.

### **A. POLICY MATTERS**

The grievances that relate to policy matters are highly dependent on the dispute resolution mechanism that is provided for in the policy in question. It is thus imperative that cognizance be taken of these provisions when the decision is been made. Non-deference to the policy provisions results in the implementation log jams that are encountered post the hearing.

The policies of Council always vest specific authority on various committees of Council and functionaries in the administration. The outcomes of grievance hearings in this regard would thus be regulated as follows:

- The chairperson, with the assistance of Labour Relations, issues the outcome to the relevant employee and department;
- The Labour Relations Division writes an implementation letter to the relevant functionary who is delegated to implement the policy provisions which were the source of the grievance;
- The Labour Relations Division ensures that, where applicable, the required report is submitted by the relevant functionary as per the provisions of the applicable policy;
- The resolution of the report is communicated to the affected employee by the Labour Relations Division.

At all material times the provisions of the Council policy have to be maintained and no digression would be allowed as same would effectively amend or otherwise rescind a Council resolution since all policies of Council are in essence Council resolutions. It must also be noted that the grievance process may highlight gaps that may exist in the Council policy and these would have to be plugged by ensuring that the requisite report to amend or enhance the policy is submitted to the relevant committees of Council.

## **B. CONDUCT MATTERS**

The grievances that relate to the conduct of employees have to be handled with due circumspection as these types of grievances are emotive in their nature. The implementation of the grievance outcome in these circumstances would involve the following:

- That a disciplinary enquiry be held to deal with the misconduct of the employee concerned;
- That the employee be subjected to a process of counselling for the problem that gave rise to the grievance;
- That a process of reconciling the employees concerned be entered into;

It is thus imperative that the nature of the conduct be appropriately determined in order to ensure that a fair and justifiable outcome is given.