

GRIEVANCE AND DISCIPLINARY PROCEDURES

at the

LOCAL GOVERNMENT LEVEL

by

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DISSERTATION

Submitted in part fulfilment of the requirements for the degree of M. Admin in the Department of Public Administration in the Faculty of Commerce at the University of Durban-Westville.

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DATE SUBMITTED : JULY 1992

DEDICATION

TO MY LATE DAD, MR JHOONOLALL BHOJDUTH MAHARAJ,
IN LOVING AFFECTION AND ADMIRATION.



"As long as I live, so long do I learn"

- SRI RAMAKRISHNA

ACKNOWLEDGEMENTS

First and foremost, all praise is due to God Almighty, for providing me with the knowledge, insight and ability to complete this task.

Several individuals and institutions have assisted directly and indirectly in the development and completion of this dissertation.

Firstly, I express my sincere appreciation to my supervisor, Dr D Sing, for his encouragement, guidance, sound knowledge, valuable suggestions and ready assistance.

A debt of gratitude is owed to my joint supervisor, Mr S Moodley, for his guidance, encouragement and prompt assistance so readily provided to me during the course of my studies.

I am also indebted to the following to whom I extend my sincere appreciation :

- The town clerks of the numerous South African municipal authorities and in particular the municipal authorities of Boksburg, Cape Town, Durban, East London, Johannesburg, Kimberley, Pietermaritzburg, Port Elizabeth, Pretoria, Tembisa and Verwoerdburg.
- The municipal personnel of the various South African municipal authorities who responded to my questionnaires.

- Mr L Harper, senior industrial relations officer of the Durban City Council, and Mr N Murugan, of the Democratic Integrated Municipal Employees Society, for their assistance and response to my interviews.
- Mrs K Naicker, for kindly typing the entire dissertation.
- Mr Rollo Sookrajh, of the Department of Geography, for his advice, patience and painstaking effort in completing the figures used in this dissertation.
- Dr PS Reddy, for providing his valuable library services and his words of encouragement.
- Mr Logan Rangasamy, for his able assistance and advice.

I am also grateful to the following members of my family for their help and support.

- My husband, Ashok, for his love, patience and support during my years of study.
- My mum and late dad for instilling in me the inspiration, perseverance and motivation to study.
- To my brother, Gajen, and sisters, Danisha and Janita, for their loving concern and words of encouragement and support.
- To the others, whom I may inadvertently missed out, thank you.

The grant made available by the Human Sciences Research Council is hereby acknowledged.

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SYNOPSIS

GRIEVANCE AND DISCIPLINARY PROCEDURES AT THE
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In this dissertation a study is undertaken of grievance and disciplinary procedures implemented in municipal authorities in South Africa.

The unitary system of government in South Africa is characterised by three tiers of government, namely central, regional and municipal levels. Municipal authorities are subordinate to the central and regional authorities. Their principal function is to provide essential services to the community as efficiently and effectively as possible. As society is becoming more advanced and complex, communities require more and improved municipal services. Municipal authorities must, therefore, ensure that their limited human resources are utilised as effectively and efficiently as possible to achieve an acceptable quality of life for the

municipal community. Therefore municipal personnel administration plays a crucial role in contributing to the welfare of the municipal community. Within this context labour relations have had an increasingly important impact on the personnel provision and utilisation function. Personnel utilisation at the municipal level of government is of paramount importance to ensure the achievement of the goals of municipal authorities. Various activities and procedures must be implemented to promote a healthy working relationship between municipal employers and employees.

Among these activities are personnel provision functions, support functions, training and development functions and personnel utilisation functions. Grievance procedures are a component of the support function whilst disciplinary procedures are a part of the personnel utilisation function. Grievance and disciplinary procedures play a pivotal role in promoting harmony in the workplace.

In view of the aforementioned, this study investigates the implementation of grievance and disciplinary procedures within South African municipal authorities. The research was necessitated by the fact that 15% of total public sector employment is concentrated in local government. Furthermore, very little research has been undertaken on grievance and disciplinary procedures as activities within municipal personnel administration.

Municipal functionaries must take cognisance of the fact that all functions in regard to grievance and disciplinary procedures must be performed in terms of the generic administrative and managerial processes of

policy-making, organising, financing, staffing, determining procedures and exercising control. They must also bear in mind the normative guidelines which have implications for employer/employee relations in general, and grievance and disciplinary procedures in particular, namely, deference to labour rights, respect for human rights, fairness and reasonableness, requirements of administrative law and the maintenance of public accountability.

The study undertaken on grievance and disciplinary procedures at local government level is viewed from a theoretical and operational perspective as follows :

- grievance and disciplinary procedures and municipal personnel administration;
- theoretical aspects of grievance procedures;
- grievance procedures at South African municipal authorities : operational perspectives;
- theoretical aspects of disciplinary procedures; and
- disciplinary procedures at South African municipal authorities : operational perspectives.

The grievance and disciplinary procedures at the municipal authorities studied, are primarily viewed within an administrative frame of reference. Particular attention is focussed on legislative measures and policy directives, organising, financing, staffing, determining procedures and exercising control. The im-

portance and use of fair, just and consistent grievance and disciplinary procedures is stressed.

In the light of the aforementioned, the following recommendations are made :

- (i) that municipal councils and high-ranking municipal officials give due regard to the importance of employer/employee relations within the context of municipal personnel administration;
- (ii) the review of grievance and disciplinary procedures within an administrative framework with particular attention to :
 - legislative measures;
 - policy directives;
 - organising;
 - financing;
 - staffing;
 - determining procedures; and
 - exercising control.
- (iii) line supervisors must undergo training in dealing with grievance and disciplinary procedures;
- (iv) employees must be given the right to be accompanied by employee representatives to grievance and disciplinary proceedings; and
- (v) employer/employee relations training programmes should be conducted for super-

visors and employees by the labour relations section of municipal authorities.

CHAPTER ONE

INTRODUCTION

1 STUDY PLAN

The study plan hereunder sets out the approach, method of study and terminology used in this dissertation.

1.1 Approach

Municipal administration is a specialised branch of public administration found at the municipal or local tier of government. The primary objective of municipal administration is the provision of essential goods and services to meet the needs of local communities. To expedite the attainment of the objective of municipal administration, the latter may be divided into several sub-fields of activity. Of particular relevance to this dissertation is municipal personnel administration.

Grievance and disciplinary procedures fall within the ambit of municipal personnel administration. They are essential components of the functional activities of municipal personnel administration which contribute to the effective and efficient achievement of municipal

goals. The generic administrative and managerial functions, the functional activities, auxiliary and instrumental activities must be executed and co-ordinated to achieve the fundamental goal of grievance and disciplinary procedures, which is to ensure harmonious employer-employee relations at the municipal level of government.

Within the total municipal context, this may be considered to be a sub-goal which with other sub-goals collectively contributes to the efficient and effective achievement of the primary municipal objective, namely, promotion of municipal community welfare.

Employer/employee relations has become a focal point of discussion in recent times in South Africa. Up to 1979 the legislated policy as embodied in the Labour Relations Act 28 of 1956, was characterised by a dualistic system of employer/employee representation, namely one for White, Coloured and Indian workers, and another for Black workers. The implementation of the new system after 1979, through the Labour Relations Act of 1956, as amended, engendered new developments in employer/employee relations in South Africa.

Although the Labour Relations Act generally regulates employer/employee relations in South Africa, however, the core provisions do not apply to all public sector institutions, for example, the Public Service is barred from using employer/employee mechanisms such as industrial councils, conciliation boards and the industrial courts. Local authorities are the only public sector institutions which are extensively regulated by the Labour Relations Act 28 of 1956.

There are approximately 10,86 million economically active people in South Africa. The public sector employs approximately 1,6 million people representing 14,7% of the economically active population in South Africa. Local government personnel constitutes 15% of the economically active people in the public sector (Race Relations Survey 1989-1990 : 623). Hence, conditions of service for local government personnel cannot be viewed lightly.

Leading labour experts advocate that the Labour Relations Act 28 of 1956 enables formal negotiation between employer and employee, and, significantly, that grievance and disciplinary procedures must be negotiated as an integral component of the conditions of service (Sing & Penceliah 1989 : 30). These procedures

must serve as instruments in solving labour relations problems such as unfair labour practices (Sing & Penceliah 1989 : 30).

According to the Labour Relations Amendment Act 83 of 1988, unfair labour practice denotes any act or omission which in an unfair manner infringes or impairs the labour relations between an employer and employee. The Industrial Court has indicated that the failure or refusal to discuss, negotiate and introduce a disciplinary and grievance procedure in circumstances where a trade union has approached the employer with such a request may constitute an unfair labour practice (Sing & Penceliah 1989 : 31).

With the introduction of the concept of unfair labour practice, fairness in dismissal of an employee and the handling of grievances is now of utmost importance. The employer can no longer rely solely on his rights in law but is required to ensure that he adheres to fair and proper procedures in dealing with employee discipline and grievances.

Bendeman work
Research in local government has todate prominently focused on the fields of financing, housing and training of municipal personnel. However, very little atten-

tion has been devoted to employer-employee relations in the public sector. Consequently, this research has been undertaken to provide valuable insight into the field of grievance and disciplinary procedures within the South African context. It is against this background that the investigation on grievance and disciplinary procedures at South African municipal authorities was carried out.

The following areas form the basis of the study:

(a) Grievance and disciplinary procedures and municipal personnel administration highlighting, inter alia:

- municipal administration;
- municipal personnel administration;
- grievance and disciplinary procedures within the context of municipal personnel administration;
- legislative measures and policy directives for grievance and disciplinary procedures; and

- normative factors of municipal personnel administration.
- (b) theoretical aspects of grievance procedures stressing:
- definitions of grievances;
 - nature and causes of grievances;
 - nature and content of grievance procedures; and
 - employer/employee interaction in grievance procedures.
- (c) grievance procedures at South African municipal authorities : operational perspectives.
- (d) theoretical aspects of disciplinary procedures emphasising:
- objectives of discipline;
 - types of discipline problems;
 - approaches to maintaining discipline; and
 - nature and scope of disciplinary procedures.

- (e) disciplinary procedures at South African municipal authorities : operational perspectives.

The five chapters, apart from introduction and conclusion, set out the following areas of the study:

- chapter two provides the theoretical aspects of municipal administration, municipal personnel administration and grievance and disciplinary procedures;
- chapters three and five provide theoretical perspectives on grievance and disciplinary procedures respectively; and
- chapters four and six explain the operational aspects of grievance and disciplinary procedures within an administrative frame of reference.

1.2 Chapter Two

Municipal administration is one of the specialised branches of public administration. It is emphasised that the specialised branches of public administration reflect large measures of similarity because all administrative processes comprise fundamentally of the

six main groups, namely, policy-making, organising, financing, staffing, determining procedures and exercising control. Municipal personnel administration is a sub-field of municipal administration and grievance and disciplinary procedures in turn are component activities of municipal personnel administration. These specialised fields use the six generic administrative and management processes of public administration in achieving their functional objectives. These activities contribute to the goal of municipal community welfare.

This chapter focuses on the relationship between municipal administration and municipal personnel administration and grievance and disciplinary procedures within the context of municipal personnel administration. The emphasis is on municipal personnel administration as this area encompasses grievance and disciplinary procedures. The legislative measures and policy directives, as contained in the Labour Relations Act 28 of 1956 for grievance and disciplinary procedures are highlighted, together with the normative factors that are considered relevant to this field of study.

1.3 Chapter Three

The primary function of municipal authorities is to promote community welfare by providing both general community services, such as roads, transport and health and basic municipal services such as water, electricity and sewerage in an efficient and effective manner and at the lowest possible cost to the ratepayer.

The achievement of municipal goals, therefore, depends on, inter alia, the provision of support, training and development and utilisation of personnel. The provision of support functions such as grievance procedures will promote the well-being of municipal employees. In light of the above, this chapter gives prominence to :

- definitions of grievances;
- nature and causes of grievances;
- nature and content of grievance procedures; and
- employer-employee interaction in grievance procedures.

1.4 Chapter Four

In this chapter the operational aspects of grievance procedures at South African municipalities is viewed

within an administrative framework. Particular attention is focused on the following :

- legislative measures and policy directives;
- organising;
- financing;
- staffing;
- determining procedures; and
- exercising control.

1.5 Chapter Five

In order to achieve the goals of municipal authorities, namely, the promotion of the municipal community welfare, municipal personnel must be utilised effectively. One of the components of the personnel utilisation function is the establishment and implementation of disciplinary procedures.

In this chapter a theoretical perspective is provided on disciplinary procedures. The aspects discussed include :

- defining discipline;
- objectives of discipline;
- types of discipline problems;

- approaches to maintaining discipline; and
- nature and scope of disciplinary procedures.

1.6 Chapter Six

This chapter discusses the operational aspects of disciplinary procedures in South African municipalities within an administrative framework as follows :

- legislative measures and policy directives;
- organising;
- financing;
- staffing;
- determining procedures; and
- exercising control.

2 METHOD OF STUDY

As indicated in the bibliography, a number of books, journals, periodicals, reports and official documents that have a bearing on municipal personnel administration and particularly grievance and disciplinary procedures were consulted to complete this dissertation.

Acts, ordinances, by-laws, regulations and other relevant official documentation on municipal personnel

administration, and particularly those aspects relating to grievance and disciplinary procedures were studied. The above documentation served as the primary source of information.

Structured interviews were held with high-ranking municipal personnel functionaries and trade union leaders.

In order to comprehend the subject from a national perspective structured questionnaires (see annexure 1) were sent to numerous municipal authorities within the country. However, this document was used mainly to collect information in an area where there is a dearth of literature. Thus it served as a supplementary source of information.

2.1 Limitations of the study

There is little doubt that there will always be limitations in a research undertaking of this nature. Some primary concerns in this regard are :

- the questionnaires which were intended to gather information on the operational aspects of grievance and disciplinary procedures were poorly

received by certain municipal authorities. A primary reason advanced in this regard was that the grievance and disciplinary procedures were of a confidential and sensitive nature, and therefore, could not be divulged.

- questionnaires were poorly completed, with vital gaps in information.
- questions relating to the following aspects were not adequately answered :
 - . data on annual grievance and disciplinary cases handled; and
 - . ways to improve grievance and disciplinary procedures.
- the major established municipal authorities of Boksburg, Cape Town, Durban, East London, Johannesburg, Kimberley, Pietermaritzburg, Port Elizabeth, Pretoria, Tembisa and Verwoerdburg provided the best inputs in regard to grievance and disciplinary procedures;

- Of the black municipal authorities, only Tembisa City Council responded;
- only one prominent Indian municipal authority in Natal, namely, Isipingo, responded.

3 TERMINOLOGY

The author has endeavoured to maintain the use of current terminology in this dissertation. However, to obviate the multiplicity of meanings, either direct or implied, the clarification of the following key terms is considered necessary.

Municipal Government

The term 'municipal government' is generally used to refer to a decentralised representative institution with powers that have been devolved upon it and delegated to it by the central or regional authority and for which it is responsible to exercise within a demarcated geographical area in the state (Vosloo, Kotze and Jeppe 1974 : 10). Hence, 'municipal government' refers to the governing of defined parts of a country such as, inter alia, towns and cities. For purposes of uniformity, the terms 'local' and

'municipal' are used interchangeably in this dissertation.

Municipal Authorities

The term 'municipal authorities' are statutory bodies which are constituent parts of local government and are responsible for the determination and execution of local public programmes (Speed undated : 1). These bodies derive their authority from a higher source, (such as a central or regional (provincial) authority) and are bound by the terms and conditions by which they are created (Speed undated : 1). To prevent any misunderstanding and to ensure uniformity, the terms 'municipal authorities' and 'local authorities' have been used interchangeably.

Municipality

A 'municipality' is a defined geographical area which has a governing body created and vested with authority and power and is a term often used to cover cities, boroughs, towns and villages (Colliers Encyclopedia Vol. 16 1973 : 703).

Public Service, public sector

The Public Service refers to all departments and administrations (including own affairs departments and provincial administrations) as listed in the Public Service Act, 1984 (Commission for Administration Annual Report 1987 : 19). Municipal authorities are not part of the Public Service.

The public sector includes the departments and administrations of the Public Service, parastatal institutions, public services of the self-governing National States, municipal authorities, agricultural control boards and public corporations (Commission for Administration Annual Report 1987 : 19).

Administrative functions, activities, processes

Public administration consists of various administrative functions namely, policy-making, organising, financing, staffing, determining procedures and exercising control (Cloete 1985 : 1). For the purposes of this study the terms administrative functions, activities and processes are used interchangeably.

Management

For the purpose of this study, the term 'management' refers to:

- functionaries who hold posts in the higher echelons of the institution, for example line supervisors, heads of department and personnel managers; or

- the functions or activities that constitute a part of public administration, for example, leading, motivating, conflict resolution and reporting.

Community Welfare; General Welfare; Improved Quality of Life

These aforementioned aspects relate to the goal of public administration. Public institutions are usually established to promote the general welfare of society. This is attained by ensuring the greatest measure of spiritual and material well-being for the citizens (Cloete 1981 : 55).

Legislators and public functionaries, including municipal officials, must ensure that all their actions are aimed at promotion of the general welfare of the

citizenry, and the needs and desires of the public are accommodated. Furthermore, all actions of public functionaries must be morally acceptable and aimed at improving the quality of life of communities (Hanekom & Bain (1991 : 46)).

Employer/employee relations

The term 'employer/employee relations' is used to describe the complex relations between and among the employer and employee which develop in the working environment.

Labour relations

A study of the term 'labour relations' reveals numerous definitions formulated from a singular or multidisciplinary approach. For the purpose of this study, 'labour relations' may be defined as :

"... a multi-dimensional complex of relationships existing in and arising out of the work situation in an organisational context within the parameters of a socio-economic ideology determined by the state" (Poolman 1985 : 31).

In other words, labour relations refers to the complex relationship between employers and employees within the working environment as well as relationships that develop because of the nature of the working relationship. Such relations are bounded by, inter alia, the social and economic policies of the government.

For the purposes of this study, the terms "employer/employee relations" and "labour relations" are used interchangeably.

Grievance and disciplinary procedures

In this dissertation grievance and disciplinary procedures are described as functional activities of municipal personnel administration. Grievance procedures are the mechanisms which employees may use to redress their grievances. Disciplinary procedures are the mechanisms which employers apply to correct or improve employees' behaviour and work performance. Both these activities take place within the work environment.

Gender

For the purposes of grammatical classification the pronoun 'he' is used in a neuter sense to refer to both sexes.

CHAPTER TWOGRIEVANCE AND DISCIPLINARY PROCEDURES AND MUNICIPAL PERSONNEL ADMINISTRATION1 INTRODUCTION

Public administration is a comprehensive term used to explain the nature of activities executed by public institutions to achieve public goals resulting in an improved quality of life for the community as a whole.

Public administration comprises of various specialised sub-fields, such as (Cloete 1991 : 51) :

- international administration;
- central or national administration;
- regional or provincial administration; and
- local or municipal administration.

Municipal administration is one of the specialised branches of public administration (Cloete 1991 : 51). Consequently, the functions carried out in municipal administration will be very similar to those in public administration. Therefore, the generic administrative and managerial functions, the functional, auxiliary and instrumental activities which apply to public administration will also apply to municipal administration (Cloete 1991 : 51). Municipal administration may

be divided into specific sub-fields such as:

- personnel administration; and
- financial administration.

Municipal personnel administration as a specific field of activity may also be categorised into specialised fields, for example (Cloete 1985 : 8) :

- support functions, of which grievance procedures is an example, and
- personnel utilisation functions, of which implementation of disciplinary procedures is an example.

These functions are executed to achieve the goal of municipal personnel administration, namely, the promotion of the well-being of the municipal employee, which directly contributes to the primary goal of municipal administration, which is to improve the quality of the lives of the citizenry.

In meeting the objectives and goals of these activities the execution of the generic administrative and managerial processes, the functional, auxiliary and instrumental activities must also be undertaken with due

regard to the specific normative guidelines of public administration (Cloete 1991 : 56).

This chapter mainly focuses on:

- grievance and disciplinary procedures within the context of municipal personnel administration;
- legislative measures and policy directives for grievance and disciplinary procedures; and
- normative factors and grievance and disciplinary procedures.

The initial part of this chapter provides an overview of municipal administration.

2 MUNICIPAL ADMINISTRATION

In order to understand municipal administration it is necessary first to reflect on the term "municipal".

According to Craythorne (1990 : 53) "municipal" has the meaning of relating to a town or city, and has as its root, the Latin word, municipium, which meant a town in Italy, the inhabitants of which had the Roman citizenship but were governed by their own magistrates and

laws, i.e. a free town.

A municipality in English and American law is any subordinate public authority that is created and vested with authority and power and is a term which covers cities, villages, towns and boroughs and will also include counties and special districts (Colliers Encyclopaedia, vol.16 1973 : 703).

It may be concluded, that "municipal" pertains to a town or city having a governing authority.

Municipal administration, as indicated earlier, is a specialised branch of public administration found at the municipal or local level of government. Factors within the local environment greatly influence the field of municipal administration (Adlem & Du Pisani 1982 : 101). These factors provide for the implementation and expression of municipal administration as an activity.

The factors which affect municipal administration in two specific environments are as follows (Adlem & Du Pisani 1982 : 101) :

- (i) External municipal environment : which is influenced by such factors as, inter alia, constitu-

tional, statutory, economical, social, historical, cultural and spatial factors; and

- (ii) Internal municipal environment : which comprises of municipal councillors and officials who work subject to specific rules and regulations, which provides the basic infrastructure within which they operate.

Furthermore, municipal administration is influenced by the local political process. Such a process involves various groups, inter alia, voters, political parties and pressure and interest groups (Adlem & Du Pisani 1982 : 101). These groups engage in activities aimed at promoting the welfare of the municipal community.

In order to attain the goal of municipal administration, namely, the promotion of welfare of the municipal community, specialised component activities such as, inter alia, municipal personnel administration and municipal financial administration must be undertaken. Each of these fields require that the generic administrative processes should be adapted to its unique environment.

The attainment of all municipal goals has implications for municipal personnel. Therefore, it is necessary to

highlight the importance of municipal personnel administration within the context of municipal administration.

3 MUNICIPAL PERSONNEL ADMINISTRATION

Municipal personnel administration is one of the primary components of municipal administration. Without human resources, it is not possible for the municipal authority to render the necessary goods and services for the proper government and administration of the municipality. Mukhopadhyay (1985 : 1) aptly emphasises the importance of municipal personnel as follows :

"At no level of government is the need of injecting manpower with necessary training and higher degree of sensitivity to public needs felt more acutely. Being a service-oriented organisation municipal bodies are to depend heavily on the competence and devotion of their staff in the performance of their tasks."

Craythorne (1990 : 272) asserts that personnel administration is a vital activity, and if done effectively and efficiently contributes significantly to the existence of a healthy organisation.

According to the Central Statistics Service, the total number of people employed in the public sector up to June 1989 was 1 681 525 (Race Relations Survey 1989-

1990 : 623). Table 1 reflects personnel employment as a percentage in the various sections of the public sector. It may be seen that the personnel employed by municipal authorities represents 15% of total public sector employment. Furthermore, municipal employees account for 2,32 percent of the economically active population in South Africa (Race Relations Survey 1989-1990 : 623).

It seems logical then, that the provision and utilisation of personnel constitutes a major concern of municipal authorities.

Municipal personnel administration is a specific field of activity and within itself are several component activities. The activities and functionaries involved in the execution of municipal personnel administration may be seen in terms of a conceptual framework depicted in Figure 1.

From Figure 1 it is evident that municipal personnel administration consists of the generic administrative and management activities, functional, auxiliary and instrumental activities. These activities are interdependent, inter-related and mutually inclusive (Cloete 1991 : 50). For example, if a municipal authority wants to provide a functional activity of implementing

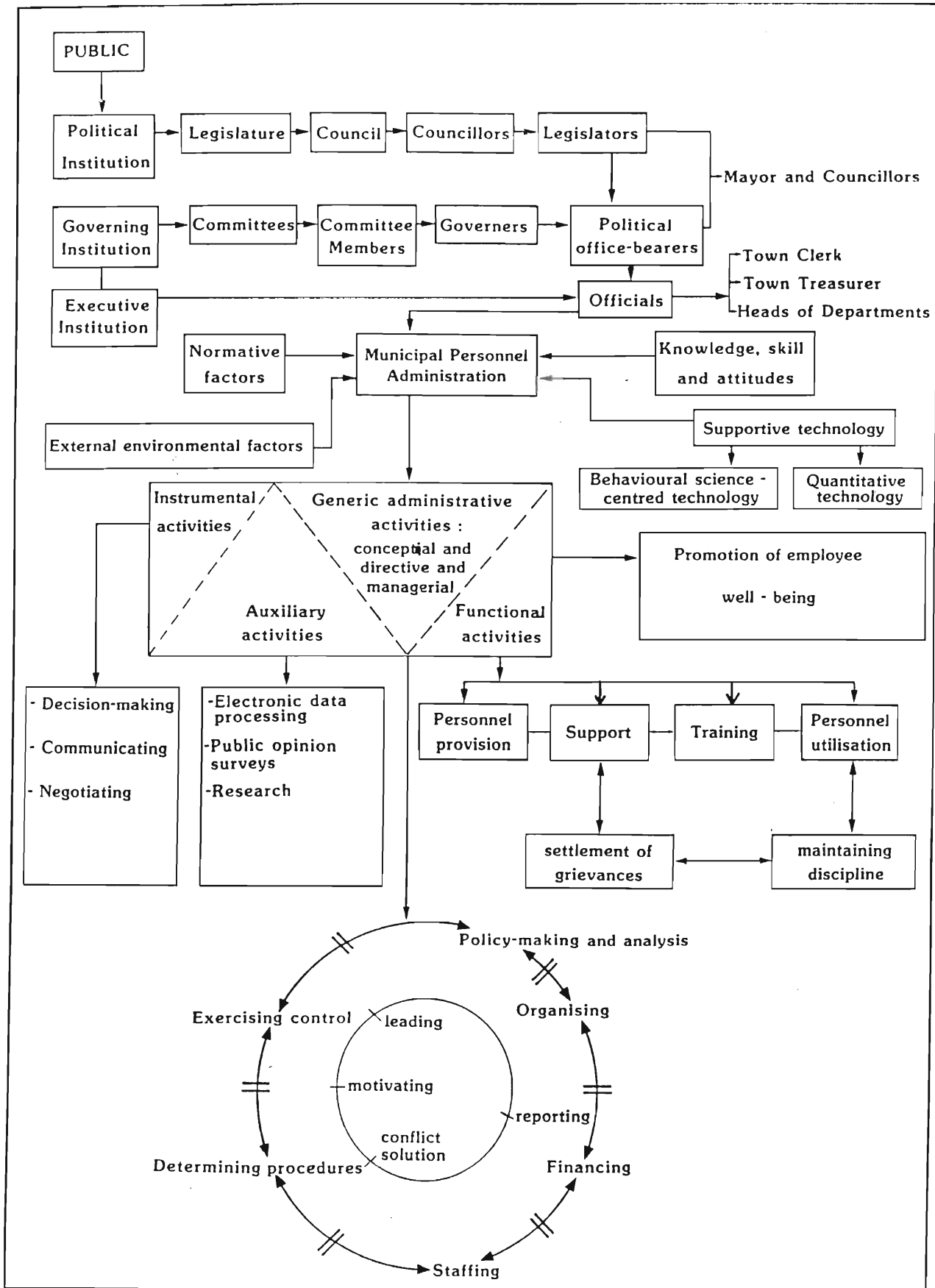
TABLE 1

TABLE REFLECTING PERSONNEL EMPLOYMENT AS A PERCENTAGE
IN THE VARIOUS SECTIONS OF THE PUBLIC SECTOR (RACE
RELATIONS SURVEY 1989 - 1990 : 621-623)

PUBLIC SECTOR	YEAR	PERCENTAGE
CENTRAL GOVERNMENT	1989 - 1990	30,95
LOCAL GOVERNMENT	1989 - 1990	15
PROVINCIAL GOVERNMENT	1989 - 1990	14
CIVIL SERVICE OF SELF- GOVERNING TERRITORIES	1989 - 1990	11
SOUTH AFRICAN TRANSPORT SERVICES	1989 - 1990	10,16
PUBLIC CORPORATIONS	1989 - 1990	8
POSTS & TELE- COMMUNICATIONS	1989 - 1990	6
UNIVERSITIES & TECHNIKONS	1989 - 1990	3
PARASTATAL INSTITUTIONS	1989 - 1990	1,27
AGRICULTURAL MARKETING BOARDS	1989 - 1990	0,17

FIGURE 1

MUNICIPAL PERSONNEL ADMINISTRATION : A CONCEPTUAL FRAMEWORK



grievance and disciplinary procedures, a policy for grievance and disciplinary procedures must be formulated; research needs to be undertaken to determine whether uniform grievance and disciplinary procedures would be acceptable to municipal employees and decisions made must be communicated clearly and unambiguously to employees (Cloete 1991 : 50).

3.1 Generic administrative functions : conceptual and directive

The generic administrative functions are the enabling processes because they determine the nature and scope of the functional, auxiliary and instrumental activities. The generic administrative functions consist of conceptual and directive functions (Cloete 1991 : 50).

The conceptual and directive functions consist of:

3.1.1 Policy-making and analysis

This process is primarily concerned with the identification of needs and setting of goals to satisfy staffing needs. Policy is the outcome of the process of policy-making and entails the statement of intention, a the process by which the municipal council and its officials strive to attain the intended goal

(Cloete 1978 : 13).

In municipal personnel administration policy-making and analysis involves, inter alia, the following (Cloete 1991 : 52) :

- a) identifying the needs of municipal functionaries, for example, satisfactory working conditions;
- b) preparing legislation, regulations, instructions and other directives, for example, directives on grievance and disciplinary procedures; and
- c) analysing existing policies and systems. Municipal functionaries may review grievance and disciplinary procedures in order to ensure fair and just treatment of municipal employees.

3.1.2 Organising

The organising process entails the creation and establishment of the organisational unit or structure for staffing and includes, inter alia, aspects, such as, division of work, delegation of authority, co-ordination and the determining of communication channels. These activities bring together municipal personnel to attain specific predetermined objectives of

municipal authorities (Cloete 1986 : 79).

3.1.3 Financing

The process of financing of the personnel function comprises of numerous activities; the primary function entails the preparation of annual budgets of income and expenditure (Cloete 1989 : 127), secondary activities include, inter alia:

- maintaining funds in appropriate accounts;
- ensuring a record of all financial transactions;
and
- spending of funds in accordance with approved directives of the municipal council (Cloete 1989 : 63-68).

In regard to grievance and disciplinary procedures, municipal councils must devise financing systems and prepare directives on how municipal functionaries are to be remunerated if they, for example, require time-off to prepare for a disciplinary hearing (Cloete 1991 : 52).

3.1.4 Staffing

The staffing function of municipal personnel administration consists of a network of functional activities which must be exercised in order to provide, utilise, remunerate, train, develop and maintain a motivated corps of personnel for the public sector (Andrews 1988 : 3).

Municipal councillors, who are the legislators at municipal level of government, must devise adequate staffing systems to promote the well-being of the municipal functionary. In preparing legislation and other directives pertaining to municipal personnel administration, municipal councillors must be objective and rational. Furthermore, they must respect the rights, freedom, needs and aspirations of municipal functionaries. Policies on grievance and disciplinary procedures, for example, must be fair and just, and be clearly stated in policy and procedure manuals of municipal authorities (Cloete 1991 : 153).

3.1.5 Determining Procedures

The determining of procedures are essential to enable and direct functionaries to perform their work in an orderly manner so as to attain specific institutional

objectives. Procedure analysis tools, such as PERT and work study are used to improve procedures to obviate the wastage of time, effort, material and financial resources (Cloete 1981 : 70-73). Supervisors in municipal authorities must prepare procedure codes and manuals to enable municipal functionaries to perform their work effectively and efficiently so as to attain the objectives of the municipal authorities (Cloete 1991 : 53).

3.1.6 Exercising Control

Appropriate control measures ensure evaluation and appraisal of the results to ascertain whether all the activities have been performed in accordance with specific procedures and within legislative and institutional guidelines (Fayol 1973 : 103). If anticipated goals are not being achieved, then control determines the corrective action necessary to remedy the situation (Dimock, Dimock & Fox 1983 : 228).

In exercising control, municipal functionaries must execute, inter alia, the following functions (Cloete 1991 : 53) :

- devising control systems and directives to ensure that municipal functionaries perform in accordance

with expected standards; and

- reporting to municipal councillors and municipal committees on whether goals are being achieved in accordance with envisaged expectations.

3.2 Managerial Functions

In addition to executing the conceptual and directive functions, municipal functionaries will also devote time to the execution of managerial functions. Within the context of municipal personnel administration these managerial functions include, inter alia, the following (Cloete 1991 : 207):

- leading;
- conflict resolution;
- motivating; and
- reporting on personnel systems and individuals.

These functions which are performed at the operational level are directed towards achieving the goal of second municipal personnel administration, in each and every municipal division. The aforementioned managerial functions, together with the generic administrative processes, functional activities, auxiliary and instrumental activities, collectively contribute towards

achieving the goal of municipal personnel administration.

3.3 Functional Activities

The functional activities of municipal personnel administration can be divided into four categories (Cloete 1985 : 8):

- personnel provision functions which comprise of creation of posts, recruitment, placement, probation, promotion, transfer and termination of services;
- support functions including, inter alia, determining conditions of service, remuneration, settlement of grievances (author underlined), counselling, health, safety and welfare;
- training and development functions consisting of the process of induction, training and developing employees; and
- utilisation functions including providing work programmes, leadership, discipline (author underlined) and evaluating work performance.

In order to perform the functional activities of municipal personnel administration, a municipal functionary must be provided with, inter alia, the relevant policy directives and necessary financial and procedural requirements (Cloete 1991 : 241). For example, if a municipal functionary is to perform the support function of settlement of grievances effectively and efficiently, he should be guided by clear and fair policy and procedures on how to redress grievances.

3.4 Auxiliary and Instrumental Activities

The auxiliary activities of municipal personnel administration are the 'help' or 'aid' techniques and tools used to provide the necessary support services to municipal authorities so that they may render improved and efficient services (Cloete 1986 : 2). Within this group are included, inter alia, the following types of activities (Cloete 1990 : 50) :

- research;
- conducting public relations;
- providing legal services;
- notification functions; and
- constructing and maintaining information systems.

The instrumental activities may be regarded as tangential because they are performed in conjunction with both the administrative and functional activities (Cloete 1991 : 223).

The aforementioned activities are all necessary to achieve the primary goals of municipal personnel administration, namely the promotion of the well-being of the employee. It is not possible to apply just one of the processes. The generic administrative activities comprising of policy-making, organising, financing, staffing, determining procedures and exercising control are enabling activities. They provide direction for the achievement of functional activities of municipal personnel administration. The importance of the managerial functions, auxiliary and instrumental activities must also be considered in achieving the goal of municipal personnel administration.

Municipal personnel administration is undertaken by three groups of public functionaries: councillors (legislators), political office-bearers (committee members) and municipal officials.

These municipal functionaries must take cognisance of the normative guidelines that govern their conduct when carrying out their work pertaining to grievance and

disciplinary procedures (Cloete 1991 : 56). The normative guidelines governing the conduct of municipal personnel functionaries involved in grievance and disciplinary procedures include, inter alia :

- (a) deference to labour rights;
- (b) respect for human rights;
- (c) fairness and reasonableness;
- (d) requirements of administrative law; and
- (e) maintenance of public accountability.

Municipal functionaries must be aware of the influence on municipal personnel administration of the general and specific external environmental factors (Adlem & Du Pisani 1982 : 101). The general environmental factors include the political, statutory, technological, social and economic elements. The specific environmental factors which influence municipal personnel administration are, inter alia, the regulators and competitors (Fox, Wissink & Schwella 1991 : 4).

Regulators, for example, the Department of Manpower, control the relationship between municipal authorities and the citizenry by providing enforceable rules by which municipal institutions have to abide (Fox, Wissink & Schwella 1991 : 4). The Department of Manpower ensures that whilst municipal authorities develop,

utilise and conserve their scarce human resources, these goals are pursued within the framework of certain guiding principles which include, inter alia, freedom of association, trade union autonomy and minimal state intervention (Finnemore & Van der Merwe 1989 : 75).

Fox et al (1991 : 22) define the competitor component of the specific environment as :

"... those societal institutions which compete for scarce resources with the particular public organisation concerned".

Municipal authorities have to compete with private sector institutions for competent, skilled employees. Consequently, municipal authorities must ensure that their personnel policies and practices are excellent and above reproach if they are to compete for scarce human resources.

To attain the objective of municipal personnel administration efficiently and effectively, municipal functionaries must possess specific knowledge, skills and behavioural attitudes, as well as understand and apply appropriate supportive technology and aids.

It is evident from Figure 1 that grievance procedures are part of the support function of municipal personnel

administration, whilst disciplinary procedures are a component of the personnel utilisation function of municipal personnel administration (Cloete 1985 : 8).

4 GRIEVANCE PROCEDURES AND MUNICIPAL PERSONNEL ADMINISTRATION

Municipal personnel administration consists of the generic administrative, managerial, functional, auxiliary and instrumental processes. Implementation of grievance procedures is a functional activity; more specifically a support function of municipal personnel administration (Cloete 1985 : 8). Prior to discussing the importance of grievance procedures in municipal personnel administration, it is necessary to define the term "grievance procedure".

4.1 Grievance Procedure

Glueck (1974 : 595) states that the employee grievance procedure involves a systematic set of steps for handling an employee complaint. Most union contracts provide for channels and mechanisms for processing these grievances.

Yet another view is that the grievance procedure is the problem-solving, dispute settling machinery of the labour agreement (Baer 1970 : 3). It is the orderly

means by which the union or the employee raises and processes a claim alleging a violation of the labour agreement by the company (Baer 1970 : 3).

According to the Code of Disciplinary and Grievance Procedures of the Municipality of Port Elizabeth (1989 : 4) a grievance procedure means

"The procedure to be followed by employees when submitting a grievance to management, and by management when attending to the grievance".

Salamon (quoted in Slabbert, Prinsloo & Backer 1990 : 22-61) states that a grievance procedure is concerned with

"The right of employees to express, and to seek to resolve, dissatisfactions they may have in respect of any aspect of their work situation".

From the foregoing definitions, it is clear that grievance procedures are mechanisms used by employees to bring their grievances to the attention of their employer.

4.2 Importance of Grievance Procedures in Municipal Personnel Administration

Within the context of personnel administration grievance procedures fall within the parameters of the labour relationship which in essence is an employer-employee relationship. Bendix (1989 : 228) emphasises the point that the effective execution of a labour relationship requires uniform procedures as regards the raising of grievances by employees.

Gerber, Nel & Van Dyk (1987 : 339) stress the importance of grievance procedures by stating that:

"... the grievance procedure is the most important of the institution's systems which can be used to support an enterprise's industrial relations activities".

From the foregoing viewpoints, it is clear that grievance procedures are essential personnel support functions, not only to maintain and improve morale of municipal employees but as a means of ensuring effective and constructive employer-employee relations. Employees will feel secure and satisfied knowing that their grievances are redressed in a fair and just manner through the formal grievance procedures. Employers who encourage employees to use formal grievance procedures should they feel aggrieved, imbibe feelings of

trust and openness among employees (Cloete 1985 : 194). This serves to promote harmonious employer-employee relations.

5 DISCIPLINARY PROCEDURES AND MUNICIPAL PERSONNEL ADMINISTRATION

Disciplinary procedures fall within the personnel utilisation function of municipal personnel administration (Cloete 1985 : 8). The implementation of disciplinary procedures is a task carried out by supervisors and management so as to regulate the interaction between the employee and employer.

The approach used in handling discipline of employees will play a pivotal role in determining the employee's view of the institution.

5.1 Disciplinary Procedure

A disciplinary procedure outlines the formal process adopted by the employer when an employee breaks the rules of the institution or commits any other act which might be in breach of his contract of employment, excluding the type of action to which he is entitled by law (Bendix 1989 : 258). The disciplinary procedure sets out the steps to be taken in the case of trans-

gressions of various kinds, some of which might warrant the dismissal of the employee (Bendix 1989 : 258).

Piron (1984 : 68) defines the disciplinary procedure as an operating document which is to be given to the workforce, and further emphasises that it must be written in such a way that it will be understood by the employees. The use of clear, simple language, imperative formulation and economy of words are the hallmark of the procedure (Piron 1984 : 68).

Disciplinary procedure as a formal mechanism can be used by management to correct or improve unacceptable behaviour or performance by employees. The disciplinary procedure includes such elements as, disciplinary policy, disciplinary code, disciplinary action, disciplinary inquiry and disciplinary appeal system.

5.2 Importance of Disciplinary Procedures in Municipal Personnel Administration

The objective of municipal personnel administration is the promotion of the well-being of municipal employees. The implementation of disciplinary procedures is an important utilisation function to achieve such an objective.

Slabbert, et al (1990 : 22-77) are of the view that the overall purpose of a disciplinary procedure is to ensure that objectives are attained in an orderly fashion, that preventive and corrective action is taken in respect of employees, and that employees are afforded job security and stability.

Botha (1977 : 1) emphasises that the primary objective of a disciplinary procedure is to initiate corrective action where work performance is unsatisfactory or the behaviour of an employee is unacceptable. He goes on to add that the disciplinary procedure is introduced to manage conflict in the workplace and to protect the interests of both the employer and the employee (Botha 1977 : 1).

Cloete (1991 : 214) substantiates the need for discipline by stating that:

"Even under conditions of positive leadership, the conduct of subordinates may sometimes be less than satisfactory. Therefore, provision should be made for cases where subordinates disobey orders, violate rules or render poor service."

Municipal authorities must realise that knowledgeable and well-trained personnel in municipal administration is a scarce resource. Hence, the proper utilisation of

available personnel in municipal authorities is an important function to achieve the goals of municipal authorities efficiently and effectively. The application of fair, just and consistent grievance and disciplinary procedures will ensure that municipal employees are motivated and afforded job security and stability. The latter phenomena are vital to attain institutional goals efficiently and effectively.

6 RELATIONSHIP BETWEEN GRIEVANCE AND DISCIPLINARY PROCEDURES

Although grievance and disciplinary procedures collectively seek to resolve the dissatisfaction of workers, they individually fulfil different functions (Finnemore & Van Der Merwe 1989 : 120). Issues which form the substance of disciplinary procedures are initiated by management to correct deviant behaviour or improve standards of work performance displayed by employees. These issues always involve disputes of right. Grievance procedures also often involve disputes of interest and are initiated by employees (Finnemore & Van Der Merwe 1989 : 120).

Some organisations specifically exclude the use of the grievance procedure for appealing against a disciplinary action (Finnemore & Van Der Merwe 1989 : 120). It

is felt that if an employee can grieve a disciplinary action, the supervisor responsible for the discipline then in a sense stands accused and "placed in the dock". This impinges on the employer's right to discipline and for this reason, it may be argued that the employee should pursue any disciplinary action via an appeal in the disciplinary procedure (Finnemore & Van Der Merwe 1989 : 120).

The misapplication of disciplinary procedure can give rise to a claim in law, and consistently unsatisfactory handling of the disciplinary procedure can give rise to a collective grievance (Finnemore & Van Der Merwe : 1989 : 120). However, an employee who is dissatisfied with the outcome of a disciplinary action against him cannot use the grievance procedure as a means of resolving his disciplinary problems. Mechanisms exist to appeal against disciplinary action in the disciplinary procedure (Finnemore & Van Der Merwe 1989 : 120).

Grievance and disciplinary procedures are separate functions which serve specific objectives. Care should be taken not to confuse the two. Each procedure must be applied with circumspection so that the rights of employees are not infringed upon. In this regard, legislative measures and policy directives for grievance and disciplinary measures must be provided

for to give direction and guidance to both the employer and employee.

7 LEGISLATIVE MEASURES AND POLICY DIRECTIVES FOR GRIEVANCE AND DISCIPLINARY PROCEDURES

Although grievance and disciplinary procedures are assuming an increasingly important role in South African labour relations, they are not prescribed by law. The introduction of these procedures has been a matter of practice thus far. In this regard Gerber, Nel & Van Dyk (1987 : 339) submit that the law is by nature conservative and often legislative expression is given to social reality and demands some time after the events have occurred in society.

Grievance and disciplinary procedures, introduced in South African labour relations without the coercive effect of the law, are primarily designed to promote harmonious employer-employee relations (Gerber, Nel & Van Dyk 1987 : 339).

In South Africa, municipal authorities which are independent legal entities, are established to give the citizens of the town or city the opportunity to provide for those matters which are of a local nature and which affect the lives of the local citizens every day

(Craythorne 1990 : 8). Municipal councils are also political institutions. Therefore, they have to undertake legislative and governmental functions in addition to their supervision of the administrative/executive activities of their appointed offices (Sing & Maharaj 1990 : 42). The municipal council is a body corporate and is thereby an employer and the appointed officials are its employees (Sing & Maharaj 1990 : 42).

Although grievance and disciplinary procedures are not prescribed by law, various labour laws have been established for the specific purpose of, as Bendix (1989 : 380) succinctly points out

"establishing parameters for the conduct of the labour relationship and to provide minimum regulations pertaining to substantive conditions of employment."

It is evident that the labour laws in South Africa only provide broad bases for the regulation of employer/employee relations. There are no provisions for grievance and disciplinary procedures specifically.

Although employer-employee relations in South Africa are affected by various labour laws, the focus of attention shall fall mainly on the Labour Relations Act 28 of 1956 as amended, as this is the principal legis-

lation governing labour relations in South Africa. However, preceding the discussion on the Labour Relations Act, the adequacy of common law regulating the employment contract will be deliberated upon.

7.1 Contract of Employment

The contract of employment serves as the foundation of the employer/employee relationship. This is the case irrespective of whether this relationship exists in the private or the public sector or whether individuals or groups are involved (Gerber, Nel & Van Dyk 1987 : 358). Bendix (1989 : 380) states that a contract of employment comes into existence when both parties agree that the employee will enter into employment with the employer.

The employer and employee have to agree to certain rights and duties at common law, once they enter into a contract of employment. Common law duties of the employer include the following (Bendix 1989 : 381):

- to pay the employee;
- to provide safe and healthy working conditions;
- to provide work for the employee;
- not to make the employee do work junior to the status for which he was employed; and

- not to contract the employee's services to another employer without the employee's consent.

In terms of the contract the employee will (Bendix 1989 : 381) :

- perform his work faithfully and diligently;
- obey reasonable orders given to him in the normal course of his employment;
- not deal dishonestly with the property of the employer; and
- not compete, in his private capacity, with the business of the employer.

The general rule of common law is that no formalities are required for the conclusion of a valid contract of service. This means that it may be an oral agreement, a tacit indication of intent or a written agreement between the two parties (Swanepoel 1984 : 5).

Contracts of service may be terminated for reasons such as effluxion of time where the contract is for a fixed period, insolvency of the employer, dismissal and termination by notice (Gerber, et al. 1987 : 360).

Although the common law treats the contract of employment by the same measures as any other contract, there are perceived shortcomings. According to Rycroft & Jordaan (1990 : 13) the two principal ones are:

- a) the contractual form of the employment relationship is said to disguise the fact of the parties' inequality of bargaining power. In other words, the employer holds more power than the employee. Hence, it may lead to exploitation of the employee; and
- b) the relationship is often seen purely in economic terms. In reality, employees do not enjoy the freedom to withdraw their labour or leave their employment at will, nor do they enjoy sufficient bargaining power to negotiate greater security of employment for themselves.

Bendix (1989 : 385) adds that the contract of employment relates only to the individual employment relationship. The collective relationship between a group of employees differs from the individual employment relationship, therefore, a different measure should apply. Individual rights incorporate rights relating to, inter alia, basic conditions of employment, health and safety, protection against victimiza-

tion and unfair labour practices (Bendix 1989 : 71). Collective rights include, inter alia, the principle of freedom of association and the right to strike (Bendix 1989 : 71). In view of the inequitable relationship that arises through the medium of common law, various labour laws have been established to safeguard the employee against exploitation, and to provide for a more equal distribution of power between employer and employees (Bendix 1989 : 385).

Employer/employee relationships are not only governed by contract of employment. Various labour laws have been established in South Africa, the most important of which is the Labour Relations Act 28 of 1956.

7.2 Labour Relations Act, 1956

The Labour Relations Act is based on the premise that collective bargaining between employers and trade unions is a suitable and acceptable way of resolving disputes (Sing & Maharaj 1990 : 43). It provides for the voluntary registration of employers' and employees' organisations. As regards the means provided by the Act, registered employers' and employees' organisations are entitled to establish and operate industrial councils, to apply for the establishment of a conciliation board and to participate in these bodies (Sing &

Maharaj 1990 : 43). In terms of the Act, trade unions and employers' organisations may also make use of various means of settling disputes such as industrial councils, conciliation boards, mediation, arbitration, and ultimately strikes and lockouts, provided that certain preconditions are met. Moreover, the Industrial Court, a permanent body established in terms of the Act, also has an important part to play in the process of dispute settlement (Sing & Maharaj 1990 : 43).

While major public sector institutions, such as the Public Service, do not fall within the scope of the Act, labour relations are extensively regulated by the Act and specific provisions are made prohibiting employers and employees from certain actions which are detrimental to public welfare (Cameron et al 1989 : 82). Local government employees render essential services to the community and for this reason cannot lawfully strike. Similarly their employers (the municipal council as a body corporate) cannot lawfully lock them out. In the event of a dispute between employer and employees which a conciliation board or industrial court cannot settle by negotiation, the dispute must be settled through compulsory arbitration (Cameron et al 1989 : 82). Compulsory arbitration may be described as a necessary alternative to strikes and lock-outs in the local government industry, in circumstances where these

actions would be detrimental to community welfare (Cameron et al 1989 : 82).

Figure 2 indicates the locus of the employer-employee relationship at the municipal government level. The governing component of a municipal authority is the municipal council. In order to expedite matters relating to policies the municipal council has various council committees. The executive and administrative component of the municipal authority is represented by the various categories of municipal employees. Employer/employee relations at the municipal tier of government focuses on the relationship between the municipal council (the governing component) and the municipal employees (the administrative component) (Sing & Maharaj 1990 : 45).

There are three actors involved in the labour relations process at the municipal government level. One is the State, which plays a regulatory role through legislation, and the other two are employers' organisations or individual local authorities and trade unions. Together their inter-relationship makes up the so-called "tripartite system" (Sing & Maharaj 1990 : 45). This system is depicted in Figure 3.

FIGURE 2

EMPLOYER/EMPLOYEE RELATIONSHIP AT THE LOCAL
GOVERNMENT LEVEL (SING & MAHARAJ 1990 : 46)

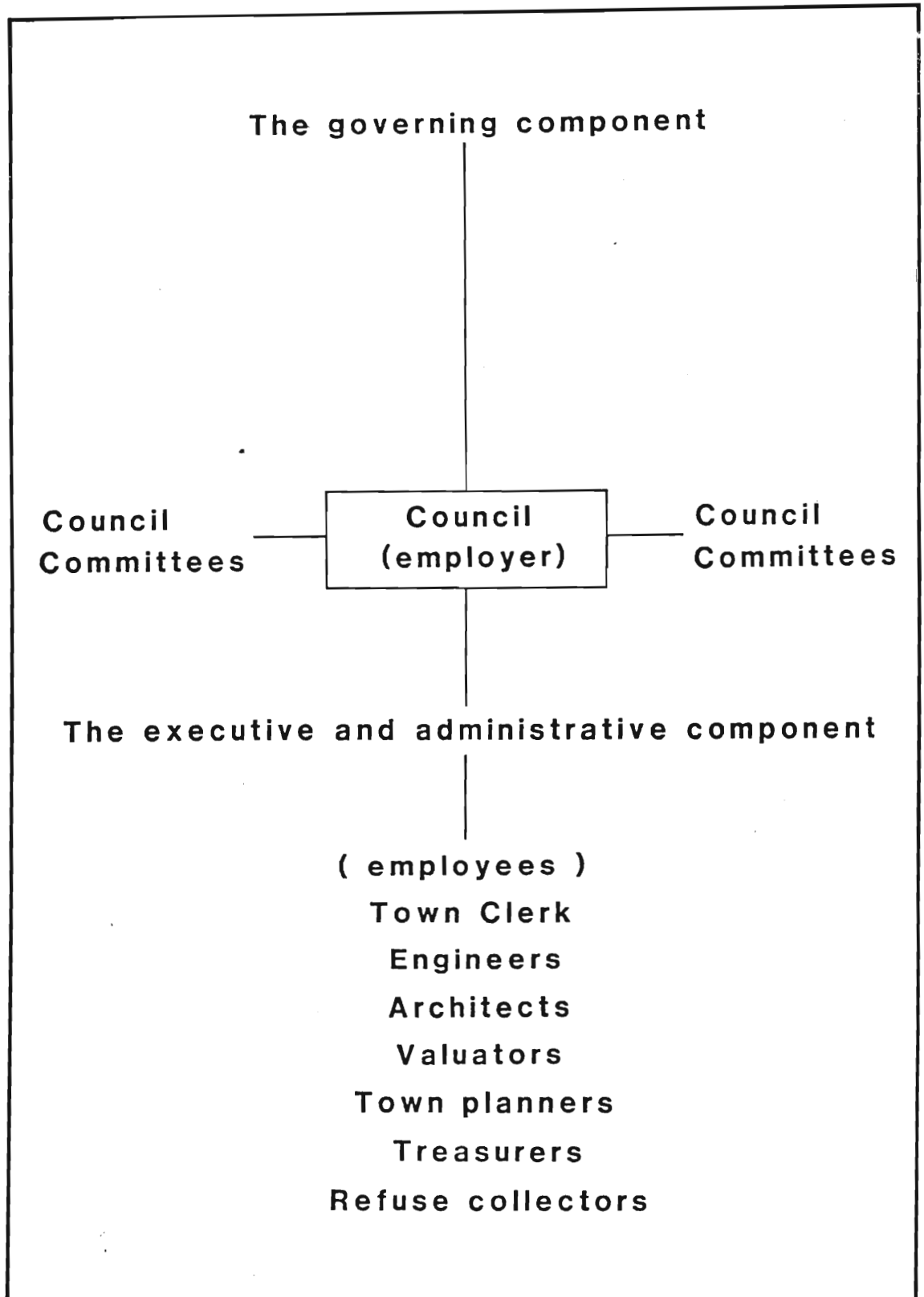
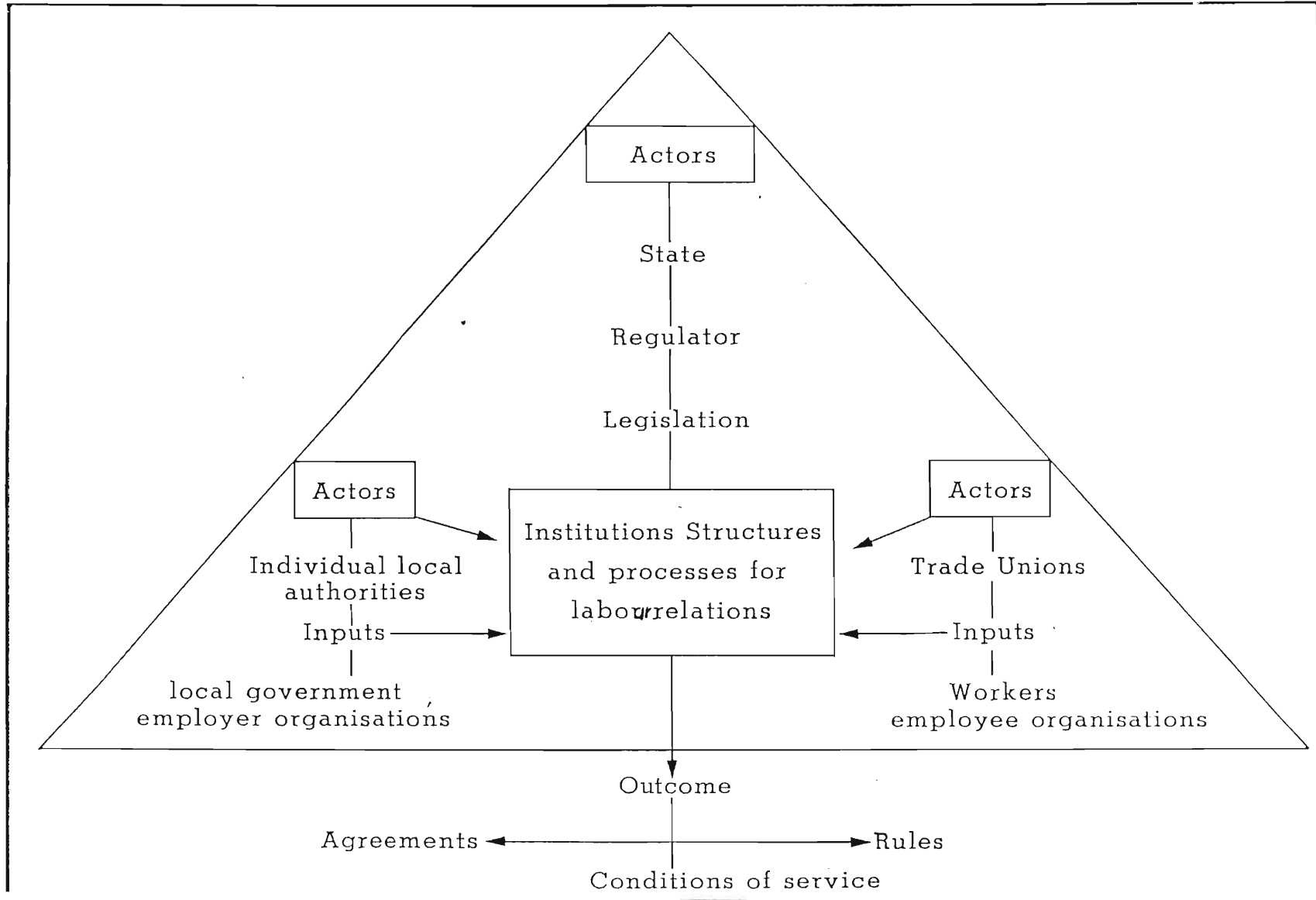


FIGURE 3

ACTORS INTERACTING IN LABOUR RELATIONS PROCESSES AT THE LOCAL GOVERNMENT LEVEL (SING & MAHARAJ 1990 : 47)



In the city status municipal authorities studied, (such as Bloemfontein, Cape Town, Johannesburg and Pretoria), grievance and disciplinary procedures constitute part of the conditions of service negotiated through industrial councils.

Leading labour experts advocate that the Labour Relations Act enables formal negotiations between employer and employee and significantly, that grievance and disciplinary procedures must be collectively negotiated as an integral component of the conditions of service (Sing & Penceliah 1989 : 30). These procedures must serve as instruments in solving labour relations problems such as unfair labour practices (Sing & Penceliah 1989 : 30).

With the introduction of the concept of unfair labour practice, fairness in dismissal of an employee and the handling of grievances is now of utmost importance. The employer can no longer rely solely on his rights in law but is required to ensure that there is substantive fairness and procedural fairness (see paragraph 8.3.1) in dealing with employee discipline and grievances (Bendix 1989 : 483).

In order to understand the implications of the Labour Relations Act on grievance and disciplinary procedures,

the following pertinent aspects shall be discussed :

- definition of unfair labour practice and implications thereof; and
- dismissal for misconduct.

7.2.1 Unfair Labour Practice

The unfair labour practice concept was introduced into the Labour Relations Act, following upon the recommendations of the Wiehahn Commission. Unfair labour practice was defined in the amending Act 94 of 1979 as "any labour practice which in the opinion of the Industrial Court is an unfair labour practice" (Rycroft & Jordaan 1990 : 120). The interpretation of what constituted an unfair labour practice was left to the discretion of the Industrial Court.

Since 1979, the definition of unfair labour practice has undergone many changes. The Labour Relations Amendment Act 83 of 1988 introduced an entirely new unfair labour practice definition. In terms of this Act, unfair labour practice denotes any act or omission which in an unfair manner infringes or impairs the labour relations between an employer and employee. It includes, inter alia, the following (Rycroft & Jordaan

1990 : 125) :

- (a) the dismissal by reason of any disciplinary action against one or more employees, without a valid and fair reason and which is not in compliance with a fair procedure;
- (b) the unfair unilateral suspension of employees;
- (c) the failure or refusal by an employer, employee, trade union or employers' organisation, to comply with an agreement;
- (d) any strike, lock-out or stoppage of work in contravention of Section 65 of the Labour Relations Act.

The Labour Relations Amendment Act, passed in September 1988, has been a source of controversy between the South African Government, Black unions and employers (Race Relations Survey 1989/90 : 321). Bendix (1989 : 392) states that the trade unions view it as being biased towards employers and regard particular clauses as indicative of an attempt to restrain union action and control the union movement.

The dissatisfaction with the amendments of 1988 to the Labour Relations Act resulted in negotiations among South African Co-ordinating Committee on Labour Affairs (SACCOLA), Congress of South African Trade Unions (COSATU) and National Council of Trade Unions (NACTU) to discuss acceptable labour legislation. This breakthrough has resulted in Parliament passing a new law which holds important implications for labour relations. The Labour Relations Amendment Act 9 of 1991 provides a new set of rules within which employers, employees and trade unions must conduct themselves (Landman 1991 : 15).

Of significance to this study is the definition of unfair labour practice in terms of the amended act. In terms of the Labour Relations Amendment Act 9 of 1991, an unfair labour practice means any act or omission other than a strike or lock-out which has or may have the effect that (Landman 1991 : 21):

- a) an employee or class of employees is or may be unfairly affected or that his or their employment opportunities or work security is or may be prejudiced or jeopardized thereby;
- b) the business of any employer or class of employer is or may be unfairly affected or disrupted

thereby;

- c) labour unrest is or may be created or promoted thereby; and
- d) the labour relations between employer and employee is or may be detrimentally affected thereby.

Within the aforementioned context, Poolman (1985 : 62) aptly and concisely defines unfair labour practice as :

"... any act of commission or the omission to act arising from or in the course of employment by any one or more of the subjects of labour relations who knowingly or intentionally causes substantial prejudice to another or to other subjects of labour relations or to the public interest, as a result of a failure under the universal duty to act fairly".

From the foregoing, it is apparent that the unfair dismissal of an employee, the unfair unilateral suspension of an employee by his employer, and the failure or refusal by an employer, employee, trade union or employers' organisation, to comply with a collective agreement, would all constitute an unfair labour practice, unless the failure or refusal could be justified.

7.2.2 Dismissal for misconduct

The common law affords the employer wide powers of termination but little security of employment for the employee. Legislative intervention in the area of discipline is effected in South Africa to curb the arbitrary exercise of the employer's traditionally wide disciplinary powers. The primary source of this development has been the provisions of the Labour Relations Act relating to unfair labour practice (Rycroft & Jordaan 1990 : 136-137).

If dismissal by reason of any disciplinary action is to avoid being an unfair labour practice, two conditions must be met. Firstly, there must be a valid and fair reason for the dismissal, and secondly, the dismissal must be in compliance with a fair procedure (Cameron et al 1989 : 110).

8 NORMATIVE FACTORS AND GRIEVANCE AND DISCIPLINARY PROCEDURES

It is accepted that municipal personnel administration, as a specialised area of municipal administration, is a comprehensive field of activity comprising of the generic administrative, managerial, functional, auxiliary and instrumental activities. These four-fold

activities are carried out to achieve a predetermined goal, which is the promotion of the well-being of the municipal employee. Municipal functionaries must bear in mind that specific guidelines govern their conduct. These guidelines are referred to as the normative factors of public administration.

Before proceeding to discuss the specific normative factors, the term "normative" is explained.

The term "normative" is derived from the word "norm".

The Shorter, Oxford Dictionary (1978 : 1413) defines a "norm" as a rule or authoritative standard.

The Concise Oxford Dictionary (1976 : 743) explains "norm" to mean "requirement of a standard quantity to be produced, amount of work to be done, as well as customary behaviour".

Funk and Wagnalls Standard Dictionary (1970 : 863) states that "normative" pertains to a norm assumed to have the prescriptive value of a standard or rule of usage.

Isaak (1975 : 4) explains the terms "normative factors" as being "moral", "ethical", "what ought to be", "the

best state of affairs" and "standards worth striving for".

From the above definitions, it could be accepted that "normative" describes certain rules and standards of behaviour in accordance with prevailing values of society. In this light, it is expected that the actions of all public functionaries, including municipal functionaries, aimed at promoting community welfare, must be based on specific guidelines that govern their conduct (Cloete 1991 : 56). These guidelines provide the basis for correct and appropriate behaviour in the work environment in all public institutions. Consequently, municipal functionaries entrusted with personnel administration must conform to the specific guidelines when executing their duties in respect of grievance and disciplinary procedures.

The following pertinent normative guidelines which have implications for employer/employee relations in general, and disciplinary and grievance procedures in particular, are discussed :

- deference to labour rights;
- respect for human rights;
- fairness and reasonableness;
- requirements of administrative law; and

- maintenance of public accountability.

8.1 Deference to Labour Rights

Employer/employee relations deals essentially with human beings (Bendix 1989 : 23). These people, because of their mutual involvement in the work situation, have been placed in a specific relationship with one another. The manner in which the conduct of employer/employee relations is regulated, will be determined not only by their status and role but also by their own ethical codes, by custom and tradition, by mutually agreed rules and regulations and by legal determination (Bendix 1989 : 23). This legal determination deals, principally with the safeguarding of basic labour rights, establishment of balance of power between employer and employees and the prevention of unfair, unjust behaviour by either side (Bendix 1989 : 23).

The following premises serve as guidelines in South African employer/employee relations (Bendix 1989 : 26):

- a) The employee should not be viewed as a machine. He has an individual personality who has certain goals and aspirations of his own.

- b) Although there are common interests between employer and employee, they are overshadowed by the conflict inherent in the relationship. However, such conflict must be contained to maintain a good relationship and to achieve a common goal.
- c) Harmonious employer/employee relations exist where there is some balance of power.
- d) Conflict is not pathological and its manifestation in the form of disputes, strikes and lock-outs is part and parcel of a 'normal' labour relationship.
- e) The best means of containing this conflict is by continued negotiation and compromise.
- f) Since the power of an individual employee does not match that of an employer, employees have the right to form associations and to engage in free collective bargaining.
- g) Society at large and its instruments of government have a legitimate stake and interest in the conduct of the labour relationship and collective bargaining, that the State has the obligation to protect both parties and to intervene should

either party engage in unacceptable behaviour.

- h) Labour relations are not conducted in a vacuum, they are subject to socio-political and economic influences and they will likewise have an effect on the social, political and economic developments within a particular society.

It is evident, then, that the employer/employee relationship is a complex relationship, influenced by various factors. One of the requirements to counteract those phenomena that impact negatively on employer/employee relations is the recognition of the fundamental rights of employees.

Workers have six internationally recognised categories of rights. These are (Gerber, Nel & Van Dyk 1987 : 321):

- the right to work;
- the right to freedom of association;
- the right to collective bargaining;
- the right to strike;
- the right to protection, and
- the right to training.

According to Nel (quoted in Gerber et al 1987 : 321) these rights are also generally applicable in South Africa.

8.1.1 Right to Work

In South Africa the right to work does not refer to a legal right to work, but rather to the democratic right of a worker to find employment and to perform his job willingly (Gerber et al 1987 : 322). His possibilities are determined by the free market economy since it dictates the job market and the rate of remuneration (Gerber et al 1987 : 322).

In its constitution and in its labour laws South Africa does not recognise either the right of a citizen to be placed in employment or the duty of the State to provide work (Gerber, et al 1987 : 322).

Robertson (1991 : 158) argues that in South African law a right to work exists once an employee has entered into a contract of employment with the employer. The employer has the right to receive the services of the employee, who is obliged to render services to the employer in terms of the contract.

The most common examples of employees enforcing their rights to work are in situations where they have been dismissed or retrenched (Robertson 1991 : 158). Dismissals and retrenchments are frequently contested in the courts (Robertson 1991 : 158). Another form of the denial of the right to work is where the employee is suspended from his or her duties (Robertson 1991 : 158).

8.1.2 Freedom of association

This right is entrenched in the Labour Relations Act 28 of 1956. It gives employees in South Africa, irrespective of race or colour, the opportunity to join an association which will represent him and negotiate / bargain on his behalf with the employer for fair and acceptable remuneration and conditions of employment (Gerber, et al 1987 : 360).

In terms of Section 78(1) of the Labour Relations Act, 1956 :

"... no employer shall require of any employee whether by a term or condition of employment or otherwise that the employee shall not be or become a member of a trade union, or other similar association of employees and any such term or condition in any contract of employment entered into ... shall be void".

If an employer dismisses an employee for trade union membership or lawful trade union activities, he is guilty of an offence. Section 2.2 of Act 28 of 1956, however, excludes civil servants from full freedom of association (Gerber et al 1987 : 360). This includes municipal functionaries. A municipal authority can, therefore, refuse to negotiate with a municipal functionary who is a member of a trade union.

Piron (1986 : 719) is of the view that the main terms of the right of association are :

- the right of association which exists as an unprotected right for all persons;
- the right of association is protected against violation by employers by means of various statutes. Some of the provisions overlap, but all exclude domestic servants and persons employed in farming operations;
- civil servants are not protected by Section 78 of the Labour Relations Act because they are excluded, but, because the associations of civil servants can register as trade unions, civil servants presumably have a limited right of association;

- persons who are not protected by labour legislation can be forced by employers to contract out of their right of association, because the right of association is not entrenched in common law. In other words an employer can for example, refuse to negotiate with a farm labourer who is a member of a trade union.

8.1.3 Collective bargaining rights

The Labour Relations Act creates the statutory framework for bargaining between employers and trade unions within industries, occupations, trades and undertakings subject to its provisions (Jordaan & Rycroft 1990 : 110). It provides structures and institutions for collective bargaining and for the settlement of disputes, but it does not prohibit collective bargaining outside of the statutory framework. Employers and trade unions thus remain free to design and utilise their own agreed structures. However, recourse to the structures provided by the Act is essential for gaining access to the industrial court and for ensuring the legality of strikes and lock-outs (Jordaan & Rycroft 1990 : 110).

8.1.4 Right to strike

Bendix (1989 : 213) defines a strike as :

"a temporary, collective withholding of labour, its objective being to stop production and thereby to oblige the employer to take cognisance of the demands of employees". A strike is a temporary mechanism which is utilised to persuade the employer to adopt a different stance regarding the demands of employees.

Finnemore & Van der Merwe (1989 : 142) express the view that it is essential to grant workers the right to strike. Municipal employees however, do not have the right to strike in terms of the Labour Relations Act 28 of 1956. It is argued that municipal functionaries render essential services to the community, therefore, they should not be given the right to strike (Andrews 1988 : 351).

Strike action, according to Rycroft & Jordaan (1990 : 107) plays an indispensable role in resolving deadlocks in a collective bargaining relationship. They add that legislative regulations will not necessarily prevent or minimize industrial conflict. At the same time there cannot be an unlimited freedom to strike. Therefore, the following premises pertaining to the right to strike should be borne in mind (Rycroft & Jordaan 1990 : 107):

- a) legislation is a secondary form in human affairs, and especially in industrial relations;
- b) the strike phenomenon needs to be accepted as an integral part of the market economy and conflict as a necessary consequence of industrial relations; and
- c) the strike is essential for attaining a measure of equilibrium in the bargaining process, an equilibrium which is fundamental to its proper operation.

In order for the system of collective bargaining to function, the right to strike must be made lawful and given sufficient protection to be effective. The following three forms of protection are required for strikes that are effective in settlement of disputes (Finnemore & Van der Merwe 1989 : 142) :

- a) immunity from civil liability;
- b) immunity from criminal prosecution; and
- c) protection from dismissal.

Section 79 of the Labour Relations Act, 1956 indemnifies employees, union officials and registered trade unions from civil legal proceedings in respect of any

breach of contract, breach of statutory duty or delict committed by an employee, union office-bearer/official or union that participates in a legal strike. This indemnity does not apply to those participating in an illegal strike (Finnemore & Van der Merwe 1989 : 143). A controversial amendment to the Labour Relations Act in 1988 included the provision that, where a strike is illegal, any member, officer-bearer or official who interferes with the contractual relationship between employer and employee, shall be deemed to have acted with authority from the union, unless proved otherwise (Finnemore & Van der Merwe 1989 : 143).

In South Africa, strikes and lock outs are illegal where there has been a failure to comply with the provisions of Section 65 of the Labour Relations Act (Barry 1991 : 3). In terms of Section 65 a strike or lock-out may not take place during the operation of any agreement, award a determination which covers the matter giving rise to the dispute and which binds the employers and employee concerned or within one year of the publication of a determination made by the wage board which covers the matter in dispute or pending the making of an arbitration award (Barry 1991 : 3).

Despite prohibition of strike action by public sector workers, there has been a dramatic increase in the

level of strike action in the public sector. The figure increased from only 0,4% of the total man-days lost during the first half of 1989 to 46,2% during the first half of 1990. Much of the industrial action taking place in schools, hospitals and municipal authorities has succeeded in bringing to the public's attention the plight of public sector workers - an area that has been largely overlooked by the union movement until now as far as their wages and working conditions are concerned (Race Relations Survey 1989-90 : 368).

Under the provisions of the Labour Relations Act, it is an offence to participate in an illegal strike, although few criminal prosecutions have been undertaken by the state.

The most controversial amendment to the Labour Relations Act in 1988 was the inclusion of strikes and lock-outs within the ambit of the definition of unfair labour practice (Barry 1991 : 15). This resulted in talks between employer organisations and trade unions to discuss acceptable labour legislation. The outcome of these deliberations is reflected in the Labour Relations Amendment Act of 1991 wherein strikes and lock-outs are now excluded from the definition of an unfair labour practice (Landman 1991 : 15).

Landman (1991 : 15) points out that the industrial court will no longer be permitted to adjudicate on the fairness or the unfairness of a strike or a lock-out. This means that it will not be possible for an employer to approach the industrial court for an interdict or other order restraining his employee from embarking on a lawful strike (Landman 1991 : 15).

Participants in a legal strike are protected against criminal liability, unless the strike action is accompanied by behaviour, such as picketing or intimidation that are construed as offences under other laws (Finnemore and van der Merwe 1989 : 143).

In South Africa, employees may be defined as having restricted rights to strike. For example, municipal employees who render essential services are prohibited to strike (Labour Relations Act 28 of 1956). A lack of protection against dismissal for legally striking workers is a highly controversial issue. Under common law, employees who embark on strike action, whether legal or illegal, are considered to have broken their contract of employment (Finnemore & van der Merwe 1989 : 143). In most other western countries where the right to strike is regarded as a fundamental labour right, it is generally accepted that workers' contracts are suspended and not terminated at times of labour action

(Finnemore and van der Merwe 1989 : 143).

8.1.5 Protection of employees' rights

Workers must be protected in terms of their right to fair remuneration and conditions of service, health, safety, security and protection from unfair labour practices. There are various acts to protect workers in the work environment, for example the Workmen's Compensation Act 30 of 1941, the Unemployment Insurance Act 30 of 1966 and the Machinery and Occupational Safety Act 6 of 1983 (Gerber Nel & Van Dyk 1987 : 322).

8.1.6 Training

This right is of paramount importance in South Africa today, and the Manpower Training Act 56 of 1981 gives training prominence. This right has two components, namely the right to vocational training and the right to industrial relations training (Gerber et al 1987 : 323).

As far as vocational training is concerned, it is the duty of the state to provide the machinery for training in the form of training centres or tax concessions for employers who provide training for workers (Gerber et al 1987 : 323). The responsibility for training lies

with the employer and he has to ensure that all workers undergo the training necessary to qualify them adequately for their jobs.

Workers also need training in, inter alia, labour law to give them a better perspective of their position in the working environment and in society. Trade union training should relate to the philosophy, history and administration of all kinds of worker organisations (Gerber et al 1987 : 323). The reason for this is that knowledge of trade unions helps a work force to be organised, responsible and well-disciplined. Workers then have a better understanding of what is required of them and of how to maintain their position in the industry they are employed in.

8.2 Respect for human rights

Labour relations systems and practices differ from country to country, yet it is obvious that, in order to be compatible with the ethics of time, such systems have to be orientated on certain universally acceptable principles and guidelines (Bendix & Swart 1979 : 6). These guidelines are formulated and derived by the consensus of state representatives in international labour conventions (Bendix and Swart 1979 : 6). With the improvement of human rights in South Africa already

widely acknowledged, South Africa is considering associating with the Universal Declaration of Human Rights and acceding to other human rights conventions (Daily News September 1991 : 23).

According to Article 23 of the Universal Declaration of Human Rights, the following are fundamental rights of employees (Nedjati 1978 : 247) :

- a) the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- b) the right to equal pay for equal work, without any discrimination.
- c) the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- d) the right to form and to join trade unions for the protection of his interests.

The Universal Declaration of Human Rights together with other international labour law standards relate to fundamental human rights concerned with labour relations.

The Declaration of Philadelphia, passed in 1944, and regarded as the founding document of the International Labour Organization states, inter alia, that "freedom of expression and association are essential to sustained progress". This right together with protection of the right to organize is enlarged in Convention Number 87. This Convention stipulates the following rights pertaining to freedom of association and the right to organise (Bendix 1989 : 28-29) :

- employees' and employers have the right to join organisations of their own choosing;
- employees' and employers' organisations may draw up their own constitutions and rules;
- the state shall not restrict the aforementioned rights in any way;
- workers' and employers' organisations shall not be suspended or dissolved by their administrative authority;
- workers and employees shall respect the laws that govern their country; and

- the International Labour Organisation shall undertake all necessary measures to ensure that workers and employers may exercise freely the right to organise.

The freedom of association and the right to organise, synthesised into universal principles and entrenched in the International Labour Conventions Nos 87 and 98 of 1948 and 1949 respectively, are accepted as inalienable human rights and represent the cornerstones of any labour relations system. Bendix and Swart 1979 : 5) state unequivocally that

"... they are prerequisites to the functioning of any social system that purports to structure human relations in production with the optimum consensus of all its participants".

In other words, the freedom of association and the right to organise are synonymous with the notion of democracy.

The Convention concerning the application of the principles of the right to organise and to bargain collectively emphasises the feeling that acceptable labour legislation should protect employees from victimization for trade union membership or activity, should create the machinery for the establishment of employee and

employer organisations, should provide the machinery for collective bargaining and the state should encourage this process as far as possible (Bendix 1989 : 30).

Although recognition of human rights in terms of employer/employee relations received due attention by international labour organisations, it was not until 1963 and 1967 that recommendations pertaining to discipline and dismissal and grievance procedures respectively, were established by the International Labour Organisation (Poolman 1985 : 118).

The 1963 recommendations stipulate that termination of employment should not occur unless the employer has a valid reason to support such action. While the concept "valid reason" is not defined, and, therefore, regulated by each country's labour-law system, the recommendations include reasons which are considered invalid for the termination of employment. The reasons, according to Poolman (1985 : 118), are :

- a) trade union membership or participating in trade union activities outside working hours or, with the consent of the employer, during working hours;

- b) seeking office as, or acting or having acted in the capacity of an employee's representative;
- c) the filing in good faith of a complaint or the participation in proceedings against an employer involving alleged violation of law; or
- d) race, colour, sex, marital status, religion, political opinion, national extraction or social origin.

Grievance and disciplinary procedures are essential to guarantee protection of employees' rights. However, in South Africa fundamental human rights are not entrenched constitutionally (Carpenter 1987 : 100). This necessitates the need for a bill of rights. One of the aims of a bill of rights is to set an ethos for the advancement and protection of human rights (Landman 1990 : 5). Olivier (1991 : 38) advocates a charter of human rights for South Africa because

"... the demand for the protection of human rights is a demand for justice. The concepts of fairness and justice are part of man's deepest moral perceptions ... A charter of rights is simply the external manifestation of that universal demand for justice. It is the result of a strong and ineluctable demand for justice ...".

The South African Law Commission and the African National Congress advocate the acceptance, as part of a new constitution, of an honest complete charter of human rights which is based on the principle of equality of all people before the law (Daily News September 1991 : 23).

From the foregoing discussion it may be concluded that the right to air grievances and the right to a fair disciplinary hearing are fundamental human rights concerned with labour relations. Grievance and disciplinary procedure must therefore be implemented with fairness and reasonableness.

8.3 Fairness and reasonableness

Municipal authorities are created to promote the welfare of the community. Therefore, municipal functionaries should always act fairly and reasonably when dealing with employer/employee problems. Cloete (1990 : 70) expresses the view that an individual can exercise his freedom and rights only to the extent that he will not prejudice the rights and freedom of others or cause himself and others harm, by acting unfairly and unreasonably.

With the introduction of the concept of unfair labour practice in terms of the Labour Relations Act, 1956, the normative guidelines of fairness and reasonableness in the handling of grievance and disciplinary procedures, are now of utmost importance.

An unfair labour practice suggests some form of conduct which has not met the requirements of fairness. Fairness may be equated to, inter alia, "equitable", "equity", "unbiased", "reasonable", "impartial", "balanced", "just", "honest", "free from irregularities", "according to the rules", "equality" (Poolman 1985 : 42). Bendix (1989 : 31) states that there is no absolute measure of fairness. This is so because perceptions of fairness differ from person to person. She goes on to add that the best criteria of fairness appear to be those adopted by Salamon (1989 : 31) who states that :

- there should be balance and reciprocity between the parties concerned. This means that one party should not obtain all the benefits to the detriment of the other parties. There should be an equitable exchange, both of substance and behaviours, and the participants themselves should consider their positions to be fair;

- the actions of the parties should stand up to impartial judgement and universal standards; and
- both parties should receive equal treatment and consideration. The same criteria and judgements should be applicable to both parties and the treatment of persons, should as a whole, be consistent.

In accordance with principles of common law, the employer possesses the right to dismiss an employee, the dismissal therefore, is fair (Bendix 1989 : 483). However, the Industrial Court has repeatedly refuted this assumption and it is now accepted that lawfulness is not necessarily equated to fairness. An action may be lawful, but may still be unfair (Bendix 1989 : 483).

8.3.1 Substantive and procedural fairness

The resolution of allegedly unfair labour practices implies an efficient procedure for the achievement of fair results (Poolman 1985 : 58). This should ensure that, at least partly, certain facts have been found to be present before a decision is made.

Procedural fairness is used as the means of ensuring substantive fairness in the evaluation of allegedly un-

fair labour practices. Procedure and substance are therefore inter-dependent practices to ensure fair results (Poolman 1985 : 58).

A dismissal will in all probability be regarded as substantively unfair if (Bendix 1989 : 485-6) :

- a) the dismissed employee was unaware of the rule broken by him. An employee cannot be expected to behave correctly if he is not informed of the requirements for correct behaviour;
- b) there is no clear reason for the dismissal of the employee. Such reasons may be established in terms of law, contract, disciplinary code and the expectations and circumstances of the organisation;
- c) the sanction imposed on the employee is inconsistent with the treatment of other employees who committed the same or an equal offence;
- d) after the imposition of the sanction, there was no consideration of the special circumstances, such as the previous record of the employee;
- e) there was insufficient proof of misconduct. The onus is on the employer to establish, on the

balance of probability and beyond reasonable doubt, that the offence was, in fact, committed;

- f) the sanction is too severe for the offence which was committed. The employer would have to prove that the misconduct or the part of the employee constituted sufficient reason for dismissal;
- g) the expectations of the employer were unreasonable or unlawful;
- h) the dismissal constitutes victimization of the employee; or
- i) the dismissal contravenes a law, service contract, wage determination or industrial council agreement.

Poolman (1985 : 58) emphasizes that procedural fairness should manifest the attainment of two objectives in the decision-making process, namely accuracy, or that which will be the most likely to ensure accuracy, and those procedures which respect decency and individual dignity.

The universal importance of procedure is the protection it affords a person who may suffer adverse consequences

at the hands of the employer. The decision can have momentous consequences for the employee, therefore the legislative insistence on substantive and procedural fairness must be given due weight (Cameron et al 1989 : 147).

Poolman (1985 : 59) aptly points out that the inherent sense of fairness and harmonious labour relations, is a matter of mutual interest to employers and employees.

Fairness also means "reasonableness". Grievance and disciplinary procedures must satisfy the requirements of "reasonableness". The common law of most countries requires human conduct to be measured in terms of the "reasonable man", a person who is a normal, average human being (Poolman 1985 : 47).

In unfair labour practices the "reasonable" person in labour relations relates to the reasonableness of the decision that a "sensible or reasonable" employer, employee, their organisations, or state, should arrive at (Poolman 1985 : 47). The process of determining reasonableness involves the following steps (Poolman 1985 : 47) :

- a) whether the person in labour relations, after a reasonably, careful investigation, has adequate

factual grounds on which to base his views;

- b) whether the person in labour relations adopted a reasonable procedure in his investigation; and
- c) whether the decision and the consequential conduct was reasonable in the circumstances.

Attaining a sense of reasonableness in implementation of grievance and disciplinary procedures depends on the behaviour of municipal functionaries.

For example, if an employee is found guilty of misconduct, and is subjected to alleged unfair disciplinary action, steps are taken to consider whether such action satisfies the requirement of reasonableness (Poolman 1985 : 59).

The preliminary step is to determine the reason for the complaint. This step identifies the reason why the person was treated unfavourably, the effect of which caused prejudice (Poolman 1985 : 59). It therefore, seeks to isolate the principle, underlying or real reason, and not merely the stated or apparent reason for the complaint (Poolman 1985 : 59).

The second step is designed to test the reasonableness of the conduct by evaluating it against the conduct expected of the reasonable person in labour relations (Poolman 1985 : 59).

Reasonableness, therefore, implies both subjective and objective considerations. For example, the individual's personal belief may have a subjective bearing on his reason for action or inaction. The belief must be substantiated by supporting evidence to show its genuineness. Furthermore, the decision to act or not to act must have substantial merits for treating the reason as sufficient ground for the decision to act or not to act (Poolman 1985 : 59).

8.4 Requirements of administrative law

Municipal functionaries must comply with South African administrative law when handling matters pertaining to grievance and disciplinary procedures.

Bernard Schwartz, quoted in Barton and Chappel (1985 : 174), defines administrative law as

"that branch of the law which controls the administrative operations of government. It sets forth the powers which may be exercised by administrative agencies, lays down the principles governing the exercise of those powers,

and provides legal remedies to those aggrieved by administrative action".

Simply, administrative law refers to the legal processes involved in administrative decision-making and execution (Miewald 1978 : 239).

Municipal functionaries in complying with administrative law, must perform their functions with legality, which according to Andrews (1988 : 28) means that all rules of natural justice and the rule of law must be borne in mind with every action performed in public institutions. Municipal officials must adhere to the following principles of administrative law (Cloete 1991 : 74) :

- a) a public functionary should not exceed his powers under the law. All actions must be intra vires and not ultra vires;
- b) the functionary should act only if he has the power or authority to do so;
- c) there should be a justifiable reason for the act or decision; and
- d) the audi alterem partem rule should apply.

An additional rule of natural justice that applies to municipal officials stipulates that no man should be a judge in his own cause.

8.4.1 Ultra Vires Rule

There are two rules of ultra vires, according to which grievance and disciplinary procedures may be unfairly implemented : the procedural ultra vires rule and the substantive ultra vires rule (Riekert 1986 : 187).

8.4.1.1 Procedural Ultra Vires Rule

Grievance and disciplinary procedures are laid down as part of the Conditions of Service of municipal authorities in South Africa (Sing & Penceliah 1989 : 30). Agreements pertaining to these procedures are binding on employers and employees. If a supervisor acts arbitrarily and disciplines an employee without adhering to stipulated disciplinary procedures, the action will be declared unacceptable in terms of the procedural ultra vires rule (Riekert 1986 : 187).

8.4.1.2 Substantive Ultra Vires Rule

When a municipal council goes outside or beyond the powers conferred on it by the enabling legislation, the

disciplinary measures will be ultra vires.

A local government is a decentralized system of government and acquires power through enabling acts of Parliament. Wade (1988 : 40) states that when parliament confers power on municipal government authorities, it is assumed that the power is to be used fairly and with due consideration of rights and interests of the community. Hence, municipal functionaries must ensure that measures dealing with grievance and disciplinary procedures are to be exercised not arbitrarily, but both fairly and consistently.

8.4.2 Audi alterem partem rule

This rule means that both sides must be heard. The general rule is that whenever an official is empowered to make a decision or issue an order which may adversely affect the rights or interests of or have legal consequences for a person, there is a duty upon the official to afford that person a hearing.

Under the audi alterem partem rule the affected person must be (Craythorne 1990 : 435):

- informed of the case which he has to answer;

- given an adequate opportunity to answer the case disclosed and reasonable time to do so; and
- informed of the evidence on which the official makes his decision.

When an employee is charged with misconduct, the supervisor must ensure that the above-mentioned principles are adhered to.

8.4.3 No man should be a judge in his own cause

The principle nemo debet esse iudex in causa propria sua precludes any party who is interested in the subject matter of a dispute from acting as a justice therein (Riekert 1986 : 188). An example of this would be a supervisor functioning as both a witness and an adjudicating official in a disciplinary hearing.

8.5 Maintenance of Public Accountability

Municipal authorities are public institutions established to promote the welfare of the community. Therefore, municipal functionaries must be able to account for whatever decisions they take.

Derbyshire and Patterson (1979 : 219) maintain that accountability means the need for decisions to be justified to the community through its elected representations. Responsible government, if it is to be effective, must also mean accountable government. This implies that municipal officials are required to answer for their activities and that a degree of control over municipal official behaviour is necessary.

Measures that are used to uphold public accountability are the legislature, judicial institutions, organisational arrangements and work procedures (Cloete 1991 : 64-67).

Parliament passes laws which protect the rights and privileges of the individual. Municipal functionaries are subject to the provisions of such legislation when performing their functions. For example, municipal functionaries must take cognisance of the Labour Relations Act of 1956, as amended, when dismissing an employee for misconduct (Cloete 1991 : 64).

Barton and Chappell (1985 : 172) postulate that legislature also has a role in providing judicial review of administrative actions. The courts of law have to protect the rights and freedom of individual citizens (Cloete 1991 : 65). In terms of the 1988 amendments to

the Labour Relations Act of 1956, failure to comply with correct procedures in disciplining an employee constitutes an unfair labour practice. The affected employee has recourse to the industrial council, if applicable, or to the Industrial Court if he is a victim of such unfair labour practice.

Effective and efficient organisational arrangements ensure that municipal functionaries are able to render account to their superiors for actions taken, and are responsible for such action. Demarcation of lines of authority ensure that municipal officials do not abuse their powers and waste taxpayers money (Cloete 1986 : 79).

Procedural control is very important in handling of grievance and disciplinary procedures. This means that supervisors and heads of department must follow established procedures in carrying out grievance and disciplinary actions. For example, in order to discharge an employee who has allegedly committed a serious violation of the municipal authority's rule, line management may have to follow a clearly defined procedure. Depending upon the circumstances, this may involve submitting written evidence, obtaining testimony of witnesses, notifying the union, and granting the person a full hearing (Beach 1985 : 46).

In order to achieve success in the implementation of grievance and disciplinary procedures, municipal functionaries must always take cognisance of the aforementioned normative guidelines that govern their conduct.

9 SUMMARY

Public administration is a capacious field of activity aimed at promoting community welfare. In order to achieve this goal efficiently and effectively, specialisation must take place. At the local level, municipal administration is considered to be a sub-field of activity of public administration.

In a similar vein, municipal personnel administration is a specialised field of activity of municipal administration. Municipal personnel administration is concerned with promoting the well-being of municipal employees. To this end, the generic administrative and managerial functions, the functional, auxiliary and instrumental activities are executed. The functional activities may be categorised into personnel provision, support, training and development and utilisation functions.

An important component of the support function of municipal personnel administration is grievance procedures. Disciplinary procedures are part of the utilisation functions of personnel administration. Municipal employees represent 15% of the total public sector employment. Therefore, grievance and disciplinary procedures play a vital role in maintaining and promoting effective and efficient personnel administration.

Although grievance and disciplinary procedures are functional activities of municipal personnel administration, they fulfil different functions. Grievance procedures are initiated by municipal employees who feel discontented about some occurrence or condition at work. Issues which form the substance of disciplinary procedures are initiated by management for actions against the interest of the municipal authority.

In South Africa, grievance and disciplinary procedures are not prescribed by law. However, various legislative measures and policy directives exist to promote harmonious employer/employee relations, including grievance and disciplinary procedures. It is argued that the contract of employment does not cater for the relationship between employer and employees. With the rules of common law governing employer/employee rela-

tions exclusively, employers may exploit employees. Furthermore, employees do not have sufficient bargaining power to improve their conditions of employment. In South Africa, the Labour Relations Act 28 of 1956, as amended, is the principal regulator of employer/employee relations. With the introduction of the concept of unfair labour practice, the Labour Relations Act has important implications for grievance and disciplinary procedures.

In terms of the definition of unfair labour practice, the unfair dismissal of an employee, the unfair unilateral suspension of an employee by his employer, and the failure or refusal by an employer, employee trade union or employers' organisation to comply with a collective agreement, would all constitute an unfair labour practice, unless the failure or refusal could be justified. Of major concern in this study are the implications of the Labour Relations Act on the employer's traditionally wide disciplinary powers. It is concluded that if a municipal authority dismisses an employee by reason of a disciplinary action, there must be a valid and fair reason for the dismissal, and the dismissal must be in compliance with a fair procedure.

In undertaking any field of activity aimed at promotion of employee welfare, municipal functionaries must bear

in mind the normative guidelines that govern their conduct. The most important of these normative guidelines that municipal functionaries should take cognisance of in regard to grievance and disciplinary procedures are deference to labour rights, respect for human rights, fairness and reasonableness, requirements of administrative law and the maintenance of public accountability.

In South Africa, fundamental human rights are not protected by the constitution. Hence, the need for a bill of rights to be entrenched in the constitution. Such a bill of rights will enshrine the inalienable rights of the citizens of the country. Municipal authorities should recognise the fundamental rights of employees, namely, the right to work, the right to freedom of association, the right to collective bargaining, the right to strike, the right to protection against unfair labour practices, and the right to training. Leading labour relations experts express the view that employees enforce their rights to work when they have been dismissed or retrenched and where the employees are suspended.

The right to freedom of association is entrenched in the Labour Relations Act. However, civil servants are excluded from full freedom of association. Municipal

employees, however, may belong to trade unions, and therefore, have a limited right of association. Municipal functionaries also have the right to utilise structures and institutions for collective bargaining and for the settlement of disputes.

Labour relations experts recognise the need to grant employees the right to strike. The reasons advocated in this regard include the reduction in the discrepancy in the balance of power between employer and employees and that the strike phenomenon has to be accepted as an integral part of the market economy and conflict as a necessary consequence of labour relations. In spite of this, legislation in South Africa does not permit municipal functionaries the right to strike.

Municipal employees need to be protected against unfair labour practices, and assured of satisfactory working conditions. Various acts serve to protect municipal functionaries in this regard. These include, inter alia, the Workmen's Compensation Act 30 of 1941, Unemployment Insurance Act 30 of 1966, and Machinery and Occupational Safety Act 6 of 1983.

The right to be trained is also a fundamental right of employees. This responsibility lies with the employer. Training involves two components, namely, vocational

training and industrial relations training. Training enables employees to have a better understanding of the employer's expectations and imbibes responsibility and self-discipline in employees.

Employer/employee relations must be orientated on universally acceptable principles and guidelines. It follows, then, that grievance and disciplinary procedures are essential to guarantee protection of employees' rights. An employee who considers himself aggrieved, should have the right to redress such a grievance through effective and efficient mechanisms without being victimised or prejudiced. If an employee is subject to disciplinary action, the employee must be given a chance to present his case and to a fair hearing.

Municipal functionaries must also ensure that their actions are fair and reasonable when dealing with grievance and disciplinary procedures. When decisions are made on the type of disciplinary action imposed on an employee guilty of misconduct, the decision must be both, procedurally fair and substantively fair. Fairness also implies reasonableness. For an action to be reasonable, it must take into account objective and subjective considerations.

Municipal functionaries must also comply with the requirements of administrative law when handling grievance and disciplinary procedures. Municipal functionaries should bear in mind that all actions must be intra vires, a functionary should act only if he has the power or authority to do so, there should be a justifiable reason for the act or decision, and that the audi alterem partem rule should apply.

Municipal authorities are public institutions, and are, therefore, accountable to the State and its citizens for decisions implemented. Municipal personnel functionaries must bear in mind the legislative, judicial, organisational and work procedure mechanisms which are used to ensure accountability at all times.

In this chapter the focus on grievance and disciplinary procedures within municipal personnel administration was highlighted. In the next chapter a study of the fundamental aspects of the grievance procedures shall be undertaken.

CHAPTER THREETHEORETICAL ASPECTS OF GRIEVANCE PROCEDURES1 INTRODUCTION

Conflict in employer/employee relations is an essential and inevitable feature of labour relations in any heterogeneous society. Conflict is essential to an institution as it stimulates change and is inevitable, often because employees may have values and aspirations that differ from those of the employer. One of the mechanisms to resolve such conflict amicably is the formal grievance procedure. In South Africa, grievance and disciplinary procedures are fairly new to South African labour relations practice. There is an increasing tendency in the employer/employee relationship to accord the worker more say, however, grievance and disciplinary procedures are not prescribed in terms of legislation, but are incorporated into the conditions of service, as a matter of practice.

Employer/employee relationships must be seen in terms of a contractual responsibility between the employer and employee (Yoder 1958 : 11-5). Prescriptive conditions, emanating from legislation, must be complied with when employer and employee conclude the contract. The nature

and content of the service contract may be determined by legislation. Employer and employee organisations lay down conditions of service to which all who act on their behalf must adhere. Often these conditions of service can be enforced by law, and in some cases a violation of the conditions of service can even lead to criminal presecution by the State (Yoder 1958 : 11-5).

In general, however, provision is made for problems relating to conditions of service and working circumstances to be settled between the employer and employee themselves, before outside parties become involved. Grievance procedures are the instruments whereby the objective of solving employer/employee conflict internally is achieved.

To attain a modicum of success in understanding the nature of grievance procedures, this chapter shall focus on the following:

- defining grievance;
- nature and causes of grievances;
- nature and content of grievance procedures; and
- employer/employee interaction in grievance procedures.

2 DEFINING GRIEVANCE

Attempts by various authors to define the term grievance have resulted in numerous and diverse conclusions. Piron (1984 : 75) is of the opinion that the definition of the term grievance has presented many problems, especially because the connotation of the term is predominantly negative.

Viewpoints as to just what constitutes a grievance vary among personnel management and industrial relations authorities. According to Birnbrauer (1981 : 7) the term grievance means different things to different people. Many labour relations experts have distinguished between a complaint and a grievance.

A complaint is a discontentment or dissatisfaction which has not, as yet, assumed a great measure of importance to the complainant. Complaints are often submitted in a highly informal fashion. A complaint becomes a grievance when the employee feels that an injustice has been committed. If the supervisor ignores the complaint and the dissatisfaction grows within the employee, it usually assumes the status of a grievance (Flippo 1966 : 361). It should, however, be noted firstly, that not all employee complaints result in formal grievances and secondly, if the complaint has a legal basis (for ex-

ample working beyond legally defined hours of work) resolution of the dissatisfaction is not subject to the discretion of management because management must comply with the law (Prinsloo, Slabbert & Backer 1990 : 22-60).

Mills (1982 : 335) is of the view that a grievance is an alleged violation of the rights of workers on-the-job. These rights may be spelled out in labour agreements wherein grievances are referred to as controversies or disputes arising from the application, interpretation or violation of clauses in the agreement (Mills 1982 : 335). Such a definition provides a very narrow perspective because it suggests that a grievance is genuine only if there has been some alleged violation of the labour agreement (Flipppo 1966 : 361). This implies that the only rights possessed by employees are those specifically spelled out in the contract. Hence they can legitimately grieve only issues involved in the application and interpretation of the union/management agreement.

Some authors have adopted a broad definition of the term which encompasses those grievances expressed as well as those not vocalised. Advocates of this viewpoint believe that a grievance is any discontentment or sense of injustice, expressed or not, felt by an employee in connection with his employment in an organisation (Magwaza

1981 : 9). Such a definition includes all states of dissatisfaction or unhappiness whether they have been vocalized or not, written or oral, legitimate or ridiculous and whether they can be substantiated by facts or not. The only major restriction is that the discontentment must affect worker performance (Magwaza 1981 : 10).

Much debate has been waged over the issues which have not been brought to the attention of management, that is, whether they constitute a grievance or not. Botha (1977 : 1) and Finnemore & Van der Merwe (1989 : 120) define grievance as any dissatisfaction or feeling of injustice which has been experienced by a worker or group of workers and has been brought to the attention of the employer. Prentice (1984 : 29) shares the same view, having defined grievance as any dissatisfaction or feeling of injustice a worker may have in connection with his employment situation that is brought to the attention of management.

Magwaza (1981 : 9) however, defines a grievance as any discontentment or dissatisfaction whether expressed or not, and whether valid or not, arising out of anything connected with the institution that an employee thinks, believes or even feels is unfair, unjust or inequitable.

It should be borne in mind, though, that it is difficult for management to act on an employee's problem if he does not call the matter to their attention. The emphasis on management's part should be to create a proper leadership climate so that employees who think they have a justifiable complaint feel free to inform management of this fact (Magwaza 1981 : 9).

Bendix (1989 : 254) believes it is difficult to concretise the type of grievance which would resort under a formal grievance procedure. Employee grievances are wide-ranging and vary from general dissatisfaction about wages and working conditions, dissatisfaction regarding promotion or training and complaints about lack of facilities or inadequate equipment to unhappiness on the part of an employee regarding unfair treatment, unreasonable orders, unrealistic expectations and blatant discrimination (Bendix 1989 : 254). Not all of these would resort under a formal grievance procedure.

Common grievances regarding wages and working conditions are usually channelled through a representative union or, where no union exists, through a representative employee body. Individual grievances regarding wages may be aired in personal interviews with management or may be channelled through a workers' body, as may dissatisfaction regarding promotion and training (Bendix 1989 :

254). A workers' committee will also raise issues regarding facilities and equipment, although in these cases suggestion boxes and hotlines could prove to be useful (Bendix 1989 : 254).

Usually a formal grievance is initiated when, within the day-to-day work situation of the employee, an incident has occurred or the employee's position is such that he is left with a general feeling of dissatisfaction or a sense of injustice. A supervisor may have consistently discriminated against an employee or group of employees or may have treated him or them with unnecessary harshness, an employee may have been unjustifiably disciplined or insulted or he may not have been allowed time off which otherwise would have been common practice (Bendix 1989 : 254). This is the type of issue which will be channelled through the grievance procedure, the rationale being that it requires the formal consideration of management.

Moreover, a grievance of the above nature is the type of issue which, if unresolved, may lead to a situation of dispute between management and the employee or group of employees. This aspect differentiates a formal grievance from those of a more trivial nature, that is, those not warranting the declaration of a dispute (Bendix 1989 : 254). Thus, a formal grievance may be defined as a com-

plaint, other than demands formulated by a collective body, which is related to the employee's position or treatment within his daily working routine and which, because it may result in a dispute, warrants the formal attention of management (Bendix 1989 : 254).

Piron (1984 : 75) adds that the definition of grievance can and normally does accommodate both grievances of right and grievances of interest.

A grievance of right involves a grievance in terms of which the employee claims that he has not been given what is rightfully his, or management has not respected a right that he has (Piron 1984 : 75). For example, X complains that he was not paid for the overtime he worked last month, or Y complains that the supervisor swore at him, thus infringing his right of personal integrity.

A grievance of interest involves a grievance in terms of which an employee has no claim in law upon the institution, but he feels he has been badly treated. For example, X complains that both he and Y joined the institution with the same qualifications and experience in September last year. Y has now been given an increase and there is no reason why X should not be given the same increase. X has no claim in law against the in-

stitution, but it is sound industrial relations practice to give X's complaint a formal hearing (Piron 1984 : 75).

A study of the various definitions of the term 'grievance' reveals that it means different things to different people. Some authors have adopted a broad definition whilst others have restricted the meaning to that associated with the collective agreement between employer and employees (Beach 1985 : 314). In this dissertation the term "grievance" is defined within a broad context, encompassing the following : the grounds for a grievance may be any measure or situation which :

- concerns the relations between employer and worker, or;
- affects or may affect the conditions of employment of one or several workers in the institution.

According to the International Labour Office (1977 : 3) such a measure or situation must be contrary to, inter alia :

- provisions of an applicable collective agreement;
- an individual's contract of employment;
- work rules; and/or

- laws, regulations and customs.

It may be concluded, that the term 'grievance' is used to designate claims by workers concerning the workers' individual or collective rights under an applicable collective agreement, individual contract of employment, laws, regulations, work rules or customs.

3 NATURE AND CAUSES OF GRIEVANCES

If some problem or condition bothers or annoys an employee or if he thinks he has been unfairly treated by someone, he may express his discontentment to someone else. When he vocalizes his dissatisfaction, such action is designated as a complaint. Usually, but not always, when a person complains about something that bothers him, he hopes that the listener (or fellow employee or his supervisor) will do something to correct the difficulty (Beach 1975 : 617).

But an unexpressed dissatisfaction can be just as worthy of consideration by the supervisor as the spoken complaint (Beach 1975 : 617). There are many reasons why an employee may keep his problem "bottled up" inside himself. He may simply have a high tolerance limit for frustration or he may feel that the condition may soon change in such a way that the problem will then be cor-

rected (Beach 1975 : 617). He may feel that complaining to the supervisor will be in vain because of past experiences. Sometimes an individual may even feel that he will be condemned or criticized if he complains. By inspiring trust and confidence, the supervisor can dispel employee fears and encourage free expression of feelings (Beach 1975 : 618).

Nigro (1959 : 404) states that nothing is more certain than that the morale of the employees will be greatly affected by how management deals with their grievances. There are numerous causes for grievances. It may be an adverse action taken against the employee, such as refusal to grant him a salary increase or consider him for a promotion. This type of grievance frequently leads to prolonged appeals and hearings and is thus well-known (Nigro 1959 : 404). Sometimes, no adverse action is taken or planned against the individual, but he is dissatisfied for some reason or other. Eventually, this kind of grievance may also end up in protracted appeals and hearings (Nigro 1959 : 404).

The immediate supervisor plays a key role in detecting evidence of employee discontentment in taking steps to correct the causes. Ideally, most grievances should be handled by informal conversations between the supervisor and the employee (Nigro 1959 : 404). A formal grievance

procedure is necessary to assure the right of the subordinate to appeal the decision of the supervisor, but if the latter acts promptly and intelligently, the great probability is that most grievances will be disposed of in this informal manner. The manner of handling employee dissatisfaction, disaffection or resentment effectively, is to detect it early and handle it promptly, tactfully and above all, informally (Nigro 1959 : 404-405).

The above view is also shared by Yoder, Heneman, Turnbull & Stone (1958 : 14-51). Grievances, if not treated in a prompt, orderly fashion will lead to even lower levels of morale and may result, through social contagion in more serious forms of unrest. Grievances may be real or imaginary, may stem from a variety of causes, and may arise for many reasons other than those subjects included in a labour contract. They are the safety valve of poor morale and overall discontentment and dissatisfaction.

Yoder, et al (1958 : 14-51) provide the following examples of typical grievances and common causes :

TABLE 2TYPICAL EXAMPLES OF EMPLOYEE GRIEVANCES

TYPE OF GRIEVANCE	COMMON CAUSES
A. <u>WAGES</u>	The worker feels that
1. Demand for individual wage adjustment	He is not getting what he is worth. He gets less than other people doing work requiring the same degree of skill.
2. Complaints about job classification	His job is worth more than it pays and should be reclassified. He deserves to be upgraded.
3. Complaints about incentive systems	The method of figuring his pay is so complicated that he does not know what his rate really is.
4. Miscellaneous	Mistakes are made in calculating pay. Methods of paying off are inconsiderate.
B. <u>SUPERVISION</u>	
1. Complaints against discipline	Foreman does not like him and picks on him. Management dislikes him because he is active in the union. His mistakes were due to inadequate instruction.
2. Objection to a particular foreman	Foreman is trying to undermine the union. Foreman ignores complaints.

3. Objections to general method of supervision
- There are too many rules and regulations. Rules and regulations are not clearly posted.
- C. SENIORITY, DISCHARGE, ETC.:
1. Loss of seniority
- He has been unfairly deprived of seniority.
2. Calculation of seniority
- He has not received all the seniority due to him.
3. Interpretation of seniority
- Clauses in contract have been unfairly interpreted (clauses are vague).
4. Disciplinary discharge or lay-off
- He has been penalized unfairly or at least too severely. Management waited to get rid of him anyway for union activity or other reasons.
5. Promotions
- Seniority clause violated. No promotion because of union activity. He does not have a chance to advance himself.
6. Transfer to other departments or shifts
- He has had more than his share of "graveyard shifts".
- D. GENERAL WORKING CONDITIONS:
1. Safety and Health
- Toilet facilities inadequate. Dampness, noise, fumes and other unpleasant or unsafe conditions could be corrected.

- | | | |
|------|-------------------------------|---|
| 2. | Miscellaneous | He has to lose too much time waiting for materials. Overtime is unnecessary. He is being unfairly denied an employment release. Lunchroom facilities are inadequate. |
|
 | | |
| E. | <u>COLLECTIVE BARGAINING:</u> | |
| 1. | Violations of contract | Management puts obstacles in the way of grievance settlements. |
| 2. | Interpretation of contract | Management would not give supervisors authority to grant any concessions. |
| 3. | Settlement of grievances | Management has disregarded precedents and agreed upon interpretations. Management fails to discipline supervisors where disciplinary action is necessary and has been promised. |

From the foregoing it is evident that there is a large variety of reasons for grievances. In fact, individuals will be susceptible to grievances for divergent reasons (Cloete 1985 : 194). Because man is fallible, he will in his work environment always be prone to misunderstanding, mutual jealousy, mutual unfriendliness and unhealthy mutual competition. All these opportunities for clashes will result in grievances (Cloete 1985 : 194). In general, the causes of grievances constitute a transgression by employers of the formalised policies

and practices of the institution, or some form of behaviour that is seen to be unfair, unjust, inequitable or arbitrary. Some examples cited by Nel & Van Rooyen (1989 : 277) are:

- favouritism by supervisors;
- ignoring seniority in treatment of workers;
- harsh, unjust discipline;
- short pay, incorrect rates, unequal rates, incorrect reading of work time;
- working conditions;
- hours of work;
- personality conflict;
- holidays, vacations, time off;
- assault;
- poor instructions/communications;
- ignoring worker needs, situations and problems;
- unfair and variable supervisory practices;
- ignoring worker suggestions; and
- unsound personnel policies.

The aforementioned grievances are common to all employees. Hence, municipal functionaries will identify with such occurrences in municipal authorities.

4 NATURE AND CONTENT OF GRIEVANCE PROCEDURES

If workers' complaints and grievances are not channelled by means of some formal procedures, they accumulate and result in, inter alia, (Nel & Van Rooyen 1989 : 273) :

- high absentee rate;
- high labour turnover;
- increased accident rate;
- weakening team spirit; and
- strikes.

A well-functioning grievance procedure is therefore stressed, with its central function being to allow management to give attention to any anomaly or injustice in its policy before this finds expression in a crisis situation, or before the enterprise is externally accused of unfair labour practices (Nel & Van Rooyen 1989 : 273).

Municipal authorities are public institutions which render essential goods and services to the municipal citizenry. In order to provide efficient and effective service, municipal functionaries must be highly motivated and satisfied with their working conditions. Therefore, an effective formal grievance procedure is a prerequisite for sound employer/employee relations.

4.1 Need for Grievance Procedures

Employee complaints and dissatisfactions are, not necessarily settled satisfactorily by the first-line supervisor for various reasons (Beach 1975 : 620). The supervisor may lack the necessary human relations skills to deal effectively with his people. He may lack the authority to take the action that is really necessary to properly solve the problem (Beach 1975 : 620). He may even agree with the substance of the employee's grievance but know, from past experience, that it is futile for him to try to get higher management to act positively (Beach 1975 : 620).

Most, if not all, personnel management experts agree that the grievance procedure is essential because of the following reasons:

- a) a formal grievance-handling system brings employee problems to the attention of higher management. It serves as a medium of upward communication;
- b) it serves as an outlet for employee frustrations, discontentment and gripes; and
- c) helps to improve morale.

Bendix (1989 : 253) emphasises the fact that procedures for effective communication and consultation are required to deal with employee grievances, with the disciplining and dismissing of employees and with imminent retrenchments. The necessity for dealing in a consistent and proper manner with employee grievances arises not only from the fact that employees have a right to formal channels through which grievances may be expressed, but also from the very real danger that individual grievances may escalate and promote industrial unrest (Bendix 1989 : 253). The consistency achieved by generally applicable procedures ensures the equal and fair treatment of all employees and prevents overhasty actions or reactions on the part of management.

In the South African municipal authorities studied, it was found that major city status local authorities such as Cape Town and Port Elizabeth agree with the need for formal grievance procedures to handle employee grievances consistently and in an appropriate manner.

4.2 Establishment of Grievance Procedures

Grievance, disciplinary and retrenchment procedures may be negotiated with a union, drafted by management in consultation with union or other employee representatives, or instituted solely by management. Bendix

(1989 : 253) states that where there is active employee representation at the institution, the latter route is not advisable.

Unions contend that employee grievances are within their sphere of interest, and that they have a right, at the very least, to provide an input (Bendix 1989 : 253). It cannot be over-emphasised that grievance procedures are established to protect the rights of all employees both collectively and individually. Furthermore, it is necessary that those members of line management who will be most closely involved with the implementation of procedures should be consulted when the procedures are drafted (Bendix 1989 : 253).

The nature of the procedure depends on the circumstances of a particular institution, its size, work process, organizational structure, management style and the nature of employee representation (Bendix 1989 : 253). This is also applicable to municipal authorities. The nature of the grievance procedure will depend on the size of the municipal authority and on whether it falls under the jurisdiction of an industrial council. Bendix (1989 : 253) is of the view that procedures should be developed to suit a particular institution. Procedures must also be practicable in the institution. Nevertheless, there are certain rules and guidelines which must be borne in

mind when establishing grievance procedures.

4.3 Principles underlying grievance procedures

When employees work together their attitudes, values or prejudices, or the behaviour that flows from these factors may tend to bring them into conflict (Nel & Van Rooyen 1989 : 274). Such conflict can occur between co-workers, between departments, frequently between workers and managers, and more often than not, the supervisors (Nel & Van Rooyen 1989 : 274). A conflict very often occurs because of the difference between the expectations and perceptions of the worker on the one hand, and the prescriptions made by the system, as is contained in the collective agreement, on the other hand (Nel & Van Rooyen 1989 : 274). The feelings of unhappiness, insecurity, general unsettledness that any worker, or group of workers, experience when such disturbances occur, and the resulting negative feelings that are generated, are commonly known as grievances (Nel & Van Rooyen 1989 : 274-275).

The acceptance of the fact that an interdependent relationship exists between workers and management gives the worker the right to expect, and in fact places an obligation on the employer to ensure, that appropriate action is taken to deal with all grievances. This state-

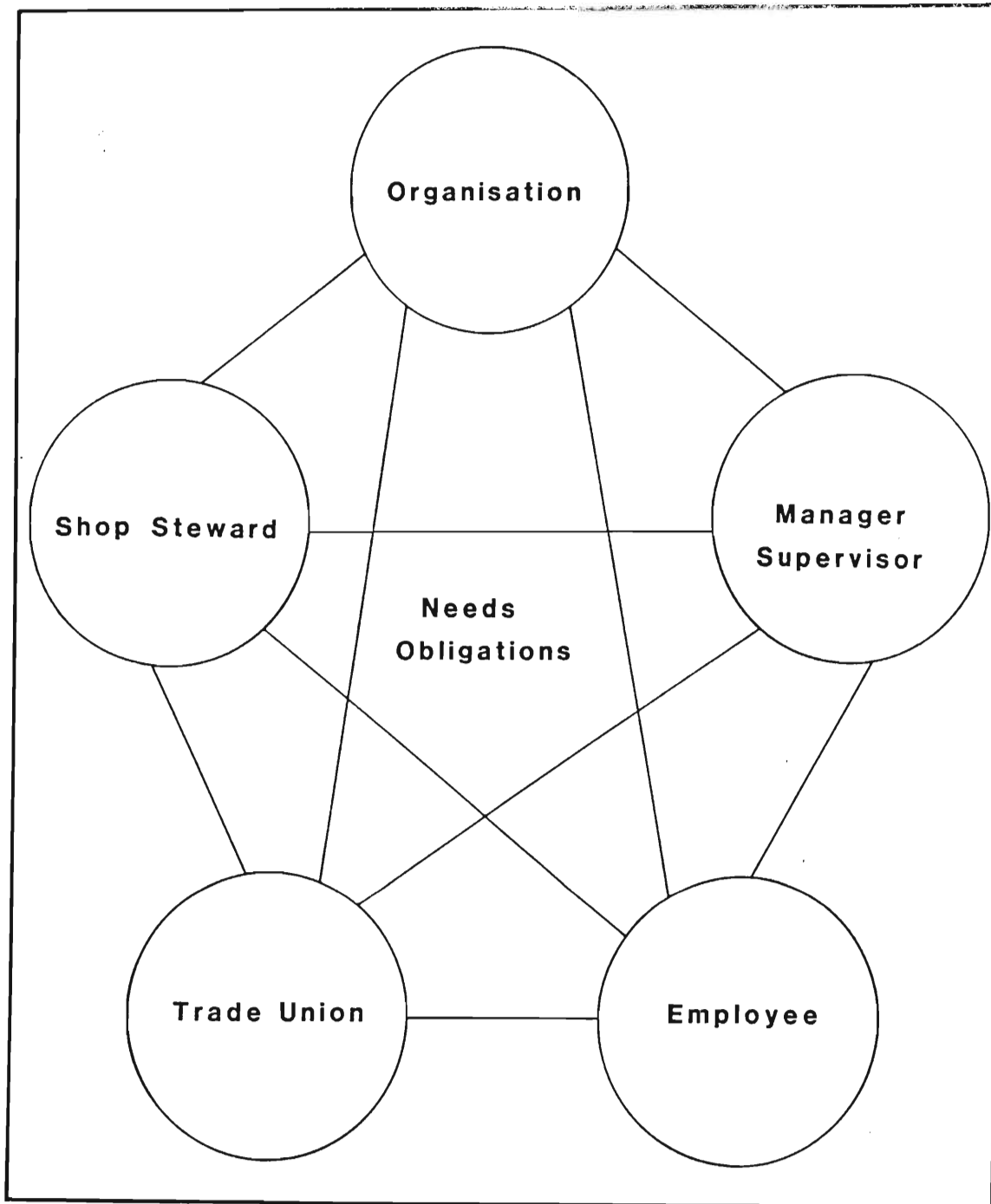
ment is based on the fact that a supervisor's prime responsibility is the optimum use of resources (of which human resources is probably the most critical), particularly in the light of the knowledge that grievances are counterproductive and disabling (Nel & Van Rooyen 1989 : 275).

Poppleton (1984 : 12) is of the view that communication is a crucial component in settlement of grievances. Line management needs to nurture its role as communicator to employees. In this sense a communications grid plays an important role in showing the inter-relationship of participants in the labour relations sphere. The question of recognising the participants in the labour relations communication grid and acknowledging that each has specific needs and obligations is important if the line manager is to be effective within the grid (Poppleton 1984 : 12). Each organisation will have its own unique grid, but the components fundamental to all grids are depicted in Figure 4.

The removal of grievances consists of the removal or adjustment of the violations of the terms of the collective bargaining agreement, in an orderly and equitable manner (Poppleton 1984 : 12). The extent to which these adjustments are fair and equitable, and, therefore, the maintenance of the interdependent relationship between

FIGURE 4

COMPONENTS FUNDAMENTAL TO ALL LABOUR
RELATIONS COMMUNICATION GRIDS (POPPLETON 1984 : 12)



employer and worker, are ensured through grievance procedures.

4.4 Objectives of Grievance Procedures

The majority of signed recognition agreements in South African municipal authorities include grievance procedures as a component. Grievance procedures fulfil the following functions (Nel & Van Rooyen 1989 : 275) :

- a) Create the opportunity for upward communication from employees.
- b) Ensure that complaints are effectively dealt with by management.
- c) Create awareness of employee problems or of problem areas which could be subjected to further investigation.
- d) Act as a safety valve that will release the tension and dissipate the latent aggression inherent in all institutions.
- e) Allow the raising and settlement of grievances for a worker without fear of retribution or victimisation.

- f) Promote openness and honesty between manager and worker.
- g) Allow managers to identify and remove legitimate causes of dissatisfaction or conflict.
- h) Allow the removal of conflict sources that make small problems escalate into major unrest.
- i) Facilitate the development of positive worker morale.
- j) Assist in promoting goal achievement and emphasizes management's concern for the well-being of employees.

Managers who limit the scope of the grievance procedures to those grievances relating to formal personnel policies, or to the items contained in the collective agreement, are ignoring the complexity and unique nature of individual human beings (Nel & Van Rooyen 1989 : 276). It should be recognised that, owing to the very complexity of human nature and the behaviour resulting from it, many issues which can give rise to a grievance fall beyond the scope of a written and formal policy. Such issues must be provided for by dealing with some grievances "off the cuff" (Nel & Van Rooyen 1989 : 276).

Kochan (1980 : 386) postulates that modern grievance procedures should meet the needs of the following three constituencies :

- a) they should serve the collective interests of the union and the employer;
- b) they should serve the interests of workers as systems for protecting individual rights and assuring industrial justice; and
- c) they should serve the interests of society by preserving industrial peace during the term of the contract, by keeping industrial disputes from overloading the courts, and by insuring that unions and employees comply with, and implement, public policies governing terms and conditions of employment (Kochan 1980 : 386).

Chamberlain & Kuhn (1986 : 150) note that grievance procedures perform three basic functions during the term of the contract to meet the collective needs of unions and employers. These are as follows (Chamberlain & Kuhn 1986 : 150) :

- a) agreements must be interpreted on a day-to-day basis and differences over interpretations must be

resolved,

- b) terms must be adapted to changing circumstances and unforeseen situations, and
- c) demands by workers, local-level managers, and first-line supervisors for adjustments and modifications of the basic agreements to fit local conditions must be accommodated.

The employer is particularly interested in the stability and predictability that the grievance procedure brings to the employment relationship (Kochan 1980 : 386). The union also benefits from consistency in the application of contract terms. However, both parties recognize that flexibility must be built into the contract interpretation process in order to accommodate the diverse needs of different parts of the bargaining unit (Kochan 1980 : 386). Presumably, all the parties, including the public, benefit to the extent that the grievance procedure serves as an effective substitute for the strike in resolving conflicts during the term of the agreement (Kochan 1980 : 386).

A policy decision must be taken as to whether the procedure will accommodate every single inquiry, in which case it will be informally structured, or whether infor-

mal inquiries will be raised outside the procedure, and that the procedure be available only for more serious complaints (Piron 1984 : 76). This will involve a very formal structure. In addition, a decision must be taken as to whether the procedure will accommodate group complaints or only individual complaints. If group complaints or grievances are to be accommodated and if the procedure is to accommodate both grievances of right and grievances of interest, it is clear that group interests, such as complaints and grievances over issues such as, what wages a particular group of employees should be paid, can involve the institution in a collective bargaining process (Piron 1984 : 76).

Municipal authorities in South Africa, such as Cape Town and Port Elizabeth specify procedures for individual grievances and separate procedures for group grievances. It is also clearly stipulated that grievances regarding wages, for example, fall under the collective bargaining procedure, and not the grievance procedure (Labour Relations Training Programme for Cape Town City Council no date : module 7)

4.5 Factors affecting Grievance Procedures

According to Chamberlain & Kuhn (1986 : 155) the following factors affect grievance-handling procedures:

- a) the more centralized the institution's administration, the more grievances get pushed to higher levels of authority and the more workers grieve. Presumably, workers find both delays involved in distant settlement and centralized managerial control, in itself, less satisfactory;

- b) supervisory styles greatly influence both the number of grievances and the level of settlement. Supervisors who act arbitrarily emphasizing their formal authority at the expense of workers' trust and consideration, tend to stimulate grievances and find them difficult to settle in the early steps; and

- c) stewards and union officers handling grievances must regularly stand for election, and they often find politics becoming large in their dealings.

Chamberlain & Kuhn (1986 : 155) further add that those who handle grievances will find political consideration influencing the grievances filed and the level at which they are settled.

Moreover, certain workers tend to grieve more than others. As work forces change, or if a department employs a large number of grieving workers, grievance

procedures can become strained and ineffective in resolving disputes (Chamberlain & Kuhn 1986 : 156). Among those most likely to grieve are the younger, better-schooled workers and union activists, grievors also tend to be workers who have more absences, take more sick leave, have poorer disciplinary records and earn less (Chamberlain & Kuhn 1986 : 156).

It may, thus be concluded that the four most prominent influences upon grievance procedures in municipal authorities are :

- a) structure of management;
- b) style of management;
- c) union politics; and
- d) the kind of work force.

Therefore, municipal authorities must take cognisance of the foregoing influences on grievance procedures to ensure efficient and effective implementation of such procedures.

4.6 Grievance Procedures in Practice

The employee grievance procedure involves a systematic set of steps for handling an employee complaint. Most contracts provide the channels and mechanisms for

processing these grievances (Glueck 1974 : 595).

Most leading labour relations experts and authors agree that the grievance procedure has at least three purposes and objectives (Glueck 1974 : 595). These may be summed up as follows :

- a) to serve as an orderly channel for reducing pressures and anxieties of employees;
- b) to serve as a mechanism for equitable, just interpretation and application of negotiated items; and
- c) to prevent arbitrary, capricious and unreasonable actions against employees.

Employees file grievances for a variety of reasons, such as to protest a contractual violation, to draw attention to a problem in the institution, or to make themselves or their union feel important. Grievances are processed through the grievance procedure specified in the labour agreement. The interactions between union and management representatives give meaning to the grievance procedure as well as insights into the quality of the labour-management relationship at a particular institution (Holley & Jennings 1987 : 493).

Bendix (1989 : 255) postulates that there are no prescriptive steps which have to be adhered to at all costs in the establishment of grievance procedures, but the following general rules apply:

- the employee should be granted the opportunity to bring his grievance, albeit in stages, to the attention of top management;
- he should be permitted representation, if so desired;
- management at the various levels, should give careful consideration to the grievance and make genuine attempts to resolve it;
- time limits should be established for each stage of the procedure;
- the grievance will not be resolved before the employee declares himself satisfied;
- the employee has the right, if the grievance remains unresolved, to declare a dispute; and
- grievances should, wherever possible, be handled by line management, but staff, in the form of the per-

sonnel department, may act in an advisory capacity.

In the light of these guidelines, a grievance procedure might, depending on the organizational structure and management style consist of steps as depicted in Figure 5. It should be noted that this applies to institutions with trade unions and shop-steward participation. However, such a procedure should be part of the employment policy in any institution, suitably adjusted to operate without shop-stewards and trade union participation.

The steps in the grievance procedure fall into three groups : informal procedures, formal procedures and third party resolution. A discussion on the nature and scope of these procedures follow (Finnemore & Van der Merwe 1989 : 121) :

(A) Informal Procedures

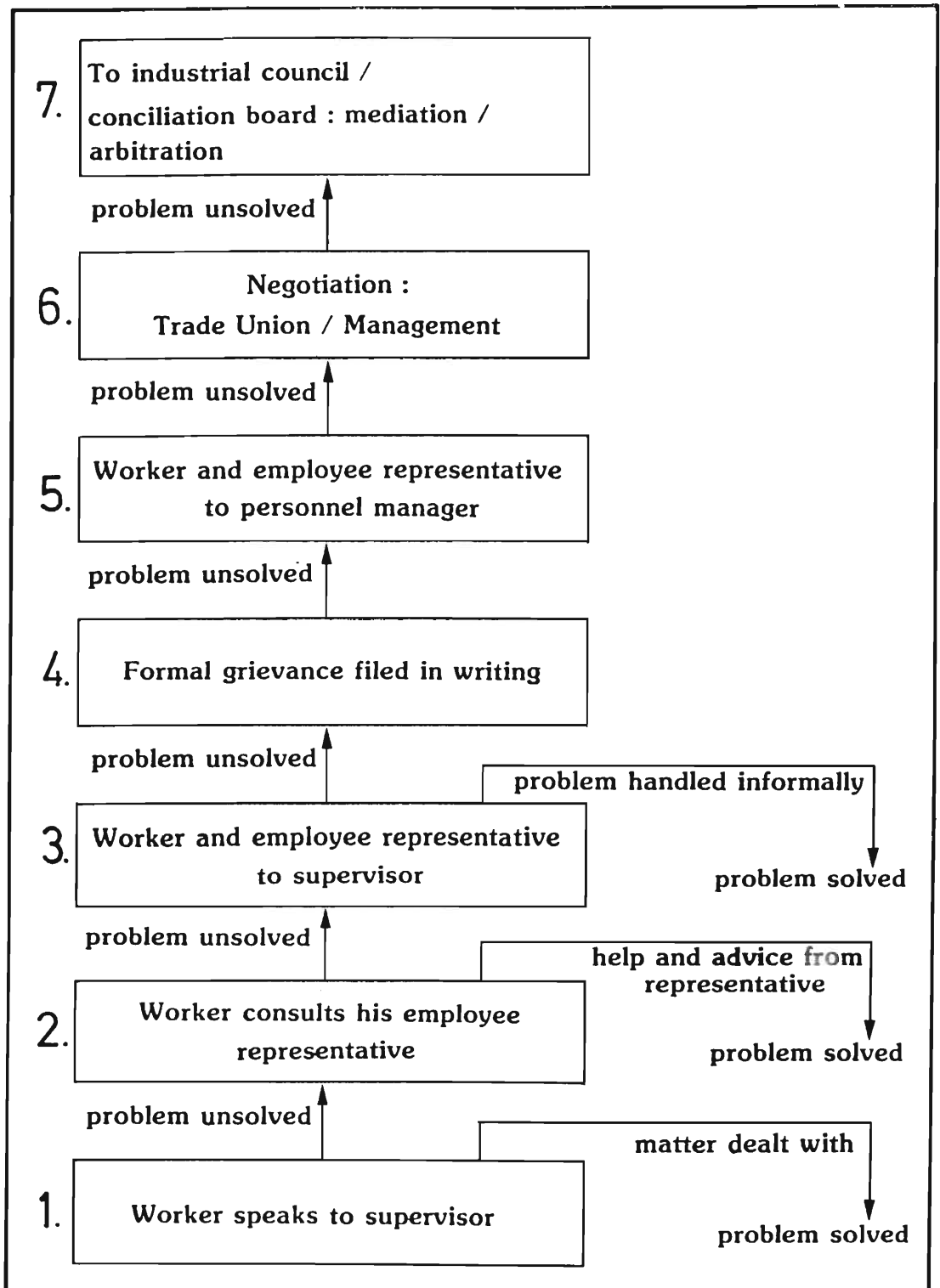
The informal procedures may be divided into three stages.

(i) STAGE 1

An employee with a grievance relating directly to his employment must communicate it verbally to his immediate

FIGURE 5

A TYPICAL GRIEVANCE PROCEDURE IN A UNIONISED
 INSTITUTION (ADAPTED FROM FINNEMORE AND VAN DER MERWE
 1989 : 122)



supervisor. The supervisor must, to the best of his ability,

- talk to the employee in private;
- encourage the employee to express his grievance freely and openly;
- ascertain all relevant facts relating to the grievance (distinguishing fact from opinion); and
- the supervisor must endeavour to resolve the grievance as speedily as possible and within two working days at the most.

If the supervisor's decision is unacceptable to the employee, stage 2 becomes effective and the supervisor must advise the employee of the subsequent stages of the procedure and of his right to seek the assistance of an employee representative.

(ii) STAGE 2

The employee should discuss his grievance with his representative. With help and advice from the representative, the grievance may be solved. The representative ought to inform the employee if he feels that

the complaint or grievance is unfounded, and also why he considers this to be so. If the grievance is justifiable stage 3 of the procedure is implemented.

(iii) STAGE 3

The employee, with the assistance of his representative, should again verbally inform the immediate supervisor of the grievance, and the latter should resolve this within four working days.

If the matter is settled, it is the duty of the supervisor and the employee representative to ensure that the action agreed upon is implemented.

Stages one, two and three are informal, and supervisors should be encouraged wherever possible to settle grievances promptly at any one of the stages. However, Finnemore & Van der Merwe (1989 : 122) cite the following two reasons why this may be difficult :

- the grievance may involve the supervisor himself, and he may be unable to address it impartially. Consequently, every worker should have the right to raise his grievance at a higher level. Suppressed grievances, through fear of victimisation, are likely to create industrial relations problems and

thus, a low grievance rate might not necessarily be an indication of organisational health.

- the supervisor may recognise that the grievance settlement could set a precedent for other employees, even outside his department. In such a case, he may prefer to let it be formally heard at a level where the implications can be fully explored.

The employee now engages in formal grievance procedures, if he so desires (Finnemore & Van der Merwe 1989 : 122).

(B) Formal Procedures

If the employee is dissatisfied with the outcome of stage 3, he proceeds to the next stage which is formal (Finnemore & Van der Merwe 1989 : 122)

(iv) STAGE 4

If the supervisor's suggestions are not acceptable to the employee, the latter, with or without the assistance of a representative, lodges a formal written grievance for the attention of the supervisor at the next level of management. Copies of the grievance are circulated to the supervisor, manager and personnel department

(Finnemore & Van der Merwe 1989 : 122).

Formal grievances are normally filed via a prescribed form, in which the employee sets out his dissatisfaction, and also the action he considers necessary to resolve the grievance. Both are important, the former because it forces the employee and his representative to think through the problem and provide specific details, and the latter because it provides a required action, which if conceded, would settle the matter. The employee representative has a role to play here in screening grievances filed by members (Finnemore & Van der Merwe 1989 : 123).

If the problem is unresolved, stage 5 becomes effective.

(v) STAGE 5

A grievance which remains unresolved is then channelled to the next level of management, for example, to the personnel manager (Finnemore & Van der Merwe 1989 : 123). The personnel manager should, once he has been notified of the grievance, call a meeting which must be attended by the personnel manager, the supervisor, the worker submitting the grievance, and the worker's representative. It is essential for the personnel manager to call the meeting within the prescribed time limit of ten

days so that grievances can be resolved as soon as possible (Finnemore & Van der Merwe 1989 : 123).

(vi) STAGE 6

Should the decision of the personnel manager not be acceptable to the employee, the grievance is then brought to the attention of top management. The discussions which are held will involve various management representatives, the employee and his representatives (Finnemore & Van der Merwe 1989 : 123). The meetings may now begin to take the form of negotiations. A lack of solution at this stage will result either in the employee's backing down or in his declaration of a dispute.

(C) Third Party Resolution

When the employee declares a dispute with his employer stage 7 is implemented.

(vii) STAGE 7

The aggrieved employee may declare a dispute in which case the issue may be processed through the statutorily established dispute - settlement mechanism. Such a procedure may provide for mediation, arbitration or judi-

cial adjudication (Bendix 1989 : 256).

The grievance may be resolved at any stage during the procedure (Bendix 1989 : 256). If this occurs the method of settlement should be noted in writing and the employee should signify his satisfaction with the solution.

In small municipal authorities the number of steps in the procedure decrease significantly. The procedure need not necessarily extend to the highest level of management. It could be terminated at Stage 3 or 4 if management at this level is regarded as the final authority on issues relating to employee problems. The dispute procedure would then be implemented after this stage (Bendix 1989 : 256).

In South Africa, the municipal authorities that were studied have all established grievance procedures. The grievance procedures differ from municipal authority to municipal authority depending on their peculiar environment.

4.7 Effectiveness of Grievance Procedures

Magwaza (1981 : 9) is of the opinion that the grievance procedures are usually the most important aspect of

labour relations insofar as conflict minimisation is concerned. When the process operates fairly and efficiently, employees will have little need to resort to strike action of any kind. The grievance machinery provides a readily available channel for upward communication and a means of defining what might otherwise develop into an explosive situation (Magwaza 1981 : 9).

By studying the use of grievance procedures, a personnel manager can often become aware of potential conflict before it becomes disruptive. Any time there is a decided increase in grievance activity, it can be assumed a problem exists that may subsequently become explosive.

Magwaza (1981 : 9) identifies some of these problems as:

- a) an over-eager union steward trying to make a name for himself through the expansion of minor incidents into full-scale grievances;
- b) a concerted attempt to get at an unpopular foreman; and/or;
- c) considerable and widespread discontentment over changes in production standards.

However, a complete lack of grievances can also raise questions. These may reflect supervisory over-permissiveness as a result of lower levels of line management permitting employees to violate rules repeatedly to keep grievances down (Magwaza 1981 : 10).

Because grievances almost invariably begin with a complaint to front-line supervision, and because the attitudes and behaviour of supervisors have a direct relationship to the grievance rate, it is extremely important that lower levels of management are kept informed and fully trained in this area (Magwaza 1981 : 10). This is particularly crucial in large organisations in which lower levels of management often feel that they have little voice in contract negotiations (Magwaza 1981 : 14).

If grievance procedures are to be effective, they must be known to all employees in the institution, who should be familiarised with its use (Bendix 1989 : 256). Consequently, a certain amount of training regarding the grievance procedure needs to be undertaken either during induction or in other training sessions. Role playing will assist the employee in grasping the procedure (Bendix 1989 : 256). He should be urged to formulate the grievance as concisely as possible, to express his grievance freely and clearly and to consider beforehand

what he would regard as an acceptable solution. Instruction and practice in the completion of grievance forms is also advantageous (Bendix 1989 : 256).

The employee will not feel free to express his grievances unless he is assured that the steps taken by him will not result in his victimization or intimidation (Bendix 1989 : 256). This may be clearly stated at the beginning of the procedure. Employees should be encouraged to use the procedure.

Employee representatives may be involved in the operation of grievance procedures (Bendix 1989 : 258). They, too, need to be instructed in its use. Representatives should be advised to listen carefully to the employee's complaint, sift the facts, investigate in order to ascertain whether the employee has a case, counsel the employee and represent the employee effectively.

Even if the above precautions are taken, the grievance procedures will not be effective unless the members of management involved in the handling of grievances are trained for this task (Bendix 1989 : 258). Line managers, from supervisors upwards, should be completely conversant with all the stages in the grievance procedures and should be trained to listen carefully to the grievance, clarify any uncertainties, distinguish fact

from opinion, confirm that understanding is correct and elicit a suggested solution from the employee. The manager must be conversant in investigating the grievance, verifying facts, and finding and promoting a solution.

A national study conducted by Miller (1978 : 302) to determine structure, administration and effectiveness, of grievance procedures revealed that an effective and creditable grievance procedure incorporates several components. Some of the more relevant aspects are highlighted hereunder.

(a) Established policy and procedure

The right of an employee to file a grievance and to stay free from supervisor retaliation should be stated as a part of the personnel policy of the employer (Miller 1978 : 302). Employers should also state in the personnel policy that it is not the intent of grievance procedures to determine terms and conditions of employment. Furthermore, employers should be alerted to the fact that grievance procedures are available for their use. A clear and complete description of the policy and procedure should be made available to employees for their ready reference, for example, the information could be included in an employee handbook or distributed to new

employees during orientation (Miller 1978 : 302).

In municipal authorities the policy and procedures are laid down as part of the conditions of service and appear in a conditions of service handbook (Bronkhurst 1990 : letter).

When the procedures are being explained, any limitations or restrictions related to the use of procedures should be clearly stated. Managers and supervisors should be made to recognise that use of the established procedures is an employee's right, not a privilege (Miller 1978 : 302). This is an essential part of any grievance policy, because management's willingness to advise employees of their grievance rights can go a long way towards dispelling employees' fears of possible retaliation (Miller 1978 : 302). On the other hand, periodic training for managers and supervisors on the purpose and management of the grievance procedures could reduce their concerns regarding the dilution of managerial authority (Miller 1978 : 306).

(b) Access to the grievance procedure

Employees who have access to the grievance procedures should be clearly identified in the written policy by their appropriate categories such as permanent full-time

and permanent part-time employees (Miller 1978 : 306). Employees who are exempt should also be identified, such as supervisors, managers, temporary employees and employees covered by a collective bargaining agreement (Miller 1978 : 306). There should be no ambiguity as to who is included or excluded from the use of grievance procedures (Miller 1978 : 306).

Many municipal authorities in South Africa do not clearly identify the categories of employees who have access to the grievance procedures.

(c) Grievable issues

Miller (1978 : 306) believes that a precise statement on what categories of issues may be grieved is another key component of any grievance procedure. If the intent of a grievance procedure is to accommodate both employee and employer interests, it is particularly important that the scope of grievable issues be co-ordinated with :

(a) the authority of internal or external review bodies (such as grievance committees and neutral third parties); and

(b) the terminal point of the procedure.

Despite an employer's best efforts to precisely specify what constitutes a grievable issue, a controversy could reasonably develop on whether a particular matter qualifies or not (Miller 1978 : 306). Therefore, the procedure should designate a method to determine if the matter in question qualifies as a grievance for redress.

In South African municipal authorities, an employee who has a grievance may consult with his trade union, if applicable. Representatives of the trade union will determine whether the employee is justified in lodging a grievance. The trade union, thus screens all grievances of its members (Murugan : interview).

(d) Structural components

The steps or levels for internal appeal and review should reflect the characteristics of the organization, such as managerial levels, delegation of authority and responsibility, and other factors (Miller 1978 : 307). There is no specified number of steps or levels, but a balance should be struck between necessary managerial review and redundancy (Miller 1978 : 307). Action parties at each step or level should be designated by position title. The instituting of time limitations for action at each stage of the procedure can help prevent procrastination (Miller 1978 : 307).

In a well structured procedure, it should be possible to determine the maximum number of days for internal review, from the filing date to management's last step response (Miller 1978 : 307). There should also be reasonable time constraints for external review. Since a grievance can be resolved more effectively if it is filed soon after the cause for the grievance, a maximum time period for filing should be specified. The designated time periods should be in terms of work days or calendar days, and ought to be modifiable only by mutual consent (Miller 1978 : 307).

The grievance procedures should also specify whether a particular stage is written or oral (Miller 1978 : 307). Management should be aware that there are trade-offs involved in such a consideration. For example, a strictly oral step of internal review may encourage manager-employee dialogue but at the expense of clarification of issues. On the other hand, a written grievance system provides a record for appeal and discourages manipulations (Miller 1978 : 307).

(e) Administration

The responsibility for the administration of the grievance procedures should be specifically assigned - usually to a personnel staff specialist - and should in-

clude, inter alia, the following :

- arrangement of meetings;
- co-ordination with supervisors for release time for the grievant, witnesses and others during scheduled work hours;
- record-keeping;
- advising employees on procedural requirements; and
- information gathering and dissemination.

A grievance procedure will work only if there is a sincere desire to solve problems on all sides (Miller 1978 : 307). In this respect the personnel department has a duty to monitor the use of grievance procedures and to advise on possible solutions (Miller 1978 : 307).

Pertinent ways to test the effectiveness of an institution's grievance procedures are to ask the following questions (Miller 1978 : 307):

- a) Are the steps in grievance procedures well defined?
- b) Do these steps follow each other progressively?

- c) How much time is allowed for each step to be carried out?
- d) Are the time limits between steps specified?
- e) Is the grievance considered to be settled if there has been no further appeal to a higher authority within the specified time?
- f) Is the action of each party spelled out?
- g) Must the grievance be recorded? - must the proceedings be minuted? and, if yes, at what stage?
- h) Can employee representatives be involved, and, if so, at what stage?
- i) Can employee representatives investigate grievances during working hours?
- j) Do all workers know their rights and obligations under the grievance system? Have these been recorded in writing, made available and carefully explained to each employee?
- k) Has the role of the union been spelled out clearly in the grievance procedure? More specifically, can

management attitudes and use of the system be tested?

- l) Have the grievances of the last year been analysed and studied to identify possible areas of discontentment?
- m) Do the grievances indicate a contravention of the collective agreement or poor management behaviour or organisational climate?
- n) At what level are most grievances resolved?
- o) Have the grievances been analysed by a department or section or by an individual supervisor?
- p) Has the cost of grievances been determined, and has time lost been calculated in?

People working within an institution have different values, beliefs, perceptions and come from different cultural backgrounds. It is, therefore, incumbent on the supervisor to recognise the reasons for dissatisfaction and low employee morale (Kochan 1980 : 391). He should be able to identify variables affecting the usage of grievance procedures (Kochan 1980 : 391).

4.8 Variables affecting usage of grievance procedures

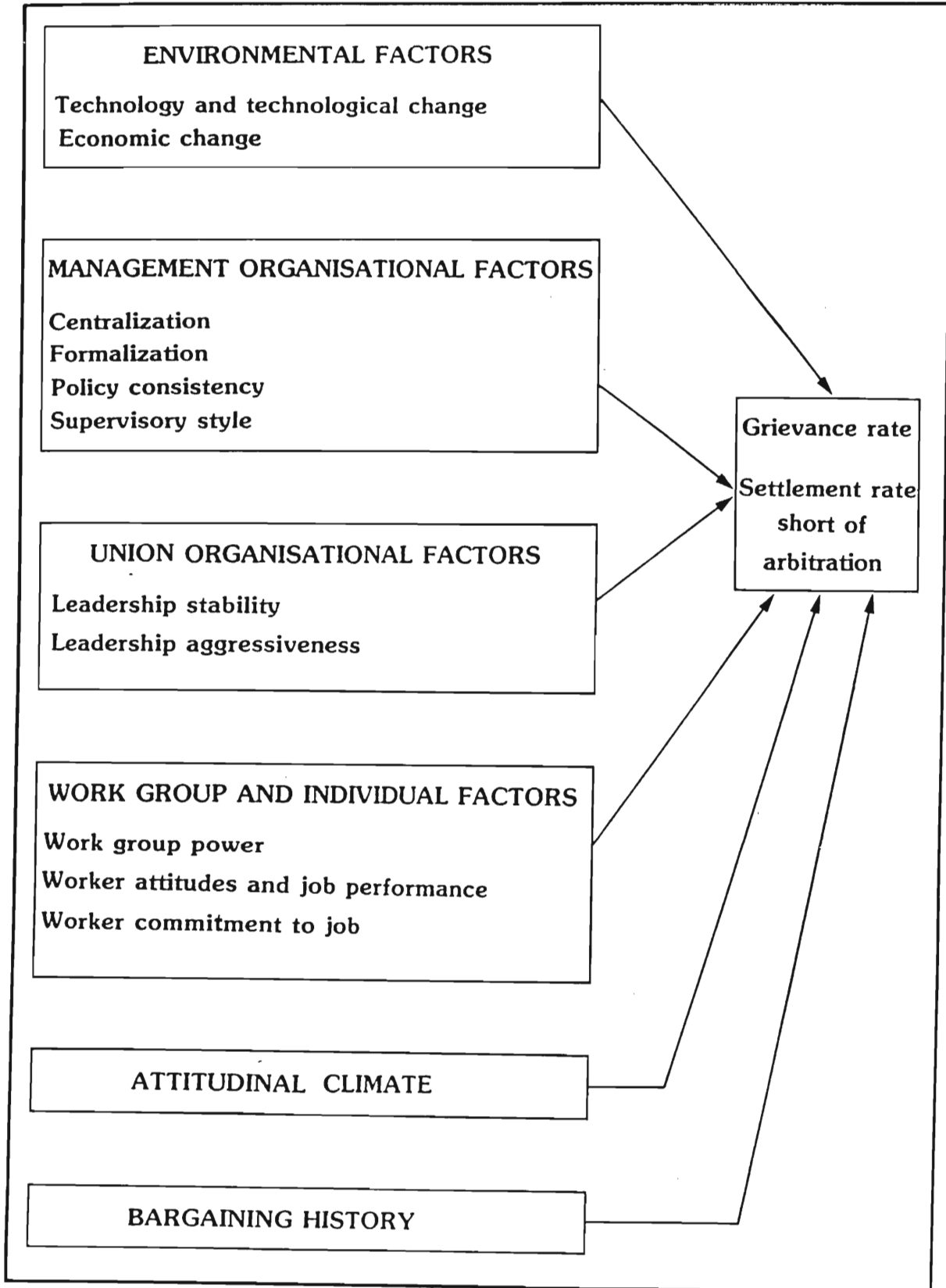
The careful study of grievances may disclose patterns in them (Kochan 1980 : 391). In such cases, the source of these dissatisfactions deserves immediate attention. Thus, if there is a series of grievances, all of which emerge from the interpretation of one clause of an agreement, the clause itself may deserve special attention. Similarly, a pattern may disclose weaknesses in supervision, routing, planning, or the setting of standards. Grievances may, in other words, indicate more deep-seated difficulties and deficiencies that appear on the surface (Kochan 1980 : 391). Only careful consideration of grievances will disclose these hidden implications. But if analytical procedures are followed, grievances can become an important source of information on the satisfactory or unsatisfactory nature of employee morale. One basic requirement in effective grievance procedures is adequate records. A good starting point, according to Yoder, et al, (1958 : 14.58) is to compare the difference between grievors and non-grievors in terms of personal characteristics, types of grievance, and results.

Kochan (1980 : 391) identifies various variables as determinants of grievance procedure usage and which are depicted in Figure 6.

FIGURE 6

DETERMINANTS OF GRIEVANCE ACTIVITY

(ADAPTED FROM KOCHAN 1980 : 391)



The determinants of grievance procedures usage include such variables as :

- a) environmental factors;
- b) management organizational factors;
- c) union organizational factors;
- d) work group and individual factors;
- e) attitudinal climate; and
- f) bargaining history.

The environmental factors that affect the usage of grievance procedures are, inter alia, the social, political, economic and technological phenomena (Kochan 1980 : 391). For example, municipal authorities may introduce technologically advanced machinery to improve effectiveness and efficiency within the organisation. However, if it does not provide adequate training on the use of such equipment, municipal functionaries may lodge grievances.

Management and union organisational factors also have an impact on the usage of grievance procedures (Kochan 1980 : 39). The level of communication between management and the union, for example, determines whether grievances will be solved amicably.

Employees have their own goals, values, needs and aspirations (Kochan 1980 : 391). These may conflict with those of the employer, thus resulting in grievances being lodged by employees.

The attitudinal climate or level of trust between the parties is one of the characteristics that is most likely to carry over between the two phases of the bargaining relationship, namely, negotiating conditions of service and the management of agreements between employer and employees (Kochan 1980 : 391). When a large backlog of unresolved grievances piles up and creates a hostile atmosphere between the parties during the term of the agreement, the negotiations process becomes a convenient forum for venting these hostilities (Kochan 1980 : 391).

Peach & Livernash (Kochan 1980 : 392) found that the higher the management centralization, the higher the grievance rate, and the more grievances got pushed up the procedure to higher levels where the authority to make decisions was vested. They also stressed that lack of consistent application of management policies or the lack of formalized policies led to higher grievance rates (Kochan 1980 : 392).

On the union side, the aggressiveness of the union leaders, political stability within the union, and aggressiveness of rank-and-file workers have been stressed as determinants of grievance activity (Kochan 1980 : 394). While several studies have attempted to identify other characteristics of individual workers that affect grievance activity the evidence is rather sketchy and difficult to interpret. One study found, for example, that low performers were more frequent users of grievance procedures than high performers (Kochan 1980 : 394). In this regard it is difficult to determine the cause and effect sequence since low performers may be more closely supervised and the efforts made to change their behaviour may produce grievances (Kochan 1980 : 394).

Where the grievance procedure has failed to achieve a successful resolution to a problem, one party or the other can be expected to place a demand on the negotiation table to remedy the situation. On the other hand, vague or inconsistent language in a contract that was negotiated in a climate of distrust and conflict is likely to set the stage for conflict during the administration of the agreement (Kochan 1980 : 391). Thomson and Murray, for example, concluded from their study that higher levels of distrust and conflict in the overall bargaining relationship require more formalised

processes and a more judicial approach to grievance handling (Kochan 1980 : 391).

A study conducted by Turner & Robinson (Kochan 1980 : 391) found that co-operative attitudes between union and management officials increased the likelihood that grievances would be settled at lower levels of the procedure. This study, along with the evidence cited earlier from Thomson and Murray, therefore, document the importance of the attitudinal climate of the relationship as a determinant of grievance activity (Kochan 1980 : 391). Yet, since attitudes are not formed in a vacuum, a theory of grievance rates must go beyond this set of variables and relate to other characteristics of the bargaining system for example, the role of the government in the bargaining process.

The attitudes of the parties are not the only tie between the overall bargaining system and the grievance process. The researchers Thomson & Murray (Kochan 1980 : 392), as well as Peach & Livernash (Kochan 1980 : 392) stress the importance of relating grievance activity to the nature of the environment and organizational characteristics of the parties. They stress the importance of technology of the work as an environmental variable. The central proposition offered by Peach & Livernash is that the greater the rate of change in the technology, the

higher the grievance rates (Kochan 1980 : 392). They also note that technologies requiring high levels of worker responsibility and close supervision are likely to increase grievance activity (Kochan 1980 : 392).

The major management organizational variables stressed in these studies include (Kochan 1980 : 392) :

- the centralization of management decision-making;
- the degree to which management policies are formalised and applied in a consistent fashion; and
- the leadership styles of first-line supervisors.

The foregoing discussion on determinants of grievance activity emphasises the need for a formal, equitable grievance handling mechanism which should be embodied in grievance procedures of all municipal authorities.

5 EMPLOYER/EMPLOYEE INTERACTION IN GRIEVANCE PROCEDURES

The most frequent interaction in grievance resolution takes place between the first-line supervisor and the union steward, who is an employee representing his work peers on a voluntary basis. Within these activities three types of interactive relationships are identified

by Holley & Jennings (1987 : 496) namely codified, power and sympathetic interactions.

5.1 Codified Interaction

The rights and privileges of foremen and union stewards often stem from a defining code established through labour agreements and various union and management publications. Union steward handbooks and management publications emphasize mutual rights and respect (Holley & Jennings 1987 : 496).

Generally, every effort should be made to settle a grievance as close to the source of the dispute as possible. The representatives have to abide by any settlement reached. If they can arrive at one, rather than having it imposed on them from above, both parties will be better-off (Holley & Jennings 1987 : 496). In addition, the further the grievance travels up the procedural ladder the more difficult it becomes to settle, because it becomes a matter of pride or prestige. Therefore, both sides tend to back up their subordinates even when they feel they may have been wrong originally. This results in a win-win situation without any resolution of conflict (Fox et al 1991 : 196).

In the management of employer/employee relations, there is no room for prejudice toward union representatives. The presence of the union organization in the institution effects a union-management marriage, and a corresponding obligation to observe the vows of recognition and good faith (Holley & Jennings 1987 : 497).

5.2 Power interaction

Codified relationships can erode when supervisors and union stewards attempt to use power to pursue different interests or goals. One dimension of the power relationship is knowledge of the labour agreement. Union stewards tend to know the labour agreement better than first-line supervisors, since supervisors must spend more time on production issues than on the analysis and understanding of the labour agreement (Holley & Jennings 1987 : 498).

A second dimension of power activities is the intimidation factor. Union stewards can file many grievances, a practice that demands the time-consuming attention of several management officials (Holley & Jennings 1987 : 498). Even if the grievances are without merit, top management may wonder why the first-line supervisor cannot solve employee problems.

Intimidation tactics are not one-sided; it is possible for a supervisor to make life very difficult for a union steward, probably without incurring an unfair labour practice charge (Holley & Jennings 1987 : 498). For example, many job classifications include a wide variety of work assignments, some of them less desirable than others. A supervisor directing unionized employees can assign undesirable work to the union steward, who has little recourse as long as the work is within his job classification (Holley & Jennings 1987 : 498).

5.3 Sympathetic interaction

Grievance participants may also engage in sympathetic activities such as allowing the other party to save face. Sympathetic relationships are aided when the supervisor and the union steward realise that both occupy marginal and difficult positions within their own organizations (Holley & Jennings 1987 : 498). For example, many first-line supervisors do not have full authority to resolve grievances at the first step, because other management officials, concerned with the precedent-setting impacts of grievances decisions like to be continually informed of related supervisory activities (Holley & Jennings (1987 : 498). These supervisors usually also receive advice from the personnel department on contract administration matters.

Holley & Jennings (1987 : 498) are of the view that union stewards are also subjected to a variety of pressures in their contract administration activities. Members expect their union steward to actively press every grievance, reasoning that the union's sole purpose is to represent its members. Consequently, it is difficult for the union steward to accept a supervisor's first-step rejection of a grievance, even if he agrees with the supervisor's position (Holley & Jennings 1987 : 498). On the other hand, union officials receiving such a grievance in subsequent steps of the grievance procedure tend to view the union steward as either, ignorant of the labour agreement or too timid to stand up to aggrieved employees (Holley & Jennings 1987 : 498).

These varieties of interpersonal relationships reveal how real-life grievance procedures vary from the procedures outlined in the labour agreement. Individual objectives, strategies and personalities force the procedures to be more flexible in practice than it is on paper.

In South African municipal authorities, there is a constant struggle waged by trade unions to improve the conditions of employment of municipal employees (Murugan 16/8/91 : interview). Municipal authorities recognise some trade unions which define their objectives in

recognition agreements. Intimidation tactics are present in the relationship between municipal authorities and trade union officials (Murugan 16/8/91 : interview). A supervisor, for example, may not allow a shop steward time off to discuss grievances with employees. Trade union officials are pressurised to seek redress of every grievance. However, some trade unions have screening committees to determine whether the grievance is of merit (Murugan 16/8/91 : interview).

6 SUMMARY

Conflict is an inevitable part of an employee's life which can be resolved through the application of various mechanisms. An effective method of handling conflict is the establishment of formal, just and equitable grievance procedures. Municipal authorities that do not have this mechanism of redress of grievances may be fraught with dysfunctional conflict situations.

In this chapter, various aspects of grievance procedures were studied. Viewpoints as to what constitutes a grievance are diverse and numerous. A grievance has been defined within a broad context encompassing the notion that the grounds for a grievance may be any measure or situation which concerns the relations between employer and employees, or which affects or may affect the condi-

tions of employment of one or several workers in an institution. A complaint becomes a grievance when an employee feels that he has been treated unjustly.

There are numerous reasons for grievances, such as poor working conditions, unfair and variable supervisory practices and unsound personnel policies. Effective management of scarce human resources ensures a high level of morale and motivation to achieve the goals of the institution. It is suggested, therefore, that grievances should be handled promptly, tactfully and in an orderly manner.

The right to air grievances is a fundamental human right, hence, the need for effective and efficient grievance procedures. Labour relations experts agree that grievance procedures are essential because they serve as a medium of upward communication, employees are able to vent their frustrations and discontentment, as well as improve their morale. It is essential that employers deal with employee grievances in a consistent and proper manner. This can only be achieved by ensuring equal and fair treatment of all employees by employers.

The nature of grievance procedures differ from institution to institution. It depends on, inter alia, the circumstances of the institution, size, work processes, or-

ganizational structure, management style and the nature of employee representation. Grievance procedures must be practicable.

Employers must accept that an interdependent relationship exists between employers and employees. The former are obligated to employees to ensure that the action is taken to deal with all grievances, particularly in the light of the recognition that grievances are counterproductive and disabling. Supervisors must be able to identify needs and aspirations of the participants in the employer/employee relationship and nurture their roles as communicators.

Grievance procedures should satisfy the needs of all participants in the employer/employee relationship. Firstly, they should serve the collective interests of both employers and employees. Secondly, they should serve the interests of employees by protecting individual rights. Thirdly, they should serve society by ensuring peace and stability.

It is emphasized that grievance procedures, whilst accommodating grievances of right and grievances of interest, should not be used for the purpose of collective bargaining.

Various factors such as the structure of management, affect handling of grievance procedures. The centralization of an institution's administration may result in delays in handling grievances of employees. The arbitrary action by supervisors may result in an increase in number of grievances filed and finally, organised labour relationships are affected by political power struggles, which have an impact on grievance procedures. Several studies that were discussed reveal that some employers grieve more than others. Grievors tend to be more educated and actively involved in union activities, they tend to have more absences, take more sick leave, earn less and have no fewer wage increases than non-grievors.

The most prominent influences on grievance procedures are the type of structure of management, style of management, organised labour politics and the kind of work force prevalent in the institution. The steps in the grievance procedures may be categorised into three groups, namely, informal procedures, formal procedures and third party resolution. Each group may be further divided into stages. The number of stages in a grievance procedure of a municipal authority depends on the size of the municipal authority.

An effective grievance procedure must incorporate a sound policy and procedure. Employees who have access to the grievance procedure must be clearly identified. Furthermore, the issues that will be accommodated in the grievance procedure must be indicated. The structural and administration components of grievance procedures should be considered as well.

Various factors affect the usage of grievance procedures. These are, inter alia, the environment, attitudinal climate and the bargaining history of employees. The implementation of grievance procedures necessitates various types of interactive relationships among employers and employees. In South African municipal authorities such a relationship may be codified in terms of the recognition agreements of trade unions. A struggle for power is another consequence of such interaction. Nevertheless, municipal authorities and trade unions have identified the fact that individual goals, strategies and personality traits have an impact and an influence on the manner in which grievance procedures are implemented.

CHAPTER FOURGRIEVANCE PROCEDURES IN SOUTH AFRICAN MUNICIPAL AUTHORITIES : OPERATIONAL PERSPECTIVES1 INTRODUCTION

In the preceding chapter the theoretical aspects of the grievance procedures were discussed. Grievance procedures are considered important because they provide an excellent outlet for venting employee frustrations. Furthermore, they serve as a means for identifying policies and practices that are causing employee complaints. Employers are thus able to bring about acceptable changes on the basis of such complaints.

In this chapter the grievance procedures in various South African municipal authorities shall be discussed within the following administrative framework :

- policy directives;
- organisational arrangements;
- financing;
- staffing;
- determining procedures; and
- exercising control.

2 POLICY DIRECTIVES

Sound policy directives are necessary to ensure effective grievance procedure in municipal authorities in South Africa. Like all other functions carried out by public institutions, the grievance procedure must always be directed towards a clear goal, namely, the resolution of employee dissatisfaction. The policy directives must indicate, what is intended, how to go about it, who will take action, by what means it will be dealt with and when action should take place (Cloete 1991 : 83). An effective grievance procedure must be preceded by a clear, concise, fair and just policy with respect to handling of grievances.

Before focusing on the nature of policy directives in use in South African municipal authorities, clarification of what constitutes a grievance is necessary. The Cape Town City Council defines a grievance as :

"a feeling of injustice or dissatisfaction arising from the work situation but shall exclude grievances of individuals over disciplinary action by management, unfair dismissals, staff appointments, or any other matter that forms part of substantive negotiations between the Council and the Trade Unions" (Labour Relations Training Programme : Cape Town City Council no date : module 6).

A more comprehensive definition is given by Pretoria City Council where it is believed that:

"a grievance is any alleged infringement of the rights and interests of an individual employee attributed directly or indirectly to the Council and relating directly or indirectly to the terms and conditions of employment; working conditions; job security and advancement; personal safety; relations with the Council and/or its other employees; victimization or any other action or activity which might constitute a criminal offence in relation to such employee" (Bronkhurst 1990 : letter).

Some of South African municipal authorities studied have formulated policy directives for their grievance procedure. In the policy statement of Johannesburg City Council are the following guidelines relevant to grievance procedures (Reyneke 1989 : letter) :

- a) A grievance should be dealt with as simply and as near to the point of origin as possible.
- b) The grievance procedure is prohibited from being used as a forum for re-negotiation of conditions of service as machinery already exists for such a purpose.
- c) An employee is allowed to consult his union at any time.

Pretoria City Council provides directives on grievance procedures. The objective of such procedures is to accommodate and solve grievances of right and grievances of interest of any individual employee in an amicable and peaceful manner (Bronkhurst 1990 : letter). Furthermore, whilst the Council undertakes to inform its officials of the procedure, the employee organisations undertake to educate their members and officials in the correct and proper utilisation of this facility (Bronkhurst 1990 : letter). The Council indicates in its policy guidelines that no employee will be penalised merely because such employee resorted to the grievance procedure (Bronkhurst 1990 : letter).

In keeping with the demands of an industrialised nation, South African municipal authorities must entrench fair and just policies on grievance procedures. The City Council of Port Elizabeth outlines its policies which are directed towards attaining sound employer/employee relations (Grievance and disciplinary procedures applicable to all employees : City Council of Port Elizabeth 1988 : 5). One of the Council's objectives aimed at realising the aforementioned policy is to promote grievance procedures in such a way that :

- a) Dependence of the council on its employees and of the employees on the council is adequately recog-

nised and safeguarded.

- b) Interests of both the council and its employees are recognised and safeguarded.

- c) Efforts of employees are harnessed towards the attainment of goals, as determined from time to time within each department, through mutual understanding and trust (Grievance and disciplinary procedures applicable to all employees : City Council of Port Elizabeth 1988 : 5).

The council stipulates further that (Grievance and disciplinary procedures applicable to all employees : City Council of Port Elizabeth 1988 : 6) :

- grievance handling be vested in line management and that problems be solved at the lowest level at which this can be satisfactorily achieved;

- each employee must be given a fair hearing where he has a grievance;

- employees should be able to raise any grievance without fear of reprisal; and

- every employee has the right of appeal to a higher authority against a decision made against him.

All employees are given the opportunity to have a full understanding of the above policies and the procedures flowing from it. Communication of this knowledge is line management's responsibility and the municipal personnel division is available to help management in this task (Grievance and disciplinary procedures applicable to all employees : City Council of Port Elizabeth 1988 : 5). When employees are inducted, they are given copies of the grievance and disciplinary procedures of the municipal authority.

The City Council of Cape Town has set objectives on grievance procedures. The main objectives of the grievance procedure are the following (Labour Relations Training Programme : Cape Town City Council no date : module 6) :

- employees may lodge grievances without fear of victimization.
- grievances should be resolved promptly and satisfactorily, and as close to the source as possible.
- employees lodging grievances have the right to be accompanied and represented by a fellow employee, a shop steward or a union official at any stage during this procedure.

- suitable records will be kept of all statements and decisions, and copies circulated among the parties concerned.

- if the grievance is lodged against a higher level of management, the grievance should be written and handed to the next level of management, who will then be responsible for ensuring that the grievance is resolved within the number of days provided for, at that particular level of management.

- maximum time frames are to be adhered to in all possible instances, however, the parties may mutually consent to deal with grievances more expeditiously, or to extend the time frames as deemed necessary.

With the exception of Durban and Pietermaritzburg, it would appear that South African city status municipal authorities studied have established policy directives for the implementation of grievance procedures. In the cities of Durban and Pietermaritzburg grievance procedures are a part of the conditions of service (Ntshangase 1990 : letter). No details on policy directives for grievance procedures are given.

It is evident from the discussion that policy directives must be clear, concise and unambiguous. In this regard the following pertinent policy directives must be considered in determining grievance procedures :

- employees may lodge grievances without the fear of being victimized;
- grievances should be resolved speedily; and
- attempts be made to resolve grievances satisfactorily at the lowest hierarchical level at which this can be done.

Policy directives for grievance procedures should be incorporated into manuals, which provide a guideline for action within the employer/employee relations environment. Such policy directives must stipulate clearly and concisely the objective of grievance procedures, namely, the prompt and satisfactory resolution of grievances. Policy directives must be reviewed from time to time to ensure that they are relevant to the functions of grievance procedures.

Once policy directives have been outlined, municipal authorities must ensure that the necessary organisational arrangements are established to implement the

policies for grievance procedures.

3 ORGANISATIONAL ARRANGEMENTS

The actions of individuals working in concert to achieve a specific objective must be well co-ordinated (Cloete 1985 : 43). This implies that there must be an organisational hierarchy, lines of authority between employees at different levels of the hierarchy and the division of labour (Andrews 1988 : 8). Once municipal authorities have outlined their policies on grievance procedures, the necessary organisational infrastructure must be provided.

It is emphasised in all grievance policy directives of the various municipal authorities that the implementation of the grievance procedure rests with line management. The City Council of Kimberley vests the responsibility of grievance handling in line management and submits the following as being important (Bester 1990 : letter) :

- employees must be in a position to draw management's attention to their grievances without fear of victimisation;

- both employer and employee must strive to solve as quickly as possible all grievances.

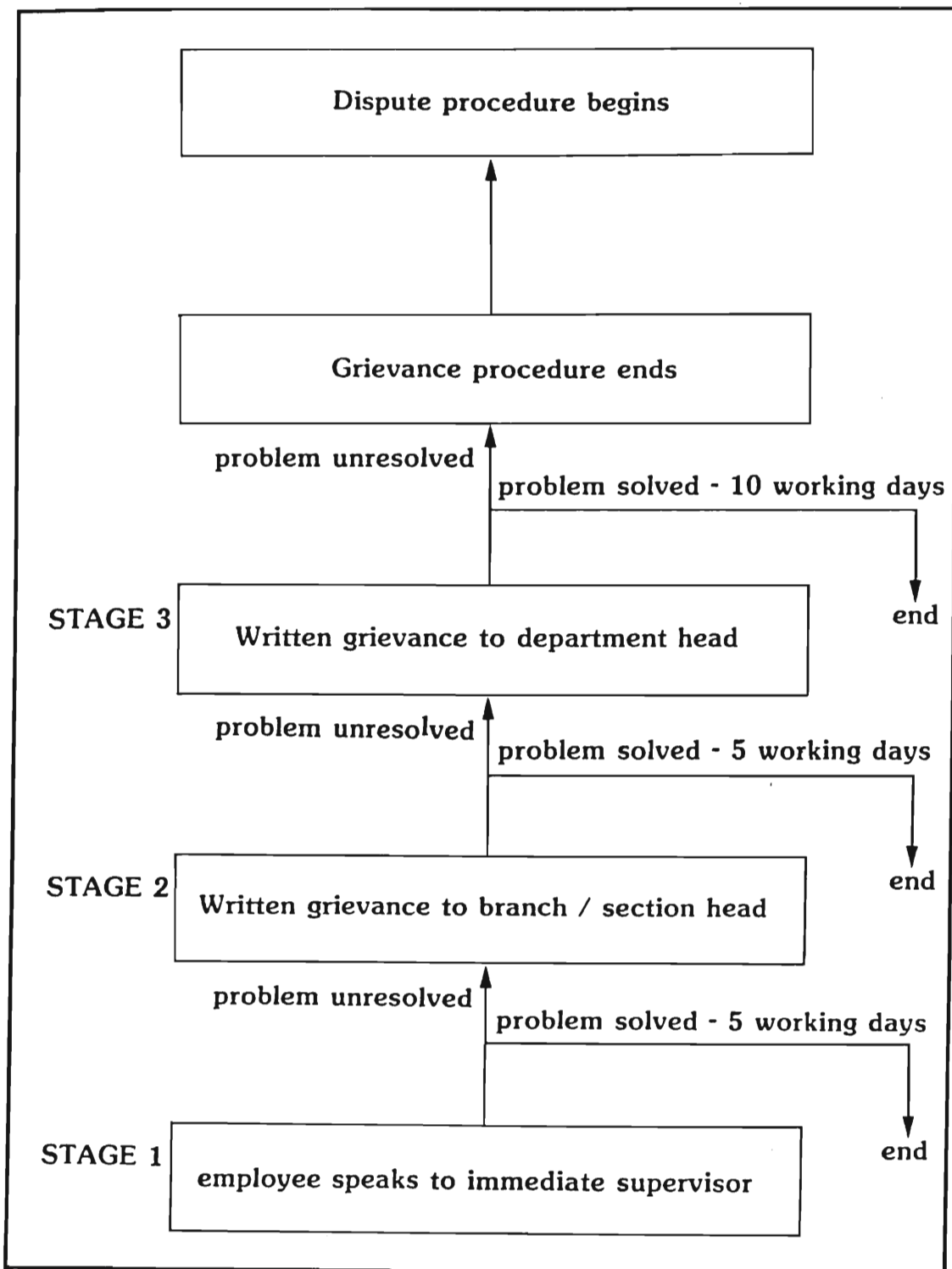
Similarly, the Councils of Verwoerdburg (Killian 1991 : letter) and Bloemfontein (Claasens 1990 : letter) believe that employees must have the opportunity to air their grievances without fear of being victimised. Management and employees must understand the correct grievance procedure.

An organisational procedural flowchart in respect of grievance procedures of a municipal authority is diagrammatically represented in Figure 7.

From the figure it is evident that if an employee has a grievance, he must follow the proper channels of communication. Grievance procedures reflect an upward channel of communication where the aggrieved lodges a complaint with his supervisor. If the problem is not solved within the specified time period, a written grievance is sent to the sectional head. The next step is to send a written grievance to the departmental head who circulates copies to the relevant parties. If the problems remains unresolved, the grievance procedure is terminated and the dispute procedure is put into effect.

FIGURE 7

AN ORGANISATIONAL GRIEVANCE PROCEDURE FLOWCHART
OF A LOCAL AUTHORITY



Specific relationships between the employee and the supervisor, and various other municipal functionaries at different levels of the hierarchy are created to ensure that grievances are resolved expeditiously. It should be noted that these relationships reflect the internal organisational arrangements of the municipal authority.

Employees also consult with their trade union representatives, usually the shop steward when lodging grievances. Municipal authorities liaise with recognised trade unions when resolving employee grievances. For the purposes of this study, the aforementioned may be regarded as external organisational arrangements.

a) Internal Organisational Arrangements

It is important for the employee to observe the steps in the grievance procedure, as "leapfrogging" to higher levels will be resented by lower management, or management may seek to get the grievance thrown out because the proper steps were not followed (Botha 1977 : 9). The degree to which grievances are successfully handled at the first step is dependent largely on the authority granted to the supervisor. However, in some municipal authorities in South Africa, supervisors lack the authority to deal with certain grievances (Labour Relations Training Programme : Cape Town City Council no

date : module 6). According to Murugan (1990 : interview) this problem has been experienced with the City of Durban.

Management must always be prepared to listen to employees' grievances. Furthermore, management must create an atmosphere which is conducive to employees wanting to air their grievances. Most of the major municipal authorities, for example Bloemfontein, Cape Town, Durban, Johannesburg, Kimberley and Pretoria have labour relations sections within the personnel department. The labour relations officer plays an important facilitating role in grievance procedure. His functions include, inter alia, the following (Botha 1977 : 9) :

- serving in an advisory capacity, advising either side on request;
- monitoring that the procedure is adhered to; and
- ensuring that grievances are not referred to him for resolution as they are a line responsibility.

The internal organisational arrangements of a municipal authority cannot function in isolation to achieve the goals of grievance procedures effectively. External organisational arrangements must be taken cognisance of.

b) External Organisational Arrangements

All major municipal authorities in South Africa have organised labour movements. Municipal employees may belong to trade unions such as The South African Municipal Workers Union, amongst others. Employee representatives, usually the shop stewards, play an important role in grievance procedures.

A shop steward is the legitimate representative of union members in the employ of municipal authorities (Bendix 1989 : 57). The duties of a shop steward include, inter alia, the following (Murugan 16/08/91 : interview) :

- to establish and maintain good relations between employees and their employers as far as possible;
- to maintain order, discipline and harmony amongst the members in the institution;
- to try and settle disputes in such establishments by conciliatory methods;
- to report regularly to the branch executive committee any disputes or grievances of members; and

- to take up all legitimate complaints of members with employers in their establishment.

The organisational arrangements for the implementation of grievance procedures varies from municipal authority to municipal authority. All municipal authorities do not have a labour relations unit to deal with grievances. Whilst Bloemfontein, Cape Town, Durban and Johannesburg City Council have specialised labour relations units, Tembisa City Council does not have such an arrangement. A disadvantage of not having a specialised labour relations unit is that , in addition to executing all other personnel functions, the personnel department must ensure that the grievance procedure followed is correct, fair and just.

The municipalities of Durban (Murugan 16/08/91 : interview) and Pretoria (Bronkhurst 1990 : letter) have grievance sub-committees to deal with grievances. The grievance sub-committee of Durban City Council consists of (Murugan 16/08/91 : interview) :

- Chairman of the Board;
- Chairman of the Municipal Service Commission; and
- Chairman or President of the trade union concerned.

The Pretoria City Council has a conciliatory body to discuss grievances and comprises of (Bronkhurst 1990 : letter) :

- the Director of Manpower and Management Auxiliary Services;
- a representative from the Department of Manpower;
- the departmental head concerned;
- a member of the union executive committee;
- a member of the union negotiating committee;
- the employee concerned; and
- the shop steward concerned.

An effective grievance procedure embodies a joint committee consisting of representatives of the municipal council and trade unions. Pietermaritzburg City Council stipulates in its conditions of service that a staff committee redress grievances. However, no details on the composition of such a committee appear in the document (Ntshangase 1990 : letter).

South African municipal authorities should heed the fact that the existence of a negotiating forum with representatives of employer and employees provides an acceptable means for resolving grievances (Botha 1977 : 7).

Once organisational arrangements have been established, financial implications of the grievance procedure must be considered.

4 FINANCING

Grievance procedures cannot be administered effectively and efficiently without financial implications being considered.

In the South African municipal authorities studied, for example, Durban, Johannesburg, Pretoria and Verwoerdburg, budgetary matters are dealt with by the municipal authority's finance department. There is no specific budget allocation for grievance procedures (Harper 16/08/91 : interview). Furthermore, the financial implications of lodging a grievance are not stated in the conditions of service or procedure manuals of municipal authorities (Murugan 16/08/91 : interview).

Public officials tend to affirm the success of the grievance procedure if it effectively solves disputes without disrupting the organisation (Shane 1973 : 171).

Shane (1973 : 171) expresses the view that the grievance procedure does more than resolve arguments between conflicting parties. One important function, other than the

mere settlement of disputes is that the grievance procedure ensures financial accountability (Shane 1973 : 171). In a sense this is seen when grievances are speedily resolved and in the improved productivity of the worker.

Municipal authorities do not have clear-cut policies on the financial implications of lodging grievances (Murugan 16/08/91 : interview). Employees may lodge grievances, but may not, during working hours, consult employee representatives or shop stewards about such grievances. Employees may have to take leave to engage in consultations, or not even get paid for the time wasted in terms of productivity (Murugan 16/08/91 : interview). Municipal authorities should realise that employee grievances result in lower levels of morale, and if supervisors do not redress such grievances satisfactorily, employees may not perform efficiently and effectively. Thus, goods and services provided to the community may deteriorate in terms of quality. The municipal councillors are accountable to citizens of the municipality. Hence, grievance procedures must ensure that municipal officials redress grievances of employees, thereby attaining the objectives of the municipal authority with limited resources (Murugan 16/08/91 : interview).

Miller (1978 : 307) expresses the view that an adequate grievance procedure should specify whether or not an employee and employer representative are to be paid for time spent in grievance administration, when this activity takes place during their scheduled hours of work. More specifically, the following issues should be covered in the procedure (Miller 1978 : 307) :

- Is compensation confined to regularly scheduled hours, or might an employee be paid for missed overtime?
- Is preparation time to be paid? Are there limits for paid preparation time?
- Are the witnesses called by the employee and management to be covered by similar pay policies?
- Will the amount of paid time devoted to grievance administration by the grievant co-workers, and witnesses be specifically limited or will a "reasonable" standard apply?

It is imperative that municipal authorities recognise the seriousness of an employee lodging a grievance. Such an employee should be given time off with full pay to prepare and consult with his representative about the

grievance (Murugan 16/08/91 : interview). Consequently, it is expected that as the impact of grievance procedures gains momentum specific budgetary allocations would be determined by municipal authorities for this purpose.

Once the necessary financial arrangements have been finalised, provisions must be made for trained and well-qualified personnel corps.

5 STAFFING

In every group of officials there will always be individuals who, for some reason feel aggrieved. To ensure that the morale of employees will at all times remain high and to free individual employees from worries which could have a negative influence on their productivity, a grievance should be dealt with timeously (Cloete 1985 : 194). The grievance function is a line management function, therefore, supervisors should always be prepared and qualified to assist their subordinates with advice to overcome their worries and grievances (Cloete 1985 : 194).

Whilst supervisors may be competent public functionaries, they may not have the awareness, experience in interpersonal relationships and authority to

deal with all types of grievances. Indeed, one of the major causes of failure of grievance procedures is lack of support and commitment from supervisors (Labour Relations Training Programme : Cape Town City Council no date: module 6). Supervisors may often not have the human skills necessary to deal with grievances. Herein lies the role of the labour relations section within the personnel department of the municipal authority.

Municipal authorities, such as Bloemfontein, Cape Town, Durban and Johannesburg have appointed labour relations officers to assist line management on the incidence and seriousness of grievance matters, and any implications of grievances on industrial relations in general (Harper 1990 : interview). As far as possible, through discussion with the line manager dealing with the case, the personnel officer should ensure that procedures are consistent in all departments and are in conformity with the policies of the municipal authority.

Furthermore, officials of the labour relations section of the personnel division are available to advise and assist employees on all grievances if required. The personnel division is responsible for (Disciplinary and Grievance Procedures : Municipality of Port Elizabeth 1989 : 13) :

- a) assisting with the correct completion of the grievance/complaint form which must properly identify the grievance/complaint (See annexure 2);
- b) monitoring all facts collected, marshalled and presented as a safeguard against bias, victimisation and unfair labour practice; and
- c) advising the complainant, accused, witness, representative and presiding official of their rights and responsibilities.

The personnel division is also responsible for ensuring that any grievance coming to its notice is referred to line management for its decision. It ensures that undertakings made in the settlement of a grievance by line management are fulfilled (Disciplinary and Grievance Procedures : Municipality of Port Elizabeth 1989 : 13).

In certain municipal authorities it was found that the personnel officers deal with all employer/employee problems. Tembisa City Council is an example of such a municipal authority (Mare 1990 : letter). Personnel officers may lack specialised training in labour law and skills to deal with employer/employee problems. In contrast to this, the Cape Town municipal authority has in its labour relations unit four people who hold univer-

sity degrees in law and industrial psychology. Furthermore, other members of the unit have diplomas in labour relations (Labour Relations Training Programme for Cape Town City Council no date : 1)

The effective implementation of fair and just grievance procedures demands the need for supervisors to be adequately trained. When an administrator or supervisor perceives a proposal for the alteration of policies or procedures as a threat to his position or status, dysfunction occurs (Shane 1973 : 176). The inability or failure of the supervisor to expand the perceptions of his functions to encompass variations in procedure, inevitably produces a hindrance to the operation of the system he is responsible for managing. A value of the grievance procedure, therefore, is to re-establish communication and focus attention on the processes which have caused the dysfunction to occur (Shane 1973 : 176).

Shane (1973 : 176) postulates that while the immediate outcome of the grievance action may be to correct an inequity, its value in directing attention to processes is equally important. To capitalize upon the grievance procedures value as a means of analyzing dysfunction, a follow up with supervisory personnel must be effected, so that the dimensions of the grievance action threatening to the supervisor will not be reinforced (Shane 1973

: 176).

Equally important to the effective implementation of grievance procedures are the employee representatives such as shop stewards and trade union officials. Shop stewards must be well versed with the grievance procedures of municipal authorities. Training on employer/employee relations and specifically, the rights of employees in the settlement of grievances must be undertaken by trade unions and municipal councils.

In South African municipal authorities labour relations training programmes that incorporate the handling of grievances is lacking. To date, only Cape Town City Council has an intensive programme aimed at sharpening the skills of supervisors in dealing with grievances.

Once the staffing arrangements have been met, it is necessary to systematically carry out procedures necessary to achieve the objectives of the grievance procedure.

6 DETERMINING PROCEDURES

All functions pertaining to grievance procedures must be carried out systematically in order to ensure effectiveness and efficiency within the municipal authority. The

rights of employees must be protected by the consistent application of fair and just procedures. The procedures for the execution of the grievance procedures are not prescribed by legislation in South Africa. Consequently, procedures are determined by the respective municipal councils.

A study of the grievance procedures of municipal authorities reveals that the grievance procedures constitute part of the conditions of service negotiated through industrial councils. Municipal authorities provide for grievance procedures by outlining relevant policy directives in procedure manuals and manuals containing their comprehensive conditions of service. However, not all local authorities fall under the jurisdiction of an industrial council. For example, Durban and Pietermaritzburg City Councils do not have access to an industrial council. Hence, the channels of solving a grievance will differ in such municipal authorities.

For the purposes of this study, grievance procedures in South African municipal authorities shall be discussed under the following headings :

- Industrial council involvement in grievance procedures;

- Non-industrial council involvement in grievance procedures; and
 - Group grievance procedures.
- a) Industrial council involvement in grievance procedures

The municipal authorities of Bloemfontein, Boksburg, Johannesburg, Kimberely, Port Elizabeth, Pretoria and Verwoerdburg fall under the jurisdiction of industrial councils.

The function of the industrial council as defined in section 23(1) of the Labour Relations Act, 1956 is to :

"... endeavour, by the negotiation of agreements or otherwise, to prevent disputes from arising, and to settle disputes that have arisen or may arise between employers and employers' organisations and employees or trade unions and take such steps as it may think expedient to bring about the regulation or settlement of matters of mutual interest to employers or employers' organisations and employees or trade unions".

Bendix (1989 : 369) crystallises the role of the industrial council by stating that the functions of the industrial council are two-fold, namely, a collective bargaining function and a dispute-settlement function. The dispute-settlement function applies to all employers

and employees in the occupation or areas in which a particular industrial council has jurisdiction (Bendix 1989 : 369).

Johannesburg City Council falls under the jurisdiction of the Industrial Council for the Johannesburg Municipal Undertaking. The grievance procedure in these instances are as follows (Reyneke 1989 : letter) :

- the employee must first present his grievance to his immediate supervisor;
- the supervisor must ensure that a full record of the grievance and its outcome is kept on a prescribed form;
- in cases where the supervisor is the subject of complaint, an employee may approach the next higher level of supervision;
- immediately after a decision has been reached, it is communicated verbally to the grievant;
- should the grievant disagree with a decision, his grievance shall be referred by the supervisor who made the decision to a higher level of supervision within two working days, and if necessary finally

to the head of department;

- should the grievant still disagree with the decision reached, he may refer the matter to his union or take the matter up with the Director, Personnel Department or the Town Clerk, who shall then take a decision on the matter;

- if the aggrieved person is not satisfied with a decision taken in terms of the above, he shall request his union to place the matter before the Industrial Council for settlement in terms of the Labour Relations Act, 1956 as amended.

The municipal authorities studied redress grievances at the lowest possible level of the organisational hierarchy.

Pretoria City Council stipulates the following procedures (Bronkhurst 1990 : letter) :

- any member who feels aggrieved and wishes to make use of the grievance procedure should firstly approach his immediate supervisor and have the grievance discussed between themselves;

- should the grievance remain unresolved, the employee may consult his shop steward. The shop steward may accompany the aggrieved employee and approach the supervisor. The aggrieved employee, shop steward and the supervisor will endeavour to resolve the grievance. In the process the supervisor will consult with his supervisors;
- if the employee is dissatisfied with the outcome of the foregoing discussions, he may complete a prescribed grievance procedure form (see annexure 3);
- the form is sent to the relevant supervisor within seven (7) days;
- the supervisor must submit a copy of the grievance form to the relevant departmental head and to the director of Manpower and Management Auxiliary Services within three (3) days of receipt thereof;
- the departmental head shall, if possible, resolve the grievance. He may call for a meeting to be held by and between the departmental head, the aggrieved employee, the shop steward and the supervisor concerned;

- the meeting shall occur within fifteen (15) days of the date of submission of the grievance procedure form to the departmental head;
- the departmental head shall act as chairman of the meeting and shall do his utmost to resolve the grievance;
- all parties shall indicate on the grievance form whether the grievance was resolved or not, shall sign the grievance form and submit a copy thereof to the director of the municipal authority's department of Manpower and Management Auxiliary services and to the union within three (3) days of the day on which the meeting was held;
- in the event of the grievance not being resolved, the director of Manpower and Management Auxiliary Services shall, within seven (7) days of receipt of the grievance form, arrange for a conciliation meeting to be held within ten (10) days;
- the aforementioned meeting shall be attended by the following :
 - a) Director of Pretoria City Council's Department of Manpower and Management Auxiliary Services;

- b) the departmental head concerned;
 - c) a member of the union executive committee;
 - d) a member of the union negotiating committee;
 - e) the employee concerned; and
 - f) the shop steward concerned.
-
- the decision of the conciliation meeting is taken by a majority of votes. Each person attending the meeting shall have one (1) vote, and the decision is final;
 - at the conclusion of the meeting the decisions are noted on the grievance form and signed by all the parties;
 - should the aggrieved employee not be satisfied with the decision of the meeting, he shall be entitled to refer the matter in terms of the dispute settlement procedure;
 - the employee declares a dispute with the council in writing and submits a copy of the grievance form to the secretary of the dispute settlement committee within four (4) days of the date on which the conciliation meeting took its decision.

The importance of the need for a grievance to be resolved promptly, satisfactorily and as close to the source as possible is encapsulated in the grievance procedure of Cape Town City Council. The content of such grievance procedure is discussed hereunder (Labour Relations Training Programme : Cape Town City Council no date : module 6) :

- an employee wishing to raise a grievance in which he is directly concerned, should first raise it verbally with his immediate supervisor. The supervisor will investigate and attempt to resolve the grievance within five (5) working days of it being lodged;

- if the grievance is not resolved satisfactorily, the employee involved must fill in the grievance form provided for this purpose and lodge the grievance with his section head. Where this is not possible or where there has been agreement with the section head, he may lodge the grievance with the branch head instead. The section/branch head will investigate and attempt to resolve the grievance within five (5) working days of the grievance form being received;

- the branch head may consult with any or all of the parties involved in the grievance;

- if the grievance is not resolved satisfactorily, the employee involved may lodge the grievance with his departmental head. The grievance must be lodged on the grievance form provided for this purpose. The departmental head will investigate and attempt to resolve the grievance within ten (10) working days of the grievance form being received. The departmental head may consult with any or all of the parties involved in the grievance;

- at this stage the grievance procedure will have been exhausted and should the matter not be resolved, the employee/s may elect to declare a dispute.

Boksburg Town Council follows a unique procedure in handling grievances. Although the Town Council does fall under the jurisdiction of an industrial council, it has two procedures, one for its white employees, and another for its black employees.

The grievance procedure for white employees stipulates the following (Boksburg Town Council 1990 : letter) :

- an employee shall make written representation to the Council only through the head of his department on matters affecting him in his capacity as an employee;
- an employee who has any grievance or complaint arising out of his employment, may submit the matter to the head of his department in writing, who in turn shall take such action as he may deem fit and immediately advise the employee in writing to that effect;
- if the employee is dissatisfied with the ruling given by the head of the department he may make representations to the Town Clerk who shall take such steps as he may deem fit and accordingly advise the employee in writing;
- if the employee is dissatisfied with the latter ruling, he may appeal to the management committee and in such an event the Town Clerk shall submit the matter for consideration to the management committee.

Grievance procedures for black employees of Boksburg Town Council is as follows (Boksburg Town Council 1990 : letter) :

- an employee with a grievance shall endeavour to settle such a grievance informally with his immediate supervisor or, if the immediate supervisor is allegedly the cause of such grievance, with that supervisor's superior;
- where a grievance of an employee is not informally settled, the employee shall immediately submit such grievance to his head of department verbally or in writing and the employee may request a fellow-employee who is not necessarily a member of a trade union or works council, to accompany or assist him during the hearing of the grievance;
- the head of department shall take such steps as he deems fit within the powers vested in him by the Council and shall inform the employee and the Council thereof in writing within two (2) working days from the date on which such grievance was submitted to him;
- should the employee not be satisfied with the decision of his head of department, the employee may submit his grievance verbally or in writing to the Town Clerk who shall take the steps he deems fit within the powers vested in him by the Council after hearing the employee and his representative,

and shall inform the employee, the head of department concerned and the Council thereof in writing within two (2) working days from the date on which such grievance was submitted to him;

- should the employee not be satisfied with the decision of the Town Clerk, he may appeal in writing to the Council through the Town Clerk in which case the Town Clerk shall submit the matter to the Council for consideration which shall, within two (2) working days of hearing the employee and his representative and considering the matter, inform the Town Clerk and the head of department concerned of the Council's decision in writing (Boksburg Town Council 1990 : letter).

The grievance procedures of Bloemfontein, Kimberley and Verwoerdburg City Councils are similar in content. All three local authorities fall under the jurisdiction of industrial councils (Claassens 1990 : letter). The procedure followed by these municipal authorities emphasises the need for orderliness in the resolution of grievances. An employee must lodge his grievance with his immediate supervisor. If he is not satisfied with the outcome, he may lodge a written grievance with the head of the section. The section head consults with the supervisor, personnel officer, the grievant and, if ap-

plicable, his representative. Such consultation must take place within two days after the formal grievance has been lodged (Bester 1990 : letter).

If the employee is still dissatisfied with the outcome, he may then go to the head of department who meets with all interested and relevant parties. The consultation must take place within five working days. The aggrieved employee may finally, lodge the grievance with the Director of Personnel and if he is still dissatisfied, may declare a dispute in terms of the Labour Relations Act, 1956 and take the matter to the industrial council (Kilian 1991 : letter).

The procedures implemented by the municipal authorities discussed reflect some uniformity. However, Boksburg City Council has separate procedures for Black and White personnel. It is also noted that municipal councils recognise the fact that grievances cannot always be resolved internally. Therefore, employees who are dissatisfied with the outcome of the internal grievance settlement, should have recourse to an external, neutral grievance resolution mechanism. Such a mechanism is provided by the respective industrial councils of the municipal authorities.

It should be noted that not all municipal authorities fell under the jurisdiction of industrial councils. A reason put forward for this is that the municipal authorities do not want to lose the power that they have over employees. Furthermore, in Durban there is some resistance to centralised bargaining (Murugan 16/08/91 : interview).

Grievance procedures in municipal authorities that do not fall under the jurisdiction of industrial councils will differ.

b) Non-industrial council involvement in grievance procedures

The municipal authorities of Durban, East London, Pietermaritzburg and Tembisa do not fall under the jurisdiction of industrial councils.

The employees of East London municipality do not have access to an industrial council. Hence, the conciliation board system and the Industrial Court are used for resolution of disputes. When investigating grievances, both parties must have the intention of solving the grievance at the earliest stage, as quickly as possible and at the lowest possible level. The Council of East London stipulates further that management should not try to prescribe or restrict the nature of grievances, but

rather try to create an atmosphere of mutual communication (Grievance and Disciplinary Procedures : East London Municipality 1987 : 19).

The procedure to be followed by employees of East London municipality when lodging a grievance is as follows (Grievance and Disciplinary Procedures : East London Municipality 1987 : 19) :

(i) Step 1

The aggrieved employee takes his grievance to his immediate supervisor who tries to solve it.

(ii) Step 2

If the supervisor is unable to do so within forty-eight (48) hours of receiving the grievance or if the employee is still dissatisfied, the grievance will be referred to the next level of management (eg. Section/Branch Head) and eventually to the Head of Department/Director, if necessary.

(iii) Step 3

If the aggrieved employee is satisfied with the outcome of the investigation he will do so by acknowledging it.

(iv) Step 4

If the employee still feels that his grievance did not receive the correct attention, he should then exercise his right of appeal to the Town Clerk, who will then give the final decision, as the rights of appeal applied to all employees equally.

Tembisa City Council does not fall under the jurisdiction of an industrial council. Despite this mechanism, the City Council resolves grievances with the use of an arbitration tribunal. Before using such a mechanism of redress, employees must follow the stipulated procedure which embraces four stages (Mare 1990 : letter).

a) Stage One

The first step in raising a grievance is for the relevant employee to discuss the matter verbally with his immediate supervisor. All relevant information concerning the grievance, such as background, full details and nature of the settlement desired, should be stated clearly. A complainant should endeavour to approach his supervisor at a time when it is convenient for both the supervisor and the complainant to discuss the matter without interruption.

He should not make promises, threats or insults and should prevent the grievance from escalating into a conflict situation.

The supervisor must to the best of his ability :

- listen to the employee in private;
- encourage the employee to express his grievance freely and openly;
- obtain all relevant facts about the grievance (distinguishing fact from opinion); and
- the supervisor, to whom the complaint was lodged, must endeavour to resolve the grievance as speedily as possible and resolve it within three (3) working days.

Any employee raising a grievance shall have the right to be assisted or represented by his shop steward or a fellow employee.

Where the grievance concerns his supervisor, an employee has the right to bypass him and to state his case directly to the head of the department to whom his supervisor reports. Alternatively, an employee may ap-

proach the personnel department or a member of the liaison committee. The latter will then take the matter up with the personnel manager.

The person to whom the grievance was reported must do his utmost to resolve the matter. If he is unsuccessful, he must report the fact to the complainant within three (3) working days from the date of lodging of the complaint and he is also obliged to explain stage two of this procedure to him. He must further hand over to the complainant a grievance form for completion by him and signature/or thumb print by complainant and supervisor or personnel manager. If the complainant is illiterate, the supervisor must assist him in completing the grievance form. This form shall then be handed over to the next level of management. A complainant who is dissatisfied with the decision taken in this stage is at liberty to proceed to stage 2. If stage 2 is used, the supervisor must send a copy, to the head of department.

b) Stage Two

The head of the department to whom the grievance form was handed shall, within three (3) working days convene a meeting of all the parties involved in the issue. Each will be entitled to be represented by a representative of his choice who may be elected from within the employ-

ment of the Council.

At this meeting the following matters will be dealt with:

- issues not resolved under stage 1; and
- issues involving supervisors.

This meeting will take the form of an investigation by the head of the department concerned. He will :

- a) grant all parties the opportunity to be heard;
- b) question anyone on the facts if necessary;
- c) keep a record of all relevant facts;
- d) allow the parties to call witnesses to testify;
- e) allow an interpreter to be used if requested;
- f) question witnesses (if necessary);
- g) not proceed with their investigation if the aggrieved party is not present;
- h) postpone the meeting, if desirable, but not for more than one week;
- i) permit no other issues and emotions to cloud the essence of the matter under discussion;
- j) decide on a fair way to resolve the issue, or propose a compromise between the parties; and
- k) record the terms of the settlement or the fact that a settlement could not be reached.

Where no solution is reached in terms of the grievance, or where the head of the department feels the Town Clerk may be able to resolve the matter, he may refer the issue to the Town Clerk.

c) Stage Three

At this stage matters not settled under stage two will be dealt with as well as instances where the aggrieved party is not satisfied with the decision taken by the head of the department at stage two.

The completed grievance form together with the full record of the proceedings at stage two is submitted within three days to the Town Clerk for a decision.

Within three (3) days from receipt of the documents and without hearing any further representation or evidence, the Town Clerk must reach a decision. His decision has to be reduced to writing and a copy thereof is to be handed to the complainant.

The decision reached at this stage will be final and binding on all parties. The Town Clerk may, however, at the request of the aggrieved party, allow the election of an arbitration tribunal to decide the issue.

d) Stage Four

The arbitration tribunal shall consist of two members from the ranks of the Council's Executive Committee. An umpire will be appointed by the Council, who must be a person with knowledge of local authority work, and if possible, with a legal background and one other person who preferably must not be in the employment of the Council.

The arbitration tribunal will renew the issue and may arrange interviews with all interested parties in order to arrive at a decision within ten (10) working days from date of its appointment.

The decision of the arbitration tribunal shall be final and binding on all parties (Mare 1990 : letter).

Similar to East London and Tembisa City Councils, Durban and Pietermaritzburg City Councils do not fall under the jurisdiction of an industrial council. Grievance procedures constitute part of the conditions of service. The procedure for Pietermaritzburg City Council is as follows (Conditions of Service : City Council of Pietermaritzburg 1981 : Part 5) :

"Any office or salaried employee having any grievance or complaint arising out of his employment in the service of the Council shall submit the matter in writing for the consideration of the head of department. Any such employee who is dissatisfied with the decision of the head of department, which shall be given in writing, may ask that the complaint be brought before the Staff Committee and, in the event of the head of department declining to have this done, such employee may address a communication direct to the Town Clerk, who shall thereupon submit the matter for consideration by the Staff Committee".

In accordance with the conditions of service of the Durban City Council, any grievance or complaint lodged shall be investigated by a grievance sub-committee consisting of (Conditions of Service : Durban City Council no date : 57) :

- a) the Chairman of the Board;
- b) the Chairman of the Municipal Service Commission if the grievance or complaint has reference to any matter in regard to which plenary powers have been delegated to the Commission; and
- c) the Chairman or President of the Trade Union concerned.

It is provided, that, if in any particular case any member and his alternate are both unable or unwilling to

sit on the sub-committee, the Mayor (after consultation with the trade union concerned in the case of its representative) may direct how the sub-committee is to be constituted for the purpose of that case and provided, further, that if the grievance or complaint in issue relates to grading or scales of pay, it shall not be referred to the aforesaid sub-committee, but shall be referred to the Municipal Service Commission for investigation (Conditions of Service : Durban City Council no date : 57).

The head of the department and the employee or employees concerned and the Chairman of the Municipal Service Commission may be present at the meeting of the sub-committee, and if present shall have the right to be heard by the sub-committee upon the grievance or complaint in issue.

The following special rules shall apply whenever any promotion or appointment is in issue (Conditions of Service : Durban City Council no date : 57) :

- a) Any trade union which has been required to refer any grievance or complaint to the sub-committee shall, on application to the Town Clerk, be furnished with the names of all employees who have been interviewed as candidates for the promotion or

appointment in question.

- b) Any employee who has been recommended by the standing committee concerned or the Municipal Service Commission for the promotion or appointment in issue shall be notified of the meeting of the sub-committee and shall be entitled to be present and to be heard.
- c) The sub-committee shall review the claims for the promotion or appointment in issue of all the employees whose grievance or complaints have been referred to it and of any employee who has been recommended therefor by the standing committee concerned, or the Municipal Service Commission and shall promote or appoint the employee whom it adjudges to be most suitable, having regard to all relevant consideration.
- d) After the sub-committee has decided on any matter, no further complaints or grievances regarding the promotion or appointment concerned and no complaints or grievances against the sub-committee's decision or anything done upon consideration thereof, may be referred to the sub-committee.

The decision of the sub-committee shall be final and, to this end, the decision of the sub-committee shall be deemed to be decisions of the Council (Conditions of Service of Durban City Council no date : 57).

A study of the grievance procedure as laid down by Durban City Council, reveals that there is an absence of a step by step procedure to be followed when an employee lodges a grievance. Furthermore, the grievance procedure is long and laborious (Murugan 1991 : interview). A recognised trade union of the City Council, the Democratic Integrated Municipal Employees (DIMES) has spelt out a clearly defined grievance procedure in its recognition agreement (See annexure 4).

An inherent weakness in the grievance procedures of Durban, East London, Pietermaritzburg and Tembisa City Councils is the absence of an industrial council in settling disputes. Each municipal authority has its own mechanisms of redressing grievances of employees. The Durban City Council has the Municipal Service Commission whilst Tembisa City Council appoints an administrative tribunal. An industrial council serves, inter alia, a dispute-settlement function. Municipal authorities which fall under the jurisdiction of industrial councils can negotiate with employee representatives and reach agreement on substantive issues such as working conditions

(Bendix 1989 : 369). However, in the case of Durban, East London, Pietermaritzburg and Tembisa City Councils, should employees declare a dispute with the councils, the matter is taken to the Industrial Court in terms of the Labour Relations Act. A disadvantage of this is that it is very expensive and time-consuming (Murugan 16/08/91 : interview).

Municipal authorities in South Africa also specify procedures for group grievances. Examples are Cape Town and Port Elizabeth municipal authorities.

(a) Group Grievances

When several employees are directly concerned in a grievance they may, instead of going individually to management, appoint a deputation not exceeding six in number from among themselves to represent them at a meeting with the head of the division/section (Grievance and disciplinary procedures : Municipality of Port Elizabeth 1989 : 12).

At such a meeting the deputation may be accompanied by a representative and an interpreter.

(i) Procedure

- A request for a meeting between a deputation and a Head of Division/Section must be made in writing to the Head of the Division/Section and must state the names of the members of the deputation and the representative. The matters to be discussed must also be stated in writing.
- The meeting should be held within three (3) working days during normal working hours, subject to the exigencies of service.
- The outcome of the meeting or reasons for failure to reach settlement are to be reported to the Personnel Division in writing.
- Should the employees be dissatisfied with the outcome, they may appeal to the head of department. Should they still be dissatisfied the procedure for individual grievances must be followed.

Cape Town City Council stipulates the following procedure for group grievances (Labour Relations Training Programme : Cape Town City Council no date : module 6) :

If two or more employees wish to raise a group grievance/s, the shop steward/s concerned may take this up and submit the grievance to the level of management having immediate authority over all members of the group concerned. The collective grievance must be in writing, on the form provided for this purpose, and shall where necessary commence immediately at step 2 or step 3, with the branch/section head or head of department respectively.

It may be concluded that the grievance procedures of municipal authorities in South Africa differ, depending on the organisational structure and management style of the municipal authority. The municipal authorities of Bloemfontein, Boksburg, Johannesburg, Kimberley, Port Elizabeth, Pretoria and Verwoerdburg fall under the jurisdiction of industrial councils. Hence, in these municipal authorities grievance procedures are negotiated through the industrial councils. The municipal authorities of Durban, East London, Pietermaritzburg and Tembisa do not fall under the jurisdiction of industrial councils. Grievance procedures are negotiated with recognised trade unions and stipulated in the recognition agreements of trade unions.

Where the grievance procedures are unilaterally determined by the municipal council it was found that such

procedures do not illustrate a clear, step-by-step process. This was found to be the case with the Durban City Council's grievance procedures. Boksburg City Council does not apply grievance procedures consistently and uniformly because there are separate procedures for White and Black employees.

Other municipal authorities have defined procedures specifically for group grievances, as is the case with Cape Town and Port Elizabeth City Councils.

Effective and efficient grievance procedures are vital to promoting peace and harmony among employers and employees. South African municipal authorities, should therefore, ensure that grievance procedures are uniformly applied to all employees. Furthermore, grievances must be resolved timeously and employees must have access to dispute settlement machinery such as industrial councils.

Control mechanism must be enforced to ensure that the grievance procedures are implemented to attain the predetermined objectives of the municipal authority.

7 EXERCISING CONTROL

Employees working together to achieve set objectives may become dissatisfied and frustrated in their working environment. This may result in poor work performance and low morale. The existence of grievance procedures provides employees with avenues to redress the feelings of discontentment and frustration. Furthermore, grievance procedures enable municipal authorities to detect dysfunctional practices and policies that cause employee dissatisfaction. Grievances when viewed in a positive manner, provide valuable feedback to high-ranking officials regarding either sub-unit or total institutional performance (Bohlander 1989 : 341).

In exercising control over grievance procedures, municipal authorities may use (Cloete 1991 : 188) :

- (1) internal control mechanisms; and
- (2) external control mechanisms

7.1 Internal Control Arrangements

The generic administrative processes of policy-making, organising, financing, staffing, determining procedures and exercising control serve as internal control measures. Policy directives in respect of grievance procedures, are contained in the municipal authority's con-

ditions of service or grievance procedure manual. Such policy directives ensure that the grievance procedures are implemented in accordance with the wishes of the municipal council. The organisational structure of the municipal authority also serves a control function by emphasising the effective components of organising, namely, division of labour, delegation of power, co-ordination, co-operation and communication. For example, in the various municipal authorities studied, an aggrieved employee must lodge a grievance with his immediate supervisor. Only if he is dissatisfied with the outcome will he then consult the head of the section.

The amount of money spent on the implementation of grievance procedures also serves as a good criterion for exercising control. However, in South African municipal authorities there is no separate budget allocated for the implementation of grievance procedures.

Personnel involved in grievance procedures play an important role in employer/employee relations. The need for staff to be well-trained, motivated and enlightened in employer/employee relations is essential. To this end, supervisors should attend training course on labour relations. However, this appears not to be the case at many municipal authorities. Trade unionists such as shop stewards should also receive training on labour issues.

They must be aware of the grievance procedures of the municipal council, and the rights of employees when lodging grievances.

Grievance procedures also serve to regulate control in municipal personnel administration. Effective and efficient grievance procedures emphasise orderliness, fairness and consistency. In the municipal authorities studied, it was found that if employees are dissatisfied with the outcome of their consultation with supervisors, they could seek redress with higher ranking officials. Furthermore, the municipal authorities of Bloemfontein, Boksburg, Johannesburg, Kimberley, Port Elizabeth, Pretoria and Verwoerdburg fall under the jurisdiction of industrial councils which regulate the actions of municipal functionaries.

Control is inherent in the generic administrative processes. If the goal of implementing grievance procedures is not being attained effectively and efficiently, then a review of these processes are necessary.

7.2 External control arrangements

In the case of municipal authorities that fall under the jurisdiction of industrial councils, the industrial council ensures that municipal employees rights are

protected and that the grievance is redressed in a fair, just and consistent manner.

Trade unions also exercise a control function over the implementation of grievance procedures. For example, Durban City Council has members of recognised trade unions in its grievance sub-committee. The trade union representative ensures that the procedure is fair, just and consistent with the policies and procedures of the municipal council.

The Industrial Court may exercise a control function when employees declare a dispute with the municipal council. Intervention by the Industrial Court ensures that disputes are resolved amicably.

Municipal functionaries and trade union representatives must also bear in mind the specific guidelines that govern their conducts. They must always ensure that they take cognisance of the normative factors of deference to labour rights, respect for human rights, requirements of administrative law, fairness and reasonableness and public accountability, in the execution of their functions.

Lastly, municipal functionaries are accountable ultimately to members of the municipal community. Hence,

the citizens exercise control over municipal functionaires by ensuring that the goods and services provided by the municipal authority are acceptable and of a high standard.

8 SUMMARY

It has been established that the grievance procedure is absolutely essential for the effective functioning of a municipal authority. The grievance procedure is a vehicle for employees to lodge their dissatisfaction with management and must, therefore, be arrived at through a joint and consultative process.

The grievance procedure is an integrated part of the field of municipal personnel administration. It is accepted that no activity can be undertaken and no goal achieved if employees are dissatisfied with aspects of their work environment.

It is agreed that employers and employees recognise the need to set up and maintain a grievance procedure which is capable of resolving employee dissatisfaction. Like all other personnel functions carried out by municipal authorities, the grievance procedure must always be directed towards a clear goal, namely the effective and efficient resolution of employee discontentment. The

policy directives regarding implementation of the grievance procedures by various municipal authorities reveal common viewpoints on the general principles governing grievance procedures.

Policy directives on grievance procedures should be clearly outlined in a formal procedure manual, a requirement which is lacking in some municipal authorities. These policy directives must be constantly reviewed to ensure that they are pertinent to municipal employees' needs and interests.

In regard to organisational arrangements for the grievance procedure, municipal authorities emphasise the premise that the implementation of the grievance procedure rests with line management. However, municipal authorities cannot take important decisions on grievance procedures unilaterally. Co-operation and co-ordination with employees and employee organisations are essential to maintain harmonious employer-employee relations within the municipal context. Employees must adhere to the proper channels of communication when lodging a grievance. It is recognised that the labour relations section within the personnel department of various municipal authorities play an important role in the grievance procedures. Municipal authorities have internal and external organisational arrangements to ensure

that grievances are resolved timeously. Internal organisational arrangements are represented by the specific lines of authority that exist in the organisational hierarchy. The external organisational arrangements are represented by the role of employee representatives and trade unions in the joint consultative process of redressing grievances.

Grievance procedures cannot be administered effectively without financial implications being considered. It is imperative that municipal authorities recognise the seriousness of an employee lodging a grievance. Municipal authorities do not have a specific budget to deal with grievance procedures. An employee who lodges a grievance should be given time-off with full pay to prepare and consult with his representative about the grievance. An effective and efficient grievance procedure recognises and embraces the fundamental rights of employees. Therefore, the financial implications of lodging a grievance by the employee should be clearly stipulated by the municipal authority.

It is also accepted that whilst supervisors may be competent public functionaries, they may not have the knowledge, skills and attitude to deal with all types of grievances. One of the major causes of failure of the grievance procedure is lack of support and commitment

from supervisors. Therefore, municipal authorities must provide training programmes so that supervisors are better equipped to deal with employer-employee relations problems. The labour relations section of the personnel department provides an important support function in the implementation of grievance procedures. Shop stewards should also be well-versed with the procedures of the municipal authority, and the rights of employees in labour matters.

In South Africa, the procedure for the implementation of the grievance procedures is not prescribed by legislation. However, a study of the grievance procedures of municipal authorities reveals that the procedures constitute part of the conditions of service. In some municipal authorities, such as Bloemfontein, Boksburg, Johannesburg, Kimberley, Port Elizabeth, Pretoria and Verwoerdburg, grievance procedures are negotiated through industrial councils.

The internal resolution mechanisms for grievance procedures of the major municipal authorities studied are similar in content. However, an employee who is dissatisfied with the decision of the council, may refer such a grievance to the industrial council, where applicable. In the case of Durban, East London, Pietermaritzburg and Tembisa City Councils, an employee has to

abide by the decisions of the Council or declare a dispute with the Council. The matter is then taken to the Industrial Court in terms of the Labour Relations Act, 1956, as amended.

Control is necessary to evaluate and examine whether the goals of the grievance procedure are being achieved effectively and efficiently. Control may be exercised internally and externally. The internal form of control is exercised by the generic administrative processes of policy-making, organising, financing, determining procedures and exercising control. External control measures are exercised by the trade unions, industrial councils and the industrial court.

CHAPTER FIVETHEORETICAL ASPECTS OF DISCIPLINARY PROCEDURES1 INTRODUCTION

Disciplinary procedures are assuming an increasingly important role in South African employer/employee relations, despite the fact that they are a matter of practice and are not prescribed by law. In terms of the Labour Relations Amendment Act 83 of 1988, disciplinary dismissal "without a valid and fair reason and not in compliance with a fair procedure" constitutes an unfair labour practice. Subsequently, employers exhibit a greater willingness to introduce disciplinary procedures to improve the relations between employer and employees.

The manner in which employers apply disciplinary measures has a profound effect, not only on the employee, but the institution as well. The main purpose of this chapter is to document the elements of a coherent and structured approach to the implementation of a disciplinary procedure. In the light of the foregoing, this chapter shall focus on :

- defining discipline;
- objectives of discipline;

- types of discipline problems;
- approaches to maintaining discipline; and
- nature and scope of disciplinary procedures.

2 DEFINING DISCIPLINE

The term "discipline" often connotes the idea of punishment, but this is not its true meaning. It is derived from the Latin word "disciplina" which means mental and moral training and development of character (Nigro 1959 : 408).

The Webster's Dictionary gives three basic meanings to the word discipline (Beach 1975 : 600). Firstly, it states that it is training that corrects, moulds, strengthens, or perfects. The second meaning is that it is control gained by enforcing obedience. The third meaning is punishment or chastisement.

Various authors have defined the term discipline. Some examples of definitions are :

- training, correcting, moulding, perfecting or the teaching of employees to follow and adhere to reasonable and practical rules, related to their conduct and action and which apply to all employees (Birnbrauer 1981 : 42).

- refers to a behaviour pattern of a public official which coincides with the prescriptions of laws, regulations and other statutory stipulations (Andrew 1988 : 220).

- action, or behaviour on the part of the authority in a social system aimed at stopping the behaviour of members that threaten to disrupt the functioning of the system (Nel & Van Rooyen 1989 : 280).

It is unfortunate that the word "discipline" is often thought of in a restrictive and punitive sense. Most people will say that discipline means imposing penalties for "wrong" behaviour. But, from the aforementioned definitions, it is evident that the term has a positive connotation. Its root meaning is instruction or training (Megginson 1981 : 348). Discipline, even when it is punishment, is intended to correct wrong behaviour and train the individual to perform correctly (Megginson 1981 : 348).

Megginson (1981 : 348) expresses the view that the term discipline has three-fold meaning: firstly, it means self-discipline, secondly, it is a necessary condition for orderly behaviour, and thirdly, the judicial due process of punishing employees for unacceptable behaviour. These aspects shall be discussed hereunder :

a) Self-discipline

Self-control is necessary to the individual to mould and to strengthen one's character. It is evident that self-discipline is extremely important in employers and employees.

b) Conditions of orderly behaviour

Discipline is the condition necessary to obtain orderly behaviour in an institution (Megginson 1981 : 348). This implies keeping order and control among a group of workers by using methods that build morale, esprit de corps, and obedience, which are basic elements in organisational structures. If these standards of behaviour are to be effective, the members of the institution have to accept them and adhere to them.

c) Judicial due process

Discipline is also a judicial due process for punishing a person as a result of an unacceptable act (Megginson : 1981 : 348). Its function is not to change past behaviour but to prevent a recurrence of the act in the future.

This process, according to Megginson (1981 : 348), involves the following :

- establishing "laws" or rules of behaviour;
- setting penalties for violating those rules, with progressive degrees of severity; and
- imposing the penalties upon violators only after determining the extent of guilt and taking into consideration any extenuating circumstances.

The due process is based on four requirements that are usually upheld by arbitrators. They are as follows (Megginson 1981 : 348) :

- employers have the right to have a well-disciplined, co-operative work force;
- managers have the authority to administer discipline when rules are violated;
- rules must be "reasonable"; and
- employees must have a clear idea of what is expected of them.

It must be borne in mind that discipline must be both constructive and positive management action that enables employees to work together productively and harmoniously. According to Prinsloo (1990 : 16-10), discipline as a management responsibility, must be exercised in such a manner that it is objective, reasonable, corrective and directed towards employee development.

3 OBJECTIVES OF DISCIPLINE

Any organisation from a social club to a local authority must have certain rules and regulations to carry out its activities in an orderly and meaningful manner so as to attain predetermined objectives. No institution can function effectively if each employee is permitted to behave as he pleases.

Discipline, therefore, represents an instrument used by management to unequivocally show an employee that his conduct or action is unsatisfactory. Thus discipline essentially serves to regulate the interaction of employees and employers. The primary purpose of discipline is to ensure that the employer's objectives are achieved in an orderly fashion, that preventive and corrective action is taken in respect of employees, and that employees are afforded job security and stability (Slabbert et al 1990 : 22-27).

Holley & Jennings (1987 : 565) postulate that the objective of employee discipline is to correct the employee's behaviour. This purpose involves two assumptions :

- firstly, the vast majority of employees are well-intentioned and are willing to change if they are shown the correct course of action; and
- secondly, corrective discipline benefits both the employer and employee.

The first assumption might not readily be accepted particularly since every institution has its share of employees who seem to take pride in avoiding work (Holley & Jennings 1987 : 565). However, if the first assumption is accepted, then the second assumption logically flows. Correcting an employee through proper discipline can save the employer the cost of recruiting and training a replacement. Holley & Jennings (1987 : 565) believe that an employee's discharge represents "economic capital punishment", since the employee no longer receives income from that employer and may find it difficult to find another job with the discharge on his record.

Discipline should seek to eliminate practices that make for group inefficiency and to encourage those that

facilitate effective co-operation. It should help workers to help themselves, just as the discipline imposed by society in the form of social control seeks to advance the best interests of individuals as well as of the group (Yoder & Heneman 1958 : 14-59).

The basic requirements of industrial discipline appear obvious and indisputable (Yoder & Heneman 1958 : 14-59). All employees must co-operate for the good of all. The rules of the game by means of which co-operation is made possible, make each worker more efficient. But workers, like citizens, frequently seek privilege and suspension of the rules as far as their individual conduct is concerned (Yoder & Henemen 1958 : 14-59). They may merely seek to avoid disciplinary regulations because they think it will do no harm for them to do so (Yoder & Heneman 1958 : 14-59). They may seriously doubt the propriety of the rules themselves. In many cases, they completely lose sight of the purpose of such regulations and their relationship to the welfare of individual employees. They do not realize that any action which interferes with productive efficiency tends to lower their value (Yoder & Heneman 1958 : 14-59).

Municipal functionaries must co-operate to attain the pre-determined objective of promoting the quality of life of the community. This cannot be achieved if

municipal functionaries infringe the rules and regulations of the municipal authority. Hence, the need for establishing an efficient and effective disciplinary procedure within South African municipal authorities.

4 TYPES OF DISCIPLINARY PROBLEMS

There are numerous infractions that may be identified by employers as those which require disciplinary action. Robbins (1982 : 393) has classified the more frequent violations into four categories : attendance, on-the-job behaviour, dishonesty and outside activities.

4.1 Attendance

The most serious disciplinary problems facing institutions involve attendance. This study amongst South African municipal authorities also reflects this trend (see 6.6a).

The reason postulated by Robbins (1982 : 393) for the seriousness of such a problem are the following :

- a) Failure to align workers' goals with those of the organisation. This results in employee' loss of interest in their job as well as the institution.

- b) Change in attitude towards employment may also be a contributing factor. For many people work may not be the central focal point. Hence, desire to be punctual is of secondary importance.
- c) Values and attitudes of personnel have an influence on working behaviour, standards of honesty and incorruptibility must be upheld, otherwise absenteeism and abuse of sick leave will abound.
- d) Sick leave is utilised by personnel although they may not be ill. They regard it as earned time-off.
- e) The increased difficulty in dismissing an employee especially those protected by a collective bargaining agreement.

Megginson (1981 : 348) is of the view that absenteeism is a serious problem and is apparently increasing. He adds that control mechanisms need to be enforced to minimise the problem of absenteeism. Such control mechanisms include counselling and disciplinary action (Megginson 1981 : 348).

4.2 On-the-Job Behaviour

Such behaviour includes insubordination, horseplay, fighting, gambling, failure to use safety devices, carelessness and abuse of alcohol and drugs (Andrews 1988 : 223). Any of the foregoing conduct implies the breaking of rules and regulations of an institution. Action should therefore be taken against those employees who are guilty of such misconduct. Alcoholism, although considered an illness, remains a serious problem which requires immediate action (Andrew 1988 : 223). In South African municipalities, for example, in the City of Durban, alcoholism and drug abuse are very serious problems (Murugan 16/08/91 : interview).

4.3 Dishonesty

Dishonesty has traditionally resulted in the most severe disciplinary actions. Dishonesty reflects directly on the employee's character. Furthermore, it is assumed that an employee who steals or lies cannot be trusted and must therefore be dismissed (Robbins 1982 : 395).

4.4 Outside Activities

Outside activities cover the activities that employees engage in after work, but which has a direct or indirect

negative influence on their work performance. Such activities are, criminal offences, unlawful performance of work outside the particular institution as well as the dissemination of confidential information. This implies that the employees' off-the-job activities must comply with standards of the institution or they will be subjected to disciplinary action by their institution.

5 APPROACHES TO MAINTAINING DISCIPLINE

The objective in any organised group endeavour is to develop in the participants attitudes and behaviours that conform to established norms of conduct (Beach 1975 : 600). The question is, how can this be achieved? On the one hand, those in charge can rule with an iron fist, punish rule violators severely and, in general, force the member to obey and conform. This mode of leadership has often been called negative discipline, punitive discipline, autocratic discipline, or rule through fear (Beach 1975 : 600). The other approach is to develop in people a willingness to obey and abide by the rules and regulations without losing their need for individuality (Beach 1975 : 600). They do so because they want to, not because they are afraid of the consequences of disobedience. This form of discipline has been called positive or constructive discipline (Beach 1975 : 600).

Discipline is the force that prompts an individual or group to observe the policies, rules, regulations and procedures that are necessary to attain objectives in an orderly and civilised manner (Megginson 1981 : 349). It can be positive and activating or negative and restraining (Megginson 1981 : 349). Discipline is essential to all organised group action. Workers are thus expected to conform with specific rules and regulations which facilitate the achievement of the institution's goals. However, some workers may not be committed to achieving the goals of productivity. They may find it more rewarding to pursue their individual needs such as staying away from work for their own reasons, smoking in a smokeless zone and pilfering goods from the work place (Finnemore & Van der Merwe 1989 : 113).

From the foregoing discussion it is necessary to review the methods and implications of each type of discipline.

5.1 Negative Approach

The basic fallacy in negative discipline is that it achieves only the minimum performance necessary to avoid punishment (Beach 1975 : 601). The worker is not included in formulating the rules, and no reasons are given for their exclusion from this process. However, they are informed that they will be punished if they

break a rule (Beach 1975 : 601). The rule-through-fear approach puts the emphasis upon avoidance of punishment, not upon enthusiastic, wholehearted co-operation (Beach 1975 : 601). Therefore, the practice of the rule-through-fear approach can have only limited success.

Plunkett (1975 : 257) also opposes the negative approach by stating that emphasis is placed on wrongdoing and punishment. It can become bureaucratic and impersonal, relying heavily on records, rules and procedures (Plunkett 1975 : 257). It is often characterised by a lack of trust in subordinates, demands for blind obedience and wilful disobedience of rules and regulations on the part of employees (Plunkett 1975 : 257).

The negative approach, sometimes referred to as the traditional approach is based on a set of specific employee rules and a specific procedure for punishing violations of those rules. The most common procedure for deciding punishments is called progressive discipline (Scarpello & Ledvinka 1988 : 686, author emphasised).

In progressive discipline, punishment increases in severity as the number of previous violations increases. The following list shows a typical ordering or sequence of punishment in a progressive discipline system (Scarpello & Ledvinka 1988 : 686) :

- informal talk;
- formal oral warning;
- formal written warning;
- three-day suspension without pay; and
- discharge.

A climate in which negative discipline thrives (one in which the need for punishment is frequent) should be examined and restructured to promote willing obedience and positive discipline (Scarpello & Ledvinka 1988 : 686). Individual counselling is essential (Scarpello & Ledvinka 1988 : 686). Human relationships need development, nourishment and maintenance (Scarpello & Ledvinka 1988 : 686). The disciplinary system must become more professional and worthy of the respect and confidence of employees (Scarpello & Ledvinka 1988 : 686).

Finnemore & Van der Merwe (1989 : 113) are of the view that many disputes in industrial relations have arisen over disciplinary issues, where employees believe that a colleague has been treated unfairly. Approximately one quarter of strikes in South Africa since 1979 have originated in perceived arbitrary or unfair disciplinary action (Finnemore & Van der Merwe 1989 : 113).

Clearly, such a negative approach is neither good for industrial relations, nor will it be tolerated by or-

ganised labour (Finnemore & Van der Merwe 1989 : 113). Alternative means of maintaining discipline at work are a necessity in such situations, as well as being sound management practice under any circumstances.

5.2 Positive Approach

Positive discipline, often called constructive discipline, consists of that type of supervision leadership that develops a willing adherence to the necessary rules and regulations of the institution based on understanding (Beach 1975 : 602). The employees, both as individuals and as a group, adhere to the desired standards of behaviour because they understand, believe in, and support them (Beach 1975 : 602).

Discipline must take the form of positive support and reinforcement for approved actions (Beach 1975 : 602). This is fundamental to all learning. Punishment may be applied for improper behaviour but this is carried out in a supportive, corrective manner. There is no vindictiveness. The aim is to help, not harm, the individual (Beach 1975 : 602).

Counselling by the supervisor is an important aspect of discipline and may be prescribed before the application of certain disciplinary penalties (Finnemore & Van der

Merwe 1989 : 114). Employees as individuals and as groups are more likely to develop an adherence to the rules because they understand and accept the necessity for them. If the supervisor takes the proper steps to build a cohesive work group, he may find that the group will generally support his disciplinary efforts.

The trade union should be consulted to ensure that these rules which are in operation are seen to be fair and equitable (Finnemore & Van der Merwe 1989 : 114). It is also important that similar rules are applicable to all employees, otherwise perception of inequities will arise (Finnemore & Van der Merwe 1989 : 114). During the induction period the rules of the disciplinary code and procedures must be meticulously explained to employees (Finnemore & Van der Merwe 1989 : 114).

The objective of the positive approach is to (Beach 1975 : 602) :

- create a climate in which employees are encouraged to accept the leadership of managers and supervisors; and
- develop an adherence to the rules by employees, based on their understanding and acceptance of the necessity of managerial and supervisory-leadership

and rules of the institution.

The acceptance of managerial and supervisory leadership and of rules, can be obtained through implementing the following aspects (Slabbert et al 1990 : 22-79) :

- training of employees with regard to the role of managerial and supervisory leadership within an institution;
- training of managers and supervisors in applying constructive discipline in order to afford individual employees the opportunity to reform their behaviour;
- consultation and/or negotiation with trade union or works council representatives regarding the disciplinary code and procedure. Usually consultation is used with regard to the rules or code, and negotiation in determining the procedure; and
- employee counselling prior to and during the application of disciplinary action. This is the process whereby the supervisor helps the employee to achieve the expected standards of behaviour and performance.

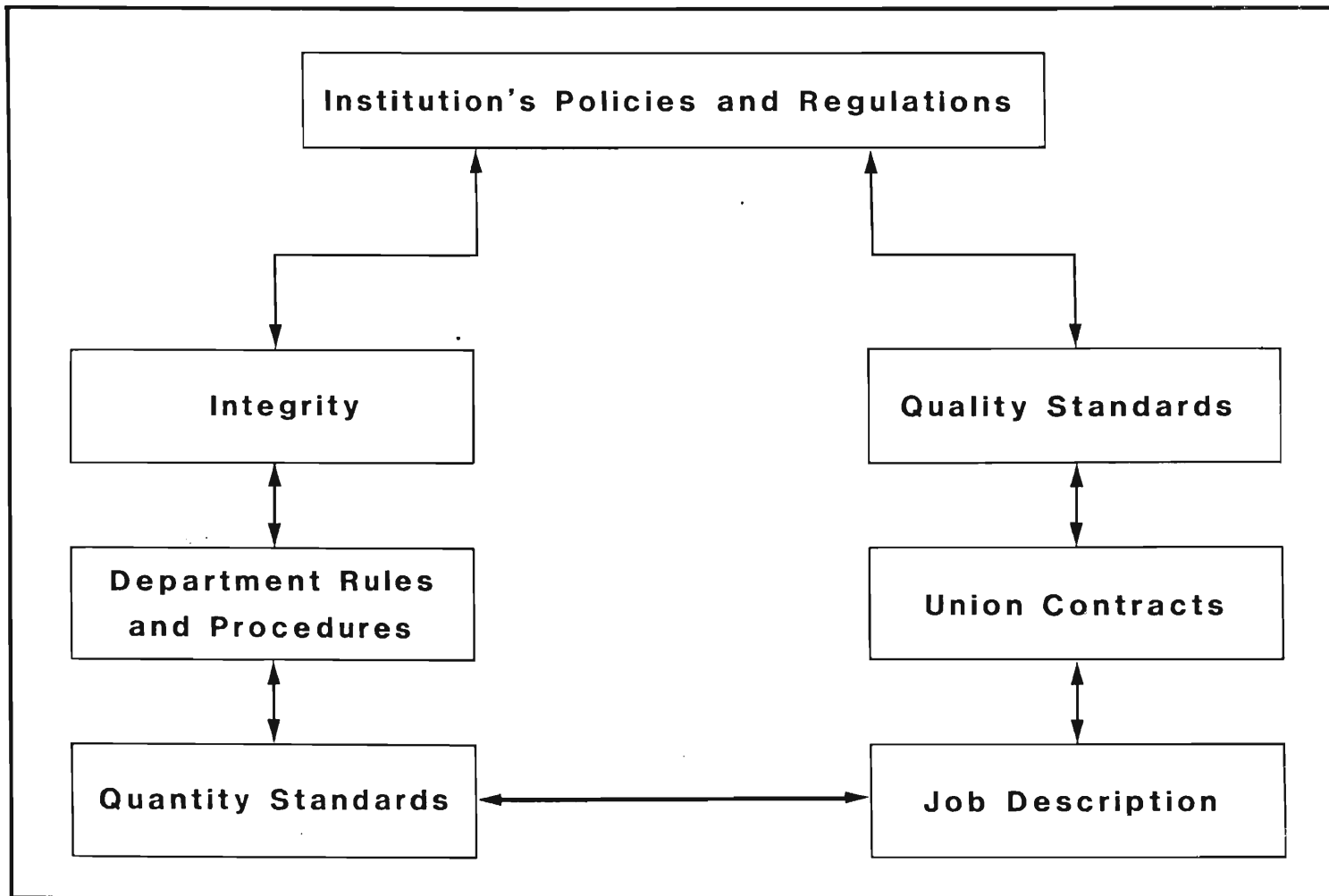
A very important factor in positive discipline is the ability of the supervisor to communicate what is expected of each individual in regard to his behaviour on the job. The subject of communications should be the limits placed upon each individual by policies and regulations, departmental rules and procedures, the persons job description, and the union contract if applicable (Plunkett 1975 : 256). By communicating, in advance of an infraction, the expectations of each worker and the limitation under which he has to work, the supervisor has forewarned the subordinate about the type of conduct to be exhibited while on the job (Plunkett 1975 : 256).

The typical boundaries placed around human conduct at work are depicted in Figure 8. If employees stay within the stated limitations they risk nothing, but if they step outside them, they can expect management to react in certain and predictable ways. Once established, these parameters need to be maintained by regular review of their usefulness and the judicious application of fair punishment (Plunkett 1975 : 256).

An example of a positive approach to discipline may be the following (Plunkett 1975 : 257) :

FIGURE 8

TYPICAL BOUNDARIES PLACED AROUND HUMAN CONDUCT AT WORK
(ADAPTED FROM PLUNKETT 1975 : 256)



- a) When an employee does something meriting punishment, there are casual, private reminders from the departmental supervisor in a friendly but factual manner.
- b) If a second transgression occurs within four to six weeks, the reminders are repeated.
- c) A third occurrence within a reasonable time (usually four to six weeks) leads to another discussion, this time with a high-ranking official. At this point, an attempt is made to determine the roots of the employee's problem. For example, the following questions could be asked of the employee:
- . Does the worker like the job?
 - . Is the worker unable to tolerate the work routine?
 - . Are there personal or domestic problems?
 - . Is the worker able and willing to abide by the rules in the future?
- d) If a fourth incident occurs within six to eight weeks, the worker's supervisor and a high-ranking

official have a final discussion with the individual. The worker is informed that another incident will result in termination. A record of this discussion is sent to the employee's home.

- e) Continued good performance over a period of several months leads to a clearing of the record.
- f) If there is any improvement in performance, the supervisor informs the worker that it is appreciated.

South African municipal authorities have often used the negative approach. However, the disciplinary policies of Cape Town, East London and Port Elizabeth seek to correct behaviour rather than merely punish employees, and is indicative of a general trend to move away from the negative approach.

Having discussed the various approaches to discipline it is necessary to explain the nature and scope of disciplinary procedures.

6 NATURE AND SCOPE OF DISCIPLINARY PROCEDURES

In essence, the maintenance of discipline regulates the interaction between employer and employee. It can thus be concluded that the disciplinary procedure is a con-

trol procedure (Slabbert et al 1990 : 22-78). Similar to any other control procedure within the organisation, the formal disciplinary procedure comprises a number of stages as shown in Figure 9.

The standards of performance and behaviour must be defined. These may be codified in a specific set of disciplinary rules and regulations and are usually referred to as the disciplinary code (Slabbert et al 1990 : 22-78).

The employee's performance or behaviour must be assessed against these standards. According to Salamon (quoted in Slabbert et al 1990 : 22-78),

"this assessment is not a formalised, periodic one in staff appraisal systems, but takes place only when management believes prima facie that the action of the employee is at variance with the designated standards".

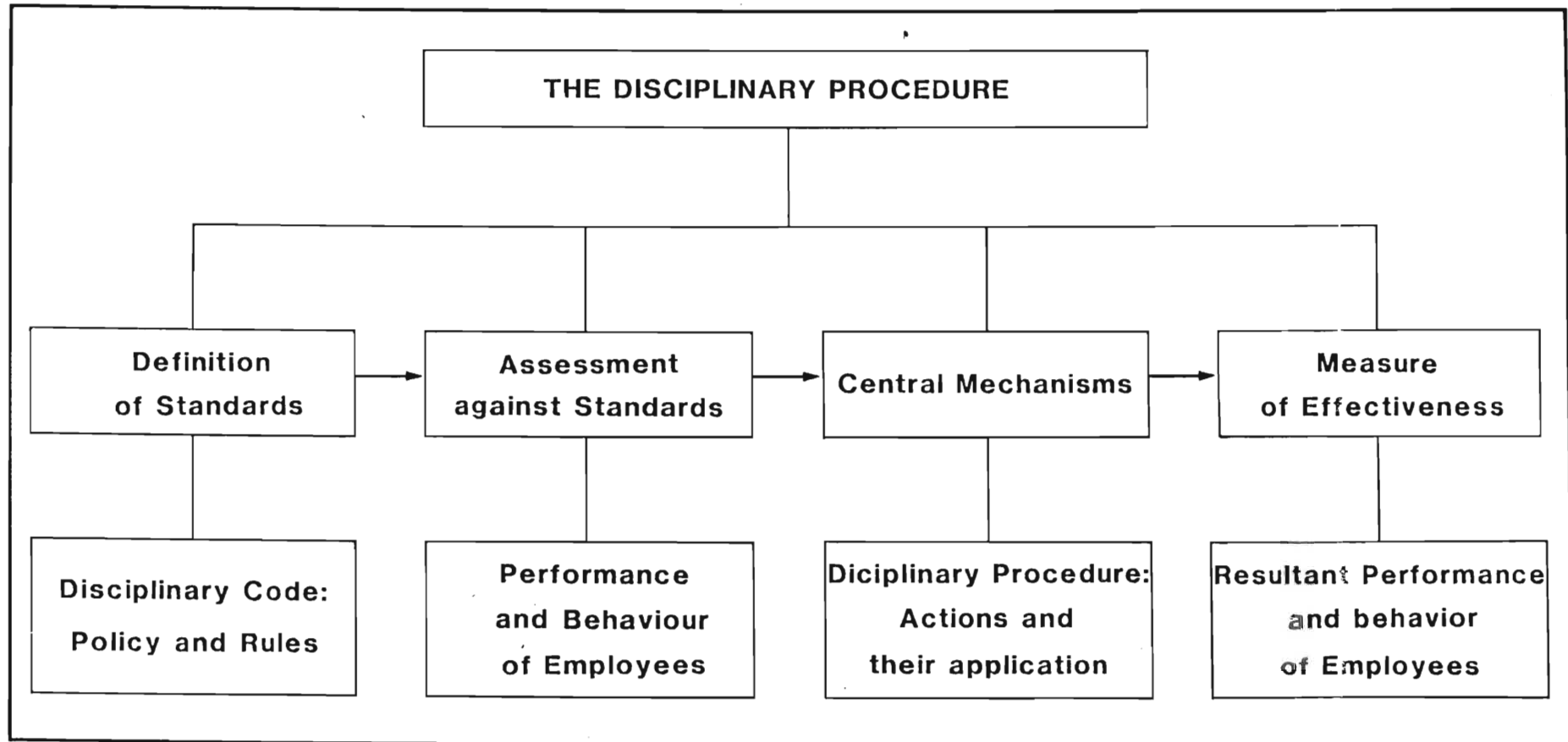
When the assessed performance or behaviour is found to be at variance with the prescribed standards, the control mechanism, that is, the disciplinary procedure with its various actions, has to be implemented (Slabbert et al 1990 : 22-78).

The effectiveness of the corrective sanctions must be measured by assessing the employee's resultant perfor-

FIGURE 9

STAGES IN THE ESTABLISHMENT OF DISCIPLINARY PROCEDURES

(ADAPTED FROM SLABBERT ET AL 1990 : 22-78)



mance or behaviour in order to determine whether this conforms with the designated standards.

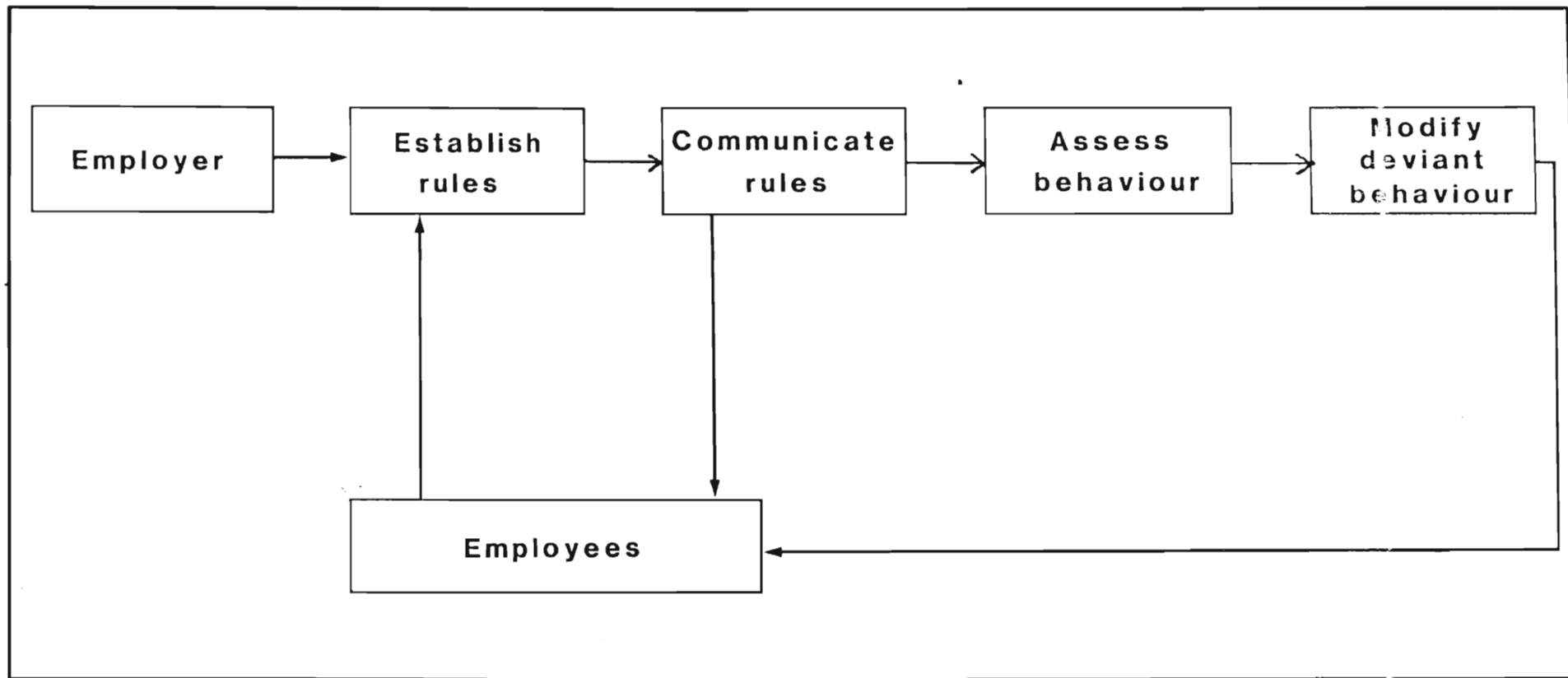
The disciplinary procedure represents an area of employer/employee relations where, on the one hand, management wants to retain its disciplinary prerogative and on the other, there is the employee's desire to establish and maintain the greatest possible degree of protection against management action that may jeopardise his work security (Slabbert et al 1990 : 22-78). From this, it is clear that the disciplinary procedure provides a focus for conflict. Therefore, management has to adopt a professional approach in order to strike a balance between the control of its labour resources and achieving objectives (Slabbert et al 1990 : 22-78).

Glueck (1974 : 606) states that discipline and counselling programmes in organisations are designed to assure effective job performance and adherence to generally acceptable work rules. The elements of such a system are shown in Figure 10.

The first element is the establishment of work and behaviour rules. Regardless of the method used (time and motion study, examination of past performance and management by objectives) a set of minimally acceptable work goals is established (Glueck 1974 : 606). An ex-

FIGURE 10

ELEMENTS IN A DISCIPLINARY PROCEDURE SYSTEM
(ADAPTED FROM GLUECK 1974 : 606)



ample would be municipal workers who have to maintain sidewalks and gardens. They are expected to cut X metres of grass on sunny days with certain quality constraints. If the worker does not meet this goal, as assessed in his performance evaluation, there is a work performance problem (Glueck 1974 : 606).

Behaviour rules cover many facets of on-the-job behaviour. They can be categorized as concerning behaviour that is directly or indirectly related to work productivity. Both types are often negatively described as prohibited behaviour (Glueck 1974 : 606).

Examples of some employee behaviour rules are as follows (Glueck 1974 : 606) :

I Rules directly related to productivity

A. Time rules

1. Starting and late times.
2. Quitting times.
3. Maximum break and lunch times.
4. Maximum absenteeism.

B. Prohibited - behaviour rules

1. No sleeping on the job.
2. No leaving workplace without permission.
3. No drinking on the job.
4. No drugtaking on the job.
5. Limited non-employer activities during work hours.

C. Insubordination rules

1. Penalties for refusal to obey supervisors.
2. Rules against slowdowns and sitdowns.

D. Rules emphasizing laws

1. Theft rules.
2. Falsification rules.

E. Safety Rules

1. No-smoking rules.
2. Safety regulations.
3. Sanitation requirements.
4. Rules prohibiting fighting.
5. Rules prohibiting dangerous weapons.

II Rules indirectly related to productivity

- A. Prevention of moonlighting.
- B. Prohibition of gambling.
- C. Prohibition of selling or soliciting at work.
- D. Clothing and uniform regulations.
- E. Rules about fraternization with other employees at work or off-the-job.

Another important element in the disciplinary procedure system is the communication of the rules to all employees. Unless employees are aware of the rules, they can hardly be expected to follow them. Closely related to the aforementioned is a willingness to accept the rules and their enforceability (Glueck 1974 : 606). If employees or their representative participate in the formation of the rules, their co-operation is more likely assured. Employees must be convinced that the rule is fair and related to job effectiveness, for example, rules regarding hair length are relevant to job safety in some settings, but irrelevant in most others (Glueck 1974 : 606).

It is useful for management to seek employee advice for periodic revision of rules (Glueck 1974 : 606). The objective is to reduce the number of rules to the minimum and enforce those that are important. Since customs and

conditions change, rules, like laws, need regular updating to achieve the respect and acceptance necessary for order in the workplace (Glueck 1974 : 606).

The third element of the disciplinary procedure system is an assessment mechanism. In most municipal authorities, performance evaluation is the mechanism for assessing work behaviour deficiency. Rule-breaking behaviour usually comes to the attention of management when it is observed or when difficulties arise and investigation reveals certain behaviour as the cause (Glueck 1974 : 606).

Finally, the disciplinary procedure system consists of a system of administering punishment or attempts to motivate change (Glueck 1974 : 606). This varies from supervisory administration of discipline to formal systems somewhat like courts or grievance procedures.

6.1 Objectives

Contrary to the opinion of many employees, a disciplinary procedure is not intended merely to ensure that they are properly disciplined (Bendix 1989 : 258). The prime objective of the disciplinary procedure should be seen as the encouraging of improvements in the employee's behaviour rather than the imposition of

penalties (Bendix 1989 : 258). In other words, the approach should be preventative and corrective, and not punitive. Action must be taken promptly, as delay allows facts and recollections to fade and may also be interpreted by employees as management's condoning of certain types of behaviour (Slabbert, et al 1990 : 22-86).

Bendix (1989 : 258) supplements this view by stating that a disciplinary procedure ensures the following :

- all employees are treated in the same manner;
- an employee is not disciplined or dismissed at the whim of a supervisor;
- the employee is accorded the opportunity of a fair hearing before dismissal occurs;
- a transgression of the same kind is treated in the same manner by all supervisor;
- employees have certainty regarding the type of treatment they will receive; and
- managerial representatives also obtain certainty about their actions and decisions.

To achieve the objectives of disciplinary procedures, it is imperative that municipal authorities clearly outline their disciplinary policies and disciplinary codes.

6.2 Importance of Disciplinary Policy

The need for achieving a healthy state of discipline throughout the organisation rests with top management. In South African municipal authorities this is the responsibility of municipal councils and high ranking municipal officials.

The municipal council must decide what kind of behaviour it expects from its employees and how it hopes to achieve this. The objective is to create a positive, constructive form of discipline through sound leadership and adequate training of all employees (Beach 1975 : 606).

Management must outline the role of the first-line supervisor in the disciplinary system. This can be effectively done by defining a clear disciplinary policy. Slabbert, et al (1990 : 22-83) submits that the purpose of the disciplinary policy is to state the intent of the organisation with regard to discipline, thereby establishing the organisational climate within which disciplinary matters will be dealt with. The policy may be

in a separate policy document, part of the disciplinary procedure, or an administrative note to managers on how to operate the procedure (Slabbert et al 1990 : 22-83).

The way in which public authorities perform their tasks, reach decisions and implement them, is what constitutes the administrative process. However, it is impossible to comprehend how a municipal council operates, without its officials being used in the correct capacity and disciplined by the necessary disciplinary guidelines. Disciplinary guidelines play a fundamental role in initiating, facilitating and regulating the administrative process.

These guidelines emanate from a distinct disciplinary policy of the municipal authority, outlining its intention on the enforcement of discipline.

An example of a disciplinary policy statement containing principles to be observed is as follows (Slabbert, et al 1990 : 22) :

"Management will initiate corrective action where work performance is unsatisfactory or employee behaviour is unacceptable. Such action aims to prevent conflict in the workplace, to protect the interests of both the employer and the employee and to promote the practice of sound industrial relations. The procedure recognises the right of an employee to a fair hearing in the event of disciplinary action being taken, and further-

more recognises the right of an employee to appeal against any disciplinary measure which he considers to be unfair or unjust. Management will ensure that action is prompt, firm and fair and ensure consistency in the application of disciplinary action".

6.3 Disciplinary Code

A set of rules of conduct is essential for all institutions, particularly municipal authorities, to ensure that employees function successfully. Such rules determine the permissible behaviour of the participants in the institution, and are contained in a disciplinary code. Discipline, defined as action aimed at correcting behaviour that threatens to disrupt the functioning of the institution, should be done by indicating what constitutes unacceptable behaviour (Nel & Van Rooyen 1989 : 280).

The goal of the disciplinary code is the establishment of a uniform framework for disciplinary action. The code is based on the following principles as outlined by Nel & Van Rooyen (1989 : 280) :

- a) The right of management to take appropriate disciplinary steps against any worker who acts in a manner conflicting with the interests of the institution.

- b) At the same time the code also recognises the right of the worker to a fair hearing and to an appeal against any disciplinary measure which he may consider to be unjust.
- c) The emphasis in any disciplinary system is on prevention, justice and rehabilitation. The disciplinary code is regarded as a guideline, and its interpretation must be adequately flexible in order to adjust to various circumstances. Where possible, an attempt must be made to correct wrong conduct. Disciplinary steps should only be taken if the worker makes no attempt to improve his conduct.

A disciplinary code must prescribe the reasons for which an employee may be disciplined or dismissed (Piron 1984 : 68). Some examples of types of transgressions may be listed as follows (Slabbert, et al 1990 : 22-84) :

a) Minor offences

- . Poor time-keeping
- . Non-notification of absence from work
- . Unsatisfactory performance of duties at work
- . Absence from place of work without reason

b) Serious offences

- . Leaving work without informing management
- . General neglect of duties
- . Disregard of managerial instructions
- . Disregard of safety rules

c) Major offences

- . Dishonesty
- . Abuse of clocking procedures
- . Unauthorised possession of property
- . Gross neglect of safety rules
- . Wilful damage to property
- . Physical violence or assault
- . Intimidation
- . Intoxication at place of work

The above examples are by no means exhaustive, and the disciplinary code is by its very nature a management directive which must be established in accordance with an institution's own specific circumstances. Municipal councils should, however, endeavour to consult with municipal employees and trade unions to ensure that the disciplinary code is fair and just.

The implementation of the disciplinary code is perhaps the most difficult aspect of the disciplinary section as far as management is concerned. A major problem of the code is that it is usually regarded as being arbitrary. To some extent this problem has been overcome by the use of a grid system which is shown in Figure 11.

A major problem often mentioned in connection with disciplinary codes is that the grid system of coding offenses is often inflexible (Piron 1984 : 69).

The problem of inflexibility may be overcome by either listing a number of available remedies in the individual boxes, or by providing maximum remedies only. The latter method would turn the grid into a guideline, and not a prescriptive model. A guideline does, however, have the disadvantage that it can lead to inconsistency of application. The imperative model, on the other hand, turns the grid into a mechanistic tool of discipline which may be consistent, but which may not be equitable in all cases (Piron 1984 : 69-70). An alternative approach is to design broad categories of offences, and leave it to the individual managers to select the correct category for a particular case (Piron 1984 : 69-70).

FIGURE 11

EXAMPLE OF A GRID SYSTEM OF OFFENCES (ADAPTED FROM PTRON 1984 : 69)

Offence	First occasion	Second occasion	Third occasion	
Theft	Summary dismissal			
Neglect of duty	Verbal warning	Written warning	Final written warning	Dismissal with notice

The application of a disciplinary code does not ensure that justice will prevail. Municipal councils must determine whether the disciplinary code is fair, reasonable, logical and acceptable to municipal employees. Furthermore, municipal employees must be able to understand the code.

In order to ensure that disciplinary codes are fairly and consistently applied, municipal functionaries must be au fait with the principles of disciplinary procedures.

6.4 General Principles of Disciplinary Procedures

When handling disciplinary problems high-ranking public officials must be aware of the accepted principles of the disciplinary procedure.

Slabbert et al (1990 : 22-77) identify the following as acceptable principles of disciplinary procedures:

a) Awareness of rules and regulations

Employees should know what is expected of them and what the consequences of not fulfilling those expectations will be. The disciplinary code and procedure form part of the terms and conditions of employment of employees,

and it is, therefore, imperative that employees are inducted in and made aware of, such code and procedure.

Through the process of induction the employees must be informed about the disciplinary "culture" of the institution and the standards which they are expected to adhere to (Slabbert et al 1990 : 22-77). The "what", "how" and "why" of the municipal authority's standards, rules and regulations must be explained in detail. Newcomers must be given instruction, counsel and encouragement in this regard (Slabbert et al 1990 : 22-77).

All rules and regulations must be effectively communicated to employees. Even if a rule is obvious it should be explained. The standards to be adhered to, and the rules, as well as the disciplinary transgressions and actions which are applicable (i.e. the disciplinary code) must be made available to employees, not necessarily in detail, but rather as an abbreviated version of the disciplinary code (Slabbert et al 1990 : 22-77).

b) Responsibility for discipline

Management is responsible for discipline by implementing and maintaining the disciplinary process. Some academics and business leaders, however, espouse the view that disciplinary action is the responsibility of a committee

that comprises both employer and employee representatives.

However, the majority of municipal authorities still practise the traditional view, which holds that discipline is a management prerogative (Slabbert et al 1990 : 22-77). Some of the reasons for this centres around the fear of losing control over employees and resistance to change (Reyneke 1990 : letter).

c) Application of the disciplinary procedure

The disciplinary procedure should be applied in accordance with the delegated line of authority within the municipal authority.

d) Employee rights in disciplinary matters

Article 7 of Convention 158 of the ILO (quoted in Slabbert et al 1990 : 22-77) states that

"... the employment of a worker shall not be terminated for reasons relating to the worker's conduct or performance before he is provided with an opportunity to defend himself against the allegations made, unless, the employer cannot reasonably be expected to provide this opportunity".

The following employee rights should be recognised by management in terms of what constitutes a fair labour practice in administering discipline (Slabbert, et al 1990 : 22 - 77) :

- the right to be told the nature of the offence. An employee is entitled to know why he is being disciplined and what exactly the charge is, together with a description of the most prominent elements.

- the right to be disciplined timeously.
The disciplinary inquiry should take place within a reasonable time after the infraction has been discovered. Management's avoidance of immediate disciplinary action may be seen as a condonation of the incident.

- the right to adequate notice prior to the inquiry.
The employee may need time to prepare his defence in conjunction with his representative, and therefore adequate notice should be given prior to the inquiry. It will be unfair to allow an employee no or little time to prepare his defence. The duration of time needed will depend upon the facts of each case.

- the right to representation.
It is an employee's fundamental right to have a representative of his choice at an inquiry.

- the right to state his case or to defend himself.
The primary objective of an inquiry is to provide an employee with an opportunity to state his case and to mount a defence. It will be unfair if management prematurely decides that an employee is guilty and does not afford him an opportunity to say anything in his defence.

- the right to call and cross-examine witnesses.
It is common knowledge that if an employee has the right to defend himself he will also have the right to call witnesses to support his defence. Furthermore, an employee is entitled not only to call witnesses in his defence, but to be personally present throughout the inquiry to cross-examine witnesses called by the employer.

- the right to an interpreter of his choice.
If an employee is not familiar with the language in which the inquiry is conducted, he has the right to call for an interpreter of his choice, or at least approve of the interpreter appointed.

- the right to a finding.

The employee also has the right to be told whether he is guilty or not. If he is found guilty of an infraction he has the right to be told the full reasons.

- the right to have previous service considered.

The employee has the right to have his previous service considered prior to a decision being made. The alleged right to have previous service considered is in fact part of a larger requirement for a fair hearing, namely, that the employee should be entitled to plead in mitigation of any proposed punishment.

- the right to be advised of the penalty.

The employee must be informed of the penalty or discipline imposed upon him.

- the right to appeal.

In South Africa circumstances appeals are usually to a higher level of management or line authority.

- conducting the inquiry.

One question that often arises is who should conduct the inquiry? This is a matter for the employer to decide. The Industrial Court has not as yet

provided clear guidelines in this regard (Slabbert et al 1990 : 22-77). It has, however, made it clear that the person conducting the inquiry must be impartial.

Armstrong (1988 : 269) in his analysis of the disciplinary procedures in the United Kingdom, concludes that disciplinary regulations should be based on principles of natural justice, and building on this foundation, understand:

- basic provisions of the law, such as the law of unfair dismissal;
- general approach that should be used to deal with disciplinary matters as set out in the code of practice; and
- particular approaches to be used in dealing with specific branches of discipline or with cases of unsuitability, especially incapability, misconduct, absenteeism and lateness.

Furthermore, when handling disciplinary problems, supervisors must bear in mind the following (Armstrong 1988 : 267) :

- a) Individuals should know the standards of performance they are expected to achieve and the rules to which they are expected to conform.
- b) They should be given a clear indication of where they are failing or the rules that have been broken.
- c) Except in cases of gross misconduct, they should be given an opportunity to improve before disciplinary action is taken.

Four further principles governing the manner in which disciplinary cases should be dealt with have been defined in case law (Armstrong 1988 : 269) :

- a) Individuals should know the nature of the accusation against them.
- b) They should be given the opportunity to state their case.
- c) The disciplinary tribunal should act in good faith.
- d) Employees should be allowed to appeal.

Yoder (1958 : 14.60) is of the view that the most important principles to be observed in the maintenance of discipline are that :

- a) As far as possible, all rules should be developed in co-operation and collaboration with representatives of employees. If they have a hand in formulating the rules they will be much more likely to observe them.
- b) All rules should be appraised at frequent and regular intervals to be sure that they are appropriate, sensible and useful.
- c) Rules should vary with working conditions.
- d) Rules must be uniformly enforced if they are to be effective. They must not be applied with favouritism or exceptions.
- e) Penalties for violation should be stated in advance, as should procedures for enforcement. Employees have a right to know what to expect. To that end both rules and procedures may well be published in employees' handbooks.

- f) Disciplinary policy should have, as its objective, the prevention of infraction rather than the simple administration of penalties, however just. It should be preventive, rather than punitive.
- g) Extreme care must be taken to ensure that infringements of rules are not encouraged.
- h) If violations of any particular rule are numerous, the circumstances surrounding these infractions should be carefully studied to discover the source of difficulty.
- i) Recidivism must be expected. Certain offenders will almost certainly occasion for more than their proportionate number of violations. These "problem cases" may require extensive consideration and attention.
- j) Definite and precise provision for appeal and review of all disciplinary action should be expressly provided in the employee handbook, collective agreement, or otherwise.

In light of the above-mentioned, municipal councils must recognise the following important principles when determining disciplinary procedures :

- employees must be aware of all rules and regulations;
- responsibility for discipline lies with a committee comprising of employer and employee representatives; and
- the rights of employees should, at all times be upheld.

6.5 Requirements for the Establishment of Effective Disciplinary Procedures

The disciplinary procedure established in a municipal authority will depend on the nature and structure of the municipal authority. However, there are certain rules which must be observed when establishing disciplinary procedures. These include the following (Bendix 1989 : 259):

- a) Disciplinary procedures should be comprehensive and complete. It should list all types of offences which may occur and specify the disciplinary measures to be applied in each case. This presupposes that rules prohibiting certain practices and actions, have been established.

- b) Procedures must be clear and accessible to employees. Explanations must be in simple language which all employees can understand and the procedure must be known to employees.

- c) Procedures should conform to the principles of natural justice. This means that the incident should be investigated, the punishment should match the offence, an employee must be fully informed of the reason for disciplinary action against him, he must be provided with an opportunity to present his side of the story, he should be allowed a representative, the circumstances should be taken into account, there should be conformity in disciplinary measures and there should be a right of appeal or review.

In addition, the following must be borne in mind (Nel and van Dyk 1989 : 342) :

- management should have the right to take appropriate disciplinary steps against any worker who acts in a manner conflicting with the interests of the institution.

- the emphasis in any disciplinary system falls on prevention, justice and rehabilitation. The dis-

disciplinary procedure is regarded as a guideline, and its interpretation should be flexible enough to be adapted to various circumstances. Where possible, informal attempts should be made to correct wrong conduct. Disciplinary steps should be taken only if the worker makes no attempt to improve his conduct, and only as a final measure.

To ensure that disciplinary procedures are carefully formulated, no essential elements are overlooked and members of management will support the programme, there is considerable merit in involving representatives of middle and lower management, together with employee representatives, in the process of developing the system (Beach 1975 : 607).

6.6 Categorisation of Offences

Offences are categorised in accordance with the nature of the offence (Bendix 1989 : 259). They are usually divided into three types, namely offences, serious offences and offences which may result in dismissal. The degree of seriousness attached to each offence will depend on the institution. In certain institutions the mere intake of alcohol, no matter what the amount, constitutes a dismissable offence, whereas in others only drunkenness which leads to incapacity would be regarded

in such a serious light. Generally, all types of misconduct regarded at common law as reasons for instant dismissal are categorised as very serious offences. The categorisation of offences requires detailed consideration and consultation with all levels of management (Bendix 1989 : 259).

Once the offences have been classified, a disciplinary mould is established for each. This will state the nature of the action to be initiated if an employee commits a particular offence (Bendix 1989 : 259). Thus, a disciplinary procedure may be represented as shown in Figure 12.

It may be noted from Figure 12, that an offence which is not of a serious nature would, in all probability, be subject to a verbal warning in the case of a first offence, a written warning for a second offence, and a final warning for a third offence. A more serious offence would be subject to a written warning, a final written warning or dismissal.

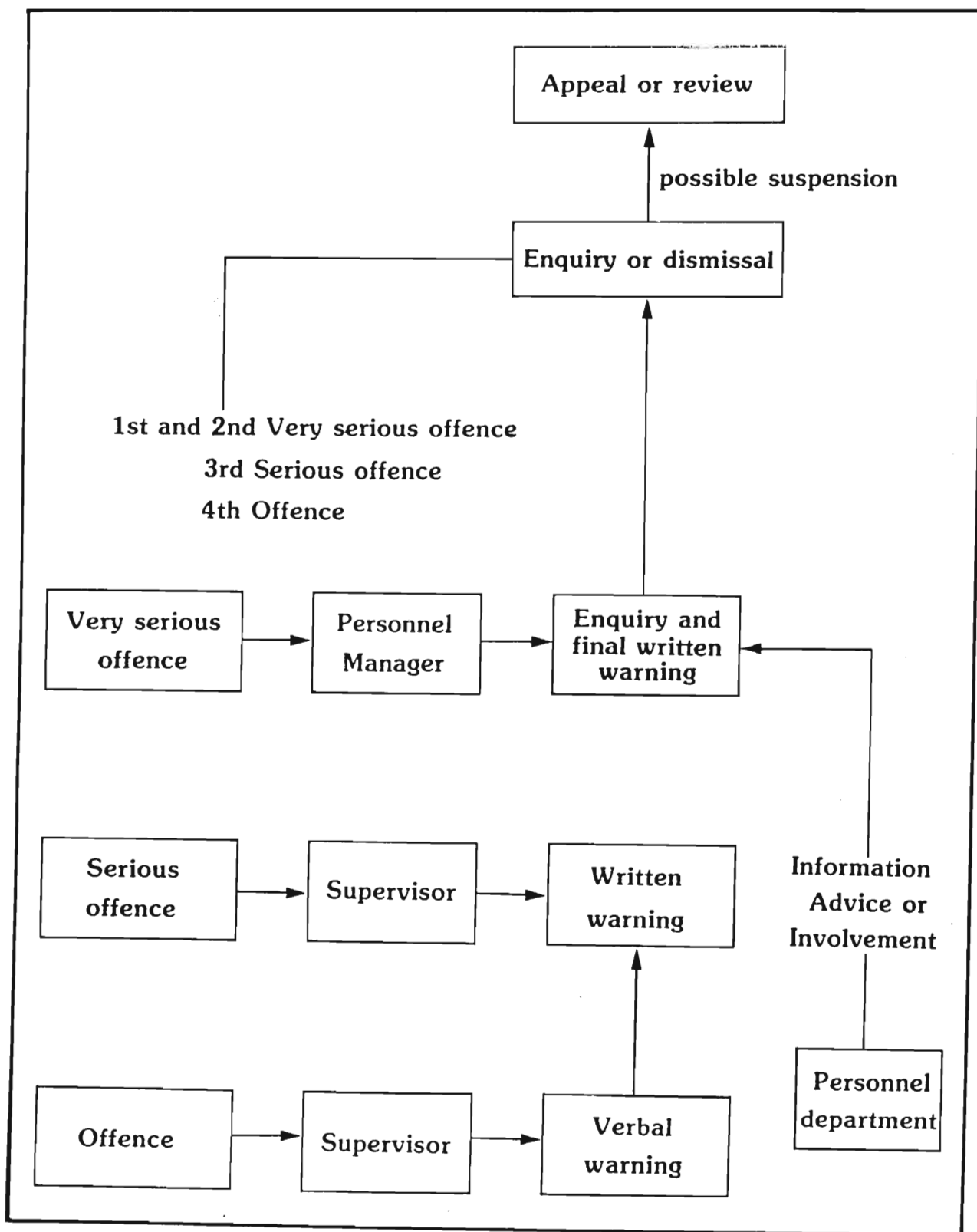
6.7 Disciplinary Action

Disciplinary actions are imposed by an employer on employees for violation of rules and regulations (Klingner 1980 : 384). A broad interpretation, according

FIGURE 12

EXAMPLE OF A TYPICAL DISCIPLINARY PROCEDURE

(ADAPTED FROM BENDIX 1989 : 261)



to Flippo (1980 : 368), would consider the words 'disciplinary action' to mean any conditioning of future behaviour by the application of either rewards or penalties. This approach would include positive motivational activities such as praise participation and incentive pay, as well as negative motivational techniques, such as reprimand, lay-off, and fines. The more commonly accepted definition of the term is that disciplinary action is confined to the application of penalties that lead to an inhibition of undesired behaviour.

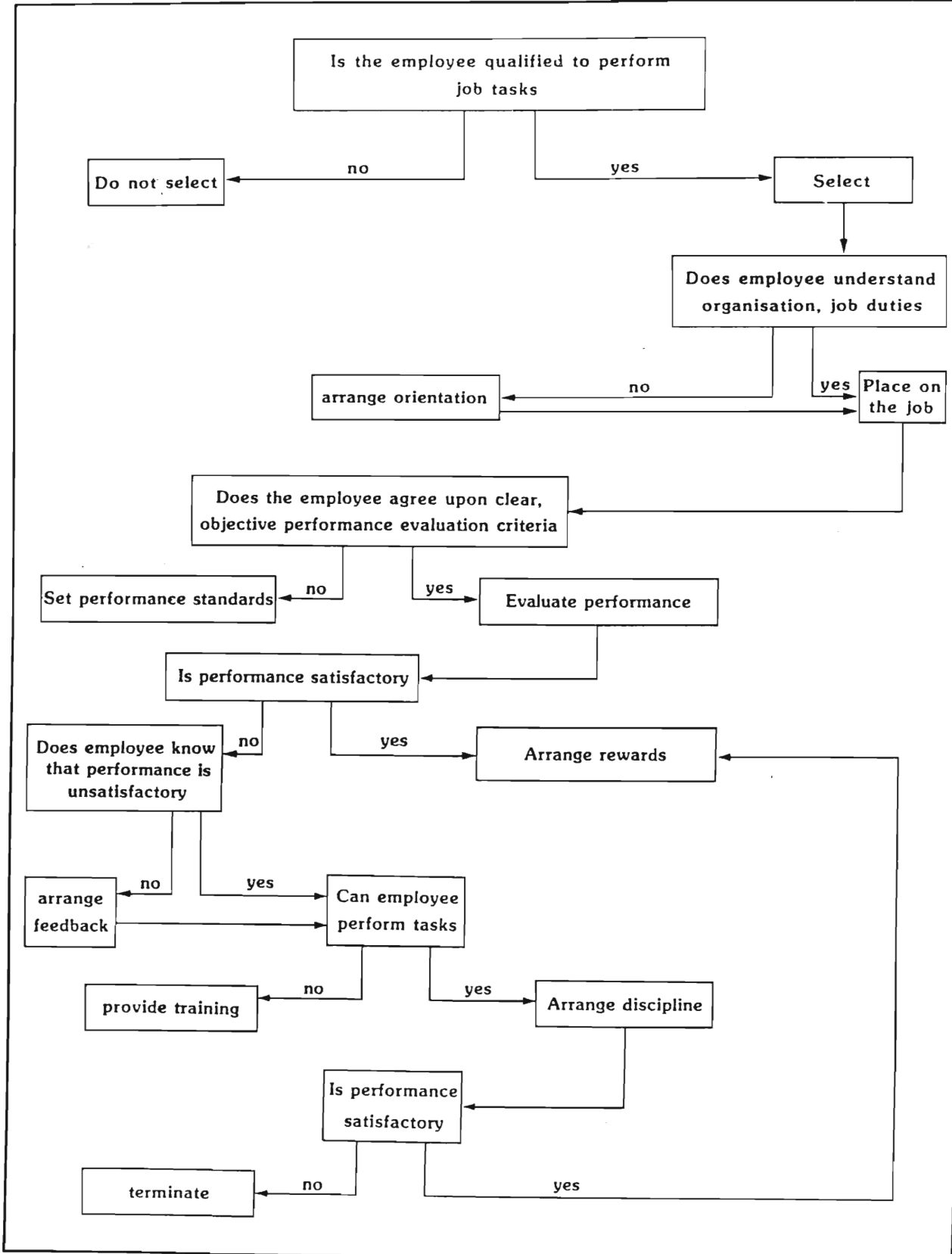
Klingner (1980 : 386) describes disciplinary action as "the last step in supervising employees because it results in termination of the relationship". It assumes that the following personnel activities have already occurred (Klingner 1980 : 386):

- orientation;
- performance evaluation;
- training; and
- rewards.

Figure 13 shows the sequential process of personnel activities which occur prior to disciplinary action.

FIGURE 13

PERSONNEL ACTIVITIES IMPLEMENTED PRIOR TO DISCIPLINARY ACTION
(ADAPTED FROM KLINGNER 1980 : 381)



Disciplinary measures must be applied to all employees concerned according to a prescribed procedure. However, before disciplinary action can be taken, the offence must be analysed and the following relevant aspects must be identified (Andrews 1988 : 224) :

a) The seriousness of the offence

Dishonesty is a more serious offence than being late for work.

b) Frequency of the offence

The supervisor must establish whether it is a first or a repeated offence. In the latter case, it must be established over what period the offence has been taking place.

c) Nature of the offence

The nature of the offence determines the type of disciplinary action to be taken.

d) Work history

An employee who has worked for many years in the municipal authority may receive lighter punishment than

an employee who tends to change jobs every few months.

e) Mitigating circumstances

Mitigating circumstances such as family crises or indisposition can be taken into consideration when a decision must be made concerning disciplinary measures.

f) Orientation

It must be established whether the employee concerned received effective orientation training during which disciplinary measures were explained to him.

g) Precedents

The pattern of disciplinary action in the municipal authority concerned should be studied. In other words, it must be established whether the application of disciplinary measures is always uniform and consequential.

h) The effect of disciplinary action on colleagues

The influence which disciplinary action against an employee has on his colleagues must be established. Disciplinary actions which result in large-scale unproductivity are not always justified. In other words, dis-

disciplinary measures must solve a problem, not create a greater one.

i) Corroborative evidence

Corroborative evidence is essential to justify actions taken against an employee before a higher authority.

When the foregoing factors are considered, it is then possible to determine which disciplinary measures should be applied to each type of offence.

6.7.1 Types of disciplinary-action penalties

When an employee's behaviour or standard of performance is unacceptable, disciplinary action, aimed at correcting such behaviour, may be taken by the municipal authority. There are many forms of disciplinary action which are used in municipal authorities today. Examples of such action include, inter alia, the following :

- oral/verbal warning;
- written warning;
- final written warning;
- dismissal;
- transfer;
- suspension;

- demotion; and
- fines.

6.7.1.1 Oral/verbal warning

The verbal warning is used in the case of minor misdemeanours and early signs of poor work performance. Such a warning must be conducted in an informal atmosphere. Miner and Miner (1977 : 453) state that the purpose of informality is to encourage employees to relate their view of the problem with an opportunity for a reasonably complete statement of the facts as they see them.

It should be borne in mind that the objective of a verbal warning is to correct behaviour or improve performance.

6.7.1.2 Written warning

The written warning is the second step in a progressive discipline procedure. It is preceded by a full discussion so that the supervisor is able to ascertain the reasons for an employee's unacceptable behaviour (Prinsloo, et al 1989 : 22 - 87).

Written warnings are appropriate for certain infractions of a more serious nature and for repetitive infractions. The purpose of the warnings is to focus the employee's attention on his shortcomings and to afford him an opportunity to reform or to rehabilitate himself (Landman 1989 : 10).

The warning must be clear, concise, non-punitive and constructive. Furthermore, there should be a prescribed period, usually six months, after which a written warning is withdrawn from the employee's personnel record (Prinsloo, et al 1989 : 22-87).

6.7.1.3 Final written warning

In respect of serious cases which fall short of dismissal or where the employee has been warned for misconduct or poor performance and there has been no improvement on his part, a final written warning is issued. There must also be a prescribed period, usually twelve months, after which a final written warning is withdrawn from the employee's personnel record (Prinsloo, et al 1989 : 22-87).

It is important that the employee be told that any further misconduct or poor performance on his part could result in dismissal (Prinsloo, et al 1989 : 22-87). The

written and final warnings are essential, with regard to possible future allegations of unfair dismissal by an employee in that they provide management with the necessary evidence to prove that attempts were made to correct the employee's unacceptable behaviour in the past. Written warnings serve as essential reference points with regard to managerial attempts to correct an employee's behaviour (Prinsloo, et al 1989 : 22-87).

6.7.1.4 Dismissal

Landman (1989 . : 11) regards dismissal as the capital sentence of the industrial world. He adds that it holds important and far reaching implications for an employee. Apart from the personal hardship and anguish which it holds for an employee, it also affects his viability in the market. Dismissal should be regarded as a sanction of last resort (Landman 1989 : 11). This does not mean that it should not be used the first time that an infraction is committed. Some infractions are so serious that dismissal for a first infraction will be appropriate. The decision to dismiss an employee should not be taken lightly (Landman 1989 : 11).

Dismissal may be linked with legal action in some instances, and the principles of procedural and substantive fairness must, of course, always be adhered to in

effecting a dismissal (Prinsloo, et al 1989 : 22-87).

Institutions may also use the following disciplinary actions, but they are not always recommended (Prinsloo, et al 1989 : 22-87) :

6.7.1.5 Transfer

The transfer of an employee does not achieve the objective of disciplinary action, that is, correcting the individual's behaviour. It merely displaces the problem from one department to another. Therefore, such action is not recommended unless personality conflict which is dysfunctional to the institution exists.

6.7.1.6 Suspension

Certain industrial council agreements forbid the use of suspension without pay as a disciplinary measure. If there is no statutory or contractual prohibition, suspension without pay may be considered as an alternative to the dismissal of an employee (Prinsloo et al 1989 : 22-27).

Prior to the 1988 amendments to the Labour Relations Act, 1956 an employer could, it was believed, only offer an employee suspension without pay where the discipli-

nary infringement merited dismissal. Dismissal must have been the appropriate alternative otherwise the employer would be acting unfairly and wrongfully in putting the offer to the employee. In fact he would be placing the employee under duress which is impermissible at common law and would probably constitute an unfair labour practice (Landman 1989 : 11).

The legislature has now expressly provided that "the unfair unilateral suspension" of an employee constitutes an unfair labour practice (Landman 1989 : 11). The converse appears to be true, namely that the "fair unilateral suspension" of an employee will not constitute an unfair labour practice. If the employee has committed a disciplinary infraction which merits a greater punishment than a final warning but one of lesser severity than a dismissal then it seems to be fair to suspend the employee without pay for a reasonable period (Landman 1989 : 11).

The following steps should not be used in administering discipline (Prinsloo, et al 1989 : 22-87) :

6.7.1.7 Demotion

Reducing the rank of an employee means that the employer has unilaterally changed the employment contract without

the employee's consent. This type of action is therefore not permissible. Moreover, demotion demotivates the employee.

6.7.1.8 Fines

The typical progression of discipline moves from an oral warning, to a written warning, to a final written warning and, if necessary, to dismissal. Municipal authorities may also consider the use of suspension as an alternative to dismissal. The type of penalty meted out to the employee depends on the seriousness of the infraction. For the disciplinary action to be successful, municipal authorities must recognise that penalties ought to correct and not punish employees' behaviour and standards of performance.

6.7.2 Guidelines in implementing disciplinary action

Robbins (1982 : 398) has developed the following guidelines to indicate how discipline should be administered.

- a) Disciplinary action should be corrective, rather than punitive

Disciplinary action must not aim to punish the employee. The objective is to correct an employee's

undersirable behaviour. Punishment may be a means to an end, but never an end in itself.

b) Disciplinary action must be progressive

The type of disciplinary action enforced depends on the nature of the offence. Nevertheless, all disciplinary actions should be progressive. This implies that an employee must be warned verbally, and if undesirable behaviour or standard of performance persists, it is followed by a written warning, a final written warning, suspension and only in most serious cases, by dismissal.

c) Follow the "Hot Stove" rule

The application of discipline can be compared with touching a red-hot stove. This is a rule described by Douglas McGregor (1982 : 398) and it implies basically that, when one touches a red-hot stove, one's discipline is immediate, with warning, consistent and impersonal. If these characteristics are compared with the application of disciplinary measures, it is found that (Robbins 1982 : 398) :

- disciplinary measures must be applied immediately after an offence. The effect of disciplinary action

reduces in proportion to the length of the period between the offence and the application of discipline. If the discipline is applied when the offence takes place, there is a smaller possibility that the employee will connect the disciplinary measure with the supervisor instead of with the offence.

- supervisors are obliged to warn employees before serious disciplinary measures are applied. In other words, the employee must be aware of the policy and standards for the conduct of public officials.
- disciplinary measures must be applied uniformly. If they are not uniformly applied, they lose the effect that they should have. In addition, it is considered to be unfair and the morale of the employees can be impaired.
- disciplinary measures must be impersonal. In other words, punishment must be related to the offence and not to the personality of the offender.

6.8 Disciplinary Inquiry

According to Prinsloo, et al (1989 : 22 - 88) the disciplinary inquiry is the most important phase in the

disciplinary process. It is at this juncture that the formal control mechanism is applied between management and the offending employee.

6.8.1 Preparation for the inquiry

The departmental manager or superintendent has to be satisfied that there is a prima facie case that the employee has contravened a rule. Therefore, a preliminary fact-finding session must be held to :

- determine what rule has been broken and what evidence there is to substantiate the breach, and
- decide who, within the line hierarchy, has the authority to conduct the inquiry.

Once it has been decided who will conduct the disciplinary inquiry, the appointed chairman must,

- formulate the alleged offence in writing, and
- issue a written notice to the employee whereby he is informed that a disciplinary inquiry must be held.

6.8.2 Objectives of the inquiry

The objectives of the inquiry are to (Prinsloo, et al 1989 : 22-88) :

- establish the facts of the case; and
- to administer the disciplinary action.

Establish the facts of the case

The chairman of the inquiry has to establish the facts of the case from both management's and the employee's point of view. The disciplinary inquiry should take place only if management believes that there has been a breach of rules by the employee. Information gained should be analysed and reviewed. The employee and his representative must be given the opportunity to question management's information by means of cross-examination and information analysis.

They must also have the right to present their side of the case.

Administering the disciplinary action

If the employee is found guilty of an infraction, the chairman of the inquiry must administer the disciplinary

action. At this stage, the chairman must inform the employee of the reasons why he has been found guilty, the nature of the action being applied and its effect, as well as what the employee can do to improve standard of performance or correct behaviour. At no stage of the inquiry should the employee be inflicted with humiliation.

6.8.3 Style of the inquiry

In order to achieve the objectives of the inquiry, namely to establish the facts and administer disciplinary action, the chairman should:

- seek information by posing open-ended questions; maintain control of the interview, but, at the same time allow the employee to put his case in his own way;
- concentrate on the facts relating to the performance or behaviour of the employee and not get drawn into personalities;
- behave in a calm, rational manner and never become angry, sarcastic or rude;

- ask the employee for suggestions as to solving the problem;
- discuss the merits and demerits of the various suggestions;
- respond with empathy;
- maintain or enhance the employee's self-esteem; and
- strive to obtain agreement on specific problem-solving action steps in terms of "who", "what" and "when".

6.8.4 Follow-up

It is recommended that the disciplinary inquiry be followed by an interview during which the action steps agreed upon are evaluated and discussed. This step is especially important to reinforce positive behaviour on the one hand, and help the employee discuss problems that may still exist on the other (Prinsloo, et al 1989 : 22-88 - 22-90).

6.9 Disciplinary Appeals Procedure

The purpose of this procedure is to afford the employee an opportunity to appeal against any disciplinary measures imposed on him and have his case reheard by the next, higher line authority.

6.9.1 General policy

An employee shall have the right to appeal against the outcome of a disciplinary inquiry under certain circumstances, i.e. when,

- the disciplinary inquiry was not conducted in accordance with the disciplinary code and procedure;
- new facts that were not taken into account at the inquiry have become available; or
- the action taken is unprecedented with regard to such an incident.

6.9.2 Procedure

The disciplinary appeals procedure according to Prinsloo et al (1990 : 22-109) is as follows:

a) Step One

If an employee is dissatisfied with the decision of the supervisor or chairman of the disciplinary inquiry, the employee and/or his representative must complete the appeal form in triplicate. The first two forms go to the supervisor and departmental manager, while the third goes to the personnel department.

The reason for appealing, as well as any additional information relevant to the case must be noted on the appeal form.

The appeal must be lodged within four (4) working days of the disciplinary inquiry. The departmental manager must acknowledge receipt of the appeal form. If a former employee appeals against his dismissal, this action will be in his own time and he will not be entitled to any remuneration for such time.

The personnel officer submits the appeal form along with the disciplinary report to the next, higher line authority for further processing.

b) Step Two

The next, higher line authority must arrange an appeal inquiry within three (3) working days of receiving the appeal form, unless otherwise agreed with the employee and/or his representative. The aggrieved employee should be given written notice of the inquiry.

Certain conditions for holding an inquiry must be adhered to. The inquiry shall be held in a separate room where evidence can be led without interference or distraction.

Witnesses shall wait outside the room to give evidence. The following are usually present at the hearing:

- (a) the chairman : managing director, departmental / sectional manager (depending on the organisational level of the aggrieved employee, any of the foregoing management representatives may act as chairman).
- (b) the aggrieved employee.
- (c) the aggrieved employee's supervisor and/or the complainant.

- (d) the aggrieved employee's representative, being a fellow employee, unless the aggrieved employee wishes otherwise.
- (e) the senior personnel officer or personnel manager.
- (f) any witness that may be called upon.
- (g) an interpreter, if necessary.

6.9.3 Conducting the appeals inquiry

The chairman explains to all relevant persons the background of the case. After hearing all sides of the case, he must decide whether the disciplinary action was fair or not.

The chairman must impart his decision and the reason for it to the employee. The manager must record his decision on the appeal form and sign it. It is advisable that the employee and his representative (if applicable) also sign the appeal form as proof that they have taken cognisance of the manager's decision.

The chairman must hand all the relevant documentation to the senior personnel officer, who will be responsible for the processing and filing thereof.

The manager's decision is final, and no further appeal to a higher line authority will be granted (Prinsloo et al 1990 : 22-109).

At this juncture, the disciplinary procedure ends. If the employee is not satisfied with the outcome of the appeals procedure, he may declare a dispute with the employer, and the dispute procedure becomes operational.

6.10 Consistency in the Application of Disciplinary Procedures

Inconsistency in application of disciplinary measures occurs when supervisors in different departments have different standards of what they expect and have different tolerance limits when employees deviate somewhat from the standard (Beach 1975 : 608). Thus, one supervisor may overlook the occasional pilfering of a few pencils by an office employee, whereas another considers such action to be stealing and grounds for discharge. The best way to achieve consistency of treatment and application of the rules is through supervisory training courses and by consistent action by higher management on a day-to-day basis as cases are brought up (Beach 1975 : 608).

6.11 Effectiveness of Disciplinary Procedures

Municipal authorities such as Bloemfontein, Cape Town and East London have established disciplinary policies. However, a well-written disciplinary policy is only as effective as its enforcement, and this is where most organisational efforts at effective discipline administration, break-down or are less than fully successful.

The single efforts of a supervisor acting alone are quite insufficient to make an organisational discipline programme effective.

Miner and Miner (1977 : 448) are of the view that any successful programme must include the following elements:

- a) An acceptable set of disciplinary policies and procedures which incorporate the need for the procedure to be comprehensive, accessible, lucid and conforming to the principles of natural justice (Bendix 1989 : 264).
- b) A uniform application of discipline rules and procedures.

- c) Senior officials must be trained in the knowledge and skills related to implementing a discipline policy. Managers, if they are to conduct interviews and enquiries, need to acquire people-handling and judgemental skills. They must remain calm, neutral and be rational when making a decision.
- d) An orientation programme which informs all new employees about management's expectations of appropriate performance and behaviour.
- e) A continuous management effort which communicates to employees all changes and revisions in personnel and discipline policies before changes are actually put into effect.

A disciplinary procedure which is fairly and consistently implemented can create trust, reliance and good faith in the labour relationship. In South Africa, the 1988 amendments to the Labour Relations Act, 1956 have included the dismissal of an employee without following a proper procedure and hearing under the definition of an Unfair Labour Practice (Bendix 1989 : 264).

6.12 Role of the Supervisor in Disciplinary Procedures

Plunkett (1975 : 252) postulates that subordinates depend upon their superiors for satisfaction in specific need areas. These areas include the following :

- need to know what is expected in the way of work performance and conduct on the job;
- need for regular feedback on their performances from the supervisor to include praise as well as censure; .
- need to be treated fairly and impartially by the supervisor; and
- need to be judged on the basis of acts and standards rather than by opinions and assumptions.

The above-mentioned areas imply that the supervisor needs to plan the work given to subordinates carefully (Plunkett 1975 : 252). The work and limits on its execution must be carefully explained to those who will be responsible for it. Policies, rules and procedures may need to be taught, explained or reviewed. Standards need to be communicated and the necessary support or training must be arranged (Plunkett 1975 : 252).

The supervisor, by recognising employees' needs for job security, may prevent high employee turnover and job dissatisfaction and may contribute positively toward instilling self-control and self-discipline in subordinates. The supervisor, whilst trying to maximise effectiveness and efficiency, will also inevitably deal with disciplinary issues (Plunkett 1975 : 252).

At lower levels of the disciplinary procedure, that is where breach of conduct results in a warning being issued, the general rule is that the first-line supervisor has final authority (Plunkett 1975 : 252). At the middle level, involving suspensions, line supervisors and managers have the final authority, while at the top levels, involving discharges, the authority is split between high-ranking officials and personnel officers. In general, as the severity increases, the role of the first-line supervisor decreases and the role of the personnel officer increases. Megginson (1981 : 350) writes that persons in higher levels of management take a stronger, perhaps more punitive position on matters of discipline than those at the lower levels. It seems that first-line supervisors are more inclined to giving consideration to individual circumstances and behaviour (Megginson 1981 : 350). Furthermore, supervisors do not follow rules strictly for fear of losing the cooperation of subordinates if they are too severe

(Megginson 1981 : 350).

The supervisor must realise that there are a wide range of problems that may require disciplinary action. He must recognise that infractions vary greatly in terms of severity (Robbins 1982 : 396). This implies that for a fair and equitable disciplinary procedure, major contingency factors must be taken cognisance of. Robbins (1982 : 396-397) outlines these factors as follows :

a) Seriousness of the problem

The supervisor must ascertain how serious the infraction is.

b) Duration of the problem

The supervisor must note whether the employee has had problems in the past, and for how long.

c) Frequency and nature of the problem

The supervisor must ascertain whether the incident is an isolated problem or is there a continuing pattern of discipline infractions emerging. Continual infractions require a different type of discipline from that applied to isolated cases of mis-

conduct.

d) Employee's work history

Employees who have developed a strong track record may receive less severe punishment for violating the disciplinary code.

e) Extenuating factors

Circumstances may result in the employee breaching the disciplinary code. It is imperative, therefore, for the supervisor to allow the employee to explain his case.

f) Degree of Socialization

Employees must know the disciplinary rules and procedures as well as consequences of violations of such rules and procedures.

g) History of the organisation's discipline practices

There must be consistency in the application of disciplinary procedures. The equitable treatment of employees must take into consideration precedents within the unit where the infraction occurs, as

well as previous disciplinary actions taken in other units within the organisation.

h) Implications for other employees

Disciplinary action against an employee will have an impact on other employees. Consequently, assessment of whether the action will have a major dysfunctional effect on others, must be made.

i) Management Support

High-ranking officials must have the necessary data to justify the necessity and equity of the action taken against the employee. No disciplinary action is likely to carry much weight if violators believe that they can challenge and successfully over-ride their supervisor's decisions.

6.13 Role of the Personnel Department in Disciplinary Procedures

The personnel department must at all times be informed of disciplinary action to be taken against an employee. Final reports on actions relating to serious and other offences are submitted to the personnel department in its capacity as custodian of employee records. Furthermore, members of the personnel department may attend

disciplinary interviews and enquiries in a consultative capacity (Bendix 1989 : 263). It is advisable that actual disciplinary action should be undertaken by line management, but, because many line managers do not possess sufficient knowledge as regards procedures and common disciplinary practices, it is not unusual for the personnel manager to be directly involved in the conduct of disciplinary hearings (Bendix 1989 : 263). Other members of management, particularly those from the same department or section, may also be invited to attend or participate in disciplinary hearings (Bendix 1989 : 263).

6.14 Role of Employee Representatives in Disciplinary Procedures

Employees need to be informed of their right to representation during a disciplinary interview or enquiry. Representatives should be allowed to speak on behalf of the employee, to bring argument and to cross-question the evidence and witnesses. The representative is more often than not the shop steward. The duties performed by the shop steward are, inter alia, the following (Labour Relations Training Programme : Cape Town City Council no date : module 7) :

- to assist members during disciplinary enquiries and appeals;

- to assist members during grievance hearings;
- to assist the trade union officials during negotiations, e.g. wages;
- to communicate with management on behalf of members, and
- to assist management during labour unrest.

The shop steward's involvement in disciplinary procedures enables quicker decision-making on the part of management. He represents employees and therefore has credibility with employees. This instills greater confidence among employees in dealing with management. Furthermore, the shop steward is able to explain the disciplinary policies and procedures of the institution to employees as well as their rights pertaining to such procedures (Labour Relations Training Programme : Cape Town City Council no date : module 7).

7 SUMMARY

An effective disciplinary procedure is an instrument of employer/employee relations policy. It should be applied with the greatest circumspection because it affects productivity and morale of employees.

The term "discipline" is very often thought of in a restrictive and punitive sense. Discipline should rather be seen as a constructive or positive management action that enables employees to work together productively and harmoniously. It should be exercised in such a manner that it is fair, reasonable and aimed at developing, rather than merely punishing an employee. There are numerous infractions which require disciplinary action, however for the purposes of clarity, the more frequent infractions may be categorized into four groups : attendance, on-the-job behaviour, dishonesty and outside activities.

Approaches to maintaining discipline may be two-fold, either positive or negative. An effective disciplinary procedure adopts the positive approach with the objective of not merely punishing the employee but encouraging improvements in the employee's behaviour and performance.

Disciplinary procedures in essence, maintain control of the interaction between employer and employees. They comprise a number of stages which include defining standards in terms of a disciplinary policy and code, assessing performance and behaviour of employees against these standards, enforcing a control mechanism in terms of actions of employees and application of disciplinary

measures and, finally, measuring the effectiveness of disciplinary procedures by evaluating resultant performance and behaviour of employees. Disciplinary procedures represent the desire of employers to retain control of behaviour of employees on the one hand, and on the other, the employees desire to protect themselves against arbitrary action by employers that may threaten their security. Therefore, disciplinary procedures must be fair, reasonable and acceptable.

To fulfil the aforementioned criteria, discipline must be progressive. This means that an offender must be given a verbal warning, followed by a written warning, a final written warning, and ultimately dismissal. Dismissal, however, holds important and far-reaching implications for the employee. It should, therefore, be regarded as a sanction of last resort. Employers may also implement transfers, suspensions, demotions, and fines on employees, however, these disciplinary actions are not always recommended. Regardless of the disciplinary action imposed, supervisors must take cognisance of the fact that penalties ought to correct and not punish employees' behaviour and standard of performance. Consequently, certain guidelines should be borne in mind when disciplining an employee. In addition to the action being corrective and progressive, it should follow "the hot stove rule" and be applied uniformly and imper-

sonally.

Disciplinary action can only be meted out once the facts of the case have been established, hence the need for a disciplinary inquiry. Employers must respect the fundamental rights of employees and give them a chance to present their side of the case. Disciplinary action must be in accordance with the type of infraction committed to be a fair and just application of the disciplinary procedure. If the employee feels that the penalty is not justified, he should be given the right to appeal against such a decision.

Consistency in the application of disciplinary procedures cannot be over-emphasized. This can only be achieved by training and developing supervisors in the field of employer/employee relations. The effectiveness of disciplinary procedures depends on the policies and procedures of an institution, consistency in application of rules and policies, expectations of appropriate performance and behaviour made known to employees by employers, and an effective channel of communication between employer and employees. The failure to implement fair and equitable procedures, especially in dismissal of an employee, would, in terms of the Labour Relations Amendment Act 83 of 1988 constitute an "unfair labour practice".

Supervisors, the personnel department and employee representatives are the principal actors in disciplinary procedures. Supervisors, by recognising employees needs for job security, may prevent high employee turnover and job dissatisfaction and may contribute positively towards instilling self-control and self-discipline in subordinates. The personnel department serves in an advisory capacity in disciplinary procedures and ensures that policies and procedures are adhered to by supervisors. Employee representatives have the right to represent employees at inquiries and help to educate employees on disciplinary policies and procedures of the institution.

The appearance of disciplinary procedures in an institution's conditions of service manual does not, necessarily, ensure that such procedures are effective and efficient, fair and just. Disciplinary procedures must be acceptable to both employer as well as employees. They must be consistently applied by well-trained supervisors. Lack of commitment and support for effective disciplinary procedures from employers will result in feelings of resentment and hostility by employees towards management and often leads to disruption of productivity and ultimately result in strike actions.

Sound disciplinary procedures which have the support of both employers and employees will contribute positively to harmony in the work place. A study of the operational perspectives of disciplinary procedures in South African municipal authorities is therefore essential. These aspects are dealt with in the next chapter.

CHAPTER SIXDISCIPLINARY PROCEDURES AT SOUTH AFRICAN MUNICIPAL AUTHORITIES : OPERATIONAL PERSPECTIVES1 INTRODUCTION

In the preceding chapter the theoretical aspects of disciplinary procedures were discussed. It was concluded that disciplinary procedures should be applied with great circumspection because they affected the productivity and morale of employees. Furthermore, the disciplinary procedures utilised by an institution, including municipal authorities will depend on the nature and structure of the public authority.

In this chapter the disciplinary procedures in various South African municipal authorities shall be discussed within an administrative frame of reference as following :

- policy directives;
- organising;
- financing;
- staffing;
- determining procedures; and
- exercising control.

2 POLICY DIRECTIVES

The municipal council as the supreme policy-making body for the municipal authority is responsible for policies on disciplinary procedures. Since disciplinary procedures have an impact and influence on sound employer/employee relations, the need for clear policy directives on disciplinary procedures is of paramount importance to municipal authorities.

The implementation of disciplinary procedures in South African municipal authorities is a matter of practice and is not prescribed by law. Municipal authorities have determined steps to be followed in the implementation of disciplinary procedures. In many South African municipal authorities, such as, Bloemfontein, Durban, East London, Pietermaritzburg, Port Elizabeth, and Pretoria, disciplinary procedures constitute part of the conditions of service. However, contents and details differ from municipal authority to municipal authority.

The policies on disciplinary procedures are generally set out in a booklet containing the conditions of service and in some instances embodied separately in disciplinary procedure manuals.

The primary objective of disciplinary procedures is emphasised by the East London City Council as follows (Disciplinary and Grievance Policy and Procedure : East London Municipality 1987 : 1) :

"As all organised group action needs discipline, the objective of this disciplinary procedure is to provide the organisation with a guide to ensure that all employees are treated in a fair and consistent manner, thereby assuring a healthy industrial relations environment. This procedure is, therefore, not intended as a substitute for good management, but as a guide of what to do".

This policy is further emphasised by Tembisa City Council. The Council is of the firm belief that disciplinary procedures play a vital role in initiating, facilitating and regulating the administrative process (Mare 1990 : letter). Included in its policy guidelines, the Council of Tembisa outlines the following objective (Mare 1990 : letter) :

"The disciplinary procedure aims to prevent conflict in the workplace, to protect the interests of both the employer and the employee and to promote the practise of sound industrial relations".

The following are some of the secondary objectives of disciplinary procedures listed by the South African municipal authorities studied :

- disciplinary procedures recognise the right of employees to a fair hearing in the event of disciplinary action being taken. Furthermore, they recognise the right of employees to appeal against any disciplinary measure which employees consider to be unfair or unjust (Mare 1990 : letter); and

- disciplinary procedures outline the standards of conduct and performance applicable to employees at the workplace (Killian 1991 : letter).

The foregoing policy directives are the internal policies of the municipal authorities. In other words, these directives apply to municipal functionaries who do not belong to recognised trade unions. Where recognised trade unions are present, the trade union members negotiate disciplinary procedures through the Industrial Council. Such procedures are contained in recognition agreements. Recognition agreements embody disciplinary procedures for members of the trade union (Murugan 1990 : interview).

An example of a policy directive applicable to municipal employees not covered by an Industrial Council agreement is that contained in the disciplinary code and procedure of Pretoria City Council (Bronkhurst

1990 : letter). The policy directive states as follows (Bronkhurst 1990 : letter) :

"The Union recognises the right of the Council to maintain a disciplined work force and the parties to this agreement acknowledge the objective of this code as setting out the instances where discipline shall be exercised and the procedure for the exercise thereof".

The Durban City Council does not fall under the jurisdiction of an Industrial Council. A trade union recognised by the Durban City Council is the Democratic Integrated Municipal Employees Society (DIMES). The objectives of disciplinary procedures are contained in DIMES recognition agreement. These objectives are as follows (DIMES : Recognition Agreement 1988 : Annexure F) :

- a) All employees are encouraged to observe reasonable standards of conduct and work performance. The procedure ensures that fair methods for dealing with disciplinary matters are implemented.
- b) The parties are committed to ensure procedural and substantive fairness in disciplinary matters.

- c) The parties adhere to a system of progressive discipline in terms of which discipline is intended to correct unacceptable behaviour, and in which progressively severe discipline is applied for repeated misconduct.

- d) A disciplinary charge shall be brought by the City Council against any employee within three (3) working days of the Council's awareness of the alleged misconduct by the employee.

- e) The procedure applies to all employees from the date of their employment.

The need for clear policy directives for the implementation of disciplinary procedures cannot be over-emphasised. Such directives provide municipal authorities with a guide to ensure that employees are fairly treated and in a consistent manner. Furthermore, fair and just policies for disciplinary procedures enable municipal authorities to achieve the objective of promoting the practice of sound employer/employee relations.

The discussion on policy directives for disciplinary procedures in South African municipal authorities

reveals that the major municipal authorities have established policy directives for disciplinary procedures. However, such policy directives are incorporated in the conditions of service manuals. Since most employees do not read the conditions of service, disciplinary policies and procedures should be published in separate manuals. Such manuals can provide guidelines for the implementation of disciplinary procedures.

The manuals on disciplinary procedures must clearly highlight the following aspects (Botha 1977 : 13) :

- clear and well-defined objectives;
- principles governing disciplinary policy must cover the following relevant aspects of disciplinary procedures :
 - . management's right to discipline employees for breaches of the municipal authority's rules;
 - . any disciplinary action should be the minimum considered necessary by management to prevent future recurrence of the fault, since ideally

correction and not punishment is the aim;

- . disciplinary procedure should apply equally to all employees regardless of race, sex and status; and
- . disciplinary action must be fair, prompt, firm and consistent.

The execution of disciplinary procedure policies are dependent on the actions of personnel within municipal authorities. Hence, organisational arrangement for disciplinary procedures must be so structured that these policies are effectively and efficiently achieved.

3 ORGANISING

Formal organisational arrangements must be made for the continuation of every activity in which more than one employee is involved (Cloete 1985 : 43). A hierarchy is therefore established which provides the structure in which individuals are grouped so as to apply concerted action to reach a specific objective.

The process of organising involves the identification and classification of required activities, the grouping

of activities necessary to attain objectives, delegation of authority and communication (Koontz & Weihrich 1988 : 162).

Once municipal authorities have outlined their policies on disciplinary procedures, the necessary organisational infrastructure must be provided.

Organisational arrangements for handling discipline in South African municipal authorities include, inter alia, the following (Labour Relations Training Programme : Cape Town City Council no date : module 7):

- responsibility for disciplinary action being taken is vested in management; and
- disciplinary action shall commence and where possible be settled at the lowest supervisory and management level.

The major municipal authorities studied, such as, Boksburg, Johannesburg, Pretoria and Verwoerdburg all have an industrial relations sub-department which forms part of the Manpower and Management Services Department, or the Personnel Department. The industrial relations section is relatively new and plays an important

role in providing an organisational labour communication service and monitoring relationships with the unions (Ntshangase 1990 : letter).

The Labour Relations Section of Johannesburg City Council is divided into two branches, namely the Maintenance Branch and Development Branch (Kotze 1989 : letter). The maintenance branch is involved in the day-to-day management of labour relations in the Council and focuses on, inter alia, the following (Kotze 1989 : letter) :

- maintain pro-active labour relations;
- inform top management in respect of all aspects of labour relations;
- complete and analyse conflict indicators;
- attend disciplinary enquiries and workers committees selectively;
- assist in solving grievances;
- gather and analyse statistical information;

- obtain and disseminate information on request.

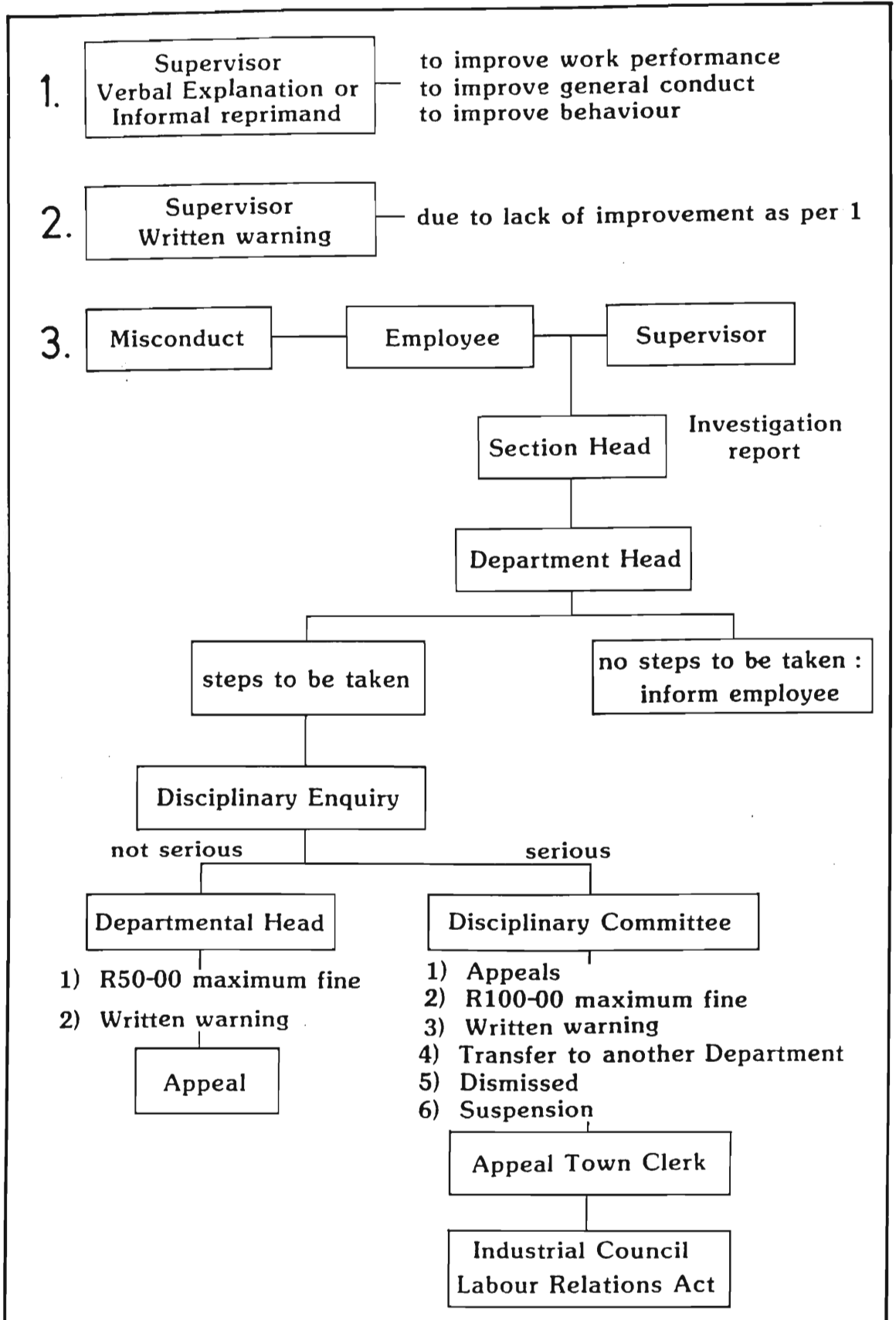
The Development Branch is involved in the following activities (Kotze 1989 : letter) :

- scrutinize, analyze, summarise and evaluate labour relations data.
- distribute data for information and/or recommended action.
- advise maintenance branch and interested parties on latest trends.
- investigate and recommend the purchase of labour relations aids.
- maintain and supply labour relations information, decisions and systems.

In order to ensure the effective implementation of policies for disciplinary procedures by municipal authorities, specific relationships are created between employees at different levels of the hierarchy. A typical disciplinary flow chart of a South African municipal authority is shown in Figure 14.

FIGURE 14

DISCIPLINARY PROCEDURE FLOWCHART OF A LOCAL AUTHORITY



From the figure it is evident that supervisors have the initial responsibility in taking disciplinary action against an employee guilty of misconduct. It should be noted, however, that the figure only indicates the relationships that occur within the municipal authority, that is, internal organisational arrangements. In addition to such arrangements are relationships created between trade unions and municipal authorities for disciplinary procedures. For the purposes of this study, the relationship between trade unions and municipal authorities are regarded as external organisational arrangements.

a) Internal organisational arrangements

It is not possible for the municipal council, or individual municipal councillors to cope with the entire field of activity that a municipal authority is responsible for (Cloete 1991 : 121). Hence, the creation of a number of posts.

Municipal authorities have established different category of posts in various departments. Each municipal department has, inter alia, the following posts :

- supervisor;
- section head; and
- departmental manager

Each of the above functionaries has a role to play in the implementation of disciplinary procedures. For example, the supervisor will enforce an informal verbal warning where there has been a minor breach of standards (Botha 1977 : 14). If an informal warning fails, the supervisor precedes to the first step in the disciplinary procedure. He issues a formal written warning or does a job performance assessment (Botha 1977 : 15).

Should the employee persist in breaching work rules or performing poorly, the supervisor refers the matter to the section head who then undertakes an investigation. If the employee is found guilty of misconduct, a second written warning is issued.

Any incident of a serious nature which the section head believes might be beyond the scope of his authority to handle should be brought to the attention of the departmental manager (Botha 1977 : 15).

The departmental manager may institute a formal inquiry and he has to act as chairman of such an inquiry

(Killian 1991 : letter). If the departmental manager finds the employee guilty of misconduct, he may impose one of the following disciplinary measures as is evident in Verwoerdburg Town Council :

- fine, not exceeding R50; or
- written warning.

In the case of a serious violation of rules, a disciplinary committee is set up to investigate the matter and impose a fair and just disciplinary action (Killian 1991 : letter).

The employee found guilty of misconduct by the disciplinary committee is entitled to appeal to the town clerk. Should the town clerk uphold the decision of the disciplinary committee, the employee through the trade union (if applicable) may declare a dispute with the municipal authority. The employee may seek recourse through the industrial council.

It is evident that trade unions play an important role in disciplinary procedures. They represent the external organisational arrangements.

b) External organisational arrangements

In order to bring about a balance of power between employers and employees, the latter have organised themselves into trade unions. The aims and objectives of trade unions relate mainly to the protection of employees.

The primary objective of DIMES, which services the Durban City Council, is contained in its recognition agreement as follows (DIMES Recognition Agreement 1988 : Annexure C) :

"The aim of the Society shall be to regulate relations between members and the Council, and to protect and further the interests of members in relation to their employment with the Council".

In keeping with the aforementioned objective, an employee representative (usually the shop steward) shall be present when a warning is given to an employee by the supervisor or head of department concerned (DIMES Recognition Agreement 1988 : Annexure F). The shop steward may represent the employee during disciplinary inquiries. This ensures that disciplinary procedures are both procedurally and substantively fair.

Similarly, the municipal authorities of Bloemfontein (Claassens 1990 : letter), Johannesburg (Reyneke 1989 : letter), Kimberley (Coetzee 1990 : letter translated), Port Elizabeth (Grievance and disciplinary procedures applicable to all employees : Municipality of Port Elizabeth) and East London (Disciplinary and grievance policy and procedures : East London 1987) ensures that recognised trade unions are able to represent their employees in disciplinary procedures.

Whilst the major municipal authorities studied ensure that employees are given the right to be represented by trade union officials, some trade unions are denied organisational facilities at work. For example, Johannesburg City Council grants specific facilities to unions that are party to the industrial council. Unions that are not party to the industrial council, but which nevertheless have members in the Johannesburg City Council, are denied these facilities. An example of a facility denied is the right to hold meetings at the workplace during working hours to discuss disciplinary issues (Local Authorities in South Africa 1989 : 62).

In view of the foregoing discussion, it is evident that South African municipal authorities accept in principle that disciplinary actions are the responsibility of

management. However, municipal authorities should not ignore the employee's right to contest or discuss the procedures laid down by management. A fair and just disciplinary procedure can only be implemented if municipal authorities recognise the need for effective and efficient internal and external organisational arrangements. Supervisors and trade unions representatives must communicate well for the purpose of serving employees' interests.

The organisational arrangements cannot be established without funds. Financing is necessary to ensure the implementation of disciplinary procedures.

4 FINANCING

Disciplinary procedures cannot be executed without the necessary funds. A major part of a municipal authority's revenue is derived from the sale of goods and services (Local Authorities in South Africa 1989 : 9). On average, about 30 percent of their income is spent on salaries, wages and allowances (Cloete 1989 : 139). This is the largest expenditure spent on any one item of the municipal budget.

The implementation of disciplinary procedures has important financial implications. Formal disciplinary action may take the form of, inter alia, suspension without pay, dismissal with notice pay or summary dismissal without notice pay (Ntshangase 1990 : letter).

The financial implications for an employee charged with misconduct are clearly indicated in the Conditions of Service of Pietermaritzburg City Council as follows (Ntshangase 1990 : letter) :

- an employee who is accused of misconduct may be suspended by the head of department concerned; and
- such an employee shall not be entitled to any salary for the period of his suspension unless he is found not guilty of misconduct.

Clarke (1989 : 57) expresses the view that under certain circumstances employees may be suspended without pay, (as a penalty) if found guilty at a disciplinary hearing, for a period not exceeding five days. Furthermore, suspension without pay may at the municipal council's discretion, be given for the repetition of the offence during a period when a recorded warning is still in effect.

Dismissal with notice pay may be imposed when (Clarke 1989 : 57) :

- other forms of disciplinary action have failed; or
- an employee on a final warning commits an offence;
or
- the offence committed is so serious that it amounts to a breach or repudiation of contract.

Certain offences may be so serious that they may warrant summary dismissal, that is, dismissal without notice pay (Clarke 1989 : 57). In such a case, an employee thought to be guilty of such an offence should be suspended on full pay pending investigation of the case and the hearing.

Municipal authorities are constantly faced with the challenge of providing more and improved services to municipal communities. This can only be achieved with the optimal use of scarce resources. The utilisation of municipal functionaries to obtain high levels of productivity is a major concern of municipal authorities. Hence the need for a separate budget allocation to handle disciplinary procedures.

Municipal authorities in South Africa should note that such a budget will provide guidelines on whether municipal functionaires are performing effectively and efficiently. The use of money allocated for disciplinary procedures implies that measures need to be applied by supervisors to correct employees' behaviour. Conversely, if the money is not utilised, supervisors are able to conclude that employees are functioning productively.

To provide effective and efficient municipal services in general, and to implement fair and just disciplinary procedures in particular, qualified personnel are required.

5 STAFFING

To ensure effective and efficient execution of disciplinary procedures, municipal authorities must have the necessary resources of which the presence of personnel is of the most critical importance. The implementation of the disciplinary procedures is the responsibility of line management (Botha 1977 : 13). Therefore, such a function must be performed by officials who have the appropriate skills and training.

Although the implementation of disciplinary procedures is the responsibility of line management, the personnel division and the employee's representative, usually a shop steward, have responsibilities and skills which are also utilised. The discussion which follows shall focus on the role of the following in the execution of disciplinary procedures :

- a) supervisor;
- b) personnel department; and
- c) shop steward

- a) Supervisor

It is important that the supervisor in a municipal department be au fait in the disciplinary procedures of the municipal authority. Disciplinary procedures fail to be effective for various reasons, some of which relate to the inadequacy of management to deal with discipline. Very often there is a lack of support and commitment from managers and supervisors (Labour Relations Training Programme : Cape Town City Council no date : module 7). Therefore, appropriate training on the implementation of the disciplinary procedures are of fundamental importance.

The supervisor plays an important role in deciding on the type of disciplinary action to be taken against an employee guilty of misconduct. As each case has its own unique circumstances and relevant factors, it is unfair to lay down actions for each breach of discipline. Each case must be judged on its own merits and the following factors, inter alia, should be considered by the supervisor before deciding on an appropriate disciplinary action (Disciplinary and grievance procedures applicable to all employees : Municipality of Port Elizabeth 1988 : 14) :

- seriousness of the offence, disciplinary and service record of the offender, precedents and uniformity;
- considerations which may aggravate or mitigate the offence; and
- probable consequences of the offence.

The supervisor must ensure that his decisions are fair, just and consistent at all times. To ensure fairness, the supervisor may seek the advice of the personnel officers who are knowledgeable on employer/employee relations.

b) Personnel department

The personnel department of a municipal authority plays a significant role in handling of disciplinary action (Bendix 1989 : 263). The officials of the personnel division must assist the line management at every stage of the disciplinary procedure. The personnel official through discussion with the supervisor ensures that disciplinary action and procedures are consistent in all departments and are in conformity with the disciplinary procedures as laid down in the municipal authority's conditions of service (Grievance and Disciplinary Procedures : Municipality of Port Elizabeth : 1989 :13).

The Municipality of Port Elizabeth clearly defines the role of the personnel department in respect of handling disciplinary procedures. The personnel division ensures that the alleged offender is aware of the complaint against him. Personnel officers must investigate the domestic and/or relevant circumstances of the accused, for example, when a domestic crisis is offered as a reason for absence or in support of a plea of mitigation (Grievance and Disciplinary Procedures of the Municipality of Port Elizabeth 1989 : 13).

In the City of Durban, the Labour Relations Unit, a section of the Personnel Department, undertakes management training programmes for the handling of grievances and implementation of disciplinary procedures. However, very little is done to educate employees on disciplinary procedures of the Council. Employees are expected to read of such procedures in the conditions of service (Harper 1991 : interview). According to the General-Secretary of DIMES, Mr Nad Murugan, the Council has a moral obligation to ensure that employees are aware of operational procedures concerning the disciplinary procedures (1991 : interview). In many instances, with the presence of organised labour movements, advice and support emanates from the employee representative / shop steward.

c) Shop Steward

In the Labour Relations Training Programme for Cape Town City Council (no date : module 7) it is emphasised that where decisions have a direct bearing on the employees, there is a legitimate right for a shop steward to become involved in the decision-making process.

The duties performed by the shop steward are, inter alia (Labour Relations Training Programme : Cape Town

City Council no date : module 7) :

- assist members during disciplinary enquiries and appeals;
- assist the trade union officials during negotiations, for example wages;
- communicate certain information from management to the member; and
- assist management during labour unrest.

From the foregoing, it is clear that the implementation of disciplinary procedures is an important activity. Therefore, it requires well qualified and trained personnel to perform the various functions within the organisational hierarchy. It is also noted that one of the problems in disciplinary procedure is the lack of support and commitment from supervisors and management due to lack of training in employer-employee relations (Murugan 1991 : interview).

Municipal councils must encourage their employees to undertake courses to improve their skills in handling disciplinary problems. Cognisance must be given to the

need for developing intensive labour relations training programmes at all municipal authorities. To date, only Cape Town City Council has developed an intensive labour relations training programme for supervisors. Other municipal authorities like Durban and Pietermaritzburg are in the process of developing such programmes (Harper 1991 : interview).

South African municipal authorities should note that training programmes will enable supervisors to implement disciplinary procedures in a fair and consistent manner, thereby improving the efficiency and effectiveness of the council and ensuring a happy and contented work force.

Once the necessary trained and skilled personnel are provided for, it is necessary to determine procedures to execute the activities constituting disciplinary procedures.

6 DETERMINING PROCEDURES

The primary objective of disciplinary procedures are to initiate corrective action where work performance is unsatisfactory or the behaviour of an employee is unacceptable. The execution of the disciplinary procedures

must ensure that action is fair, prompt, firm and consistent. For the purpose of this study, determining procedures for maintaining discipline entails outlining:

- a) disciplinary code;
- b) disciplinary procedure;
- c) disciplinary action;
- d) disciplinary inquiry; and
- e) appeals procedures of selected municipal authorities in South Africa.

a) Disciplinary Code

A set of rules of conduct is essential for all institutions, including municipal authorities, to ensure that employees function successfully. Such rules are contained in a disciplinary code (Nel & Van Rooyen 1989 : 280).

The relevancy of a disciplinary code for municipal authorities is emphasised when one looks at the assessment of some disciplinary problems of selected South African municipal authorities in Table 3. It is noted that problems relating to attendance are the highest in municipal authorities. Problems relating to alcoholism

TABLE 3

TABLE REFLECTING SOME PROMINENT DISCIPLINARY PROBLEMS OF SELECTED SOUTH AFRICAN MUNICIPAL AUTHORITIES ¹⁾

MUNICIPAL AUTHORITY		ATTENDANCE	ON-THE-JOB BEHAVIOUR	DISHONESTY	OUTSIDE ACTIVITIES
BLOEMFONTEIN	(LETTER 1990 : 1)	131	49	-	-
BOKSBURG	(LETTER 1990 : 1)	7	4	1	0
ERMELO	(LETTER 1990 : 1)	5-10	2	2	limited
ESTCOURT	(LETTER 1990 : 1)	10	8	2	0
FICKSBURG	(LETTER 1990 : 1)	10	2	0	0
GEORGE	(LETTER 1990 : 1)	3	6	-	-
KIMBERLEY	(LETTER 1990 : 1)	6	5	1	0
PIETERMARITZBURG	(LETTER 1990 : 1)	100	50	6	1
PRETORIA	(LETTER 1990 : 1)	30	25	3	-
STRAND	(LETTER 1990 : 1)	2	2	limited	limited
TEMBISA	(LETTER 1990 : 1)	high	high	-	-
WESTVILLE	(LETTER 1990 : 1)	1	1	-	-

and drug abuse are escalating at alarming proportions (Murugan 1991 : interview).

Certain South African municipal authorities such as Pretoria and Verwoerdburg have formulated a disciplinary code. The disciplinary code provides valuable information on disciplinary procedure which is indispensable to the employee. This impact is substantiated aptly by the City Council of Pretoria as follows (Bronkhurst 1990 : letter) :

"The disciplinary code reflects those instances where the council is entitled to implement disciplinary action".

Offences which may be subject to disciplinary action by municipal authorities include, inter alia, the following (Bronkhurst 1990 : letter) :

- contravening provisions relating to conditions of employment;
- disobedience and insubordination;
- negligence in discharging duties;
- improper conduct;
- alcoholism and drug-taking whilst on duty;
- corruption, bribery, theft or fraud;
- damaging municipal property;

- absenteeism without leave or valid cause; and
- assault or attempted assault.

The Verwoerdburg Town Council stipulates the behaviour of an employee shall conform with the following principles and guidelines as set out in its disciplinary code (Killian 1991 : letter) :

- adhere to all the conditions of employment as laid down by the Council;
- adhere to the Council's policy, disciplinary standard of performance and uphold its good name;
- obey a lawful order without wilful default or insubordination;
- carry out his work to the best of his ability;
- conduct himself with dignity;
- not partake in liquor or drugs whilst on duty;
- not disclose or use any information acquired in the performance of his duties, without the prior consent of the Council;

- not commit corruption or accept a bribe;
- not damage the councils property;
- not absent himself without leave or valid cause;
- not undertake any work for remuneration apart from his municipal duties without the prior consent of the Council;
- at all times adhere to the safety rules;
- not assault or threaten to assault any person during working hours; and
- not remove property of the Council without permission being granted.

Any contravention of the abovementioned guidelines shall constitute misconduct on the part of the employee and shall result in disciplinary action being taken against such an employee (Killian 1991 : letter) :

The aforementioned examples are by no means exhaustive. A disciplinary code should be established in accordance with a municipal authority's specific circumstances.

The offences listed in the disciplinary code serves as a guide to employers on how to discipline employees. However, such a guideline, as is evident in the South African municipal authorities studied, is that it can lead to inconsistency of application. An alternative to this approach is that broad categories of offences should be identified. The supervisor then should select the correct category for a particular breach of conduct (Piron 1989 : 69).

It is accepted that the disciplinary code is by its very nature a management directive. However, an effective and efficient disciplinary procedure must have the support of the employees of a municipal authority. Hence, when municipal authorities determine the categories of offences, a process of consultation with employee organisations must be undertaken.

Once a disciplinary code has been outlined, a procedure for implementing discipline must be decided upon.

b) Disciplinary Procedure

The primary objective of a disciplinary procedure is to initiate corrective action where work performance is unsatisfactory or the behaviour of an employee is unac-

ceptable. The need for fairness, promptness, firmness and consistency in the application of disciplinary action can only be achieved through a well-planned disciplinary procedure.

A study of the disciplinary procedure of the major city-status municipal authorities in South Africa reveals the following :

- disciplinary procedures negotiated through industrial councils; and
- disciplinary procedures negotiated between municipal authorities and recognised trade unions, where the municipal authority does not fall within the jurisdiction of an industrial council.

(i) Industrial Council Involvement

The municipal authorities of Bloemfontein, Johannesburg, Kimberley, Port Elizabeth, Pretoria and Verwoerdburg fall under the jurisdiction of industrial councils. Hence, their disciplinary procedures are negotiated through industrial councils.

The steps taken in the disciplinary procedures of municipal authorities covered by an industrial council agreement include the following (Claassens 1990 : letter; Reyneke 1989 : letter; Coetzee 1990 : letter; Disciplinary and Grievance Procedures applicable to all employees 1988 : 15; Bronkhurst 1990 : letter; Killian 1991 : letter) :

- A charge of misconduct is made in writing by the supervisor. The charge form is submitted to the section head of the department concerned for investigation (see annexure 5).
- The head of the section shall investigate the charge of misconduct within seven (7) working days. He submits his report and recommendations to the head of department (see annexure 6).
- If the head of department is satisfied with the report and recommendations of the head of the section that no charge of misconduct should be brought against the employee concerned, no further action is taken.
- In the event of disciplinary action being taken against an employee, the head of department may

charge the employee with misconduct. If he considers the misconduct to be of a serious nature, he refers the report to the Head of Management Services together with his recommendation that the employee be charged before the disciplinary committee.

- The disciplinary committee usually consists of the following functionaries (Bronkhurst 1990 : letter):
 - . Director of Manpower and Management Auxiliary Services, who shall act as chairman;
 - . departmental head;
 - . relevant supervisor; and
 - . an employee representative/chairman of the union or his nominee.

- Within seven (7) days of referring the case to the Head of Management Services, the head of department shall draw up a charge sheet setting out the charge and have it served upon the accused. The accused is also informed of the date, time and place of the disciplinary enquiry (see annexure 7 & 8).

- An employee has the right to be represented by a fellow employee, a shop steward or a union official at all stages in the disciplinary procedure (Labour Relations Training Programme : Cape Town City Council no date : module 4).
- The disciplinary committee has the right to question any witness called to bear testimony in substantiation of the charge or for the defence, and to peruse all documents furnished or submitted as evidence.
- The employee charged has the right to be heard and to cross-examine witnesses called in to substantiate the charge.
- If the disciplinary committee finds the employee guilty of misconduct, an appropriate disciplinary action is taken against the employee. This may include, inter alia, a reprimand, a written warning or a fine.
- The employee has the right to appeal against the findings of the disciplinary committee.

- If the employee is dissatisfied with the outcome of the appeals procedure, a dispute is declared and the matter is taken to the Industrial Council.

In a municipal authority, such as Pretoria City Council, the recommendations of the disciplinary committee may be rejected. The Council may impose any other form of punishment (Bronkhurst 1990 : letter). The action of the Council can be debated. It raises the question of fairness and justification. The question can be asked how fair is the decision of the Council when it overrules the disciplinary committee?

Municipal authorities that fall under the jurisdiction of industrial councils negotiate their disciplinary procedures with recognised trade unions through the industrial council. The presence of the industrial council instills in employees a feeling of security and protection against unfair and unjust decisions of the employer.

However, not all municipal employees enjoy such protection. One of the reasons postulated is that municipal councils do not want to lose their positions of power over employees and hence do not subscribe to the above-mentioned industrial council disciplinary mechanism

(Murugan 1991 : interview).

(ii) Non-Industrial Council Involvement

The municipal authorities of Durban, East London, Pietermaritzburg and Tembisa do not fall under the jurisdiction of industrial councils. The rules prescribing the duties, privileges and conditions of service, including disciplinary procedures are made by the city councils themselves and approved by the administrator in terms of ordinances (Ntshangase 1990 : letter).

An example of a disciplinary procedure of a municipal authority not covered by an industrial council agreement is as follows (Disciplinary and Grievance Policy and Procedure : East London Municipality 1987 : 10) :

- When a formal disciplinary complaint is laid against an employee, it must be done in writing on the approved complaint form. The offence is recorded in terms of the disciplinary code of the municipal authority.
- An investigation is undertaken to determine whether the charge is valid or not. The investiga-

tion is of vital importance as it places disciplinary control in the hands of the line manager.

- The investigation is carried out by a disciplinary committee appointed by the municipal council. Generally, the committee consists of the following members (Mare 1990 : letter) :
 - . Town Clerk, as chairman;
 - . Town Secretary;
 - . One councillor; and
 - . Personnel Officer.

- If an employee is found guilty of misconduct, the disciplinary action taken must be recorded.

- If the offence merits a more serious penalty, the case must be referred to the section head of the department concerned, with a recommendation by the supervisor.

- If further action is required, the case must be referred to the head of department.

- The employee accused of misconduct must be informed of the disciplinary action to be taken

against him. The employee, together with his representative must acknowledge such action.

- The personnel officer checks that the procedure has been followed in accordance with the disciplinary code. Any discrepancies found could be referred to the official who took the action for re-investigation.

Disciplinary procedures used at various municipal authorities differ. The recognised trade unions have procedures that differ from the disciplinary procedures of the city councils as appears in their conditions of service. This is clearly seen in the example of Durban City Council and DIMES.

The disciplinary procedure of DIMES stipulates the progressive disciplinary measures to be taken in cases of misconduct. A verbal warning is given, followed by a written warning, and final written warning (Recognition Agreement : DIMES 1988 : Annexure F).

In contrast to this, the disciplinary procedure stipulated in the Conditions of Service of the Durban City Council does not reflect any type of progressive disciplinary measures to be taken in cases of misconduct

(Conditions of Service : Durban City Council undated).

It may be concluded, then, that disciplinary action is meted out very arbitrarily by the Council (Murugan 1991 : interview).

Municipal employees of Durban, East London, Pietermaritzburg and Tembisa City Councils do not have the protection offered by industrial councils. If an employee is dissatisfied with the outcome of the disciplinary appeals procedure, he declares a dispute with the council. The matter is then dealt with in terms of the Labour Relations Act, 1956.

An inherent weakness of disciplinary procedures implemented by Durban, East London, Pietermaritzburg and Tembisa City Councils is the lack of recourse to the dispute settling mechanism of the Industrial Council. Although these municipal authorities may set up conciliation boards, such a measure is of a temporary nature. Municipal employees do not have a permanent mechanism to ensure fair and just implementation of disciplinary procedures. The Durban City Council is currently looking at the possibility of establishing an industrial council (Harper 1991 : interview).

A peculiar trait of the Boksburg Town Council is that it has two sets of procedures. To give effect to its policy of racial segregation, the Town Council has separate procedures for Whites and Blacks (Manning Labour Relations at Local Government Level : Boksburg Town Council 1990 : letter).

The importance of fair, just and consistent disciplinary procedures cannot be over-emphasised. Disciplinary procedures affect municipal employees directly. They affect morale and productivity of municipal employees. In order to be fair and consistent, municipal councils should implement uniform disciplinary procedure for all employees, irrespective of race.

Should an employee be found guilty of misconduct, the municipal authority must take the appropriate disciplinary action.

c) Disciplinary Action

When an employee's behaviour or standard of performance is unacceptable, disciplinary action aimed at correcting such behaviour, may be taken by municipal authorities.

There are many forms of disciplinary action which are used in municipal authorities.

The Cape Town City Council implements the following forms of disciplinary action (Labour Relations Training Programme : Cape Town City Council no date : module 4):

- recorded verbal warning;
- written warning;
- final written warning; and
- termination.

The recorded verbal warning is given by the immediate supervisor. Verbal warnings are given in cases of misconduct of a minor nature, for example, absenteeism, latecoming and leaving the workplace without permission. The verbal warning is intended to point out unsatisfactory performance or behaviour, and to assist an employee in improving that aspect of his job (Labour Relations Training Programme : Cape Town City Council no date : module 4).

Verbal warnings are also used by all the municipal authorities studied. They retain their validity for a period not exceeding three (3) months (Labour Relations Training Programme : Cape Town City Council no date :

module 4).

Written warnings are issued by the Section head where the employee commits an offence for which he/she has already received a formal verbal warning (within the previous three (3) months) and where there has been insufficient improvement, or where the misconduct is of a more serious nature and a verbal warning is considered to be inadequate due to the nature of the misconduct (see annexure 9). Written warnings retain validity for a period not exceeding six months (Labour Relations Training Programme : Cape Town City Council no date : module 4).

A final written warning is issued by the branch head where the employee commits an offence for which he has already received a written warning (within the previous six (6) months) and where there has been insufficient improvement, or where the misconduct is of a more serious nature and a written warning is considered to be inadequate due to the nature of the misconduct. A final written warning shall retain its validity for a period not exceeding twelve months (Labour Relations Training Programme : Cape Town City Council no date : module 4).

Termination of service may only be taken by the department head/or such person to whom authority has been delegated.

The services of an employee may be terminated with notice pay in event of (Labour Relations Training Programme : Cape Town City Council no date : module 4):

- a) a failure by the employee to sufficiently improve his conduct within the time period specified for by the final written warning, or
- b) where another offence has been committed by the employee before the expiry date of the final written warning, or
- c) where the misconduct is of such a serious nature that the employee's services are terminated.

Only in cases of gross misconduct of a serious nature, after holding a disciplinary enquiry, the council may summarily terminate the employment of an employee without notice pay.

Under certain circumstances (serious misconduct), an employee may be suspended on full pay pending the holding of a disciplinary enquiry. The period of suspension should be as short as possible and only when absolutely necessary (Labour Relations Training Programme : Cape Town City Council no date : module 4).

Many municipal authorities also use transfers, suspensions, demotion and fines as disciplinary measures.

For example, Johannesburg City Council stipulates in its Conditions of Service, that if an employee is found guilty of misconduct, any one of the following penalties may be imposed (Reyneke 1989: letter) :

- a written warning;
- suspension without payment of salary for a period not exceeding seven working days, provided that an employee (other than a fireman) may not be suspended on a day on which he would not normally work;
- transfer to another post in the service with or without a reduction in rank or salary or both;

- with the consent of the head of department, any other penalty to which he and the employee shall agree, and for which no appeal will be possible at a later stage;
- reduction of the employee's rank or salary or both;
- withholding of increments for a specified period;
- subject to the provisions of section 62 of the Local Government Ordinance, 1939 and section 14(5) of the Basic Conditions of Employment Act, 1983, dismissal with or without notice.

The City Council of the Municipality of Port Elizabeth identifies three types of disciplinary action (Disciplinary and Grievance Procedures applicable to all employees : Municipality of Port Elizabeth 1989 : 5). These are :

- Education Action

Educational action is action by the supervisor to make certain that the employee has been taught or made aware of correct procedures, rules, work standards and

behaviour norms.

- Corrective Action

Corrective action consists of a range of warnings applied to induce "offenders" to correct their ways.

- Punitive Action

When educational and corrective action is ineffective, or considered to be inappropriate, then it is accepted that punitive action in the form of more stringent measures, which could include dismissal, must be considered.

The City Council of Tembisa outlines two forms of dismissal, namely (Mare 1990 : letter) :

- a) summary dismissal; and
- b) termination with notice.

a) Summary dismissal

It is the termination of a contract of employment without notice. This is a severe step and may only be taken when the employee's action is a repudiation or

serious breach of the contract of employment (Mare 1990 : letter).

b) Termination with notice

The employee is given written notice that his employment will be ended on a certain date in the future. This action must be timed in accordance with the notice period laid down in the contract of employment (Mare 1990 : letter).

Disciplinary actions of Kimberley (Bester 1990 : letter) and Bloemfontein (Claasens 1990 : letter) include progressive actions starting with a written warning, serious written warning, final written warning and dismissal.

It may be concluded, that, when an employee's behaviour or standard of performance is unacceptable, various forms of disciplinary action aimed at correcting such behaviour are used by municipal authorities. Municipal authorities must ensure that disciplinary actions are progressive. Progressive disciplinary measures ensure that the unacceptable behaviour of employees is corrected in a manner which is not demoralising to employees. Recommended forms of dis-

disciplinary action are verbal warning, written warning, final written warning and dismissal. The use of transfers, suspension, demotion and imposition of fines may be used but are not always recommended.

The type of disciplinary action taken by municipal authorities against an employee guilty of misconduct depends on the outcome of a disciplinary inquiry.

d) Disciplinary Inquiry

A disciplinary inquiry is a process of investigating and establishing in a fair and objective manner the facts and circumstances surrounding the complaint against an employee (A Guide to Fair and Reasonable Hearings 1989 : City of Pietermaritzburg 1989 : 1).

Procedures followed by various municipal authorities in conducting disciplinary hearings are similar. The requirements for a hearing are the following (Labour Relations Training Programme : Cape Town City Council no date : module 4) :

- charges are made known to the employee;
- facts are examined;
- evidence is heard;

- defence is advanced; and
- circumstances are taken into account.

The disciplinary inquiry is undertaken by a committee composed of the following people (Disciplinary and Grievance Policy and Procedures : Municipality of East London 1987 : 12) :

- town clerk, who acts as chairman;
- complainant, who is normally the supervisor;
- accused;
- internal trained shop steward as a representative for the accused;
- employee representative if the accused is not a member of a union; and
- personnel department representative from final written warning upwards.

The disciplinary inquiry committee must ensure that the inquiry is held in the privacy of an office with minimum interference (Grievance and Disciplinary Pro-

cedures : Municipality of East London 1987 : 21).

The disciplinary inquiry of municipal authorities in South Africa involve the following stages (Labour Relations Training Programme : Cape Town City Council no date : module 4) :

Stage 1 : informing the employee of the inquiry and the charges;

Stage 2 : stating the charges;

Stage 3 : hearing the evidence;

Stage 4 : hearing the defence;

Stage 5 : adjourning to consider the evidence and defence submitted;

Stage 6 : statement of findings;

Stage 7 : evidence in mitigation; and

Stage 8 : communication of disciplinary action and right of appeal.

High-ranking municipal functionaires of the various municipal authorities must recognise the fact that the disciplinary inquiry is the most important phase of the disciplinary process. It is at this point that the formal control mechanism is applied between employer and the offending employee. Supervisors must be able to establish the relevant facts of the case and administer disciplinary action in a fair, just and consistent manner.

If an employee feels dissatisfied with the outcome of the disciplinary inquiry, he may appeal against such a decision.

f) Disciplinary Appeals Procedure

The appeals procedure affords the employee an opportunity to plead against any disciplinary measure imposed on him and have his case reheard by a higher line authority (Prinsloo, et al 1990 : 22-107).

The municipal authorities of Boksburg (199 : letter), Cape Town (Labour Relations Training Programme no date : module 4), East London (Grievance and Disciplinary Procedures : Municipality of East London 1987 : 23), Johannesburg (Reyneke 1989 : letter), Port Elizabeth

(Grievance and Disciplinary Procedures applicable to all employees : Municipality of Port Elizabeth 1989 : 15), Tembisa (Mare 1990 : letter) and Verwoerdburg (Killian 1991 : letter) recognise the importance of the disciplinary appeals procedure and clearly outline such procedure in the relevant documents.

A typical disciplinary appeals procedure implemented by municipal authorities in South Africa shall be discussed hereunder.

An employee who feels that he has been disciplined unfairly, may appeal against the disciplinary action. The reason for appealing must be noted on the appeal form (see annexure 10).

The form must be handed to the disciplinary level of management responsible for imposing the disciplinary action. This must be done within ten (10) working days of the disciplinary action having been taken (Labour Relations Training Programme : Cape Town City Council no date : module 4).

The parties concerned may mutually agree to extend the time limits specified, or to deal with the appeal more expeditiously. Suitable records will be kept of all

statements. All decisions and copies of statements are circulated among the parties concerned (Reyneke 1989 : letter).

Throughout the appeals procedure an employee may be represented by a fellow employee, a shop steward or a union official (Grievance and Disciplinary Procedures applicable to all employees : Municipality of Port Elizabeth 1989 : section 6). In conducting the investigation, the manager will consider appeals on the basis of documentation submitted to him by both parties to the appeal. However, he may call for fresh evidence if he considers it necessary (Labour Relations Training Programme : Cape Town City Council no date : module 4).

The appeals procedure of the municipal council stipulates that if the employee believes that he has been unfairly disciplined he must submit the appeal form, together with all relevant documentation to the appropriate level of management responsible for imposing the discipline, who shall ensure that the appeal is lodged with the Head of Department (Labour Relations Training Programme : Cape Town City Council no date : module 4).

The head of department will take whatever steps he deems necessary, which could include further meetings/hearings. Should the head of department consider it necessary, he may request the advice and attendance of a member of the Directorate of Personnel for this purpose. Thereafter he will make a decision and inform the parties concerned within ten (10) working days of receiving the appeal form. At this stage, the Appeal Procedure will cease.

The Verwoerdburg Town Council (Killian 1991 : letter) stipulates that the findings of the disciplinary committee in cases of appeal is final and no further appeals shall be allowed.

In the event of a successful appeal against any disciplinary action provided for in terms of the disciplinary procedure, the situation as it existed immediately prior to the disciplinary action will be re-established. If the issue still remains unresolved, then the aggrieved party may declare a dispute (Labour Relations Training Programme : Cape Town City Council no date : module 4).

The right to appeal against a decision made by a municipal authority is an inalienable right of the

employee. Municipal authorities such as Cape Town, East London, Port Elizabeth and Pretoria recognise the importance of such a right to ensure that disciplinary procedures are fair and just.

In applying disciplinary procedures, control is necessary to ensure that municipal functionaries execute their functions consistently and justly.

7 EXERCISING CONTROL

It is accepted that accountability should prevail in respect of all activities of all public institutions (Cloete 1981 : 143). Therefore, it follows that the disciplinary function will also be subject to -

- a) control to ensure that the disciplinary function is being performed effectively and efficiently, in accordance with prescribed policy and procedures, and
- b) accountability in the sense that functionaries at each level in the hierarchy will have to give account to their supervisors for what was done.

Control measures may be applied from within the municipal authority, that is internally, and from outside the municipal authority, that is externally.

7.1 Internal Control Arrangements

These may be viewed in terms of the generic administrative processes, namely, policy-making, organising, financing, staffing, determining procedures and exercising control. The policies and guidelines in respect of disciplinary procedures are contained in the conditions of service of municipal authorities. Municipal authorities have procedure manuals which facilitate control. The organisational structure also enables the municipal authority to exercise control efficiently and effectively. Effective division of labour, delegation of authority, co-ordination, co-operation and communication are applied to ensure that disciplinary procedures are executed with substantive and procedural fairness.

Disciplinary procedures cannot be implemented without financial implications being considered. Disciplinary actions involving suspension without pay requires justification from the supervisor. Such a decision may affect the livelihood of the municipal employee.

Therefore, adequate precautions must be taken by municipal functionaries to ensure that disciplinary actions are fair.

Personnel involved in implementing disciplinary procedures play an important role in determining the success of disciplinary procedures. Such success depends on the judgement, fairness, consistency and understanding of employees, supervisors, management and trade union representatives, where applicable. It is therefore, incumbent upon personnel officers of municipal authorities to ensure that when employees contravene certain rules, they are disciplined by their supervisors within the guidelines embodied in the municipal authorities' conditions of service.

Supervisors must be able to account for their actions. When disciplinary action is taken against an employee, the supervisor must be able to satisfy such an action. It should be borne in mind that disciplinary measures seek to correct undesirable behaviour, and is not implemented for the purpose of punishing the employee. Important guidelines to be borne in mind in this regard are the following (A Guide to Fair and Reasonable Hearings : City of Pietermaritzburg 1989 : 11) :

- a) The punishment that fits the "crime" has to be considered very carefully. It must not be illegal in terms of the statutes e.g. Basic Conditions of Employment Act of 1983 or common law or in relation to the employee's contract of employment with Council.
- b) It must be fair, equitable and comparable with punishment meted out throughout the department and indeed throughout the whole Council service. Input from the officials in the Staff Section will be of assistance in this regard.
- c) The employee's record must be considered - whether he has any valid warnings, length of service, his attitude, whether he desires to improve or remain unrepentant and confrontational.

Trade union representatives, for example, the shop stewards, play a pivotal role in exercising control in respect of disciplinary procedures. Shop stewards inform employees of their rights and advise employees on how to handle the disciplinary charge (Murugan 1990 : interview). Most importantly, they ensure that the supervisor implements the disciplinary procedure fairly and consistently.

Procedures for exercising discipline are laid out by the municipal council. Most municipal authorities operate within procedures laid down and approved by Council (Harper 1990 : interview). Where municipal authorities have recognised trade unions, disciplinary procedures as laid down in the recognition agreement of the trade union, are applied.

Municipal authorities, such as Bloemfontein, Cape Town, East London, Johannesburg and Port Elizabeth compel personnel to keep all documentation pertaining to the disciplinary procedure. Records are usually kept in personal files of employees and the responsibility of such record-keeping is vested with the Personnel Division.

When disciplinary hearings are conducted a full record of the hearing must be kept and made available to both parties. In pursuance of natural justice and in an effort to forestall grievances the outcome of the hearing must be communicated to the other employees in order to alleviate their concerns on the exercise of justice and promote the use and reliance on fair procedures (A Guide to Fair and Reasonable Hearings : City of Pietermaritzburg 1989 : 6). Recording the proceedings of a hearing is an important part of the

disciplinary process. At a later stage there may be appeal hearings, arbitration, industrial action, e.g. strikes or even an Industrial Court case where supporting papers will play an essential role (A Guide to Fair and Reasonable Hearings : City of Pietermaritzburg 1989 : 6).

Gortner (1977 : 83) stresses the view that the most important and ultimate control on any municipal functionary is internal, it is the functionary's personal values and loyalty to democratic ideals that limits his actions. Supervisors, management and trade union representatives must ensure that when disciplinary procedures are implemented, the basic requirements of justice are met (Gortner 1977 : 83). Employees need to maintain stipulated standards of performance whilst ensuring that behaviour is acceptable and in accordance with the code of conduct governing public officials. Management is vested with the authority to administer discipline, therefore, disciplinary measures must be implemented with circumspection. Supervisors must be held accountable and be able to justify disciplinary actions taken against an employee (Gortner 1977 : 83). Employee representatives must ensure that the accused employee is informed of all his rights and that the procedure is implemented fairly.

Municipal functionaries must bear in mind the specific guidelines which govern their conduct. The normative guidelines pertaining to disciplinary procedures which serve as internal control mechanisms are deference to labour rights, respect for human rights, fairness and reasonableness, requirements of administrative law and the maintenance of public accountability.

In South African municipal authorities, the disciplinary procedure is set out and approved by the municipal councils. Only in the cases of recognised trade union participation are disciplinary procedures negotiated with employees. Fair and just procedures can only be implemented if procedures are laid down through a joint and consultative basis (Botha 1977 : 13).

7.2 External Control Arrangements

Industrial councils serve as external control measures in municipal authorities such as Bloemfontein, Johannesburg, Kimberley, Port Elizabeth, Pretoria and Verwoerdburg. The industrial council determines whether a municipal authority has committed an unfair labour practice as defined in the Labour Relations Act, 1956 as amended.

The Industrial Court, established on the recommendation of the Wiehahn Commission, also serves as an external control mechanism. The functions of the Industrial Court are to prevent victimization of employees, and to ensure that municipal councils are not guilty of unfair labour practices (Bendix 1989 : 468).

The newspapers as well as other news media play a significant role in exercising control over employer/employee relations. The media can be used as a medium of educating employees of their rights as workers (Cloete 1991 : 110). Members of the municipal community also serve as external control measures because ultimately the municipal council is accountable to the municipal electorate for its actions.

8 SUMMARY

It is accepted that discipline should be a constructive and that positive management action enables employees to work together productively and harmoniously. Disciplinary procedures must be objective, reasonable and fair. High-ranking officials of municipal authorities must bear in mind that although the disciplinary procedures are the responsibility of

management, the employee has a right to contest and discuss the procedures.

In South Africa disciplinary procedures are not prescribed by law, but is a matter of practice in municipal authorities. It may be concluded that such procedures constitute part of the conditions of service negotiated by municipal authorities, like Johannesburg and Cape Town, through industrial councils. Documents containing disciplinary procedures must stipulate clearly rules which employees are required to abide by and the standards of performance they are expected to maintain. In this regard, the city councils are responsible for ensuring the availability of all rules to employees and awareness of standards expected of employees.

The responsibility of maintaining discipline is vested in line management. An effective disciplinary procedure has a clear and concise disciplinary policy. It may be seen that the policies of the various municipal authorities state the intent of the municipal authorities with regard to discipline, thereby establishing the organisational climate within which disciplinary matters will be dealt with. Disciplinary policies are formed as part of the disciplinary proce-

dures in most municipal authorities.

In regard to organisational arrangements for the disciplinary procedures, it is emphasised that the implementation of the disciplinary procedure rests with line management. Most of the major municipalities, such as Bloemfontein, Cape Town, Durban, Johannesburg, and Pretoria have labour relations sections within the personnel department. The labour relations section plays an important role in providing an organisational labour communication service and monitoring relationships with organised labour movements. Specific lines of authority are created between employees at different levels of the hierarchy to ensure effective implementation of the disciplinary procedure. The relationship represents the internal organisational arrangements for disciplinary procedures.

In addition to these arrangements, the municipal authority fosters a relationship of communication and co-operation with recognised trade unions. Such a relationship represents external organisational arrangements. Both internal and external organisational arrangements must be effectively implemented to achieve the objective of disciplinary procedures, namely, the fair and just treatment of municipal

employees, thereby ensuring harmonious employer/employee relations.

Disciplinary procedures cannot be administered without financial implications being considered. Formal disciplinary action may take the form of, inter alia, suspension without pay, dismissal with notice pay or summary dismissal without notice pay.

There is no specific budget set aside for disciplinary procedures in South African municipal authorities. In view of the importance of harmonious relations between employer and employees and the need for fair disciplinary procedures, a separate budget allocation for the implementation of such procedures should be considered.

To ensure effective and efficient execution of the disciplinary procedure, municipal authorities must have the necessary resources of which the presence of personnel is of the most critical importance. Implementation of the disciplinary procedure is the responsibility of line management. Therefore, such a function must be performed by officials who have the appropriate skills and training. Disciplinary procedures fail to be effective for various reasons.

Foremost is the lack of support and commitment from management and supervisors. The procedures may be unfair and too complicated. Furthermore, employees may use the procedure incorrectly. Therefore, training and communication on the implementation of the disciplinary procedure is of fundamental importance.

It is the joint responsibility of management and trade union representatives to ensure that municipal employees are au fait with the operational aspects of disciplinary procedures.

Disciplinary procedures ensure that municipal authorities have fair and just means of discipline aimed at sound employer-employee relations. Determining disciplinary procedures which are fair, just and consistent entails outlining:

- disciplinary code;
- disciplinary procedure;
- disciplinary action;
- disciplinary inquiry; and
- disciplinary appeals procedure.

The disciplinary code of the various municipal authorities reflects those instances where the Council

is entitled to implement disciplinary action. Disciplinary action must be fair, prompt, firm and consistent. This can only be achieved by a well planned disciplinary procedure. Disciplinary procedures of the various municipal authorities whilst similar in terms of principles, differ in accordance with differing organisational climate and circumstances.

Disciplinary action implemented by municipal authorities in South Africa include verbal warning, written warning, final written warning, dismissal, transfer, suspension, demotions and fines. Whilst progressive disciplinary actions are recommended, the use of transfers, suspensions, demotions and impositions of fines are not always recommended.

It is agreed upon that the disciplinary inquiry is the most important phase of the disciplinary procedure. Management must be able to establish the relevant facts of the case and administer disciplinary action in a fair, just and consistent manner.

Municipal authorities must also afford the employee an opportunity to appeal against any disciplinary measures imposed on him and have his case reheard by the next, higher line authority. The appeal is the

last step that the employee can take internally before he has recourse to the legal remedy afforded by the Labour Relations Act, 1956 (as amended).

The success of a disciplinary procedure depends on the judgement, fairness, consistency and understanding of employees, supervisors and management. Furthermore, municipal officials must render control in respect of the implementation of the disciplinary procedure in municipal authorities. Internal control measures such as the generic administrative processes of policy-making, organising, financing, staffing, determining procedures and exercising control must be exercised effectively and efficiently. External control mechanism such as the industrial councils, Industrial Court and members of the community serve to regulate the actions of municipal officials in implementing disciplinary procedures.

NOTES

1. The Table was compiled from information provided by the various municipal authorities.

CHAPTER SEVENCONCLUSIONS AND RECOMMENDATIONS1 CONCLUSIONS

Public administration is a broad field of activity aimed at promoting community welfare. In order to achieve this goal efficiently, specialisation must take place. At the municipal level, municipal administration is considered to be a sub-field of activity of public administration. Municipal administration, like public administration, utilises similar infrastructures, processes, activities, skills, attitudes and knowledge to improve the quality of life of the municipal citizenry. Municipal institutions may achieve their goals effectively and efficiently if they adhere to the basic norms of public administration.

Municipal administration is a comprehensive and complex field of activity comprising of several sub-fields of endeavour, such as personnel and financial administration. Municipal personnel administration, is concerned with promoting the well-being of the municipal employee. To this end, the generic administrative and managerial functions, the functional, auxiliary and in-

strumental activities are executed. The functional activities of municipal personnel administration may be categorised into :

- personnel provision;
- support;
- training and development, and
- personnel utilisation functions.

Grievance procedures are an important component of the support function of municipal personnel administration. Disciplinary procedures are part of the personnel utilisation functions of municipal personnel administration.

Essential to the execution of the generic administrative and managerial functions as well as the functional activities are the auxiliary processes, comprising of, inter alia, research and electronic data processing, and the instrumental processes, comprising of, inter alia, decision-making and communication. These neutral activities provide valuable support to functionaries in the performance of their duties (Cloete 1991 : 223).

Municipal officials must possess the necessary knowledge, skills and attitudes to enable a high degree

of proficiency in their work. Also of importance are the supportive technology and aids which assist functionaries in the expeditious execution of their tasks.

In recent times labour relationships between employee and employer have become more pronounced. Within the context of labour relations, grievance and disciplinary procedures have an impact and influence on sound employer/employee relations. Although grievance and disciplinary procedures are functional activities of municipal personnel administration, they fulfil different functions. Grievance procedures are initiated by municipal employees who feel discontented about some occurrence or condition at work. Disciplinary procedures are initiated by management against employees who violate work rules or perform unsatisfactorily.

In South Africa, grievance and disciplinary procedures are not prescribed by law. However, various legislative measures and policy directives exist to promote harmonious employer/employee relations. The focus of attention was placed principally on the Labour Relations Act 28 of 1956 as amended. The aspects relating to unfair labour practice and dismissal for misconduct in terms of the Labour Relations Act are discussed.

In terms of the Labour Relations Amendment Act, 1988, the unfair dismissal of an employee and the unfair unilateral suspension of an employee would constitute unfair labour practices, unless such actions could be justified. Of primary concern in this study were the implications of the Labour Relations Act on the employer's traditionally wide disciplinary powers. It is concluded that if a municipal authority dismisses an employee, there must be a valid and fair reason for the dismissal and, the dismissal must be in compliance with a fair procedure.

In implementing grievance and disciplinary procedures, municipal functionaries must take cognisance of the normative guidelines that govern their conduct. The normative guidelines pertaining to grievance and disciplinary procedures are deference to labour rights, respect for human rights, fairness and reasonableness, requirements of administrative law and the maintenance of public accountability.

Municipal functionaries should also recognise the fundamental rights of employees, namely, the right to work, the right to freedom of association, the right to collective bargaining, the right to strike, the right to protection against unfair labour practices, and the

right to training. Although various acts serve to protect municipal functionaries, for example, the Workmen's Compensation Act 30 of 1941, the Unemployment Insurance Act 30 of 1966, and the Machinery and Occupational Safety Act 6 of 1983, they are only as effective if implemented fairly and consistently.

The right to air grievances is a fundamental human right, hence the need for effective and efficient grievance procedures. Labour relations experts agree that grievance procedures are essential because they serve as a medium of upward communication, employees are able to vent their frustrations and discontent and they improve morale of employees. It is essential that employers deal with employee grievances in a consistent and proper manner. This can only be achieved by ensuring equal and fair treatment of all employees by employers.

An effective disciplinary procedure is in itself an instrument of employer/employee relations policy. It should be applied with the greatest circumspection because it affects productivity and morale of employees. The term "discipline" is very often thought of in a restrictive and punitive sense. Discipline should rather be seen as a constructive or positive management

action that enables employees to work together productively and harmoniously. It should be exercised in such a manner that it is fair, reasonable and aimed at developing, rather than merely punishing an employee.

Disciplinary procedures, in essence, maintain control of the interaction between employer and employees. They comprise a number of stages which include defining standards in terms of a disciplinary policy and code, assessing behaviour and performance of employees against these standards, enforcing a control mechanism in terms of actions of employees and application of disciplinary measures and, finally, measuring the effectiveness of disciplinary procedures by evaluating resultant performance and behaviour of employees. Disciplinary procedures represent the desire of employers to retain control over the behaviour of employees on the one hand, and on the other, employees desire to protect themselves against arbitrary action by employers that may threaten their security. Therefore, disciplinary procedures must be fair, reasonable and acceptable.

It is agreed that employers and employees recognise the need to set up and maintain grievance procedures which are capable of resolving employee dissatisfaction. In

South Africa, grievance procedures are generally set out in the conditions of service of municipal authorities. Like all other personnel functions carried out by municipal authorities, grievance procedures must always be directed towards a clear goal. The need for a policy in this regard cannot be overemphasised. The policy must be unambiguously worded and clearly documented for use. Whilst some municipal authorities have clearly formulated policies on grievance procedures, there are others which have not formulated policies. A study of the policy directives regarding implementation of grievance procedures by local authorities undertaken in this study reveal common viewpoints on the general principles governing grievance procedures.

Organisational arrangements for the implementation of grievance procedures is vested in line management. Employees must adhere to the proper channels of communication when lodging a grievance. Most of the major local authorities have specific sections specialising in labour relations within the personnel department. It is recognised that the labour relations section is an essential organisational structure if municipal authorities are seriously concerned in redressing grievances efficiently and effectively.

Grievance procedures cannot be executed without financial implications being considered. It is imperative that municipal authorities recognise the seriousness of an employee lodging a grievance. Such an employee should be given time off with full pay to prepare and consult with his representative about the grievance. Money should be made available in the municipal budget for such occurrences.

The hallmark of an efficient and effective grievance procedure is the calibre of personnel employed to execute the grievance procedures. Whilst supervisors may be competent public functionaries, they may not have the awareness, experience in interpersonal relationships and authority to deal with all types of grievances. One of the major causes of failure of the grievance procedures is lack of support and commitment from management/supervisors. Therefore, opportunities need to be created for employees to consult functionaries who have been specifically appointed and trained to deal with grievances.

The determination of procedures ensures that the various activities constituting grievance procedures are executed to achieve the goal of grievance procedures. In South Africa, the procedure for the implemen-

tation of grievance procedures is not prescribed by law. However, a study of the grievance procedures of various local authorities reveals that the procedures constitute part of the conditions of service. In some local authorities, for example, Bloemfontein, Cape Town and Johannesburg they are negotiated through industrial councils. Grievance procedures should be clearly outlined in manuals rather than in the conditions of service.

The municipalities of Boksburg, Cape Town, East London, Port Elizabeth, Tembisa and Verwoerdburg have their grievance procedures clearly documented in manuals. The Durban City Council, on the other hand, has its grievance procedures contained in the conditions of service.

Control is exercised both internally and externally. Internally, the generic administrative process plays a vital role in enabling and directing grievance procedures and in this way also ensures a controlling effect. Externally, control is exercised by determining how effectively the municipal authority is providing goods and services and whether the municipal citizenry are satisfied with the municipal council and its functioning.

It is accepted that discipline should be a constructive or positive management action that enables employees to work together productively and harmoniously. High ranking officials of local authorities must bear in mind that although the disciplinary procedures are the responsibility of management, the employee has a right to contest and discuss the procedures. Documents containing disciplinary procedures must stipulate clearly rules which employees are required to keep and the standards of performance they are expected to maintain. In this regard, the municipal authorities are responsible for making available the procedure manuals as well as the standards expected of them.

An effective disciplinary procedure has a clear and concise disciplinary policy. The municipal authorities of Cape Town, East London, Port Elizabeth, Pretoria, Tembisa and Verwoerdburg have stated their policies on discipline clearly and concisely, thereby establishing the organisational climate within which disciplinary matters will be dealt with. Disciplinary policies are incorporated as part of the disciplinary procedures in most municipal authorities.

The implementation of disciplinary procedures is the responsibility of line management. Most of the major

municipal authorities, for example, Bloemfontein, Cape Town, Durban, Johannesburg and Pretoria have labour relations sections within the personnel department of the municipal authorities. The labour relations section plays an important role in providing an organisational labour communication service and monitoring relationships with organised labour movements. Specific lines of authority are created between employees at different levels of the hierarchy to ensure effective implementation of disciplinary procedures.

Disciplinary procedures cannot be administered without financial implications being considered. Formal disciplinary action may take the form of, inter alia, suspension without pay, dismissal with notice pay or summary dismissal without notice pay. Municipal authorities must budget for loss of productivity due to time spent in disciplinary inquiries and appeal hearings. Employees should be compensated fully for time spent in such procedures.

To ensure efficient and effective execution of the disciplinary procedures, municipal authorities must have the necessary resources of which the presence of personnel is of the most critical importance. Implementation of disciplinary procedures must be performed by

officials who have the appropriate skills and training. Foremost among the reasons for disciplinary procedures being ineffective, is the lack of support and commitment from management and supervisors. The procedures may be unfair, too complicated or even used incorrectly. Therefore, training and communication on the implementation of the disciplinary procedures are of fundamental importance.

Disciplinary procedures ensure that municipal authorities have fair and just means of discipline aimed at sound employer/employee relations. Determining fair, just and consistent disciplinary procedures entails outlining :

- disciplinary code;
- disciplinary procedure;
- disciplinary action;
- disciplinary inquiry; and
- disciplinary appeals procedure.

The disciplinary codes of the various municipal authorities stipulate those instances where the council is entitled to take disciplinary action against the employee.

Disciplinary action implemented by municipal authorities in South Africa include verbal warnings, written warnings, final written warnings, dismissal, transfer, suspension, demotion and fines. Whilst progressive disciplinary actions are recommended, the use of transfers, suspensions, demotion and imposition of fines is not always recommended. Municipal authorities of Cape Town, East London, Port Elizabeth, Pretoria, Johannesburg, Verwoerdburg, Kimberley and Tembisa stipulate in their disciplinary procedures the use of progressive disciplinary action. However, Durban City Council does not mention this in its document outlining disciplinary procedures for employees. This implies that disciplinary action is meted out very arbitrarily to employees found guilty of misconduct.

The disciplinary inquiry is the most important phase of the disciplinary procedure. Members of the inquiry panel must be impartial, establish the relevant facts of the case and administer disciplinary action in a fair, just and consistent manner. Furthermore, the employee must be afforded the opportunity to appeal against any disciplinary measures imposed on him.

Disciplinary procedures must be executed with the greatest circumspection because they affect produc-

tivity and employee morale. Internal control mechanisms must therefore, be effective. Supervisors must be able to render account for their actions, and justify the disciplinary measures taken against an employee. An ineffective and inefficient disciplinary procedure leads to unhappiness among municipal employees. This dissatisfaction manifests itself in the quality of service rendered by the municipal authority to the public. It may be concluded that the external control mechanism, i.e. the community, has a vital role to play to ensure the implementation of acceptable disciplinary procedures in municipal authorities.

2 RECOMMENDATIONS

The following recommendations are advanced for consideration :

2.1 Impact of Employer/employee relations

In this regard municipal councils and high-ranking municipal officials must give due regard to the importance of employer/employee relations as one of the activities which is critical to the achievement of municipal goals by :

- (i) ensuring that fundamental human rights are protected by a bill of rights. The advancement and protection of employees' rights may be guaranteed by fair and just grievance and disciplinary procedures;
- (ii) evaluating the contributions made by these activities to the achievement of municipal goals; and
- (iii) taking appropriate steps to ensure that the activities and functionaries are goal orientated.

2.2 Grievance Procedures

In this regard cognisance must be taken of the following pertinent issues:

2.2.1 Legislative Measures

There should be uniformity in legislation applicable to the principles of grievance procedures at South African municipal authorities. A study of grievance procedures should be undertaken by the National Manpower Commission with the intention of establishing uniform and comprehensive legislation on principal aspects of

grievance procedures for municipal authorities in South Africa.

2.2.2 Policy Directives

These should be clearly formulated and documented in the conditions of service emphasising, inter alia, the following:

- the city council's commitment to sound employer/employee relations practices in the fundamental belief that all employees have a responsibility for and vested interest in the continued, efficient operation of the services provided by the local authority and hence the town or city's well-being;
- to utilise grievance procedures which are fair and just in the belief that these are in the mutual interest of both the council and its employees;
- recognise that the right to grieve is a fundamental human right and should be accorded as such in the grievance procedures;

- grievance handling be the responsibility of line management. However, the grievance procedure to be implemented must be determined through a joint and consultative process;
- grievances be solved at the lowest level at which these can satisfactorily be achieved;
- employees be given a fair hearing when they lodge grievances; and
- employees be protected against any form of inequitable treatment or victimisation.

2.2.3 Organising

Organisational arrangements for grievance procedures should be allocated to a specialised division of the personnel department, namely, the labour relations section

The labour relations section should be responsible for the following :

- ensuring that all documents used in grievance procedures properly identify the grievance/complaint and are otherwise correctly completed;

- monitoring all facts collected, marshalled and presented as a safeguard against bias, victimisation and unfair labour practice;
- advising the aggrieved, accused, witness, representative and presiding official of their rights and responsibilities;
- recognising that communication is a crucial component of employer/employee relations and ensuring that lines of authority are clearly demarcated. The employee should be told with whom he can discuss his grievance and seek redress; and
- ensuring that the line supervisor recognises and acknowledges specific needs and obligations of participants in employer/employee relations.

2.2.4 Financing

A review of the financing process in the light that the financial consequences of an ineffective and grossly inefficient grievance procedure are detrimental to municipal authorities by :

- allocating a specific budget for implementing grievance procedures;
- specifying whether or not an employee and his representative are to be paid for time spent in grievance procedures, when this activity takes place during their scheduled hours of works;
- specifying whether preparation time is to be paid for and whether there are limits for paid preparation time;
- indicating whether witnesses called by the employee and management are to be covered by similar pay policies; and
- specifying whether the amount of paid time devoted to handling of grievances by the grievant, co-workers and witnesses be specifically limited or whether a "reasonable" standard will apply.

2.2.5 Staffing

The municipal council must recognise the need for competent personnel to be involved in grievance procedures and their valued contribution to the improvement of the

employer/employee relations function by :

- providing incentives to all line supervisors and managers to obtain recognised qualifications in labour relations;
- encouraging personnel to uphold the highest ethical standards in the execution of grievance procedures;
- ensuring support and commitment to just and fair grievance procedures;
- reviewing personnel remuneration and conditions of service of labour relations personnel to encourage and promote a highly effective and efficient labour relations team.

2.2.6 Determining Procedures

The municipal council must ensure that the implementation of grievance procedures contributes effectively and efficiently to the improvement of employer/employee relations by :

- ensuring that procedures provide for the resolution of individual grievances or collective

grievances relating to a common problem;

- implementing uniform grievance procedures to all employees irrespective of race, sex or status;
- resolving grievances promptly and satisfactorily, and as close to the source as possible;
- ensuring that the grievance procedure is formalised in writing;
- allowing management, the employee or the employee's representative to consult the personnel official, specialised in employer/employee relations, for information and advice. The employee must obtain his supervisor's permission before making such an approach, and such permission must not be unreasonably withheld.
- specifying time limits for each step of the procedure;
- ensuring that every employee shall have the right to appeal to a higher level of authority, in the event of any discontentment or dissatisfaction experienced by him after the complaint has been

dealt with;

- allowing the aggrieved employee the right to be accompanied and represented by a fellow employee, a shop steward or a union official at any stage during the procedure;
- recording all statements and decisions and circulating them among the parties concerned; and
- acknowledging that the dispute settling mechanisms of the Labour Relations Act will be used as a measure of last resort.

2.2.7 Exercising Control

Control as an integral process of grievance procedures must ascertain whether the grievance procedures are achieving their goals efficiently and effectively by :

- evaluating, reviewing and amending the implementation of the generic administrative and managerial processes of grievance procedures namely :
 - . policy-making;
 - . organising;
 - . financing;

- . staffing;
- . determining procedures; and
- . exercising control;

to ensure that these processes are optimally contributing to the attainment of the goals of grievance procedures.

- establishing a system for evaluating the effectiveness of grievance procedures against predetermined criteria;
- evaluating the implementation of grievance procedures as instruments to analyze inherent structural and administrative defects;
- ensuring that by using grievance procedures supervisors are able to resolve grievances as close to the source as possible;
- undertaking research in employer/employee relations practices so that the supervisor may cope successfully with future problems and the demands for fair and just employment conditions; and

- ensuring that all personnel abide by the ethical and normative guidelines of public administration.

2.3 Disciplinary Procedures

To improve the overall efficiency and effectiveness of disciplinary procedures consideration should be given to the following :

2.3.1 Legislative Measures

Specific legislative measures should be clearly formulated focusing on fundamental principles of disciplinary procedures at the municipal level. In this regard a survey of disciplinary procedures of South African municipal authorities should be undertaken by the National Manpower Commission with the purpose of establishing uniform and comprehensive legislation on aspects of disciplinary procedures at the municipal level.

2.3.2 Policy Directives

Policy directives in regard to disciplinary procedures must be clearly and unambiguously set out in conditions of service regulations focusing on, inter alia, the following :

- implementation of disciplinary action is vested in line management and the disciplinary procedures are a guide to both management and employees, to ensure that disciplinary action is fair and consistent;
- whenever possible, disciplinary action should be educational and corrective rather than punitive, recognising however, that the particular circumstances and seriousness of some offences must of necessity call for punitive action;
- disciplinary procedure applies equally to all employees regardless of colour, sex and status;
- disciplinary action must be fair, prompt, firm and consistent;
- disciplinary action shall only be instituted after each incident is thoroughly investigated and all

relevant circumstances carefully considered;

- every employee has the right of appeal to a higher authority against a decision made against him;
- all employees be given the opportunity to have a full understanding of these policy directives and the procedures flowing from it. Communication of this knowledge is line management's responsibility and the personnel division is available to help management in this task; and
- every employee must be made aware of the standards of behaviour or performance which are expected of him.

2.3.3 Organising

Any organisational system used to perform functions involved in disciplinary procedures must be based on the components of sound organising, inter alia :

- division of work;
- delegation of authority;
- co-ordination;
- clear channels of communication; and

- control measures

Large municipal authorities should have a specialised branch of the personnel department, namely the labour relations section. The labour relation section should consist of competent personnel functionaries who are thoroughly conversant with the procedures of the municipal authority.

2.3.4 Financing

The municipal budget plays an important role in the implementation of disciplinary procedures. A review of the financing process in light of the disciplinary action invoked is necessary to :

- determine the effectiveness of suspension without pay as a penalty if the employee is found guilty of misconduct;
- determine the imposition of dismissal with notice pay when :
 - . other forms of disciplinary action have failed;

- . an employee on a final warning commits an offence; or
- . the offence committed is so serious that it amounts to a breach or repudiation of contract.

2.3.5 Staffing

The municipal council must take cognisance of the important role personnel play within the municipal environment by :

- providing incentives to all line supervisors and managers to obtain recognised qualifications in labour relations;
- encouraging personnel to uphold the highest ethical standards in the execution of disciplinary procedures;
- ensuring support and commitment to just and fair disciplinary procedures;
- reviewing personnel remuneration and conditions of service of labour relations personnel to encourage and promote a highly effective and efficient

labour relations team.

2.3.6 Determining Procedures

In this regard the municipal council should ensure that the implementation of procedures contribute efficiently and effectively to the achievement of the goals of the disciplinary procedures by :

- establishing uniform disciplinary procedures to enhance communication and co-ordination in promotion of positive employer/employee relations;
- reviewing disciplinary procedures on a continued basis to ascertain their relevance within the dynamic environment of employer/employee relations;
- setting out disciplinary procedures clearly and unambiguously in a procedure manual to facilitate the smooth execution of disciplinary procedures;
- providing in-service training by way of labour relations training programmes for line supervisors and managers;
- ensuring that disciplinary action meted out to the employee seeks to correct behaviour rather than

merely punish the employee;

- implementing disciplinary measures that are progressive. In other words, it should be a step by step process, starting with a verbal warning, first written warning, final written warning, and finally dismissal;
- ensuring that the right of appeal is an integral part of the disciplinary procedure;
- giving the employee the right to be represented by a fellow employee, a shop steward or a union official at all stages in the disciplinary procedure;
- formulating procedures which ensure the just administration of disciplinary action by encapsulating the following guidelines :
 - . the disciplinary action will depend on the seriousness of the offence, on the disciplinary and service record of the offender, precedents and uniformity;
 - . certain considerations may either aggravate or mitigate an offence;

- . the probable consequences of the offence should be considered; and
- . the nature and seriousness of the offence will determine the extent to which the whole of the employee's disciplinary record may be considered.

2.3.7 Exercising Control

Control as an integral process of disciplinary procedures must ascertain whether the goals of disciplinary procedures are being achieved effectively and efficiently by :

- evaluating, reviewing and amending the implementation of the generic administrative and managerial processes of disciplinary procedures namely :
 - . policy-making;
 - . organising;
 - . financing;
 - . staffing;
 - . determining procedures; and
 - . exercising control;

to ensure that these processes are optimally contributing to the attainment of the goals of disciplinary procedures.

- establishing a system for evaluating the effectiveness of disciplinary procedures against predetermined criteria;
- evaluating the implementation of disciplinary procedures as instruments to analyze inherent structural and administrative defects;
- ensuring that disciplinary procedures are implemented promptly, fairly and consistently, thereby ensuring uniformity;
- undertaking research in disciplinary procedure practices so that the supervisor may cope successfully with future problems and the demands for fair and just employment conditions; and
- ensuring that all personnel abide by the ethical and normative guidelines of public administration.

2.4 Role of Line Supervisors in Grievance and Disciplinary Procedures

The behaviour of line supervisors in handling grievance and disciplinary procedures is very important. In light of this, it is recommended that the following guidelines be borne in mind to improve employer-employee relations and uplift morale of employees. The supervisor must :

- try and settle a grievance as close to the source as possible;
- investigate and handle each and every case thoroughly;
- talk with the employee about his grievance, give the person a good and full hearing;
- ensure that the union identifies specific contractual provisions allegedly violated;
- comply with the contractual time limits for handling the grievance;
- visit the work area of the grievance;
- determine if there were any witnesses;

- examine the grievant's personnel record;
- fully examine prior grievance records;
- treat the union representative (if applicable) as an equal;
- hold grievance discussions privately;
- fully inform a higher ranking official of grievance matters;
- try to prevent grievances by :
 - . communicating frequently with employees;
 - . providing an outlet for complaints;
 - . observing employees and working conditions;
 - . showing appreciation; and
 - . helping employees to achieve objectives.
- ensure that employees know the rules that apply to the workplace; and are informed of any changes;
- always hold disciplinary hearings in private;
- always allow the employee to state his case;

- establish clearly what rule has been broken;
- decision must be based on the facts as to whether a rule has been violated;
- refer to the employee's disciplinary record and make a decision as to what disciplinary action, if any, to take;
- inform the employee of the disciplinary action and his right of appeal;
- document the disciplinary action :
 - . date and time of the incident
 - . a description of acceptable performance / behaviour
 - . a description of the unacceptable performance / behaviour
 - . previous occurrences
 - . previous warnings for the same offence where necessary, any witness to the incident

- . time allowed for improvement of behaviour
- . status of warning, i.e. verbal, written warning or final warning
- . a record of the agreed action plan to correct the unacceptable performance/behaviour
- . whether the employee stated a wish to appeal
- . names of representatives present at the disciplinary interview.

2.5 Role of the Employee Representative

With regards to the role of the employee representative in grievance and disciplinary procedures, cognisance must be taken of the following :

- any employee whose grievance is not satisfactorily met at the first instance of raising the grievance or against whom formal disciplinary proceedings are held, may at his request, be accompanied at hearings by a representative. The employee must be told of this by the line supervisor/manager concerned;

- the representative has no right to insist on accompanying the employee if he does not wish it, that is, a representative will attend a grievance or disciplinary hearing only at the request of the employee;
- the representative will be allowed to cross-examine during the hearing in order to challenge any adverse evidence and to comment at the conclusion and before a decision is taken by management;
- should the representative's comments at the conclusion of the hearing be of such a nature as to warrant reconsideration of certain matters or further investigation prior to a final decision being taken, time should be allowed for this and, if necessary, the inquiry recessed.
- the principal function of the employee representative is to satisfy himself and the employee that the facts of the case are fairly established; and
- it is the duty of the employee to find himself a suitable representative.

2.6 Role of the Labour Relations Section

In view of the fact that supervisors require adequate skills and training in handling grievance and disciplinary procedures, the following pertinent issues should be considered by the labour relations section of a municipality.

- labour relations training programmes should be conducted for supervisors by labour relations personnel;
- labour relations personnel must assist line supervisors on the incidence and seriousness of grievances and disciplinary offences, and any implications of grievances and proposed disciplinary action on employer/employee relations generally;
- labour relations personnel should ensure that disciplinary action and procedures are consistent in all departments and are in conformity with the policies and procedures of the municipality;
- the labour relations section should be responsible for :

- . assisting with the correct completion of the grievance/complaint form which must properly identify the grievance/complaint;
- . monitoring all facts collected, marshalled and presented as a safeguard against bias, victimisation, and unfair labour practice;
- . advising the complainant, accused witness, representative and presiding official of their rights and responsibilities;
- . ensuring that any grievance coming to its notice is referred to line management for its decision;
- . monitoring that undertakings made in the settlement of a grievance by line management are fulfilled;
- . ensuring that the alleged offender is aware of the complaint against him; and
- . investigating the domestic and/or relevant circumstances of the accused, when this is felt to be necessary; for example, when a domestic crisis is offered as a reason for absence or in

support of a plea of mitigation.

The aforementioned recommendations should be viewed as a strategy to enable employers and employees to solve problems on a level of mutual acceptance and support. The effectiveness of grievance and disciplinary procedures depends on the quality of labour relations in a municipality.

Grievance and disciplinary procedures must be well designed and be flexible enough to adapt to changing needs. Employers as well as employees must be committed to the procedures and principles laid down through joint consultation. Effective grievance and disciplinary procedures can improve morale of employees which is beneficial to the municipal authority.

The initiation, development and implementation of these recommendations will undoubtedly serve the interests of all municipal authorities in South Africa.

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ANNEXURE 1

QUESTIONNAIRE ON MANAGING LABOUR RELATIONS AT THE LOCAL
GOVERNMENT LEVEL SENT TO MUNICIPAL AUTHORITIES

22 MAY 1990

THE TOWN CLERK
 PRETORIA CITY COUNCIL
 P.O. BOX 440
PRETORIA
 0001

Sir/Madam,

RE : MANAGING LABOUR RELATIONS AT THE LOCAL GOVERNMENT LEVEL:

It would be highly appreciated if you could forward me the following information:

1. Does your municipality fall under the jurisdiction of an Industrial Council through which conditions of service, disciplinary codes and grievance procedures are collectively negotiated? If this is not the case what is the enabling legislation? For example, Transvaal municipalities fall under the jurisdiction of the Industrial Council for the Local Government Undertaking in the Province of the Transvaal.
2. Does your municipality have an industrial labour relations section? ✓
3. ^{Es} Which trade unions are recognised by your municipality?
4. What role do work councils and shop stewards play in the disciplinary and grievance procedures?
5. What are the most serious disciplinary problems that your municipality contends with? ^{angf}

Indicate the number of cases handled per month with respect to the following problems:

- Attendance
- On-the-job behaviour
- Dishonesty
- Outside Activities

6. Name some of the guidelines that your municipality follows to administer discipline.
7. What measures does your authority take to discipline an employee, without necessarily dismissing the employee?
8. How does collective bargaining influence the authority's discipline practices?
9. What are the major problems affecting trade unions regarding grievance and disciplinary problems?
10. What are the shortcomings of the existing mechanisms used to handle grievance and disciplinary problems?

How can these mechanisms be improved?

Kindly furnish copies of the disciplinary and grievance procedures applied in your municipality. The latest available copy will be sufficient. This document will enable me to make comparisons and obtain a deeper insight of measures applicable at your municipality.

This information is required for the purposes of research and academic instruction.

Yours faithfully

.....
P. MAHARAJ (MS)
LECTURER
DEPARTMENT OF PUBLIC ADMINISTRATION

ANNEXURE 2

CITY OF EAST LONDON : GRIEVANCE FORM

GRIEVANCE FORM

- 1. AGGRIEVED
DESIGNATION DEPARTMENT
EMPLOYEE NO DATE TIME
- 2. DETAILS OF GRIEVANCE
.....
.....
- 3. DETAILS OF INVESTIGATION
.....
.....
- 4. AFTER INVESTIGATION, THE FOLLOWING ACTION WAS TAKEN/RECOMMENDED *
.....
.....
DATE SUPERVISORS SIGNATURE
- 5. ACTION BY HEAD OF DEPARTMENT/DIRECTOR *
.....
DATE HEAD OF DEPARTMENT/DIRECTOR SIGNATURE
- 7. AGGRIEVED ACKNOWLEDGES OUTCOME: SIGNATURE
REPRESENTATIVE ACKNOWLEDGES OUTCOME: SIGNATURE
- 8. COMMENTS BY PERSONNEL OFFICER
.....
.....
DATE SIGNATURE OF PERSONNEL OFFICER
- * DELETE WHICH IS NOT APPLICABLE

ANNEXURE 3

CITY OF PRETORIA : GRIEVANCE PROCEDURE

MBP 75

GRIEVANCE PROCEDURE FORM

(to be completed in triplicate)

NAME OF EMPLOYEE _____ WORK NO _____

DEPARTMENT/SECTION _____

JOB TITLE/DESIGNATION _____

NATURE OF GRIEVANCE
.....
.....
.....

RESULT:

- 1. Departmental head
.....
- 2. Aggrieved member
.....
- 3. Shop steward
.....
- 4. Supervisor
.....

- COPIES TO:
- 1. DIRECTOR, MANPOWER AND MANAGEMENT AUXILIARY SERVICES
 - 2. UNION OF PRETORIA MUNICIPAL WORKERS

CONCILIATION COMMITTEE

DECISION:
.....
.....
.....
.....

SIGNED:

- 1. Director, Manpower and Management Auxiliary Services
- 2. Representative, Department of Manpower and Management Auxiliary Services
- 3. Departmental Head
- 4. Member of the Union Executive Committee
- 5. Union Negotiating Committee Representative
- 6. Shop Steward
- 7. Employee

The above decision shall not, subject to the further terms and provisions of the foregoing Agreement, preclude the employee from resorting to the process of the laws of the country in connection with the abovementioned matter.

- COPIES TO:
- 1. DIRECTOR, MANPOWER AND MANAGEMENT AUXILIARY SERVICES
 - 2. UNION OF PRETORIA MUNICIPAL WORKERS

ANNEXURE 4

DEMOCRATIC INTEGRATED MUNICIPAL EMPLOYEES SOCIETY :
GRIEVANCE PROCEDURE

GRIEVANCE PROCEDURE

1. General:

- 1.1 A grievance is any complaint, dissatisfaction or feeling of injustice by any one or more employees in relation to the workplace and/or the employment relationship.
- 1.2 Where parties agree that it is in their mutual interest to observe a grievance procedure by which all grievances can be considered and resolved. To this end the grievance procedure below is intended to provide channels for the resolution of any problems which an employee or a group of employees may wish to raise by way of grievance, claim or appeal.
- 1.3 The intention of both parties is that grievances will be resolved at the earliest stage possible and as quickly as possible, and the time period specified below are maximum time periods to be utilised to the full only where the complexity of the grievance requires the full use of the time period.
- 1.4 The failure to respond to a grievance will be deemed to constitute the acceptance and granting of the grievance by the Council.
- 1.5 The grievance will be in writing in the form attached to this procedure.
- 1.6 The parties recognise the difference between a collective and individual grievance.

2. Investigation and Report Backs:

- 2.1 The Shop Steward/Departmental Representative shall be entitled to reasonable time during working hours to investigate the issues involved in the grievance, including any necessary consultations with the grievant and witnesses.
- 2.2 The Shop Steward/Departmental Representative shall be entitled during working hours to report back to the grievant/s on the progress of the grievance.

3. Time Periods.

3.1 Stage One:

If an employee or a group of employees wish to

raise a grievance they shall approach their Shop Steward/Departmental Representative who shall approach the Supervisor of the employee/s.

3.2 Stage Two:

If the Supervisor fails to resolve the grievance within one day to the satisfaction of the Shop Steward/Departmental Representative and the employee/s concerned, the grievance will then be referred by the Shop Steward/Departmental Representative to the Head of Department. In that event the Head of Department will call a meeting of the aggrieved employee/s, the Shop Steward/s and/or the Departmental Representative/s in order to resolve the problem.

3.3 Stage Three:

Should the matter remain unresolved within two days of its being referred to the Head of Department, the Departmental Representative or Union Official shall inform the Manager of the City Personnel Department of the grievance who will then convene a meeting of the aggrieved employee/s, the Departmental Representative, or an official of the Union and the Head of Department concerned within three days.

3.4 Stage Four:

Should the matter still remain unresolved then the Union may require a meeting scheduled in terms of schedule "H" of Council's Rules relating to Conditions of Service whereat the Grievance Sub-Committee appointed for the determination of a grievance, sits and makes a final decision.

3.5 Stage Five:

If after the Grievance Sub-Committee Hearing held in terms of the Council's Regulations is unacceptable to the Union then any dispute declared may be referred to an agreed arbitrator in terms of the arbitration procedure between the parties.

3.6 In respect of a collective grievance the grievance may be raised for the first time at the level of Stage Four.

ANNEXURE 5

TOWN COUNCIL OF VERWOERDBURG : CHARGE FORM : FORM A

CHARGE FORM : PERSONNEL

Submitted herewith is a charge of misconduct against undermentioned employee :

NAME : DEPT/SECTION

POSTNUMBER : PAYNUMBER

A. PARTICULARS OF CHARGE

.....
.....
.....
.....
.....

.....
DATE	PERSON MAKING ACCUSATION	DESIGNATION

B. WITNESSES

NAME : PAYNUMBER SIGNATURE

NAME : PAYNUMBER SIGNATURE

C. ACKNOWLEDGEMENT OF CHARGE

.....
DATE	EMPLOYEE'S SIGNATURE

ANNEXURE 6

TOWN COUNCIL OF VERWOERDBURG : DISCIPLINARY INVESTIGATION FORM : FORM B

VERWOERDBURG TOWN COUNCIL

ANNEX TO DISCIPLINARY PROCEDURE

DISCIPLINARY INVESTIGATION FORM

1. PERSONAL PARTICULARS

Name : Paynumber Job Title

Location : Department :

Does the employee wish to be represented? YES/NO

If yes, name of representative

Does the employee wish to have an interpreter? YES/NO

If yes, name of interpreter?

2. PARTICULARS OF INVESTIGATION

Details of breach of discipline and reasons for investigation with dates of incidents :

.....

.....

(Additional details may be attached on a separate sheet)

Signed by Employee : Date :

Signed by Supervisor : Date :

3. OUTCOME OF INVESTIGATION

Is an enquiry required? YES/NO

If yes, date of enquiry/.../..

Reasons :

.....

Date employee and/or representative notified/.../..

4. INVESTIGATION CARRIED OUT BY

NAME	JOB TITLE	SIGNATURE
.....
.....

* Delete as appropriate

Date :/.../..

ANNEXURE 7

TOWN COUNCIL OF VERWOERDBURG : DISCIPLINARY ENQUIRY
FORM : FORM C

VERWOERDBURG TOWN COUNCIL
ANNEX TO DISCIPLINARY PROCEDURE
DISCIPLINARY ENQUIRY FORM

1. COMPOSITION OF ENQUIRY

Location : Date :/.../..

Employee : Paynumber

Department : Job Title

Chairman of Enquiry :

Job Title :

Other Parties Present	Name	Job Title
-----------------------	------	-----------

Immediate Superior :

Employee Representative :

Interpreter :

Details of breach of discipline and reasons for enquiry with date of incidents
.....
.....
.....

* If not present, give reason.

2. PROCEDURAL ASPECTS PRIOR TO COMMENCEMENT OF ENQUIRY

Employee advised of and confirmed :

Reason for the enquiry and given enough time to prepare?

Right to have a representative?

Right to have an interpreter?

Right to present his case?

Right to call witnesses?

Right to challenge evidence and/or witnesses?

Way in which the enquiry will be conducted?

ANNEXURE 8

CAPE TOWN CITY COUNCIL : NOTIFICATION OF DISCIPLINARY
ENQUIRY : FORM A

NOTIFICATION OF DISCIPLINARY ENQUIRY

NAME:

STAFF NO:

DESIGNATION:

BRANCH:

You are required to attend a disciplinary enquiry into your alleged misconduct.

The details of the allegation(s) against you are as follows:

On or about(DATE)

at approximately(TIME)

and at(PLACE)

you misconducted yourself in that you

.....

.....

.....

.....

The time, date and place of the enquiry are as follows:

TIME: DATE: PLACE:

You are reminded that you are entitled and are advised to have a representative to assist and/or represent you at the enquiry.

You are also entitled to call any material witnesses you may require as well as an interpreter should this be necessary.

.....
for HEAD OF DEPARTMENT/TOWN CLERK

.....
DATE

I on this day of
acknowledge receipt hereof and am aware of the contents.

STAFF NO: SIGNATURE

I personally served the notification of enquiry on the above-mentioned person.

WITNESSED BY:

NAME: SIGNATURE:

NAME: SIGNATURE:

ANNEXURE 9

CAPE TOWN CITY COUNCIL : DISCIPLINARY FORM : FORM B

DISCIPLINARY FORM

NATURE OF DISCIPLINARY ACTION (tick appropriate block):

- Recorded Verbal Warning – STAGE 1 – Immediate Superior
- Written Warning – STAGE 2 – Section Head
- Final Written Warning – STAGE 3 – Branch Head
- Dismissal – STAGE 4 – Head of Department

DATE:

NAME OF EMPLOYEE: STAFF NO:

DEPARTMENT: BRANCH:

REASON FOR WARNING:

.....
.....
.....

REQUIRED CORRECTIVE ACTION AND BY WHAT DATE:

.....
.....

RECOMMENDED DISCIPLINARY ACTION IF NO IMPROVEMENT:

.....
.....
.....

WARNING EFFECTIVE UNTIL:

SUPERVISOR'S/MANAGER'S NAME: SUPERVISOR'S/MANAGER'S NAME:

.....

DATE:

I confirm receipt of a copy of the above statement:

UNION OFFICIAL/SHOP STEWARD'S SIGNATURE:

EMPLOYEE'S SIGNATURE:
(Optional)

.....

.....

MANAGEMENT REPRESENTATIVE'S SIGNATURE
ACKNOWLEDGING THAT DISCIPLINARY ACTION
HAS BEEN TAKEN AGAINST THE EMPLOYEE.

.....

I wish to appeal against the disciplinary action – Tick YES NO

I wish to add the following comments:

EMPLOYEE'S SIGNATURE: DATE:

SUPERVISOR'S/MANAGER'S SIGNATURE:

WITNESSED BY:

NAME: SIGNATURE:

NAME: SIGNATURE:

DATE:

VALIDITY: Recorded Verbal Warning: - 3 months
Written Warning: - 6 months
Final Written Warning: - 12 months

NOTE:

EMPLOYEES WHO HAVE BEEN DISCIPLINED AND/OR DISMISSED HAVE THE RIGHT TO APPEAL AGAINST THE ACTION WITHIN 10 WORKING DAYS, USING THE DISCIPLINARY APPEALS PROCEDURE.

NOTE: Original of this form to be filed on Personal File.

COPY TO: The Employee
Head of Department
Union (SAAME/SAMWU)
Director of Personnel.

ANNEXURE 10

CAPE TOWN CITY COUNCIL : APPEAL FORM : FORM C

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APPEAL FORM

BRANCH/DEPARTMENT: DATE:

EMPLOYEE'S NAME:

STAFF NUMBER

NATURE OF DISCIPLINARY ACTION (tick appropriate block):

Recorded Verbal Warning

<input type="checkbox"/>
<input type="checkbox"/>

Final Written warning

<input type="checkbox"/>
<input type="checkbox"/>

Written Warning

Termination

DATE OF DISCIPLINARY ACTION:

REASONS FOR APPEAL:

.....
.....
.....
.....
.....

ACTION SUGGESTED BY EMPLOYEE:

.....
.....
.....

EMPLOYEE'S SIGNATURE: DATE:

OUTCOME OF THIS APPEAL:

.....
.....

APPROPRIATE MANAGER'S SIGNATURE:

DATE:

Date Appeal Form received:

(To be filled in by the appropriate manager)