

## DUE PROCESS GUIDELINES

The following due process guidelines have been adapted from common practice in both the public and private sector. They are designed to protect the due process rights of employees and to avoid invalidation of disciplinary actions on procedural grounds. Attachment A - Just Cause for Discipline has been adapted from a publication of the American Arbitration Association and provides a list of factors evaluated by arbitrators in determining if the just cause standard has been met.

**Purpose:** To insure that employees are afforded due process when charged with serious violations that require immediate action.

1. Review the labor contract - our labor agreements have recognized the just cause standard for discipline of permanent employees. The appointing authority should review the contract to determine if additional provisions have been negotiated concerning discipline.
2. Apply the test of reasonable action - Discipline should not be imposed in haste, remember that the burden of proof for a disciplinary action rests on the employer. The appointing authority must weight the available facts and the nature of the infraction to determine if the employee presents a threat to self or others. If the appointing authority concludes that the employee presents such a threat, he may then suspend pending a full and complete investigation. If the employee is not a threat to self or others, the disciplinary action should be reviewed and thoroughly substantiated before actions are taken.
3. The appointing authority in the case of immediate action should first contact the City Solicitor's Office at 686-5274 to review the circumstances which lead to the conclusion that immediate discipline is necessary.
- ④ 4. The appointing authority should then verbally notify the Union. The first contact should be with the employee's steward. If the steward is not available then contact the chief steward for the department, or the Local's President or Business Agent.
5. Issue the notice of suspension form to the employee. Specify the nature of the charges, even if the final outcome of discipline is pending completion of an investigation. If the action is pending investigation indicate that the employee may be subject to additional discipline but that if exonerated the employee will be made whole. Schedule a hearing to fully review all charges.
- ⑥ 6. Provide copies of the suspension notice to the Union at the same time it is issued to the employee.
- ✓ ⑦ 7. Share all specific data directly related to the charge with the Union and the employee in advance of the hearing. If you have any questions about what information should be

shared contact the Law Department. Depending upon the nature of the charges allow a reasonable amount of time for the employee to prepare a defense. For less complicated issues two days should be sufficient, for more complex issues five days or more may be needed.

Provide for a hearing at which the employee is represented by a representative of the Union (N.B. this does not guarantee the presence of a specific union official, however, departments are not precluded from making reasonable accommodations for a specific union representative.) At the hearing the employee should again be presented with charges and the specific supporting detail. The employee and the Union should both be permitted to present argument to the charges and evidence on a very liberal basis. The purpose of the hearing is to allow the employee to rebut the charges. The hearing officer should not superimpose any determination on relevancy of the rebuttal or evidence until making the recommendation or decision.

The appointing authority shall then act or shall then review the recommendation of the hearing officer and made a decision concerning the appropriate disciplinary action (refer to attachment A).

0. The employee and the Union should then be notified by personal delivery of the disciplinary action or registered mail delivery.

Within 10 days