

# **uMNGENI MUNICIPALITY**



## **PROCEDURE MANUAL**

## **PLACEMENT PROCEDURE**

- Restructuring/ Re—Organizing
- New Staff Establishment
- Classification of Posts (Unchanged, Minor Changed, Major Changed and New Posts.
- Placement of existing employees
- Placement criteria
- Placement Committee ( Comprised of Heads of Departments/ Unions observers)
- Notification/Publication of Placement Committee decisions
- New Posts ( To advertise both internally/externally )
- Acting Positions (No right to permanent employment)
- Objections Committee ( Municipal Manager & Senior Manager from another Municipality
- Lodging of Objections(Within five (5) days
- Decision of Objections Committee (Within ten (10) days
- Declaration of Disputes (Within thirty (30) days to SALGBC KZN DIVISION)
- Arbitrator's ruling(Binding to both Parties)

## **JOB EVALUATION PROCEDURE**

### **PURPOSE**

- **To implement the TASK Job Evaluation System within the Local Government Sector to achieve uniform norms and standards in the description of similar jobs and their grading across the Municipal Sector;**
- **To provide for the necessary structures, institutional arrangements and procedures for the evaluation of jobs in Municipalities;**
- **To ensure that a single job evaluation system is implemented to avoid remuneration disparities for similar categories of Municipalities within the Local Government Sector.**
- **The critical elements required to implement the TASK Job Evaluation System;**
- **An approved Staff Establishment recording the position of all jobs and their designations.**
- **Job Descriptions written in the prescribed TASK format.**
- Establishment of Job Evaluation Unit/ Provincial Audit Committee (Unions—observers)
- Responsibilities of Municipal Manager (Ensuring implementation TASK job evaluation system)
- Job Description writing exercise (As per the Staff Establishment)
- Compilation of Job Descriptions(Departments)
- Determination of Job Description(Incumbent, Manager & HOD)—If no consensus=Municipal Manager
- Submission of job descriptions for evaluation( Job Evaluation Unit)
- Factors (Complexity, Knowledge Influence & Pressure)
- Skill Level (Basic, Discretionary, Specialized, Tactical & Strategic level)
- Provisional Outcomes Report (Released by Job Evaluation Unit)
- Auditing of Provincial Outcomes Report (Provincial Audit Committee)
- Publication of final outcomes report (uMngeni Municipality)
- Implementation

- Task review process (Within thirty (30) days by Provincial Audit Committee.

### **PROCEDURAL STRIKE**

- The Act stipulates that the strike is regarded as protected if the Unions comply with the following requirements;
- THE dispute must be referred to the Bargaining Council after all internal processes have been exhausted.
- A certificate stating that the dispute is not resolved must be issued by the Bargaining Council;
- A period of thirty (30) days, or an extension of that period agreed to between the parties to the dispute had lapsed since the referral was received by the Bargaining Council;
- The Union must give seven(7) days notice in writing of the commencement of the strike since the Courts have held that the Employer is entitled to advance warning to prepare for the 'power play' that will follow, and that purpose is defeated if the Employer is not given notice of the exact time when the strike is due to commence;
- The notice to strike must also specifically call on non—essential services employees to embark on strike action;
- Where the notice call on all employees to strike, then the Unions must be requested to show that they have communicated with essential services employees not to strike, and if they fail to do so, then the Labour Court may be approached prior to the commencement of a strike to prevent essential service's employees from striking;
- An Employer may not dismiss an employee for participating in a protected strike or for any conduct in contemplation of furtherance of a protected strike;
- This however does not preclude an Employer from fairly dismissing an employee for a reason related to the employee's conduct such as intimidation, violence, assault, etc. during the strike.

## **PICKETING PROCEDURE**

The purpose of the picket is to peacefully demonstrate in support of the strike in relation to the salary/wage demand of the Unions and to encourage non striking employees and members of the public to support the strikers engaged in a protected strike.

Striking employees shall restrict themselves to areas demarcated in the agreement;

- A number of picketers shall be allowed not less than twenty(20) meters away from each of the entrances to the Municipal offices/premises, which number shall be determined at a local level, provided that subject to local circumstances a lesser distance can be agreed upon;
- Picketers shall have access to toilets and fresh water from Municipal premises. However, any entrance to buildings will be by request and permission granted but not more than five(5) persons at a time will be allowed access provided that subject to circumstances a greater number can be agreed upon;
- The Unions shall inform the Employer within a reasonable time of the time, period and place where picketing will take place;
- It may take place outside the premises of the Employer or by agreement at local level inside the premises( For this purpose 'premises' exclude buildings or Depots but include the grounds of the Municipality of the Employer in any place to which the public has access and shall not disrupt access to the premises of the Employer or the conduct of it's business;
- Picketers shall not disrupt or attempt to disrupt the ongoing operations of the Employer, nor hinder harm or intimidate those doing business with the Employer, non-striking employees, other employees or person associated with the Employer, and Management undertakes not to interfere, victimize or harass in any way those who are participating in a strike.
- If any picketing or any action associated therewith is to be taken inside the premises, the number of persons who may participate shall be limited to no more than thirty(30) persons at any one time;

- The parties may agree to the place where the balance of the picketing employees may assemble and this may include Municipal premises;
- Although the picket may be held in any place to which the public has access, the picket may not interfere with the constitutional rights of other persons;
- The picketers shall conduct themselves in a peaceful, unarmed and lawful manner, they may carry placards, chant slogans and toyi toyi;
- Picketers may not physically prevent members of the public including other employees, tenants, suppliers, securities and service providers from gaining access to or leaving the premises nor may they commit any action which may be unlawful, including but not limited to any action which is or may be perceived to be violent;
- Essential services employees are not allowed to picket during working hours;

### **DISCIPLINARY PROCEDURE**

1. The Employer (Municipal Manager or his authorized representative) appoints an investigator to investigate the alleged misconduct. **[Within a reasonable time – clause 6.1]**
2. The investigator submits a report to the Municipal Manager or his authorized representative. **[Within a reasonable time – clause 6.1]**
3. The Municipal Manager or his authorized representative takes the decision that the Employee is to be charged. **[Within a reasonable time – clause 6.2]**
4. The Municipal Manager or his authorized representative appoints an Employer representative and a Presiding Officer. **[Within a reasonable time – clause 6.6]**
5. The charge sheet (Notice of Misconduct) is drawn up by the Employer Representative and the Notice of Misconduct is served on the Employee. **[Within 5 days of the appointment of the Employer representative – clause 6.7]**
6. The Disciplinary Hearing commences. **[Not earlier than 5 days and not later than 15 days from the date of the service of the Notice of Misconduct – clause 6.10]**
7. The process set out in paragraphs 1 to 7 above shall take place within a reasonable time but not exceeding six months calculated from the first day that the Employer became aware of the alleged misconduct up to and including the first day of the Disciplinary Hearing – clause 6 and 7 read in its proper context

8. The Presiding Officer makes a finding on the evidence submitted. If the finding is one of not guilty, the matter is concluded. If the finding is one of guilty the parties lead evidence in mitigation and aggravation. The Presiding officer issues a sanction and communicates his finding and sanction to the parties. **[Within 10 days from the last day of the Disciplinary Hearing – clause 7.6]**
9. The Employee may lodge an appeal against a finding and/or sanction less than a dismissal by filing a Notice of appeal. **[Within 5 days of receipt of Disciplinary Hearing finding and sanction – clause 15.2]**
10. The Presiding Officer of the Disciplinary Appeal Hearing shall set a time, date and venue for the appeal hearing and notifies the parties thereof. **[Not earlier than 5 days and not later than 10 days from the date of the service of the Notice of Appeal – clause 15.4]**
- 11.11. Statements of Case are filed by the parties. **[ At least two days prior to the date set for the Appeal Hearing – clause 15.11]**
12. The Disciplinary Appeal Hearing takes place. **[ Not earlier than 5 days and not later than 10 days from the date of the service of the Notice of Appeal – clause 15.13]**
13. The chairperson of the Disciplinary Appeal Hearing makes his finding and communicates it to the parties. **[ Within 10 days of the Appeal Hearing taking place – clause 15.15]**
14. The chairperson of the Disciplinary Appeal Hearing makes his finding and communicates it to the parties. **[ Within 10 days of the Appeal Hearing taking place – clause 15.15]**
15. In the case of a dismissal dispute the Employee may refer a dispute to the SALGBC. **[ Within 30 calendar days of being notified on the dismissal – clause 15.1 read with section 191 of the Labour Relations Act]**

#### **14.1 CONDUCT OF THE DISCIPLINARY HEARING**

The hearing shall be conducted by the presiding Officer who may determine the procedure to be followed subject to the following:

1. The rules of natural justice must be observed in the conduct of the proceedings;

2. Unless otherwise agreed to by the parties, the hearing must be adversarial in nature and character;
3. The Presiding Officer, in discharging his duties is to exercise care, proceed diligently and act impartially; and
4. The Presiding Officer shall not consult, confer or have casual contact with any of the parties or their representatives regarding the case while handling the matter without the presence or consent of the other party concerned.

The Employer Representative shall have the duty to begin as well as the burden to prove each and every allegation of misconduct as set out in the Notice of Misconduct, on a balance of probabilities.

In discharging these duties the Employer representative shall be entitled to call before the Disciplinary Hearing any witness and lead any evidence, which may include books, documents or any other relevant items; and

1. Subject to objection, cross-examine any witness called to testify on behalf of the Employee and inspect any book, document or relevant item produced; and
2. Present argument based on evidence in support of any submission.

The Employee summoned before the Disciplinary Hearing shall have the right to be heard in person or through a representative, subject to clause 6.8.4 above and to call before the Disciplinary Hearing any witnesses and lead any evidence which may include books, documents or any other relevant items; and

1. Subject to objection, cross-examine any witness called to testify on behalf of the Employer and inspect any book, document or relevant item produced;
2. Present argument based on the evidence in support of any submission; and
3. May make application, on good cause shown, for the recusal of the Presiding Officer.

The Presiding Officer shall have the power to:

1. Determine the procedure to be followed for the conduct of the enquiry that he deems appropriate with the minimum of legal formalities provided that the rules of natural justice are observed;
2. Put questions, without cross-examining, to the parties or their witnesses on any relevant issue;
3. Subject to the provision of 12 below, proceed with the enquiry in the absence of any party who is in willful default or who fails to attend any scheduled hearing, despite the expiry of the time set out in the Notice of Misconduct;



4. Make such interim determinations or rulings of law as he deems necessary;
5. With the consent of the parties, propose compromise settlements in disposal of the whole or a portion of the issues;
6. Make a finding of fact after having considered the evidence;
7. Invite and hear any evidence or plea in mitigation, aggravation or extenuation prior to deciding on the sanction to impose; with due regard to how the rule has been consistently applied;
8. Impose, *inter alia*, any one of the following sanctions:
  - 8.1. A written warning;
  - 8.2. A final written warning;
  - 8.3. Suspension without pay for a maximum of ten (10) days and as is furthermore referred to in clause 2.5 of Annexure "A" hereto;
  - 8.4. The withholding of any salary increment for a period not exceeding twelve months;
  - 8.5. Demotion to another post with or without financial loss. In the event of a demotion to another post, such demotion shall not be more than two post levels below that which the Employee held as at the date that the misconduct had occurred; or
  - 8.6. Dismissal.

The Presiding Officer shall within ten (10) days of the last day of the Disciplinary Hearing confirm, in writing, the findings of fact, the sanction imposed in the event that the Employee was found guilty and the reasons in support thereof. The Presiding Officer shall provide a copy of the determination to the Municipal Manager or his authorized representative and to the Employee or his representative.

The determination of the Presiding Officer cannot be altered by the Municipal Manager or any other governing structure of a municipality and shall be final and binding on the Employer, subject to the provision of clause 7.8 and 14 below and to any other remedies permitted by law.

An Employee may not be charged at a subsequent Disciplinary Hearing for the same alleged misconduct, unless for circumstances otherwise permitted in general case law.

## **14.2 CONDUCT AND SANCTIONS**

### **Standard of Conduct**

Employees are expected to comply in every respect with the conditions of employment and collective agreements and any related regulation, order, policy and practice and to refrain from and conduct which would give just cause for discipline.

In particular, employees should:

1. Attend work regularly and punctually;
2. Conform to the reasonable dress and uniform requirements of the employer;
3. Perform their tasks and job responsibilities diligently, carefully and to the best of their ability;
4. Obey all lawful and reasonable instructions given by a person having the authority to do so;
5. Conduct themselves with honesty and integrity;
6. Request permission in advance for any leave of absence whenever possible;
7. Refrain from being absent from duty without leave or permission, except on good cause;
8. Refrain from accepting any other employment outside of normal working hours without the prior permission of the Department Head or Municipal Manager, which permission shall not be unreasonably withheld;
9. Refrain from any rude, abusive, insolent, provocative, intimidatory or aggressive behavior to a fellow employee or member of the public;
10. Refrain from willful or negligent behavior, which may result in the damage of property;
11. Refrain from participating, either individually or with others, in any form of action, which will have the effect of disrupting the operations of the employer, other than actions contemplated by the Labour relations Act;

12. Refrain from wrongfully disclosing privileged information; and
13. Refrain from consuming alcohol or using intoxicating drugs whilst on duty.

### **14.3 SANCTIONS FOR MISCONDUCT**

In accordance with the Disciplinary policy, any sanction that is imposed for misconduct will be intended to deter future repetition of that behavior. The sanction imposed must be based on the seriousness of the offence and considering the employee's disciplinary record;

The imposition of discipline is progressive in that sanctions are to be applied with increasing severity with the repetition of the offence. Sanction will generally be applied by first issuing a written warning and then a final written warning, except in cases of misconduct which would constitute grounds for immediate dismissal or suspension without pay or the immediate imposition of a final written warning.

All written warnings and suspensions are to be recorded in the employee's personal file.

A written warning will remain valid and on the record of the employee for a period of six (6) months from the date of imposition.

The employer may impose as a sanction a suspension without pay having regard either to the serious nature of the misconduct or the fact that there has been a previous warning or warnings for the same behavior in which event the maximum period will be ten days. In the event of a suspension in excess of five days, the suspension without pay shall be spread over three monthly pay periods;

A suspension without pay shall be regarded as a sanction more serious than a final written warning

As a guideline, an employee may be dismissed on the first occasion for, inter alia:

1. Intimidation, fighting and/or assault
2. Theft, unauthorized possession of or malicious damage to the employer's property;
3. Being under the influence of alcohol or intoxicating drugs whilst on duty such that performance is seriously impaired or diminished;
4. The consumption of alcohol or intoxicating drugs whilst on duty if the nature of work to be performed is such that intoxication endangers the safety of the employee or that of others;
5. Any act of gross dishonesty;
6. Any act of gross negligence;
7. Gross insubordination;
8. Wrongful disclosure of privileged information;
9. Any act of bribery or corruption; and
10. Any other act of misconduct which would constitute just cause for dismissal.

## **15. GRIEVANCE PROCEDURE**

### **Preamble**

This procedure shall be deemed a condition of service.

The objective of this *grievance* procedure is to ensure fair play, to resolve problems as quickly as possible and to deal with conflict through procedural means.

No employee shall suffer victimization or occupational prejudice as a result of lodging a grievance.

This *grievance* procedure shall not apply in the event that a specific dispute resolution is catered for in this agreement.

### **1. Step One: Immediate Superior**

- 1.1. The lodging of a *grievance* as per Annexure "C" shall, except in exceptional circumstances, take place within ten days from the time the employee first becomes aware of the matter that gave rise to such *grievance*.
- 1.2 An aggrieved employee or group of employees must lodge in writing with his immediate superior a grievance on the prescribed form setting out the complaint and the desired result. Such an employee may, if he so wishes be

assisted by a *shop steward*, fellow employee or union official. Should the *grievance* concern the conduct of the employee's immediate superior, the employee may proceed directly to Step Two provided that he submits the *grievance* on the prescribed form.

- 1.3 The immediate superior shall endeavor, in consultation with the affected employee(s), to resolve the *grievance* within five days of the *grievance* having been referred to him and shall inform the employee of the outcome in writing.

## **2. Step two: Head of Department**

- 2.1 If a *grievance* has not been resolved to the satisfaction of the aggrieved employee or group of employees, the immediate superior shall refer the matter in writing within five days to the Head of Department or his nominee.
- 2.2. The Head of Department or his nominee shall arrange a meeting to consult and hold discussions with the affected parties in an attempt to achieve a resolution. The employee may be assisted by a fellow employee, shop steward or union official at such a meeting and the immediate superior may also be required to attend.
- 2.3. The Head of Department or his nominee shall endeavor to resolve the *grievance* within five days of the *grievance* being referred and shall inform the employee of the outcome in writing.

## **3. Step Three: municipal Manager**

- 3.1. If the *grievance* has not been resolved to the satisfaction of the aggrieved employee or group of employees, the Head of Department or his nominee shall refer it to the Municipal Manager or his nominee within five days in writing who shall hold an enquiry into the grievance, attended by the employee, his representative, if required, and any other persons who, in the opinion of the Municipal Manager or his nominee should attend.
- 3.2. The Municipal manager or his nominee shall hear details of the *grievance* including proposals to resolve the issue and shall endeavor to reach a decision within five days.
- 3.3. The Municipal Manager or his nominee shall inform the employee in writing of the outcome of the hearing as envisaged in clause 4.2 above, and such decision shall be final in terms of this procedure.

- 3.4. If the *grievance* is against a Municipal Manager, the aggrieved employee shall refer the *grievance* to the Office of the Speaker, which may either resolve the *grievance* itself or engage the service of an appropriate Senior Manager of another *Municipality* to resolve the *grievance*.
- 3.5. If the *grievance* has not been resolved to the satisfaction of the aggrieved party, that party may refer the grievance to the *Council* for adjudication, provided that a dispute has been declared