5

# Guide to Labor Relations in the City of New York

3/05

# I. NEW YORK CITY LABOR RELATIONS

## A. Applicable Laws and Executive Orders

Efforts to organize municipal employees in New York State resulted in the enactment of the TAYLOR Act by the State Legislature in 1967. To establish a framework for collective bargaining for the City of New York, the TAYLOR Law was enacted as Chapter 54 of the Administrative Code. A brief description of these laws and their purposes are set forth below:

### 1. New York State Public Employees Fair Employment Act (TAYLOR Law):

Grants to public employees of the State of New York the right to organization and representation; requires public employers to negotiate with public employee organizations; created Public Employee Relations Board (PERB) to assist in labor disputes; prohibits public employee strikes.

### 2. New York City Collective Bargaining Law:

Sets forth the rights and obligations of the public employer and certified public employee organizations; establishes bargaining and impasse procedures; defines improper employer and union practices; creates the Office of Collective Bargaining and sets forth its responsibilities and powers.

### 3. Executive Orders

The creation and ongoing modification of New York City's labor relations program were accomplished by Executive Orders issued by the Mayor. A brief description of the most significant executive orders is presented below:

a. **Executive Order No. 38 (February 6, 1967)**

Established the Office of Municipal Labor Relations and sets forth its powers and responsibilities. Executive Order No. 13, dated July 24, 1990 renamed OMLR as the Office of Labor Relations, generally referred to as the City Office of Labor Relations (COLR).

b. **Executive Order No. 75 (1973)**

Authorized release time for City employees engaged in approved union activities.

## B. Office of Collective Bargaining (OCB)

The Office of Collective Bargaining was created by Chapter 54 of the Administrative Code of the City of New York. The OCB is comprised of a Director, two deputies, a Board of Collective Bargaining, a Board of Certification and support staff including attorneys.

The OCB is essentially the watchdog of New York City labor relations. Its responsibilities are three-fold. First, the OCB determines what an appropriate bargaining unit should be, and conducts representation elections to determine which union should represent it. Second, the OCB monitors the collective bargaining process, and, upon the request of either or both parties, determines whether the parties are negotiating in good faith, and where necessary, intercedes in negotiations when they have broken down. Finally, the OCB maintains a list of arbitrators for the resolution of disputes and supervises the arbitration procedure.

## C. City Office of Labor Relations

The responsibility of the City Office of Labor Relations is to represent the Mayor in the conduct of all relations between the City and municipal unions and to establish broad City-wide policy governing them. Specifically, the City Office of Labor

Relations has responsibility for the following:

1. Preparing and negotiating of labor contracts with municipal unions;

2. Interpreting existing labor contracts;

3. Step III grievance determinations;

4. Preparing and presenting the City's position at arbitration, fact-finding, impasses and other dispute settlement proceedings;

5. Drafting proposed legislation on labor matters for action by the City Council or State legislature.

**D. Agency Office of Labor Relations**

The mission of the Office of Labor Relations encompasses the direction, organization and administration of the labor relations program for each agency's Office of Labor Relations (OLR) + include the following responsibilities:

1. Developing Agency labor relations policies.

2. Providing advisory services to the Administrator/Commissioner and program directors.

3. Representing the Administrator in Step II grievance appeals and issuing determinations on these matters.

4. Maintaining effective relationships with unions representing agency employees and resolving local labor-management difficulties.

5. Interpreting, implementing and administering existing labor contracts.

6. Representing the Administrator/Commissioner at meetings, hearings, fact-finding sessions, arbitrations, mediation conferences and consultations conducted by the Office of Collective Bargaining and other governmental bodies.

7. Conducting the research and development of contract proposals for collective bargaining negotiations.

8. Participating as a member of the City's management team in bargaining with the unions.

9. Acting as the Agency's liaison and representing the Administration with the City Office of Labor Relations.

## E. Union Structure

Basically, union representation for most employees of the Agency is carried out on two levels. On one level is the union local, for example Local 1549 Clerical Employees or Local 371, Social Services Employees' Union. On the other level is District Council 37, which is the umbrella organization for approximately sixty (60) locals representing over 100,000 municipal employees.

### 1. Local Structure

The local's membership consists of employees in titles who have a community of interests and therefore constitute a bargaining unit or units. Each local has a president, vice-presidents and local officers and may be subdivided into chapters which include members of a local within a particular agency or program within an agency. Each chapter traditionally has a chapter chairperson and vice-chapter chairperson. Finally, for each location or program, depending on the organization of the particular local, shop stewards are elected by the membership of the location or program.

## 2. District Council 37, AFSCME

District Council 37 consists of an aggregate of municipal locals which represent titles ranging from Office Aides to Repair Crew Worker. The District Council's executive staff includes an executive director, a president, a secretary, a treasurer and a general counsel. To discharge its representational responsibilities, the District Council is subdivided into a number of divisions based on occupational similarities, for example, Blue-Collar division. Each division has a director and several DC 37 representatives whose responsibility is to service the various locals included in the division. Under the NYC Collective Bargaining Law, DC 37, as the majority representative, bargains for the majority of non-uniformed City employees and on matters which must be uniform for those employees - matters such as annual and sick leave, holidays, shift differentials, overtime pay, etc. These negotiations culminate in a City-wide Contract, covering all such employees, whether represented by DC 37 or another municipal union. The appendix to the City-wide Contract lists all titles that it covers.

## 3. Responsibilities of DC 37 and its Locals

Representation of municipal employees is shared jointly by the various locals belonging to DC 37 and the District Council itself. While the lines of responsibility sometimes overlap and vary from local to local, they may be generally delineated as follows. The local, through its shop stewards, has responsibility for representation of employees at the location level. This includes on-site handling of employee problems and representing employees at Step I of the Grievance Procedure. The local generally represents the Union at labor-management meetings and higher steps of the grievance procedure. District Council 37 has basic responsibility for the negotiation of the City-wide Contract.

4. **Unions not members of DC 37**

Citywide issues are governed by Citywide Contract between DC 37 and New York City.

Five major unions or organizations that represent agency employees are not members of DC 37. A brief description of their structure is given below.

a. **International Brotherhood of Teamsters Local 237**

This local represents titles such as the Special Officers, Maintenance Workers, and Attorneys. Representatives of this union are known as Business Agents and their role is similar to the role of Grievance Representatives in other unions. The Business Agent is responsible for employees in specific titles regardless of their work location. Shop stewards are elected by the employees at the location.

b. **Communication Workers of America Local 1180**

Local 1180 represents Principal Administrative Associates and other titles. Grievance Representatives have functions similar to those of Business Agents. They, too, represent employees in particular titles regardless of work location. The shop stewards are elected by the membership at a given location.

c. **Organization of Staff Analysts (OSA)**

OSA represents the Staff Analyst and Training Development Specialist Occupational Groups. Field Representatives represent employees throughout the Agency.

### d. The New York State Nurses Association

The Nurses Association represents Staff Nurses, Assistant Head Nurses, Head Nurses and Supervisors of Nurses. Nurse Representatives perform essentially the same functions as Grievance Representatives in the unions.

### e. Doctors Council

The Doctors Council represents Clinicians, Dentists, Senior Dentists, Physicians, Psychiatrists, Medical Specialists, Veterinarians, Anesthesiologists, Medical Examiners and many related medical practitioners. These employees are represented through a cadre of Contract Administrators who are responsible for handling grievances and contract issues for these employees.

## II. THE COLLECTIVE BARGAINING PROCESS

### Introduction

The collective bargaining process is the conduct of negotiations by representatives of management and the unions for the purpose of determining certain terms and conditions of employment for employees in titles covered by collective bargaining agreements. Appropriate subjects for collective bargaining are set forth in the New York City Collective Bargaining Law and include wages, health and welfare benefits, uniform allowances, shift premium hours, overtime, and time and leave benefits.

The collective bargaining process is initiated some time before the expiration of a particular labor contract. Upon commencement of negotiations, the City and the union exchange demands for modification of the existing contract. Thereafter, each party modifies and redefines its demands until an agreement is reached. The agreement is then reduced to writing, ratified by the union membership, approved by the City's Corporation Counsel as to form, and finally approved by the Financial Control Board. The end result of this sometimes lengthy process is a legally enforceable contract setting forth the rights and obligations of the parties regarding terms and conditions of employment. This process begins anew each time a labor contract expires. Until a new agreement is signed, the previous one remains in effect.

### A. Levels of Bargaining

Collective bargaining negotiations for most employees in titles represented by unions are accomplished at a two-tier level. At one level is City-wide negotiations, which basically encompass issues relevant to all covered titles. At the other level is the Unit or title negotiations, which deal with issues relevant to a particular group of employees, i.e., clerical, social service employees, etc.

Topics traditionally negotiated at the City-wide level include time and leave, health insurance, overtime, retirement benefits and other topics having general application to all employees covered by the contract. Title or Unit negotiations, on the other hand, deal more specifically with topics relevant to employees in a particular title. These include salaries and wages, and may also include personnel practices, hours and schedules, and transfer procedures. Still other subjects, such as adjustment of disputes, may be discussed at both levels of bargaining.

## B. Responsibilities of Agency Office of Labor Relations in City Labor Negotiations

The Agency Office of Labor Relations represents the Agency at all collective bargaining negotiations that involve a significant number of employees of the Agency. While the City Office of Labor Relations is responsible for the actual negotiation of the contract, Agency Labor Relations plays a significant role in the preparation of City demands and development of bargaining strategy. Its responsibilities include development of proposals to be incorporated in City demands, research on the impact of union demands on the Agency, and, in general, furtherance of the Agency's interests during the course of negotiations.

## C. Role of Supervisory and Administrative Staff

One of the most vital elements of the collective bargaining process is the compiling of information for use in negotiations. Without information as to the impact of existing collective bargaining provisions on the day-to-day workings of the Agency, and without suggestions regarding changes in these provisions, effective collective bargaining agreements could not be accomplished. Understandably, the bulk of this type of information can be provided only by local administrators and on-line supervisors, and their cooperation in sharing this information with Agency Labor Relations is essential.

Before the commencement of collective bargaining, . Labor Relations requests this information from all programs in the Agency having staff in titles covered by the particular contract. In complying with this request, the program administrator is encouraged to survey the administrative and supervisory staff of the program for information and suggestions that are relevant to the upcoming negotiations. This information, in turn, should be reviewed by the program administrator and incorporated into a written memorandum to Agency Labor Relations. Upon receipt of the memorandum, Agency Office of Labor Relations may interview the program administrator or his designee to discuss its contents.

Responses to such requests should be carefully considered and promptly submitted. Program input is essential not only for the formulation of the City's bargaining position, but also in answering union demands, providing data to impasse panels,

formulating agency policy and procedures, and other labor-related matters. Failure to promptly provide this information could result in agreements or policies adverse to the efficient operation of a particular program.

## III. MANAGEMENT RIGHTS AND LIMITATIONS

### A. Mandatory and Permissive Subjects of Collective Bargaining

The New York City Collective Bargaining Law obligates the City to bargain with the certified union concerning such matters as wage rates, health and welfare benefits, overtime payment, and working conditions. The City may, but is not required to, bargain on matters which are defined in the law as management rights (see paragraph B below). Generally a management right may be exercised unilaterally by the Agency, in accordance with its discretion and best judgment, unless the contract contains an explicit limitation on the particular right.

### B. Specific Management Rights

The New York City Collective Bargaining Law defines management rights as those which are not within the scope of mandatory collective bargaining. More specifically, they are the right of the City, acting through its agencies, to:

1. Determine the standards of services to be offered by the Agency.

2. Determine the standard of selection for employment.

3. Take disciplinary action.

4. Direct its employees.

5. Relieve its employees from duty because of lack of work or for other legitimate reasons.

6. Maintain efficiency of governmental operations.

7. Determine the methods, means and personnel by which government operations are to be conducted.

8. Determine the content of job classifications.

9. Take all necessary action to carry out its mission in emergencies.

10. Exercise complete control and discretion over its organization and the technology of performing its work.

## C. Management's Rights and the Supervisor

As a general rule, union rights are set forth in collective bargaining agreements. Conversely, if a particular right is not specified in a collective bargaining agreement, it is a right of management. Accordingly, whenever an issue involving management's right arises, the supervisor should consult the labor relations liaison office of the program. In exercising management rights at this level, supervisors should be aware of the following points:

### 1. The Right to Direct Employees

While the supervisor has the right to direct the employees of the unit, the right is not absolute. The supervisor may not infringe on employees' rights under a collective bargaining agreement or under agency policies or procedures which affect the terms and conditions of employment. Included in these are the right to dignified and professional and non-discriminatory treatment.

### 2. The Right to take Disciplinary Action

Where an employee's conduct is such that disciplinary action is warranted, the supervisor should carefully document the employee's entire conduct and report the situation to the Director. To promote good labor relations, the union may be advised and/or invited to a supervisory conference, where disciplinary action is contemplated.

### 3. The Right to determine the Methods, Means and Personnel by Which Government Operations are to be Conducted

Except in the most extreme circumstances, such as when compliance would be dangerous or illegal, an employee does not have the right to refuse to perform a work function.

Claims that such assignments or procedures are in some way improper or a violation of an employee's rights should be pursued through the grievance procedure or through some other legitimate channel, not by insubordinate refusal. This is true regardless of whether the refusal stems from the employee's own initiative or is done at the behest of the union. When an employee refuses to follow a directive, the supervisor should again order the employee to comply and if the employee refuses, appropriate disciplinary action should be taken.

## IV. UNION RIGHTS AND LIMITATIONS

### Introduction

The most basic right of the union is to represent employees in its bargaining unit. The bargaining process, culminating in the contract between management and the union, establishes the rights of both parties. Those rights and limitations which are especially relevant to daily labor relations at the location level are discussed below.

### A. Meetings at the Location

The union's right to hold meetings at a work location is provided for in collective bargaining agreements. The right is not absolute, however, and there are guidelines to minimize the potential disruptive effect a union meeting might have on the daily work routine of the location. Thus, such union meetings must meet the following requirements:

1. Arrangements for union meetings on Agency premises must be made in advance and may not be held without prior approval of the administrative office of the location. Approval should not be withheld unreasonably.

2. The administrative officer must make available to the union representatives a suitable place within the work location where their business may be conducted. Meetings should not be held in a working area if the ongoing activities of the program would be curtailed or disrupted.

3. The administrative office of the location should designate space for a meeting. It is the responsibility of the union to restore the area to a reasonable state of good order after use.

4. Meetings are generally permitted only during employees' lunch hours or other non-working hours. Requests for meetings at other times may be granted only with the approval of the Agency Office of Labor Relations through the program labor relations liaison officer.

## B. Bulletin Boards

Collective bargaining agreements obligate the Agency to provide a bulletin board, or portion of a bulletin board, in each location for the posting of legitimate and proper union materials. The union has the sole and exclusive use of such bulletin boards or designated portions of bulletin boards. This right is limited, however, by the following restrictions:

1. Posting of materials on the designated bulletin board is limited to labor organizations which have bargaining certificates.

2. The material posted may refer only to matters pertaining to union affairs.

3. Material directed to staff not covered by the union's bargaining certificate may not be posted.

4. Posting of material on the labor organization section of Department bulletin boards must conform with the requirements stipulated in the applicable labor agreement, e.g., notices must be on union stationery.

5. If inappropriate material is posted on a union bulletin board, the shop steward of the local should be asked to remove the material. If he or she refuses, the administrative officer should inform the liaison officer. Material posted on places other than the union's bulletin board may be removed.

## C. Visits by Union Representatives

The union has the right to send representatives to a location for an approved purpose. This right is subject to the following conditions:

1. The number of Union representatives, other than central union staff, who may be present in a work location to which they are not assigned as employees shall be limited to two (2) at any given time unless prior approval is obtained.

2. Whenever possible, an appointment to visit the work location should be made in advance. The union representatives must first report directly to the office of the administrative officer and explain the purpose of their visit.

3. The union representatives may not engage in any activity other than that which has been specifically requested and authorized.

**D. Location Representatives - Shop Stewards and Delegates**

An employee's right to union representation at the location level is exercised through the use of shop stewards and delegates. The functions of union representatives are provided for in collective bargaining agreements and Executive Orders; however, guidelines have been established to minimize disruption of the location's daily work routine. They are as follows:

1. The unions must file, in writing, with ~~Agency~~ /OLR and with the administrative officer of the work location the names of their principal representatives and alternates. Any changes in such designations must be filed promptly and in the same manner.

2. Delegates and shop stewards should discuss first with the location administrator any problems or grievances as they may arise in a location and attempt to agree mutually on a solution.

3. The delegates or shop stewards and the administrative officer of the work location should agree on an orderly procedure for handling a grievance or related matters of mutual concern.

**E. Violations**

Should any of the above processes be violated, the following steps should be undertaken:

1. **Standard Procedure**

The administrative officer of the location, or designee, should direct the Union Representative to refrain from the unauthorized activity stating with specificity the exact procedure being violated.

A memorandum should be promptly sent to the labor relations liaison office of the program indicating the exact procedure violated, giving the details of the unauthorized activity, stating whether the activity continued after the order to stop, and naming the persons who refused to comply.

If the directive to cease the unauthorized activity is refused or ignored, the labor relations liaison officer should immediately be informed of the problem. The labor relations liaison officer, in turn, will notify Agency/OLR which will take appropriate action.

If the initial directive is not followed, the written statements of witnesses should be taken and included with the memorandum of the incident.

2. **Additional Steps for Unauthorized Union Meetings**

If the unauthorized activity is a union meeting, the following additional steps should be taken:

- After the initial order to desist has been ignored or refused, a warning of possible repercussions, i.e., disciplinary action, should be given.

- Those employees who remain at the meeting after the warning should be listed in documentation of the incident. The documentation should include such details as the time and duration of

the meeting, any disruptive effects of the meeting, etc.

- After warnings are refused or ignored, the administrative officer should continue with the normal procedure set forth in (1) above.

### 3. Additional Steps for Job Actions and Strikes

The City Office of Labor Relations and the Department of Citywide Administrative Services must be advised of the occurrence of any perceived job actions or strikes.

When a job action takes place after oral orders to cease have been given, the employees should, if circumstances permit, be ordered in **writing** to perform their duties. These written orders will strengthen the Agency's case in any disciplinary action which may be taken. As with the unauthorized union meetings, it is essential that a list of the participating employees be included in the documentation of the incident. Statements in writing should also be obtained from supervisors or other employees who witnessed or have knowledge of the occurrence. All such documentation should be immediately forwarded to the Agency Office of Labor Relations.

## V. GRIEVANCES

### Introduction

One of the principal responsibilities of supervisors is to attempt to improve each employee's morale and progressively help the employee to increase job satisfaction and work productivity. They must also deal fairly with all employees and employee groups.

Even the best management cannot prevent grievances. One of the most difficult responsibilities as a supervisor is to handle complaints and grievances. As a supervisor, one must be prepared to handle grievances with tact, good judgment and common sense. **Every effort should be employed to resolve problems promptly and fairly before the formal grievance procedure becomes necessary.**

There is no magic formula for dealing successfully with complaints. There will be some that cannot be worked out informally no matter how carefully or artfully we handle them. It may be that we do not have the authority to make a decision on the matter, or the employee may, for some reason, be unwilling to accept a decision we have made. The grievance procedure is designed for such cases.

The grievance procedure gives employees some assurance of their right to be heard. It also enables management to gain some insight into the way the employee views the agency and to assist in resolving minor cases. The machinery properly followed, gives an employee an orderly way to obtain further consideration of grievances if reasonable efforts have failed to resolve them informally. **Each employee is assured freedom from interference, coercion, discrimination and reprisal in filing grievances.**

### A. Definition of Grievance

The term "Grievance" means:

a. A dispute concerning the application or interpretation of the terms of an Agreement;

b. A claimed violation, misinterpretation or misapplication of the rules or regulations, written policy or orders of the **Employer** applicable to the agency which employs the grievant affecting terms and conditions of employment; provided, disputes involving the **Rules and Regulations of the New**

York City Personnel Director or the Rules and Regulations of the Health and Hospitals Corporation with respect to those matters set forth in the first paragraph of Section 7390.1 of the Unconsolidated Laws shall not be subject to the grievance procedure or arbitration;

c. A claimed assignment of employees to duties substantially different from those stated in their job specifications;

d. A claimed improper holding of an open-competitive rather than a promotional examination;

e. A claimed wrongful disciplinary action taken against a permanent employee covered by Section 75(1) of the Civil Service Law or a permanent employee covered by the Rules and Regulations of the Health and Hospitals Corporation upon whom the agency head has served written charges of incompetency or misconduct while the employee is serving in the employee's permanent title or which affect the employee's permanent status.

f. A claimed wrongful disciplinary action taken against a non-competitive employee with six (6) months service in title, except for employees during the period of a mutually agreed upon extension of probation.

g. Failure to serve written charges as required by Section 75 of the Civil Service Law or the Rules and Regulations of the Health and Hospitals Corporation upon a permanent employee covered by Section 75(1) of the Civil Service Law or a permanent employee covered by the Rules and Regulations of the Health and Hospitals Corporation where any of the penalties (including a fine) set forth in Section 75(3) of the Civil Service Law have been imposed.

h. A claimed wrongful disciplinary action taken against a provisional employee who has served for two years in the same or similar title or related occupational group in the same agency.

In general, a grievance is a claim that a right of an individual employee, or employees collectively, has been violated. This alleged violation may occur as a result of an action of the employer, or as a result of the employer's failure or refusal to take an action.

1. Violation of a collective bargaining agreement.

2. Violation of rules or regulations, written policy or orders applicable to the agency which affect the terms and conditions of employment.

3. Out-of-title assignment.

4. Wrongful disciplinary action.

**B. Distinction Between Grievances and Complaints**

An employee may grieve any aspect of his or her employment relationship which causes dissatisfaction. However, unless the grievant can show a violation of one of the rights enumerated above, the complaint is not one that may be rectified through the grievance procedure. Most of the non-grievable complaints relate to managerial prerogative matters - staffing, methods of organization, or operations, selection of employees for provisional appointment, etc. However, any complaint which has any merit should receive appropriate consideration whether or not it is technically grievable.

**C. Matters Non-Grievable**

There are certain issues that are not grievable. Among the most common are disputes involving the Rules and Regulations of the NYC Department of Citywide Admin. Services* Another is the substance or content of performance evaluations. An employee may not grieve an unsatisfactory evaluation, or the failure to give an outstanding evaluation.

*(DCAS)

## D. Who May Bring a Grievance Action

A grievance may be brought by an individual employee, a group of employees or the certified union on behalf of the employees, or by the union itself.

## E. Representation of Grievants

Grievants may be represented by the certified union or may represent themselves in a grievance proceeding. However, the union has the contractual right to receive written notification of all grievances filed by employees, all scheduled hearings and all grievance determinations. The union has the right to have a representative present at any grievance hearing, even though the employee elects to present his own case. Non-certified unions may not represent a grievant nor be present at a grievance hearing.

## F. Steps In the Grievance Process

Most contracts provide for a four step grievance procedure. The first step is normally conducted by the location director, or his/her designee, the second step by the Agency Office of Labor Relations, and the third step by the City Office of Labor Relations. In addition, the union, but not the grievant, may bring grievances to arbitration (Step IV). The union may bring directly to Step III a grievance of a general nature affecting a large number of employees, as well as claims of unfair recoupment and transportation delay appeals.

### 1. Step I (Work Location)

An employee or the union may present a grievance in writing to the administrative head of the location (or designee). Management must register each Step I grievance with the Office of Labor Relations.

Every effort should be made to resolve the grievance informally. **An interview should be scheduled with the employee to discuss the issue as quickly as possible.**

Since a grievance is defined as a claimed violation of a right, the grievant should always be asked to identify specifically which right is involved and to describe how it has been violated.

It is essential that the person conducting a grievance hearing be objective, open-minded and professional in his/her approach to the issue.

**The employee must be given a written decision by the end of the third day following the day of submission of the grievance.** If the director exceeds this time frame, the employee or union may proceed directly to Step II of the grievance procedure. In this event, however, the Director should still prepare his response and forward a copy to Agency Labor Relations.

2. **Step II ( Agency Office of Labor Relations)**

If the grievant is not satisfied with the response given at the Step I level, the union or the grievant may file a Step II appeal to the Agency Office of Labor Relations within five (5) working days of the receipt of the Step I reply. **A copy of the appeal must be forwarded to the Administrative Head of the location.**

On receipt of the Step II grievance, Labor Relations will assign the grievance to a Hearing Officer. If a hearing is held the grievant may be represented by the certified union or may represent him or herself in the proceeding. However, the union has the right to have a representative present at the hearing, even though the employee elects to present his or her own case.

3. **Step III (City Office of Labor Relations)**

If the employee elects not to accept the decision made at Step II by the Agency Office of Labor Relations, (s)he has ten (10) working days from receipt of the Step II determination to file an appeal to Step III; requesting a hearing at the City Office of Labor Relations.

At this hearing, both the agency and the employee have an opportunity to present their views. The City Office of Labor Relations then

issues a written determination.

4. **Step IV (Office of Collective Bargaining - Arbitration)**

If the grievance remains unresolved to the satisfaction of the employee after a Step III hearing at the City Office of Labor Relations, **ONLY the certified union organization representing the bargaining unit for the title in which the employee serves may petition the Office of Collective Bargaining for impartial arbitration.** (This is a costly procedure - borne equally by the union and the city).

The decision of the arbitrator is final and binding on both parties.

G. **Time Limits for Grievance Appeals**

Collective Bargaining agreements impose time limits on all steps in the grievance process. A grievance must be timely presented - no later than 120 days after the date on which the grievance arose. For all out of title grievances which cover any period prior to the date of the filing of the **Step I** grievance, no payment will be made unless such grievance has been filed within thirty (30) days of the assignment to alleged out-of-title work. Similarly, time limits are imposed at each step of the grievance process for response by the City and for appeal to the next step by the employee or the union. The agency's initial response to the grievance (Step I) is due by the end of the third work day following the date of submission. An appeal to the next step must be made by the union or employee within five working days of the receipt of the Step I decision. If the agency exceeds the time limits for its response, the grievance may be taken to the next step without waiting for the agency's determination.

H. **Form of Presentation**

The initial presentation of the grievance by the union or the employee must be in writing. The agency's response and all subsequent appeals and determinations must be in writing.

## I. Disciplinary Appeals

Permanent competitive employees have two avenues of appeal when the agency brings disciplinary charges against them. If they do not make a timely election in writing to appeal through the contractual grievance procedure, a formal section 75 disciplinary hearing will be scheduled pursuant to the Civil Service Law.

Certain Non-Competitive employees also have the same two avenues of appeal. These are:

- Employees who served in the armed forces during war time, as defined.
- Volunteer fire fighters.
- Homemakers or Home Aides with three years of service.
- Employees with five years of service.

Non-competitive employees with six months of service who have disciplinary rights as stated in their respective contract may appeal a disciplinary action through the grievance process only. They are not entitled to a Section 75 proceeding until they reach five years of service.

Certain provisional employees with two years of service are entitled to grievance appeals.

## J. Waiving or Omitting Grievance Steps

In order to initiate a grievance, an employee or union must present it to the location director. Only in claims of improper recoupment of monies, transportation delay excusals and alleged contract violations of a general nature affecting a large group of employees may the union by-pass the initial stages of the grievance procedure and go directly to Step III, City Office of Labor Relations. Similarly, a location director may not waive the responsibility to respond to the grievance, except where the matter is clearly beyond the director's jurisdiction or competence and the director cannot issue an authoritative response to the grievance. For instance, a location

director may not deal with a claim that a particular job should be classified at the supervising level rather than the senior level or that an employee was improperly denied seniority credit for prior City service with another City agency. In such relatively rare instances, the location director may waive jurisdiction in his or her written response. There are, however, many instances in which the location director can and should make a concerted effort to obtain an authoritative response to the grievance, even if the matter is not his or her direct responsibility. For example, a grievance to receive payment for overtime worked may be resolvable by a call to Timekeeping. It is in the interest of the location to avoid unnecessary grievance appeals.

## K. Conduct of Grievance Conference

### 1. Attitude of Person Conducting Hearing

It is essential that those conducting grievance hearings be completely objective, open-minded, and professional in their approach to the issue before them.

### 2. Hearing Officer as Agency Representative

When conducting a grievance hearing, location directors are obliged to dispose of the grievance in accordance with the agency's policies, not their private opinions.

## L. Implementation of Grievance Determinations

Grievance determinations and arbitration awards must be implemented promptly. Delays in implementation may cause employees and union complaints, waste the time of the various offices involved in answering the complaint, and undermine the grievance procedure as an effective means of resolving disputes.

## Grievance Procedure

**All grievances must be presented in writing at all steps in the grievance procedure. For all (out-of-title) grievances... no monetary award shall in any event cover any period prior to the date of the filing of the Step I grievance unless such grievance has been filed within thirty (30) days of the assignment to (that) alleged out-of-title work.**

**No monetary award for a grievance alleging a miscalculation of salary rate resulting in a payroll error of a continuing nature shall be issued unless such grievance has been filed within the time limitation set forth in Step I below for such grievances; if the grievance is so filed, any monetary award shall in any event cover only the period up to six years prior to the date of the filing of the grievance.**

**Step I: The employee and/or the Union shall present the grievance in the form of a memorandum to the person designated for such purpose by the agency head no later than 120 days after the date on which the grievance arose, except that grievances alleging a miscalculation of salary rate resulting in a payroll error of a continuing nature shall be presented no later than 120 days after the first date on which the grievant discovered the payroll error. The employee may also request an appointment to discuss the grievance and such request shall be granted. The person designated by the Employer to hear the grievance shall take any Steps necessary to a proper disposition of the grievance and shall issue a determination in writing by the end of the third work day following the date of submission.**

**NOTE: In the case of grievances in the Health and Hospitals Corporation (except those for disciplinary actions and for claimed improper holding of an open competitive rather than a promotional exam)... the following Step I(a) shall apply prior to Step II of this Section:**

**Step I(a): An appeal from an unsatisfactory determination at Step I shall be presented in writing to the person designated by the agency head for such purpose. The appeal must be made within five (5) working days of the receipt of the Step I determination. A copy of the grievance appeal shall be sent to the person who initially passed upon the grievance. The person designated to receive the appeal at this Step shall meet with the employee and/or the Union for review of the grievance and shall issue a determination to the employee and/or the Union by the end of the fifth work day following the day on which the appeal was filed.**

**Step II: An appeal from an unsatisfactory determination at Step I or Step I(a), where applicable, shall be presented in writing to the agency head or the agency head's designated representative who shall not be the same person designated in Step I or Step I(a). The appeal must be made within five (5) work days of the receipt of the Step I or Step I(a) determination. The agency head or designated representative, if any, shall meet with the employee and/or the Union for review of the grievance and shall issue a determination in writing by the end of the tenth work day following the date on which the appeal was filed.**

**Step III: An appeal from an unsatisfactory determination at Step II shall be presented by the employee and/or the Union to the Commissioner of Labor Relations in writing within ten (10) work days of the receipt of the Step II determination. The grievant or the Union should submit copies of the Step I and Step II grievance filings and any agency responses thereto. Copies of such appeal shall be sent to the agency head. The Commissioner of Labor Relations or the Commissioner's designee shall review all appeals from Step II determinations and shall issue a determination on such appeals within fifteen (15) work days following the date on which the appeal was filed.**

**Step IV: An appeal from an unsatisfactory determination at Step III may be brought solely by the Union to the Office of Collective Bargaining for impartial arbitration within fifteen (15) work days of receipt of the Step III determination. In addition, the Employer shall have the right to bring directly to arbitration any dispute between the parties concerning any matter defined herein as a "grievance." The Employer shall commence such arbitration by submitting a written request therefor to the Office of Collective Bargaining. A copy of the notice requesting impartial arbitration shall be forwarded to the opposing party. The arbitration shall be conducted in accordance with Title 61 of the Rules of the City of New York. The costs and fees of such arbitration shall be borne equally by the Union and the Employer.**

**The arbitrator's decision, order or award (if any) shall be limited to the application and interpretation of the Agreement, and the arbitrator shall not add to, subtract from or modify the Agreement or any rule, regulation, written policy or order mentioned in (the first) Section of this Article. The arbitrator's award shall be final and binding and enforceable in any appropriate tribunal in accordance with Article 75 of the Civil Practice Law and Rules. The arbitrator may provide for and direct such relief as the arbitrator deems necessary and proper, subject to the limitations set forth above and any applicable limitations of law.**