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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

*David E. Duff*  
EXECUTIVE SECRETARY

May 22, 1995

**To:** Board of Directors (Organization & Personnel Committee--Action)  
**From:** General Manager  
**Subject:** Administrative Code Change -- Disciplinary and Appeal Procedure

**RECOMMENDATION:**

Modify the Administrative Code to add Sections 6217 and 6218 to include a disciplinary and appeal procedure for employees in the General Unit (i.e., the Employee's Association of the Metropolitan Water District of Southern California) who choose not to use the procedure included therein, and for the employees in the Confidential, Supervisory and Management Units.

John R. Wodraska  
General Manager

Submitted by:

*Izetta E. Birch*  
Izetta E. Birch  
Director of Human Resources

Concur:

*John R. Wodraska*  
John R. Wodraska  
General Manager

WAS/an  
Attachments  
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**EXECUTIVE SUMMARY:**

A Disciplinary and Appeal Procedure for employees in the Confidential, Supervisory, and Management Units has been developed to fulfill the District's obligation under each of the current MOUs. The Appeal Procedure has also been developed to satisfy the District's obligation to provide an appeal procedure for those employees in the General Unit who choose not to use the negotiated procedure. The Appeal Procedure supersedes the provisions of Management Bulletin 8 3/4 for employees in the Confidential, Supervisory and Management Units as well as the provisions of Management Bulletin 8 1/2 for employees in the General Unit.

The attached procedures require District management to provide an employee with the specific written documentation which supports the intended disciplinary action and provides the employee with an opportunity to respond to the intended action. If the District subsequently issues the discipline, the employee may select one of three appeal alternatives: hearing, consultation, or mediation.

**DETAILED REPORT:**

In California there is a requirement that any public employee subjected to major disciplinary penalties be accorded a chance to appeal such discipline if the employee has a legitimate right to continued employment.

The General Unit MOU provides a disciplinary appeal procedure for members of that unit who are suspended in excess of five (5) days, demoted, or discharged from District employment. Part of the agreement allows the Union to decide if the appeal procedure may be used. If an employee chooses not to be represented by the Union in the appeal process, then the Union has the right to refuse access to the appeal procedure. In that case, the District must provide an alternative appeal procedure for the employee.

The MOUs for confidential, supervisory and management employees also include articles concerning discipline. Each of these MOUs, however, states that those employees are "subject to those provisions of any disciplinary procedure which the General Manager determines to be appropriate to apply to the Unit. Such procedure is found in the Administrative Code."

Consequently, to satisfy the District's obligation to provide an appeal procedure for those employees in the General Unit who choose not to use the negotiated procedure, and to fulfill the obligation under the other three MOUs to place an appeal procedure in the Administrative Code, the District has developed a procedure which will be placed at Sections 6217 and 6218. This disciplinary and appeal procedure supersedes the provisions of Management Bulletin 8 3/4 for employees in the Confidential, Supervisory, Management Units and the provisions of Management Bulletin 8 1/2 for employees in the General Unit.

The language contained in Sections 6217 and 6218 (Attachments A and B) requires District management to provide an employee with the specific written documentation which supports the intended action and provides him or her with an opportunity to respond to the intended action. The documentation provided to the employee will also include a copy of the General Manager's Rules Providing Due Process Rights for Non-Probationary Classified Employees (Attachment C). If the District subsequently issues the discipline, the employee may select one of three appeal alternatives:

- **Hearing** - The Department Head shall select a Hearing Officer from among the Deputy General Managers, Assistant Department Heads, Division Heads, or an individual from outside the District, to hear the dispute and present a recommendation to the Department Head.
- **Consultation** - The grievant, grievant's representative, if any, the grievant's second level manager and a representative of the Employee Relations Section of the Division of Human Resources shall meet in an attempt to resolve the problem.
- **Mediation** - The grievant, the grievant's representative, if any, the grievant's second level manager and a representative of the Employee Relations Section of the Division of Human Resources shall meet with the assistance of a Mediator from the State Department of Industrial Relations in an attempt to resolve the problem.

Each of the above alternatives ends at the Department Head level whose decision is final.

## Attachment A

## § 6217 DISCIPLINARY PROCEDURE

If a regular employee is to be suspended for two (2) or more days, demoted, i.e., moved from one classification to another classification having a lower salary grade, or discharged, the employee shall:

- (a) Receive written notice of the proposed action stating the date it is intended to become effective, the specific grounds and the particular facts upon which the action is based.
- (b) Receive copies of any known materials, reports or other documents upon which the action is based.
- (c) Be accorded the right to respond in writing within a reasonable period of time to the proposed charges; or, in the alternative, be accorded the right to meet within a reasonable period of time with the Division Manager or designee who has the authority to recommend modification or elimination of the proposed disciplinary action.
- (d) Be given the results of Section 6217(c) above in writing within a reasonable period of time.
- (e) Be advised of his or her appeal rights as provided in Section 6218.
- (f) Be advised of the District's rules providing due process rights for non-probationary classified employees who are disciplined.

## Attachment B

## § 6218 APPEAL PROCEDURE

- (a) Any regular non-probationary employee who is suspended for more than five (5) working days, demoted, i.e., moved from one classification to another classification having a lower salary grade, or discharged shall be entitled to select one of the alternatives listed in Section 6218(b):
- (b) **ALTERNATIVES:**
- (1) **Hearing** - The Department Head shall select a Hearing Officer from among the Deputy General Managers, Assistant Department Heads, Division Heads, or an individual from outside the District, to hear the dispute and present a recommendation to the Department Head.
  - (2) **Consultation** - The grievant, the grievant's representative, if any, the grievant's second level manager and a representative of the Employee Relations Section of the Division of Human Resources shall meet in an attempt to resolve the problem.
  - (3) **Mediation** - The grievant, the grievant's representative, if any, the grievant's second level manager and a representative of the Employee Relations Section of the Division Human Resources shall meet with the assistance of a Mediator from the State Department of Industrial Relations in an attempt to resolve the problem.
- (c) **APPEAL PROCESS:**
- (1) A written request specifying one of the alternatives listed in Section 6218(b) must be filed by the employee with the Director of Human Resources within fifteen (15) days of the date of the notice of disciplinary action.
  - (2) Within ten (10) days of an employee filing a request with the Director of Human Resources, the employee shall receive written notice of the particulars concerning the alternative selected.
  - (3) The results of the alternative selected by the grievant shall be advisory to the Department Head.
  - (4) The Department Head shall either accept, reject or modify such result. The Department Head's decision shall be communicated in writing to the parties and shall be final and binding.

## Attachment C

**RULES PROVIDING DUE PROCESS RIGHTS FOR NON-PROBATIONARY  
CLASSIFIED EMPLOYEES**

Any non-probationary classified employee electing an evidentiary hearing pursuant to the appeals rights contained in this notice shall be afforded the following due process rights.

- A. The Hearing Officer shall conduct the hearing utilizing accepted administrative procedures subject to the following requirements:
1. The District shall be responsible for producing all witnesses and materials under the jurisdiction requested by either party.
  2. Each party may be represented by counsel, or a representative of his/her choice.
  3. The burden of proof is on the District. Charges must be proven by a preponderance of the evidence.
  4. A record of the hearing shall be made.
  5. Opening and closing statements shall be permitted. Opening briefs shall be permitted.
  6. The disciplined employee may, but shall not be required, to testify.
  7. Witnesses shall testify under oath or affirmation and shall be subject to cross-examination. Evidence shall be presented under oath, affirmation or stipulation of the parties. Hearsay evidence may be admitted and may be used to supplement a finding but shall not be the sole basis for a finding.
  8. The hearing officer shall determine the appropriateness and necessity for post-hearing briefs.
- B. The hearing officer shall expeditiously issue recommended written findings supported by the evidence and a recommended written decision supported by the findings. The hearing officer shall not consider or act upon any information other than testimony and evidence in the record. The recommended findings and decision of the hearing officer shall be delivered to the Department Head.
- C. The Department Head may modify the recommended findings, but such modification shall be based on his/her review of the record of the proceedings. The Department Head shall expeditiously affirm or change the decision recommended by the hearing officer. The decision may include reinstatement, retroactive compensation, and any other appropriate remedies. The decision of the Department Head shall be final.