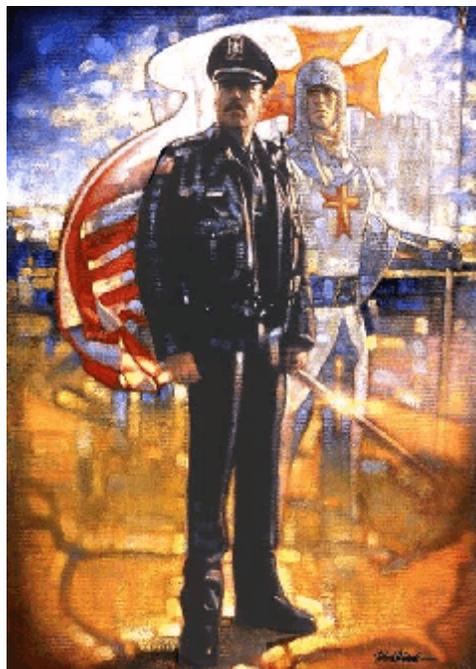




Office of State Examiner

Municipal Fire and Police Civil Service
Melinda B. Livingston, State Examiner

HEADSTART!



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Municipal Fire and Police Civil Service

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Welcome to our MFPCS *Headstart!* manual. The new format and subject areas are in response to the comments and suggestions you have made about the kind of information which our office could provide that might be useful to you as administrators and civil service boards.

In the past we have focused specifically on the Municipal Fire and Civil Service Law and the requirements it places on us. The problem with this approach is that the way we do our jobs in operating the Municipal Fire and Police Civil Service System is also controlled by influences other than state law. *Cleveland Board of Education v. Loudermill* in 1985 forever changed the manner in which terminations must be handled, but is not a part of our state law.

This manual is a starting point for use in making the system work in your jurisdiction. Some of the points covered are simply ideas for thought so that you might evaluate your practices in a new light. Other points are related to case law and the Municipal Fire and Police Civil Service law, and will give you tools to be successful in your personnel management efforts. We have no attorneys on staff at the Office of State Examiner, and do not intend for this manual to be used as a legal guide. Our goal is to provide a basic background in the requirements of the system, along with what will hopefully seem like good ideas for supervising employees, so that the MFPCS will be a tool for success rather than a roadblock to progress.

As always, we welcome your comments and suggestions. Our goal is to add additional topics in the future, so let us know how we might better serve you.

Sincerely,

Melinda B. Livingston
State Examiner

SPECIAL NOTE - MANUALS DATED MAY 2004

HEADSTART and OPERATION OF A MUNICIPAL FIRE AND POLICE CIVIL SERVICE SYSTEM

Various Louisiana Revised Statutes in the Municipal Fire and Police Civil Service Laws, Fire Employee's Rights, and Rights of Law Enforcement Officers have been revised since we produced our new Headstart Manual and revised our Operation of a Civil Service System manual in May of 2004. Inasmuch as we have not completed the revisions to our manuals at this time, we have listed below the revised statutes that have been revised.

Please refer to the copy of the Municipal Fire and Police Civil Service Laws, Fire Employee's Rights (Fire Bill of Rights), and Rights of Law Enforcement Officers (Police Bill of Rights) on our website (www.ose.louisiana.gov) to view the current version of the laws as amended by the Louisiana Legislature.

2004 **R.S. 33:2477(4) and 33:2537(4) - Duties of the board** - Added: Provides for the length of time within which municipal fire and police civil service boards shall conduct certain investigations. They must complete investigation within 60 days of the board's receipt of the request.

R.S. 33:2491.3 and 33:2551.1 - Promotional employment lists; limitations - Added: Employees in the police department who are employed after July 1, 2004, in certain classes will no longer have time served in those classes counted as departmental seniority.

R.S. 33:2493(c) - Admission to tests Added: Any applicant admitted to the competitive examinations which may be called for by the state examiner under the provisions of R.S. 33:2492(2), for the classifications of entrance police officer, entrance firefighter, or for the entrance classifications comprising the duties of the operation and maintenance of radio, alarm, or signal systems for the respective department, shall be a citizen of the United States, and of legal age.

R.S. 33:2186 – Fire Employee's Rights Added (not a complete list of the additions): minimum standards on investigations were added to provide that they all investigations must be completed within 60 days, including the conducting of any pre-disciplinary hearing or conference. However, the fire department may petition the local governing authority for an extension up to 60 additional days.

2005 **R.S. 33:2495(B)(1) and 33:2555(B)(1) - Working test** - Removed: the provisions on failing an employee in the three to six months of the working test period. Revised: if the appointing authority wishes to fail an employee in his working test period and the employee has worked less than six months, the appointing authority must get prior approval from the

civil service board.

Revised: if the appointing authority wishes to fail an entry level fireman or an entry level radio operator in his working test period and the employee has worked less than six months, no prior approval of the civil service board is required.

No change: any employee who is rejected after serving a working test of six months but not more than one year, may appeal to the board only upon the grounds that he was not given a fair opportunity to prove his ability in the position.

2006

R.S. 33:2491(I) and 33:2551(9) – Establishment and maintenance of employment lists - Revised: law now provides that an individual who obtains a passing score on an entry level Fire Communications Officer and Police Communications Officer exam administered by the State Examiner's Office may have his name placed on the eligibility list for the respective class in jurisdictions in the Municipal Fire and Police Civil Service System, provided the person's application and score are accepted by the board of the municipality, parish, or fire protection district in which he seeks employment.

R.S. 33:2492(2) and 33:2552(2) – Tests - Added: allows the State Examiner to call and administer exams for Firefighter, Police Officer, entry level Fire and Police Communications Officer and notify passing applicants in any manner prescribed by the State Examiner.

R.S. 33:2493(A)(3) and 33:2553(A)(3) – Admission to tests - Revised: Allows persons from out of state to apply for civil service examinations. Applicants are no longer required to be a qualified elector of the state of Louisiana to be eligible for any examination. Any applicant must be a citizen of the United States and of legal age.

R.S. 33:2496(c) and 33:2556(3) – Temporary appointments - Revised: the appointing authority may now make an emergency appointment for up to 90 days when it is necessary due to a local emergency which is extraordinary (such as severe weather conditions or an uncommon fire or emergency scene requiring additional personnel). This appointment shall terminate upon the conclusion of the emergency or within 90 days, whichever occurs first. In the event that a state of emergency is declared by the governor, emergency appointments shall be effective for the duration of the state of emergency.

R.S. 33:2501(c) and 33:2561(c) – Appeals by employees to the board - Revised: the civil service board may now modify the order of removal, suspension, demotion, discharge, or other disciplinary action by directing a suspension without pay, for a given period, a reduction in pay to the rate prevailing for the next lower class, a reduction or demotion to a position of any lower class and to the rate of pay prevailing thereof, or such other lesser punitive action that may be appropriate under the circumstances.

R.S. 33:2531.1 - Continuation of coverage by Part- Added: notwithstanding any provision of law to the contrary, the provisions of this Part shall continue to be applicable to any municipality, parish, or fire protection district which, prior to July 1, 2006, established a classified civil service pursuant to this Part.

2007

R.S. 33:2495.2 - Continuation of system - Added: if the city of New Iberia which has a municipal fire and police civil service system in existence on the effective date of this Section ceases to operate either its fire department or its police department, the civil service system shall continue in full force and effect for the remaining department as provided by law.

R.S. 33:2181 (c) - Fire Employee's Rights - Added: now provides that no fire employee shall be disciplined, demoted, dismissed or be subject to any adverse action unless the investigation is conducted in accordance with this Subpart. Any discipline, demotion, dismissal or adverse action of any sort taken against a fire employee without complete compliance with the provisions of this Subpart is an absolute nullity.

R.S. 40:2531(B)(7) - Rights of Law Enforcement Officer - Added (not a complete list of the additions): minimum standards on investigations were added to provide that they all investigations must be completed within 60 days. However, the police department may petition the local municipal fire and police civil service board for an extension up to 60 additional days. The investigation is consider complete upon notice to the police department employee under investigation of a pre-disciplinary hearing or a determination of an unfounded or unsustained complaint. Other provisions added: investigation of police employee shall be initiated within 14 days of the date the complaint is received.

R.S. 40:2531(c)- Rights of Law Enforcement Officers - Added: now provides that no police employee shall be disciplined, demoted, dismissed or be subject to any adverse action unless the investigation is conducted in accordance with this Subpart. Any discipline, demotion, dismissal or adverse action of any sort taken against a fire employee without complete compliance with the provisions of this Subpart is an absolute nullity.

2008

R.S. 33:2496(A)(1) and 33:2556(1)(a) - Temporary Appointments - Revised: now any provisional appointment made to a position of the competitive classes, shall be terminated upon the regular filling of the vacancy in any manner authorized under this Part and, in any event, within sixty days after certification from which a regular or substitute appointment, as the case may be, can be made under the provisions of this Part.

R.S. 33:2501(C)(3) and 33:2561(C)(3) Appeals by Employees to the Board - Added: now the employee or appointing authority may ask the board for a reconsideration

of a previous finding of an appeal hearing within six months. The board has to hear the request within 30 days and make a decision to conduct a hearing or have an investigation. The hearing or investigation has to be held within 30 days of the decision. The board may modify or reverse its original decision.

R.S. 33:2536.2 - Jefferson Parish; board and board secretary - Revised: notwithstanding the provisions of R.S. 33:2536(B)(1)(a), to be eligible for appointment to or to serve as a member of the Jefferson Parish Fire Civil Service Board, a person shall be a citizen of the United States of America, a resident of Jefferson Parish for a least five years preceding his appointment, and at the time of his appointment, a qualified voter of the parish.

R.S. 40:2531- Police Officer Bill of Rights - Added: the term “police employees” to the various parts of the law as the law is now going to be applicable to all police employees as defined by R.S. 40:1372(5) (any officer that has been assigned to police work as a peace officer pursuant to 40:1379). Added: the officer in question can be represented by counsel or other representative and shall be granted 30 days to secure the representation. The representation can offer advice and make statements on record at any interrogation, interview or hearing during the investigation.

R.S. 42:7(a)(1)(b)(I) and (II)- Notice of Meetings - Revised: now the board may take up a matter that is not on the agenda with unanimous vote. When it comes to motion to add an item: the matter must be identified, purpose for the addition, and entered into the minutes. The public shall be offered the opportunity to make comment before the vote on the motion.

2009

R.S. 33:2476.4 - Jefferson Parish municipal fire and police civil service board; board secretary - Added: Notwithstanding the provisions of R.S. 33:2476(L)(1), any municipal fire and police civil service board in any municipality in Jefferson Parish may also fill the office of secretary by employing any other person on a full-time basis with a rate of salary equivalent to like administrative personnel of the municipality, which salary range shall be subject to approval by the governing authority and the mayor. (Harahan, Kenner, Westwego)

R.S. 33:2481.3- Police chief; city of Houma; unclassified service - Added: the position of chief of police for the city of Houma is in the unclassified service, and the right of selection, appointment, supervision, and discharge for such position is vested in the president of the parish of Terrebonne.

R.S. 33:2491.4 - Promotional employment lists; tests; city of West Monroe; classified police service - Provides relative to the establishment and maintenance of promotional employment lists for the classified police service in the city of West Monroe. The maximum period which a name may remain on the promotional employment list in West Monroe shall be forty-eight months. The minimum period which a name may remain on the promotional employment list in West Monroe shall be as provided in 33:2491(F).

R.S. 33:2536.2(B) - Jefferson Parish; board and board secretary - Revised: added that the position of secretary can also be filled by assigning duties to an employee of the Eastbank Consolidated Special Services Fire Protection District. This is subject to the approval of the parish GA and the parish president.

R.S. 33:2181(A) and (B) - Fire Employee's Rights - Added: the definition of interrogation and additional minimum standards the department/appointing authority must follow when investigating a fire employee who is under investigation. Also, the fire employee must now be notified in writing the nature of the investigation, the person conducting the investigation, and the charges against him prior to the commencement of the investigation. Employees have to submit a written request for a copy of the recordings or transcript of the recording. The employees counsel may offer advice at any interrogation in the course of the investigation.

2010

R.S. 33:2476 (B)(1)(c) and 33:2536(B)(1)(c) - Municipal fire and police civil service boards - Added: Notwithstanding the provisions of Subparagraphs (a) and (b) of this Paragraph, the two members elected from the municipal fire and the municipal police departments shall not be required to be residents or qualified voters of the municipality in which they are appointed to serve or residents of the parish in which the municipality is located provided that such exceptions are approved by resolution of the local governing authority. The law still provides that the governing authority may pass a resolution allowing the fire and police department board members to be residents of the parish in which the municipality they are to serve is located for a period of at least five years preceding their appointment.

R.S. 33:2481.4 and R.S. 33:2541.1 - Deputy chief of police; competitive appointment - Added: provides that the governing authority may create, by ordinance, the competitive position of deputy chief of police in accordance with the provisions of this Section. Provides who is eligible, how the appointment is made, and other provisions of the position.

R.S. 33:2561(E) - Appeals by employees to the board - Revised: provides relative to appeals by employees; to provide for the jurisdiction of appeals.

HEADSTART!

For

Administrators

MFPCS Headstart!

For Administrators

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Making the Most of Supervision

Seeing Disciplinary Actions in a New Light

Generation X and Beyond . . .

The experts tell us that we have to change how we do business to manage the young employees. They have different expectations about their jobs and are motivated by different things than are those who have been in the workforce for a while. They have grown up in a culture that, in general, has not taught the respect for authority that was common in the educational process twenty years ago. A large number of new employees have never had to worry about a shortage of jobs during periods of unemployment. Rather than trying to convince us what skills they can bring to the job, they are waiting for us to tell them what we have to offer them. It's not that they don't have a work ethic - in many cases these young employees are very hard workers. They are, however, looking for challenges that are fun, new and exciting. Rather than us, as administrators, evaluating the fitness of the new employees, the current theory has the new employee evaluating our merits as an employer. Are we providing work that is interesting and challenging enough? Is our work environment too rigid, or can we operate at their comfort level? The bottom line is that the low rates of unemployment experienced recently have left an inadequate pool of qualified candidates from which to select our employees. To be successful in attracting and keeping a qualified staff in such a market, we must look at jobs we have to offer and the work environment we create in a new light.

For those of us who have been around for a while, this new trend is somewhat uncomfortable for us. We want things to be like they used to be and don't see why we should compromise what we are doing for a bunch of whiney kids. "Give me a break!" you might say. "Police and Fire Departments have been operating this way for at least fifty years - it's tradition!" As administrators, we feel that we will lose control by

giving into their demands. So, who is right – the administrators or the new crop of potential employees?

Reality tells us it should probably be a little of both. As administrators, we should not jeopardize our ability to carry out our mission. We have a responsibility to the public and to our employees. On the other hand, the face of the job market is changing. If we are going to be successful in recruiting and retaining qualified employees, we will also have to adapt and rethink the way we have always done things. The challenge is to find the right balance of change that does not compromise our mission.

CIVIL SERVICE KEY TO SUCCESS

<i>Hire the best people you can find.</i>

Establish performance expectations – I think there is a rule for that

As simple as this sounds, employees sometimes fail to meet our expectations because we have never really told them what we expect. It may seem like common sense to us, but keep in mind that our years of experience affect how we view job related situations. If the departmental image we wish to project is one of professionalism, efficiency, and respect, it is in our best interests to let each employee know how this translates to his or her job. If we expect employees and supervisors alike to be treated with courtesy and respect, we should not take it for granted that this concept is inherent in the preconceived notions we all have about our jobs. We may have rules about how to accomplish specific tasks and what kind of time frame is expected, specific training that should be completed, how we interact with the public and our

coworkers, and benefits related to our job such as sick and annual leave.

While this sounds extremely obvious, the key to successful personnel management is to first decide what your basic expectations are about how the department should be run and how you expect your employees to interact with each other and the public.

What are your expectations?

- ☞ Expect mutual respect between supervisors and employees.*
- ☞ Expect employees to treat the public with courtesy and respect.*
- ☞ Expect everyone to do his or her job professionally, and with commitment and enthusiasm.*
- ☞ Expect all employees to conduct themselves so that the reputation and integrity of the department is above reproach.*

How do you convey your philosophy to your employees? Departmental rules and policies should cover not only task specific rules, but also guidelines on how you expect members of the department to interact with each other and the public. While rules are necessary, sometimes we make a mistake by over-regulating things that are really not that important to us. Two pages of rules on the use of the refrigerator at the office may be overkill. On the other hand, occasionally an employee will do something so stupid that it never would have occurred to you that a rule would be necessary. In our case, it was "Thou shall not drink and drive the state car."

The last thing we want to do is to write the rules just for the

benefit of the problem employees so that the good employees are disadvantaged. An example of this might be requiring a doctor's excuse each time an employee is absent. You may have an employee who has never taken a sick day in five years, but just came down with a virus that is making the rounds. There is probably nothing that the doctor can do for him, and you have no reason to suspect this employee of misusing his sick leave benefit, yet he will have to go to the expense of seeing a doctor just to get an excuse to return to work. The other alternative is that the sick employee comes to work anyway because he knows how much the doctor will cost and that the illness just has to run its course, and proceeds to share his bug with the rest of the department. What you really want to do is eliminate the abuse of sick leave. To do this you should have a strong policy against the abuse of sick leave, then target the problem employees. You can have a rule that states that doctors excuses will be required after a set number of absences.

When evaluating your own policies and procedures, ask yourself if the rule is necessary to:

- ☞ Operate the department in an efficient and cost effective manner.*
- ☞ Avoid violating someone's rights.*
- ☞ Provide for the safety of employees and the public.*
- ☞ Ensure a comfortable and professional work climate.*
- ☞ Maintain the integrity and reputation of the department.*
- ☞ Stay out of legal trouble.*

Have your rules or policies written in an easy to understand format. A memo may be an effective way to handle those things which come up between official revisions of your rules and policies, but a large collection of memos is not the most effective way to convey what you expect from employees in the long run. If your policy manual consists of many years'

worth of memos, consider how effective this will be in providing a comprehensive guideline for new employees.

CIVIL SERVICE KEY TO SUCCESS

Make your expectations known to your employees in clear, concise, and easy to understand rules and policies.



Documentation Tip! Rules and Policies

1. Write only those rules necessary, but do write rules to cover those things that are important to you.
2. Don't leave rules in effect if the general consensus is that the rule is on the books, but no one really follows it. This undermines your authority to enforce the rules that are important to you.
3. Set a schedule to review the rules you have in effect – at least once a year is probably a good idea.
4. When the rules change, have a sign-up sheet indicating that an employee has been provided the new rules, a copy of which should be maintained in the employee's personnel file. (This later serves as excellent documentation that the employee should have understood the rule and not broken it.)
5. All policies should have an effective date and be certified by the Chief of the department.

Rules are made to be followed – what part of “Thou shall not” did you not understand?

Supervision is how administrators and supervisors guide employees toward certain behaviors so that the mission of the department is accomplished. We establish rules and

policies to provide a framework within which employees must operate. Rules provide for order, rules make sure we do not violate laws and accepted practices, and rules let us know what is expected of us. The basic foundation for making the department run as efficiently and effectively as it should, therefore, is to establish and clearly communicate your expectations to those on your team.

Now that employees know what is expected of them, what do we do when those expectations are not met? The paramilitary culture of most fire and police departments sometimes leads to a rigid application of consequences. Some departments have an elaborate list of offenses and consequences that tie the hands of supervisors and administrators in making decisions which will best resolve problems. Minor infractions may receive reprimands, being charged with a specific number of minor infractions within a period of time might warrant a one day suspension, and major offenses are attached to specific penalties such as suspensions and termination. The advantage in this system is that employees know they are taking a calculated risk when they break the rules in that the penalty is already spelled out. The disadvantages, however, are that administrators are not able to consider the unique nature of individuals or extenuating circumstances surrounding the infraction, and, most importantly, what action will best insure that the problem will not be repeated. With many employees, counseling is the only action necessary to ensure that the problem behavior is not repeated, and supervisors should not be forced, by policy, into recommending more serious disciplinary action than is necessary to correct the problem. On the other hand, some actions are such a violation of the public's trust and confidence, may so undermine the public's perception of the department, or may cause such serious legal problems for the department that termination may be warranted even though an employee has never been in trouble before. In this case, an administrator should also not have his hands tied by established policy from taking action that is reasonable and necessary including termination. In

other words, administrators should be able to evaluate each situation on its own merits, take reasonable action to change the employee's behavior, or, when necessary in good faith for cause, separate the employee from the departmental service.

CIVIL SERVICE KEY TO SUCCESS

<i>Don't tie your hands by developing an elaborate hierarchy of penalties for specific violations or combinations of violations.</i>
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Coach First, Discipline Later

In the good old days, employers held all the cards and employees were actually grateful for the privilege of being employed by our organization. In today's job market, however, the good employees are the ones with the advantage, and the wise administrator makes sure that the culture of his organization changes along with the labor market. To attract and retain qualified employees, we must constantly examine what changes our organization needs to make to be competitive in the labor market. This is not to say that we let the new employees run the show or that we manage the department by committee, but there are some basic cultural differences between the old and new schools of supervision. Whereas the old school of supervision was very autocratic, the new school encourages employee development and a mutual respect between supervisors and employees that is evident within all levels of the organization. In the simplest of terms, we need to treat employees as we would like to be treated. Effective Supervisory Practices, published by the International City/County Management Association, is one of the standard references we use in the development of our examinations. This book has an excellent description of the concept of supervisory coaching:

Coaching is helping your workers learn and do their jobs to the best of their abilities. It may involve on-the-job training in basic job skills, or it may involve more subtle motivation by which you encourage your employees and help them refine their skills and increase their job efficiency.

Coaching is one of the most important and challenging aspects of supervision. The successful supervisor, like the successful coach, can create a positive work environment by giving support and encouragement to others and by reinforcing their desire to do well. Like a good coach, the supervisor is able to get across his or her performance expectations. A good supervisory coach observes the team members, knows their abilities, and is able to bring out the best in them.

There are times when the supervisory coach will be severely challenged. It may be by the employee who feels he or she is more qualified for the supervisor's position, or by the marginal worker who does just enough to get by, or by the employee who possesses excellent technical skills but is not able to get along with his or her co-workers.

In the face of these challenges, the supervisor is responsible for getting the work out – for results and productivity. He or she must direct the individual's work and that of the crew or team, yet still have a vision of the big picture, the goals the department must accomplish. It is the job of the effective supervisory coach to find ways to cope with human demands and to inspire commitment among employees. After all, the true test of a successful coach is not only the day-to-day performance record – it is the bonds of trust and respect created within the team that produce consistent winning results over a long period of time.¹

In other words, by taking a step back from our traditional views of discipline within a fire or police department we might best accomplish our goals by trying the positive "coaching" approach first before traditional disciplinary action is needed. If this approach is successful, the

¹*Effective Supervisory Practices, 3rd Edition, 1995, published by ICMA, pp. 122-123.*

employee has a more positive feeling about his/her job and the department. In addition, the supervisors and administrators have saved an unbelievable amount of time, and both supervisors and employees have not experienced the inevitable escalation of stress that occurs with traditional disciplinary actions.

Documentation Tip! Supervisory File

*Each supervisor should be required to keep a simple diary of interactions, accomplishments and problems associated with each employee under his/her supervision. The form may be as simple as a spiral notebook, or may be a standard computer file designed for ease of use. Entries should include examples of *good* work, examples of work problems, and a record of discussions where an employee is encouraged to take a different approach or reminded of a departmental policy. The entries concerning counseling should include date, time, those present, what was said, and comments made by the employee.*

These notes become invaluable in having a balanced picture of employee performance when attempting to do performance evaluations, are excellent tools for evaluating training needs, and, when other methods fail, serve as useful supporting documentation when more formal disciplinary action is required.

Help! The Warm Fuzzy Stuff Didn't Work!

No matter how progressive and positive the administrators and supervisors might be, there are those occasional employees who fail to understand their role in the coaching scenario. In other words, they refuse to be coached. They push the limits of acceptable behavior, continue to violate the rules, and seem to feel Teflon-coated. It is unfortunate that, in many cases, the more negative aspect of discipline must be employed in order to get the employee's attention and effect a change in his/her behavior.

When rules or policies are violated, you should (1) act promptly, (2) get all the facts, and (3) decide what action should be taken. In deciding what penalty, if any, should be taken, Effective Supervisory Practices recommends asking the following questions:

- ▼ *Why did the worker commit the violation?*
- ▼ *Was it a major offense?*
- ▼ *How much trouble did it cause?*
- ▼ *How many people or dollars were involved?*
- ▼ *Was one rule broken, or more than one?*
- ▼ *How have previous violations of this rule by other employees been dealt with?*
- ▼ *Does the employee have a good conduct record?*
- ▼ *Does the employee have a good work record?*
- ▼ *How long has the employee worked in the department?*
- ▼ *When was the last disciplinary action (if any) taken against the employee?*
- ▼ *Did the employee understand the possible consequences of the violation?²*

The following are suggestions for progressively more serious attempts to effect a change in behavior or actions of the employee:

1. Verbal Reprimand

This is really not much different than the prior coaching technique, other than a difference in tone to convey the seriousness of the discussion. It is very important that the supervisor document this discussion in his/her supervisory file as described above.

 *Documentation Tip! Verbal Reprimands*

²Ibid, pp. 169-170.

The documentation for a verbal reprimand should be in the supervisor's notes, and should include the date, time, and the essence of what was said. Some departments have a form to document an "oral" reprimand that is then placed in the employee's file once completed. The problem with this is that the "oral" reprimand becomes a "written" reprimand, regardless of what it is called, and is appealable to the civil service board as a disciplinary action. Remember that placing a record of a "verbal" reprimand in the employee's official personnel file completely changes what you intended to do. Notes concerning a verbal reprimand should *only* be kept in a supervisory file.

2. *Written Record of Counseling*

A written record of counseling takes the form of a memorandum addressed to the employee. The problem behavior is clearly discussed, along with future performance expectations. The employee may be asked to sign the document acknowledging that he/she clearly understands the problem and what is expected in the future. If the employee refuses to sign the document, the supervisor notes such on the memorandum. The employee is provided a copy of the written record of counseling. The supervisor then places the written record of counseling in his supervisory file.



Documentation Tip! Written Record of Counseling

The reason the written record of counseling memorandum is placed in the supervisory file is that by placing it in the employee's personnel file, it becomes a written reprimand and is appealable to the civil service board. The employee receives the same message whether or not you place the document in the official personnel file, and it is really the message that is important here. If this step does not work and further disciplinary action is warranted, the permanent record will then be created in the employee's official personnel file.

A Final Word On Counseling Prior To Discipline

It is worth repeating that what we really want to do is change the employee's behavior with the least amount of stress on

both administrators and employees alike. The more successful we are in accomplishing this objective without having to resort to formal disciplinary action, the more successful we will be in creating a positive work environment. Departmental objectives will be accomplished and the employees will feel better about their jobs. The following are hints for resolving conflicts before disciplinary action is needed:

☞ Checklist! Counseling Prior to Discipline

- ☞ *Explain specifically what you have observed and why the behavior cannot continue.*
- ☞ *Request and listen attentively to the employee's reasons for the behavior.*
- ☞ *Ask the employee for ideas on changing the problem behavior and offer your help.*
- ☞ *Come to an agreement on specific action steps to be taken by the employee in improving problem behavior or job performance.*
- ☞ *Document the meeting in the supervisor's notes, noting the date and changes needed to improve employee performance.*
- ☞ *FOLLOW UP! Monitor whether or not counseling was effective and whether further action is needed.*

Supervisory Note File

*The most important concept to be gathered from this section is the **Supervisory Note File**. It is our advice that you make this a mandatory requirement for supervisors, and that this become an integral component in the evaluation of their job*

performance. The argument will be made that they do not have time to do this along with their "real" supervisory duties, but the fact is that you cannot afford not to do it. When you suspend an employee for one day for habitually coming in late to work, it is difficult to support on appeal unless you have specific dates and times in the supervisor's notes. If an employee flagrantly violates a rule about which he has been repeatedly counseled, it is difficult to make the disciplinary action stick without a supervisory record of those counseling sessions.

Example of Supervisory Note File:

<i>Date</i>	<i>Incident/Comment: Officer John Deaux</i>
<i>1/5/02</i>	<i>Spoke with John at approx. 7:30 a.m. about his report on the Smith burglary being turned in late. John admitted the report was late, and said that it just slipped his mind.</i>
<i>2/10/02</i>	<i>Told John that he did an excellent job in handling the major accident today on Smithfield Avenue.</i>
<i>3/3/02</i>	<i>John asked to talk to me today about a problem he is having with Officer B. Smith. Advised John of techniques he might use in diffusing the tension.</i>

3/15/0 2	<i>John called in sick at 7:00 a.m. on this date. Advised him that he failed to follow departmental policy in calling in at least 30 minutes prior to the start of his shift.</i>
3/18/0 2	<i>John called in sick at 7:30 a.m., 30 min. following the start of shift. Advised John that this was contrary to policy and that we would discuss it further upon his return to work.</i>
3/19/0 2	<i>Counseled John at approximately 7:30 a.m. about his recent violations of the policy requiring him to call in at least 30 min. prior to the start of the shift. Explained that his failure to call in time made our finding a replacement difficult and resulted in our precinct being understaffed. Provided John with a written record of our discussion which reiterated departmental policy and advised that disciplinary action might result in the future if he failed to adhere to the policy. John offered no explanation for his actions, and signed memorandum indicating that he understood the policy. Counseling memo will be maintained in my file.</i>

⚡ Timesaver!

It is the advice of the Office of State Examiner that the above two tools are not disciplinary actions and are not appealable to the civil service board. The remainder of actions described below are disciplinary actions and may be appealed to the civil service board. The more personnel problems you are able to resolve using the tools presented above, the more time you will save. Remember that the ultimate goal is to change the behavior of the employee. If that goal can be accomplished without having to spend hours preparing for appeal hearings or court appearances, you have hours to spend on more pressing matters.

3. *Written Reprimand*

The written form of the counseling the employee that the



reprimand takes the written record of described above, but should be advised document will be

placed in his official personnel file and reported to the civil service board. The employee should also be given a copy of the personnel action form which is used to report the action to the civil service board after the board has approved it. The employee will have fifteen days from the date he or she is given the written reprimand within which to appeal the action to the civil service board. Please note that the employee may be given the written reprimand (at which point the fifteen day count begins) prior to receiving a copy of the personnel action form signed by all parties involved. An employee may be given a written reprimand on December 1st, for example, but the civil service board may not have an opportunity to approve the form until its next regularly scheduled meeting on January 23rd. If the employee waits until receiving the signed PAF on January 24th, he has effectively lost his right of appeal due to the elapsed time.

 **Documentation Tip! Written Reprimands**

While the written record of counseling may be signed by the supervisor, someone in the chain of command above the supervisor, or the Chief of the department, the written reprimand must be transmitted over the approval of the appointing authority. The memorandum may come from either the Chief or the appointing authority, but the personnel action form transmitting the written reprimand to the civil service board must be approved by the appointing authority.

If the events which led to the written reprimand include prior counseling on the issue or perhaps a written record of counseling, reference should be made to the dates and subject of prior counseling, and a copy of the written record of counseling should be attached. If the written reprimand is appealed to the civil service board, such progressive action shows a good faith effort to work with the employee to improve his behavior or work methods. Complete documentation should also be included on the incident which prompted the current disciplinary action. This documentation must be furnished to both the civil service board and the employee.

The following disciplinary actions involve not only admonishment, but also represent some financial or seniority loss to the employee, and are therefore more severe. Administrators are advised to review the provisions of the Firefighter's and Police Officer's Bill of Rights printed

later in this manual.

4. Suspension

A suspension represents a loss of seniority and pay, although the two may not be equal. There must be some loss of both seniority and pay, however. If an employee is suspended for four days beginning on October 1 and ending on October 4, he/she will lose four days of seniority. The actual pay lost as a result of the suspension will vary depending upon the employee's work schedule and the timing of the suspension. In the above example, assume that the employee has been off for 48 hours and is scheduled to work from 7 a.m. October 2nd to 7 a.m. on October 3rd. He would not be scheduled to report for duty again until 7 a.m. on October 5th, so his actual loss of pay would only be for 24 hours. An employee may be suspended for no more than an aggregate of 90 days in any 12 consecutive month period and the suspension must be approved by the appointing authority.



Documentation Tip! Suspensions

Please, please, suspend in calendar days and not in hours. Using hours may sound good in theory until you try to develop the seniority roster vis-a-vis the definition of seniority. Trust us on this one – we have a number of jurisdictions who have had monumental problems in resolving conflicts regarding this issue.

If the suspension is appealed to the civil service board, the board will be determining if the action taken by the appointing authority is in good faith for cause, so it is advisable for the appointing authority to keep this in mind when determining the length of the suspension and the quality of the available supporting documentation. Documentation on prior counseling on this issue or written records of counseling should be attached. The specific departmental rules violated should be specified, as well as the provisions of state law which justify disciplinary action. This complete documentation must be provided to both the civil service board and the employee.

5. Reduction in Pay

A reduction in pay may be effected for a period of time to the

rate prevailing for the next lower class. This might be an appropriate disciplinary action if the infraction or action of the employee caused a monetary loss to the department. An example might be a Fire Driver who fails to follow proper safety procedures in backing up the apparatus and damages the truck through carelessness.

 **Documentation Tip! Reduction in Pay**

The personnel action form should include an effective date and an ending date for the action, and should specify the rate of pay the employee will be paid during the period of the disciplinary action.

6. Demotion

A demotion is a reduction in rank, with a resulting loss of pay. A demotion may be the next rank below the one currently occupied by the employee, or may extend incrementally to the lowest or entrance class. A demotion negates current eligibility for promotion on an existing promotional list. Consider, for example, a Police Lieutenant who is the senior eligible on the list for Police Captain. If he/she is demoted to Sergeant, and a subsequent appointment is made to Captain, the disciplined employee would no longer be eligible for promotion to Captain until he once again attains the rank of Lieutenant and requalifies, or in the event of a very unusual situation, it becomes necessary to give the test for Captain with a waiver.

 **Documentation Tip! Demotions**

If an employee is demoted to the next lower class and immediately takes the test for promotion to the rank from which the demotion occurred, his total departmental seniority will probably immediately place him back in his original position when an opening occurs. If it is the desire of the appointing authority that this not occur, the remarks section of the personnel action form must include a statement indicating when the employee will be able to take the test for promotion: *“Employee will be ineligible to take the test for (rank) for a period of __ months following the effective date of this action.”* Remember that the employee must be advised of all aspects of the disciplinary action, so if there is a chance that he will be appealing the action prior to receiving the approved PAF, all stipulations pertaining to the action should be contained in the letter advising the employee of the action to be taken against him. In other words, it is not appropriate for an employee to find out he will be prevented from testing for promotion for a period of time *only* after his prescribed period to appeal has expired.

7. Termination

The most serious form of disciplinary action is removing an employee from the service. A termination for delinquency or misconduct may effectively prevent an employee from obtaining similar employment in the respective service in any of the jurisdictions under the Municipal Fire and Police Civil Service Law. Terminations will be discussed in detail in the next section of this manual.

Documentation Tip! Terminations

The Municipal Fire and Police Civil Service Law requires that the appointing authority furnish both the employee and the civil service board with a statement in writing of the action and the complete reasons therefor. According to *Cleveland Board of Education vs. Loudermill*, the employee must also be given a pre-termination hearing. Please refer to the next section of this manual for more complete information on procedures that should be followed when separating an employee from the service.

Who is this Loudermill, and why do I have to put him on Administrative Leave With Pay?

Cleveland Board of Education vs. Loudermill was a landmark case

in 1985 that forever changed many of our personnel practices pertaining to disciplinary action. What the court determined is that public employees have a property interest in their employment that may not be taken away from them without due process. Assume you are in your first week as Police Chief and one of your officers is arrested by the sheriff's office for soliciting a prostitute while in uniform, in your marked police unit, and paying for the services rendered with a personalized check. (Okay, a few of the facts were changed, and we won't name the jurisdiction, but sometimes reality is better than an example we could come up with.) Needless to say, this could be a really embarrassing problem for the department. Your officer is in jail, for heaven's sake, and your initial reaction is "how fast can I fire him and why should I pay him when he is in jail?"

While not specifically discussed in the Municipal Fire and Police Civil Service Law, Administrative Leave With Pay is a tool needed by appointing authorities so that they may get all the facts prior to disadvantaging employees. Civil Service Boards are charged with the responsibility for adopting rules governing leave, and it is our recommendation that boards adopt a rule for Administrative Leave With Pay. Your investigation may turn up facts which explain why an employee acted in such a manner and which might convince you that disciplinary action is not warranted. As a general rule, don't take something significant away from the employee before you get all the facts and afford the employee due process. Administrative Leave With Pay is also a tool that facilitates removing the employee from the work setting so that the investigation might be completed and records might be preserved.

We understand the reluctance of appointing authorities to use this tool when an employee has clearly violated the integrity and impacted the reputation of your department. If you feel that it will be necessary to remove the employee from departmental service, however, it is in your best interest not to rush the process. It is our advice that you weigh the significance of paying the employee for a few extra days while you complete the required termination procedures against having the termination overturned and a

problem employee ordered back to work.

Administrative Leave With Pay, except in very unusual circumstances, should be for less than thirty days. It is simply a tool which allows you to complete your investigation prior to taking action. This benefits the department and the employee. When the infraction of the employee involves the potential of criminal charges, it is always our advice that appointing authorities conduct an investigation independent of other investigative procedures, and take appropriate action if warranted. The situation which always comes to mind is the Firefighter who was dealing drugs out of the fire station. The Fire Chief put the employee on Administrative Leave, but rather than indicating that the leave was pending the outcome of his investigation, the PAF (personnel action form) indicated that the leave was pending the outcome of the criminal charges. As sometimes happens, the criminal investigation and court proceedings extended for over a year, while the public perceived that this individual was on paid vacation. Everybody, including the Chief, knew the employee had been dealing drugs, but because of an error in the evidence collection procedures by the investigating agency, the case was eventually dismissed. Remember that the burden of proof necessary to support disciplinary actions is not as strong as is required for criminal conviction. Whether or not the employee was eventually convicted, he was certainly a liability for the department and was guilty of "the commission of an act to the prejudice of the departmental service or contrary to the public interest or policy."

What Kinds of Behavior Warrant Disciplinary Action According to State Law?

According to Louisiana Revised Statutes 33:2500 and 33:2560:

- (1) *Unwillingness or failure to perform the duties of his position in a satisfactory manner.*

- (2) *The deliberate omission of any act that it was his duty to perform.*
- (3) *The commission or omission of any act to the prejudice of the departmental service or contrary to the public interest or policy.*
- (4) *Insubordination*
- (5) *Conduct of a discourteous or wantonly offensive nature toward the public, any municipal officer or employee, and any dishonest, disgraceful, or immoral conduct.*
- (6) *Drinking vinous or spirituous liquors while on duty or reporting for duty while under the influence of liquor.*
- (7) *The use of intoxicating liquors, or habit forming drug, liquid, or preparation to an extent which precludes the employee from performing the duties of his position in a safe or satisfactory manner.*
- (8) *The conviction of a felony.*
- (9) *Falsely making a statement of any material fact in his application for admission to any test for securing eligibility or appointment to any position in the classified service, or, practicing or attempting to practice fraud or deception in any test.*
- (10) *Using or promising to use his influence or official authority to secure any appointment to a position within the classified service as a reward or return for partisan or political services.*
- (11) *Soliciting or receiving any money or valuable thing from any person for any political party or political purpose.*
- (12) *Inducing or attempting to induce by threats of coercion, any person holding a position in the classified service to resign his position, take a leave of absence from his duties, or waive any of his rights under the provisions of this Part, or of the rules.*
- (13) *The development of any defect or physical condition which precludes the employee from properly performing the duties of his position, or the development of any physical condition that may endanger the health or lives of fellow employees.*
- (14) *The willful violation of any provision of this Part or of any rule, regulation, or order hereunder.*
- (15) *Any other act or failure to act which the board deems sufficient to show the offender to be an unsuitable or unfit person to be*

employed in the



respective service.

☞ Checklist! Disciplinary Actions

- ☞ *Give the employee notice of the potential disciplinary action and an explanation of the charges against him.*
- ☞ *Give the employee an opportunity to respond to the charges.*
- ☞ *If substantial loss to the employee is being contemplated, it is advisable to follow the Loudermill procedures discussed in the next section.*
- ☞ *Follow the "Bill of Rights" for Firefighters or Police Officers for suspension, demotion, or termination.*
- ☞ *Review all the material that relates to the situation, including any additional information provided by the employee.*
- ☞ *Decide the issue based upon whether there are reasonable grounds to believe the charges are true and support the disciplinary action.*
- ☞ *Advise the employee of the decision. If formal disciplinary action is taken, provide the employee with the written reasons. Send the same information to the Municipal Fire and Police Civil Service Board for your jurisdiction along with a personnel action form (PAF). The employee will be given the PAF after it has been signed by the Civil Service Board.*

When Removal of an Employee is Warranted

Removing employees from the service is one of the most difficult parts of the job for any administrator. We all know how many lives are touched when such action is necessary - it is not just the employee who is impacted, but his family, his coworkers, and his friends. No administrator wants to be the bad guy, either, regardless of what some might think. What many people fail to realize is that administrators also have to live with the consequences of such difficult decisions, and very few take such action lightly. Those in charge of Fire and Police Departments are responsible to the citizens of their communities for

more than just efficiency and cost effective services, however. Public safety employees hold the safety and well-being of their friends and neighbors in their hands every day. Efficiency of performance may involve rescuing an elderly woman from a burning building or apprehending an armed suspect who has just shot a convenience store clerk, not just processing paperwork. Each administrator is at some point in his career faced with the decision of whether to keep working with an employee to improve his job performance or to remove him from the service. Each individual represents a unique combination of talents and skills, and some people are just not suited to fire fighting or law enforcement. Some individuals are uncomfortable or unable to accept the respect for authority and supervision that is inherent in public safety employment. Finally, there are some employees who violate the public's trust and confidence by choosing a course of action which undermines the department's ability to function. In these cases, the administrator must override his concern for the individual to preserve the integrity and efficiency of the department.

Before the fire and police personnel jump to the conclusion that the Office of State Examiner is helping administrators get rid of people, think about this: Whether or not you make it home to your family at the end of your shift is sometimes dependent on the guy next to you doing his job. It is not in your best interest to have someone backing you up who doesn't know his job or who cannot or will not take orders in an emergency. Firefighters and Police Officers are serious about the professionalism with which they approach their jobs, and most realize that when someone takes action to jeopardize the integrity or respect of their department, their reputation is affected as well. Like it or not, the public's perception of the department will often affect how much money is available for salaries and new equipment.

Some will be saying, "You just don't know our Chief or our Mayor!" The bottom line on unjust terminations is that your civil service protection provides that your job is not employment at will. The second reason for the Office of State Examiner to provide guidance in this sensitive area is to protect your rights under the law. The appointing authority must act in good faith and for cause in removing an employee from the service. The law also provides an avenue by which such decisions may

be reviewed through civil service board hearings and, if necessary, subsequent appeal through the court system. You, as employees, have the right to due process, yet many employers are not aware of the steps that should be taken to afford you this right.

There are different means by which employees are removed from the service depending upon whether or not they are confirmed, and the reasons for removal. Each situation will be discussed below, beginning with new hires.

Recruits

MFPCS Law specifies that persons hired into the class of Firefighter or Police Officer are first hired as recruits until such time as they satisfactorily complete basic training or until the expiration of a period of six months, whichever occurs first. Satisfactory completion of training is defined as obtaining Firefighter I certification in the fire service or POST certification in the police service. An employee in recruit status has not yet obtained any civil service protection, and may be removed by the appointing authority at will. The employee and the civil service board should be notified.

Probational Appointments – Working Test Periods

First Three Months of Probational Appointment

The law is really silent as to what happens in the first three months of the working test period, and the contemporaneous practice has been that appointing authorities may remove employees at will during the first three months of the working test period. The employee and the civil service board should be notified.

Three to Six Months Following Probational Appointment

MFPCS Law specifies that an employee in the three to six month period of his working test may only be removed with the prior approval of the civil service board. If an administrator desires to remove an employee during this period of time, he must petition the civil service board for such approval. The causes which would justify removal of an employee, as specified in MFPCS Law are twofold:

- 1. He is unable or unwilling to perform satisfactorily the duties of the position to which he has been appointed.*
- 2. His habits and dependability do not merit his continuance therein.*

Any such employee may appear before the board and present his case before he is removed.

Six to Twelve Month Period Following Probational Appointment

An employee may be confirmed or not at any point during the six to twelve month period of the working test. The appointing authority has the right to decide how long (between six and twelve months) the working test shall last and shall have the right to determine the standards of service expected in order for a probational employee to be confirmed as a regular and permanent employee. This is the one time during an employee's career during which the judgement of the appointing authority concerning job performance and fitness for duty should not be questioned by the civil service board. The law specifies that, "Upon any employee completing his working test, the appointing authority shall so advise the board and furnish a signed statement to the respective employee of its confirmation and acceptance of the employee as a regular and permanent employee in the respective position or of its refusal to confirm the employee and the reasons therefor." (Emphasis ours.) MFPCS Law provides that "any employee who is rejected after serving a

working test of six months but not more than one year, may appeal to the board only upon the grounds that he was not given a fair opportunity to prove his ability in the position.” (Emphasis ours.)

The advice of the Office of State Examiner regarding “fair opportunity” may be explained by the following example: Assume that an employee is probationally appointed as a Communications Officer, but the Chief assigns her duties as his secretary for the first nine months. She is only placed in the Communications Division three months prior to the end of her working test period, and is unable to completely grasp all the duties of the job within the three month period. If the appointing authority fails to confirm this employee at the end of the twelve month period, she may make an excellent argument that she was not given a fair opportunity to prove her ability to learn the job in that she was worked out of class for the majority of her working test period. The concept of “fair opportunity,” however, should not be viewed as an excuse for the civil service board to substitute its judgement for that of the appointing authority in evaluating the quality of work or fitness of the employee to become a permanent member of the organization. This is the only time during an employee’s career when the appointing authority has the absolute authority to determine whether the employee will be retained or not. Most employees who receive a negative evaluation of their job performance will probably conclude that the Chief or the appointing authority “doesn’t like” him. Civil service boards are urged to use extreme caution when applying this excuse to the concept of “fair opportunity” during the working test.



Documentation Tip! Working Test Confirmation or Rejection

If there is a possibility that the appointing authority may not want to confirm an employee at the end of his/her working test period, care should be taken to advise the employee he will not be confirmed *prior to the expiration of the twelve month period*. If the appointing authority fails to act, *the employee is automatically confirmed at the expiration of the working test period*.

Removal During Working Test Period Based on Error, Misrepresentation or Fraud

According to MFPCS Law, "the appointing authority may remove, and shall remove upon the order of the board, any employee during his working test period who the board finds, after giving him notice and an opportunity to be heard, was appointed as a result of an error, misrepresentation, or fraud." This would be particularly appropriate in the case of an employee who was found to have lied on his application, or who falsified an eligibility score from another jurisdiction to secure eligibility for hire in a different jurisdiction.



CIVIL SERVICE KEY TO SUCCESS

Seniority begins on the date of confirmation in the employee's entrance class. Many departments have established a practice of breaking ties in seniority at date of confirmation by confirming employees a day apart. The criteria used is often the academy score.

While this allows employees to know what to expect in the future in terms of when they might be promoted, it does nothing to encourage aggressive preparation and training earlier in the employee's career. High performing younger employees are discouraged by the lack of opportunity, and the administrators are discouraged by what they perceive as a flaw in the civil service system.

The problem with the rationale of forcing a break in seniority is that the abilities and motivations of employees change over a span of 10-20 years. The head of the academy class may turn out to be the biggest goof off by the time a promotion to Sergeant or Fire Captain becomes available, yet your hands are tied by having to promote the person with the greatest total departmental seniority. If Mr. Head of the Class was confirmed one day ahead of No. 2 because of a one point difference in their respective scores, he will be promoted ahead of No. 2 throughout his career. The long term negative consequences of breaking ties in seniority at the lowest level without reasonable justification should be considered by the appointing authority.

As an administrator, you may wish to consider the value in confirming all employees graduating from the academy on the same date. This will provide tied seniority for a number of employees. When the first promotion becomes available, some will have fallen out of the running due to suspensions, but the remainder should be certified to the appointing authority as being tied for the greatest total departmental seniority. The appointing authority may use some objective means of breaking the tie, such as the score on the most recent promotional exam or a combination of factors, or may simply select the employee he deems best qualified from among those with tied seniority.

CIVIL SERVICE KEY TO SUCCESS

Use the working test as it is intended, and remove any employee who is not meeting your expectations. It is better to lose the time you have invested now and suffer through being "the bad guy" rather than gain a 20-30 year problem.

Removal of Permanent Classified Employees

Contrary to what some would have you believe, appointment to a civil service job does not mean that you have a job for life. Civil service employees have the right to due process, but they also have an obligation to perform the jobs they were hired to do and in the manner specified by the appointing authority.

What are the reasons for removal of a permanent employee? The fifteen reasons cited in Louisiana Revised Statutes 33:2500 and 33:2560 (which were discussed previously under the section on disciplinary actions), are very comprehensive. In addition, MFPCS Law also provides the following:

- ▼ *Any employee in the classified service who wilfully refuses or fails to appear before any court, officer, board, body or person properly authorized to conduct any hearing or inquiry, or any employee who, having appeared, refuses to testify or answer any relevant question relating to the affairs of government of the municipality or the conduct of any municipal officer or employee, except upon the grounds that his testimony or answers would incriminate him, shall forfeit his position and shall not be eligible for appointment to any position in the classified service for a period of six years.*

- ▼ *An employee engaging in political activity shall be discharged from the service, and shall not again be eligible for employment or public office in the classified service for a period of six years from the time of his discharge.*

- ▼ *Any employee who willfully violates one of the following shall forfeit his position:*
 - *Make any false statement, certificate, mark, rating, or report with regard to any test, certification, or appointment made under any provisions of MFPCS Law or commit or attempt to commit any fraud preventing the impartial execution of the law or civil service rules.*

 - *Directly or indirectly give, render, pay, offer, solicit, or accept any money, service, or other valuable consideration for or on account of any appointment, proposed appointment, promotion, or proposed promotion to, or any advantage in, a promotion in the classified service.*

 - *Defeat, deceive, or obstruct any person in his right to examination, eligibility, certification, or appointment under the MFPCS Law, or furnish to any person any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in the classified service.*

 - *Require any employee in the classified service to perform an act, or neglect an act, which would be a reason for dismissal or disciplinary*

action of the employee.

If you look at the fifteen reasons that the MFPCS Law identifies as justification for disciplinary action including termination, the first reason identified is an “unwillingness or failure to perform the duties of his position in a satisfactory manner.” The above statement will probably inflame many appointing authorities across the state. “Try taking that to our civil service board,” they might say, or “Wait until the lawyers get a hold of that one!” If you are an appointing authority who has experienced frustration with the process, it is understandable that you will want to blame civil service law, the civil service board, and the Office of State Examiner. We respectfully suggest that there may be some room to look at how you, as administrators, are going about the process.

We hate bureaucracy as much as the next guy, but there are two fundamental rules you do not want to forget with regard to terminations of permanent employees:

- You will need to be able to support that you acted in good faith, and for cause, and*
- You must go through the basic steps required by Loudermill.*

In Good Faith . . .

This is not just about having the right documentation, it is about getting all the facts and taking disciplinary action because it is warranted. Consider the case of an appointing authority who terminates a Fire Captain, officially for a relatively minor rules violation, but unofficially because of a dispute on a hunting lease. Other officers routinely violate the policy that is the subject of the disciplinary action, but with no penalty. This might be an example of a disciplinary

action that was not taken in good faith. In another situation, the appointing authority may have terminated an officer based solely on the statement of one citizen without any corroborating testimony. The officer might have witnesses or other evidence to present at his appeal hearing that the event never occurred. In this case, the appointing authority may have acted in bad faith by not listening to the officer's version of events or conducting a complete investigation.

For Cause . . .

The disciplinary action taken should be justified by the seriousness of the incident or the chronic nature of the problem. If there is a departmental policy that all police officers will wear their hats when they get out of their units, a thirty day suspension will probably be overturned by the civil service board inasmuch as the penalty was too severe. A termination based on a single incident of insubordination will probably be overturned, as well. A termination should be supported by documentation and a full investigation that leaves no doubt as to the seriousness of the violation or conduct. The termination for cause of a classified employee will be because the problem adversely affects the quality or quantity of work, other employees, the organization as a whole, or the public. The progressive nature of counseling (remember the Supervisory Notes?), prior disciplinary action, and obvious prior attempts on the part of management to salvage an employee all serve as supporting documentation that termination might be warranted.

Loudermill and Terminations -

Wait! Don't Start Without Loudermill!

We discussed the Loudermill case briefly under the section

on Administrative Leave With Pay, but a more complete understanding of the requirements is appropriate when examining the procedures for terminating a classified employee. The requirements of Loudermill are often overlooked, and substantially support the practice of many employment attorneys. If you simply follow the procedures identified in the Municipal Fire and Police Civil Service Law for terminating an employee, you will probably lose your case on appeal every time. Cleveland Board of Education v. Loudermill (470 U.S. 532, 84 L.Ed. 2d 494, 105 S.Ct. 1487 (1985)) was as much of a landmark case to employment law as the Miranda case was to law enforcement. If you would never think of allowing officers to arrest without using the Miranda warnings, don't think about terminating an employee without using the appropriate Loudermill procedures. What this landmark U.S. Supreme Court case provides, in short, is that a public employee must be given a hearing prior to being terminated. He is entitled to oral or written notice of the charges, an explanation of the charges against him, and an opportunity to present his or her side of the story.

The court found that Loudermill was violated in Cannon v. City of Hammond, 727 So. 2d 570 (La. 1st Cir. 1998). In this case, Cannon was subjected to a series of investigatory interviews. Because of the questioning, Cannon knew that something was going on, but was never advised of his rights under the Police Officers' Bill of Rights. During the final meeting with city officials, he was simply advised that he was fired. The court found violation of Loudermill in that the decision to fire Cannon was pre-determined, he was not given the chance to review and rebut evidence against him, and was not given the opportunity to prepare his case in advance of the final meeting.

The following steps are our recommendation for how this procedure should take place.

1. *Gather your facts and supporting information.*
2. *At the point when sufficient facts have been gathered by the appointing authority to formally place the employee under investigation, the provisions of the Firefighters' or Police Officers' Bill of Rights should be followed.*
3. *Consult with your attorney, if you have one available, and follow his or her advice. Call the State Examiner's Office if we can be of any help to you as you proceed.*
4. *Place the employee on Administrative Leave With Pay if he is not already on it. Order the employee in writing to appear at a specific time on a given date for a pre-disciplinary hearing. Include a detailed written list of the charges against him and any rules/procedures which were violated. Attach any corroborating evidence that might be used against the employee. Advise the employee that disciplinary action is being contemplated against him, up to and including termination. Set the hearing for a point in the future so that he may have adequate time to prepare his case against the charges. Advise the employee he may bring counsel or a representative if he so chooses. Many experts also advise that the employee be allowed to present witnesses at the Loudermill Hearing to refute the charges or evidence against him. (Note: While Loudermill only requires oral notice of the charges, we think the written notice allows the employee a better opportunity to prepare his case and serves as documentation that the proper procedures were followed.)*
5. *Conduct the pre-disciplinary hearing. The meeting should be conducted by the appointing authority or his designee, such as the Chief. If you have a City or Parish attorney, it may be advisable to have him or her present. There should always be witnesses present. Advise the employee of the charges against him and that termination is being*

contemplated. Advise
wish to allow him an
his side of the argument
why you should not take
important to maintain
particularly if the
counsel and witnesses. At the conclusion of the hearing, advise the
employee that he will be advised in writing of the outcome of the
hearing.



the employee that you
opportunity to present
and present reasons
action against him. It is
control of the meeting,
employee brings

6. Following the hearing, evaluate the evidence, including carefully considering any information presented by the employee. Decide what action is warranted.

7. Advise the employee in writing of your decision, whether it is to take no action, or to take disciplinary action such as suspension, demotion, or termination. If disciplinary action is taken, remember to once again attach the detailed reasons for the action to the Personnel Action Form. The PAF and supporting information should be provided to the employee and to the local civil service board for your jurisdiction. Having to attach the details of the charges once again seems like a duplication of effort, but is necessary according to State Law.

Other Important Issues You Won't Find In Civil Service Law

Light Duty

This is a sensitive issue for both employees and administrators. It is not appropriate to work employees out of class, and not all classes will lend themselves to light duty assignments. Depending upon the nature of the disability, duties of a less strenuous nature may be available in another position of the class. A Sergeant with a broken leg who is unable to perform routine patrol duties, for example, might be able to work as a desk Sergeant. The department is under no obligation to create such a position if it does not exist or is already filled. Workers compensation officials who insist on the creation of light duty assignments are unaware of other mitigating laws and how this may impact your organization.

Keep in mind that an employee is at work whether or not his assigned duties are regular or classified as "light duty". Consider the case of an employee who discovered she was pregnant right after beginning her working test period as a Fire Driver. If the department had elected to place her on sick leave, they could have interrupted her working test for the duration of her incapacity, thus allowing a full working test to later evaluate her fitness for the job (there is no provision for extending a working test). In this case, however, they elected to place her on light duty filling out reports. The unfortunate thing was that this time counted toward her working test period as a Fire Driver, yet she was unable to perform the duties of the class. This will almost guarantee confirmation in the class as the employee may now assert, in the face of a failure to confirm, that she was not given a fair opportunity to prove that she could do the job.

Employee Records

The Supervisory Notes described earlier are notes of the supervisor and should not be placed in an employee's official personnel file. Many experts also recommend that performance appraisal reports should not be kept in the official personnel file. Medical records, including psychological evaluations, should be kept separate from the official personnel file.

Notices of official disciplinary actions, such as suspensions and demotions, must be maintained in the personnel file throughout the career of the employee.



Documentation Tip! Employee Records

Because of the penalties involved and short time frame allowed by law, everyone should review the public records statutes and make a plan ahead of time for how requests should be handled. Consult with your attorney and decide who is the custodian of the records, which records are protected, and which records may be released or examined. Never release social security numbers.

Probational Promotions vs. Temporary Appointments

Civil service law tells us that promotions are made when permanent vacancies occur, but there is also a provision for temporary appointments when a permanent promotion is not possible. A provisional appointment is made when there is a permanent vacancy and there is a need to make a probational appointment, but no eligibility list exists. Reporting a provisional appointment to the civil service board should always trigger a call for the examination so that an eligibility list might be established.

Another type of temporary appointment is a substitute appointment. A substitute appointment is made when there

is not a permanent vacancy in the position: the current incumbent may be away on authorized annual or sick leave, or may be filling another substitute appointment. Whenever substitute appointments are made, the appointing authority should attach verification of the reason for the substitute appointment (i.e., leave record for the employee who is away or record of his or her substitute appointment to another class).

During periods of restricted resources, the Office of State Examiner contended that civil service boards had fulfilled their responsibility by administering or calling for promotional tests at least once during each eighteen month period. If there was no permanent vacancy anticipated, boards were asked to refrain from calling for exams. If it was determined at a later time that a demonstrated need existed (i.e., provisional appointment or anticipated vacancy), the test would be scheduled at that time. This did not meet the needs of the jurisdictions for making substitute appointments. For periods of less than 30 days, appointments may be made of anyone the appointing authority deems qualified. For substitute appointments which are anticipated to last over 30 days, however, the substitute appointment must be offered to the person on the eligibility list with the greatest total departmental seniority.

Particularly in the fire service, there is a frequent need for substitute appointments to adequately man apparatus and meet state laws regarding staffing. The appointing authority is justified in wanting to know if the persons selected for substitute appointments have the basic knowledge necessary to perform the tasks of the class. For this reason we now suggest that the appointing authority ask the civil service board to maintain eligibility lists for high activity classes.

CIVIL SERVICE KEY TO SUCCESS

Ask your civil service board to maintain eligibility lists for any high activity classes for which you anticipate making substitute appointments.

Trouble Staffing the Lowest or Entrance Classes

Tests for competitive classes may be given as often as the needs of the service require. Some jurisdictions are having trouble finding sufficient applicants from the eligibility list, or discover that qualified applicants have already accepted other employment. The Office of State Examiner will be happy to work with each jurisdiction having this difficulty by providing the examinations on a more frequent basis as requested by the local civil service board. This need will be readily apparent when examining the average number of eligibles generated from each test administration and the number of existing positions which need to be filled. Administering an entrance test four times per year will probably require calling for the new examination prior to approving the grades on the last exam. The eligibility of persons on all existing eligibility lists should be merged for the duration of their respective length of eligibility.

CIVIL SERVICE KEY TO SUCCESS

If you are having trouble hiring at the entrance level, ask your civil service board to call for more frequent examinations, up to four times per year, until your current needs are met.

Do You Have Special Needs Regarding Your Grades?

We give processing grades a very high priority in the Office of State Examiner, but we do want to make sure it is done correctly. We also process grades in the order in which the exams have been given. Occasionally you will have special needs such as an academy starting or a pending retirement, and need your grades in a hurry. Call and speak to either the State Examiner or the Deputy State Examiner, and we will do everything possible to expedite the processing of your grades. (Our internal procedure is that any special requests for grades processing must be approved by either the State Examiner or the Deputy State Examiner.) Depending upon your needs, we might be able to process the grades for the problem exam as soon as possible, then forward the grades for the other examinations when they are ready. As the grades must be approved by your civil service board before any appointments are made, it is a good idea to also advise the board of the special need and that a special meeting might be necessary.

CIVIL SERVICE KEY TO SUCCESS
<i>If you have special needs regarding your grades, call either the State Examiner or the Deputy State Examiner and we will try to help you. Also advise the civil service board that you need the grade approval process expedited. We respectfully ask that you not cry, "wolf!", however!</i>

Wait! You haven't answered all of my questions . . .

Call us! We make every attempt to return your call the same day, and will gladly provide you with numbers where you can reach us after hours, if needed.

HEADSTART!

For

Civil Service Boards

MFPCS Headstart!

For Civil Service Boards

*How Does the Civil Service Board
Fit Into the Overall Operation
Of the System?*

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*How Does the Civil Service Board
Fit Into the Overall Operation of the System?*

General Introduction to the MFPCS System

Throughout the State of Louisiana prior to 1940, the staffing of municipal police and fire departments and the selection of chiefs for those same departments was based on a system of political patronage. Decisions on the selection of police and fire personnel were not controlled locally, but rather were controlled legislatively and by the Governor. The first Municipal Fire and Police Civil

Service Law was enacted in 1940, and our current system has evolved from that point. When the first civil service laws were introduced at the state level, public safety personnel were outraged at being excluded from the provisions. The State Firefighter's Association had legislation introduced as an amendment to the Constitution of 1921 to implement a civil service system for municipal fire and police personnel.

The current system is strongly based on the original amendment, and is mandated constitutionally for municipalities having regularly paid fire and police departments with populations of 13,000 to 400,000, and for cities up to 500,000 having met specific criteria. The system was expanded statutorily to include all regularly paid fire protection districts, as well as municipalities with populations between 7,000 and 13,000 which have at least one of the two public safety services. The statutes governing the Municipal Fire and Police Civil Service System are super statutes, meaning that a 2/3 vote is needed to implement any change.

The Office of State Examiner, the civil service boards, and the local governing/appointing authorities each have unique responsibilities for making the system work. Regardless of the perception, this is not a system where the state is dictating what is to be done at the local level. The local appointing authorities always have the right of appointment and the right to determine how the departments should be run. The civil service boards, also comprised of local citizens, assist in an advisory capacity in some situations, assist in staffing by developing lists of eligibles and reviewing the legality of personnel movements, and serve as an avenue of appeal in other matters. The Office of State Examiner serves in an advisory capacity in the operation of the system and provides examinations at the request of the civil service boards.

Appointment to the Civil Service Board – What Have You Gotten Yourself Into?

With the exception of the City of Shreveport, a local system having either a fire or a police department will have three members, while a system having both a fire and police department will have five members on the civil service board. The employees of the respective departments elect an employee representative to serve as one of the board members, the governing authority has one appointment on his own nomination, and the other one or two members are selected by the governing authority from a list of names supplied by the president of a nearby institution of higher learning. After the initial terms when a jurisdiction first enters the system, all civil service board members serve three year terms, unless a specific appointment is made to fill an unexpired term of another member.

As a civil service board member, you not only give of your time, you also give up some of your privacy. Those agreeing to serve on the board share a commitment to their communities and to the fire and police personnel who serve and protect us. Experience in personnel management and fire or police work is not a prerequisite for appointment to the board. For the board to function as it should, however, it is imperative that each member make a commitment to attend meetings. Some of the frustration experienced by those associated with the system in some jurisdictions is based entirely on the fact that the board seems unable to conduct even routine business due to a lack of a quorum.

CIVIL SERVICE KEY TO SUCCESS

<i>Please do not accept appointment to the civil service board if you are not willing to make the commitment to attend meetings.</i>

Whether for good or bad, it is very difficult to be fired as a civil service board member once you have been sworn in. The governing authority may not simply decide to replace you in the middle of your term if you are a governing authority or college list appointee, nor may disgruntled fire and police personnel simply decide to elect a new representative. Board members may only be removed for high crimes and misdemeanors in office, incompetency, corruption, favoritism, extortion, oppression in office, gross misconduct, or habitual drunkenness. The process to begin removal of a board member is initiated when the District Attorney is presented with a petition signed by twenty-five citizens of the area served requesting the removal of the board member. The DA, in turn, is required to assist in the process once presented with such a request.



Political Activity – It Is Not Only the Classified Employees Who Have Their Hands Tied

In order to assure the autonomy of the board, its members are prohibited from participating in political activities. No one may be appointed to the board who, for the period of six months immediately prior to appointment, has been a member of a local, state, or national committee in any factional political club or organization. In addition, a member of the board cannot be a candidate for nomination or election to any public office. The coast is not clear once appointed – the Constitution of Louisiana

prohibits all members of civil service boards from engaging in political activity in language that is actually stronger than that governing classified civil service employees.

As a Civil Service Board Member, to Whom Do You Owe Your Loyalty?

This one point has caused considerable discussion and discontent between those involved. The fire and police personnel often feel that the appointees of the governing authority owe loyalty to the appointing authority when issues come before the board. Administrative officials, on the other hand, feel that employee representatives always side with the employee, regardless of the issue. Elected employee representatives sometimes even see themselves as employee advocates, much as a union representative might be. Some boards are viewed by the employees as a puppet arm of the appointing authority, while others are viewed by administrators as strongly employee oriented. The true mission of the civil service board and all of its members should be a shared commitment to objectively and honestly evaluate the issues that are brought before it and to make the civil service system operate as the law has intended. Each member has an obligation to the governing/appointing authorities to provide advice and assistance regarding the maintenance and improvement of personnel standards and the operation of the classified system. Each member has an obligation to the employees in the system to provide advice and assistance regarding the maintenance, improvement, and administration of personnel matters related to any individual or group of employees. Each member has an obligation to the public to represent their interests in the operation of the system. Once appointed, the members of the civil service board take an oath to uphold the constitution and laws of the State of Louisiana and to impartially

discharge their duties. As a collective body, the civil service board owes loyalty to neither the employees or the administrators, but rather shares a sworn commitment to faithfully and impartially execute their duties as board members.

CIVIL SERVICE KEY TO SUCCESS

<i>As a civil service board member, you should base your actions on your sworn duty to faithfully and impartially uphold civil service law.</i>
--

What Are the Board's Responsibilities?

The Municipal Fire and Police Civil Service Law fortunately gives us a very specific list of the duties of the board. Your board is required to:

- ☞ Advise and assist the governing body, mayor, commissioner of public safety, and the chiefs of the fire and police departments with reference to the maintenance and improvement of personnel standards and administration in the fire and police services.*

- ☞ Advise and assist the employees in the classified service with reference to the maintenance, improvement, and administration of personnel matters related to any individual or group of employees.*

- ☞ Make, upon request or upon its own motion, any investigation concerning the administration of personnel or the compliance with the provisions of the law.*

- ⌘ *Review and modify or set aside upon its own motion, any of its actions, and take any other action which the board determines to be desirable or necessary in the public interest or to carry out effectively the provisions and purposes of the Municipal Fire and Police Civil Service Law.*

- ⌘ *Conduct investigations and pass upon complaints by or against any officer or employee in the classified services for the purpose of demotion, reduction in position or abolition thereof, suspension or dismissal of the officer or employee in accordance with the provisions of the law.*

- ⌘ *Hear and pass upon matters which the mayor, commissioner of public safety, the chiefs of the departments affected, and the State Examiner of Municipal Fire and Police Civil Service bring before it.*

- ⌘ *Make, alter, amend, and promulgate rules necessary to carry out effectively the provisions of the Municipal Fire and Police Civil Service Law.*

- ⌘ *Adopt and maintain a classification plan which is adopted and maintained by rules of the board.*

- ⌘ *Make reports to the governing body, either upon its own motion or upon the official request of the governing body, regarding general or special matters of personnel administration, or with reference to any appropriation made by the governing body for the expenses incidental to the operation of the board.*

That Sounds Pretty Obscure - Give Me A Quick Overview For What I Have To Do and How I Do It!

Conducting the Board's Business - Calling for Civil Service Meetings

Your board is required to meet, at a minimum, at least once every quarter. You may find that more frequent meetings will be necessary, however. Many boards meet more than twice a month, but that usually occurs in the largest cities and fire protection districts in the system. Louisiana Law requires that your board schedule your regular meetings at the beginning of each calendar year. The required public notice should include the dates, times, and places of the meetings.

Some of you are probably thinking that you have enough trouble finding a time when everyone can meet, and you have no way of knowing what the board's business will be then anyway, so how can you possibly be expected to schedule meetings a year in advance? Fortunately, your board is allowed to schedule a special meeting which only requires a twenty-four hour notice. A written public notice should be provided for all meetings at least twenty-four hours before the meeting is to be held. The notice should include whether the meeting is a regular, special, or rescheduled meeting, and should include the agenda, date, time, place, and whether an executive session is to be held.

Some meetings require different posting or notification requirements. Any change to a board rule or the classification plan must be posted for thirty days prior to the

hearing, both in current and revised form. In addition, disciplinary appeal hearings require that all parties involved be notified at least ten days in advance of the date and time of the meeting. Your chairman is required to call for the meetings and set the agendas, but if he fails to do so or is otherwise unavailable, any two members of the board may call a meeting by notifying the other board members with a written notice at least ten days in advance of the scheduled meeting.

The agenda is a written plan for what business will be covered during the meeting, and allows the public to be present for issues of concern. If any board members have business which they would like the board to consider, they should ask the chairman to add it to the agenda by submitting their items well enough in advance to meet the board's posting requirements.

Conducting the Meeting

The chairman calls the meeting to order, and a roll call will be taken to be sure a quorum is present. (The meeting may not be held in the absence of a quorum!) The minutes of the previous meeting should be read and, if there are no revisions, they should be approved as read. The chairman should then introduce any unfinished business. Following the unfinished business, your board should consider any new business which will include any new items that have been placed on the agenda prior to the meeting. If it is necessary to bring up additional business not appearing on the published agenda, it may be added with a 2/3 vote of the members. During the meeting, the public should be given an opportunity to be heard. Finally, after all the business on the

agenda has been covered, a motion to adjourn should be made, seconded, and the meeting will be ended with a majority vote.

CIVIL SERVICE KEY TO SUCCESS

<i>If your board consists of five members, a quorum consists of having four members present. For a three member board, two members must be present to conduct business.</i>

Some Nuts and Bolts About Motions

The method by which the civil service board reaches decisions on specific items is by making motions. A motion is a proposal that the entire membership take action or a specific stand on an issue. Individual members may:

- ☞ Make motions.*
- ☞ Second motions.*
- ☞ Debate motions.*
- ☞ Vote on motions.*

When you make a motion, say, "I move that we . . ." Refrain from saying, "I move that we do not . . ." For the board to consider the motion, it must receive a "second" from another board member. Either another member will second the motion or the chairman will call for a second. If there is no second to the motion, the motion dies. The chairman states your motion by saying, "It has been moved and seconded that we . . ." This places your motion before the membership for consideration and action. The members of the board then

either debate your motion, or may move directly to a vote. Once your motion is presented to the membership by the chairman it becomes "assembly property," and cannot be changed by you without the consent of the board. Finally, a vote is taken by the chairman putting the question to the members. R.S. 42:5(C) requires that all votes by a public body shall be by voice. This may be accomplished by the chairman asking those in favor to say "aye", while those opposed say "no". Any member may move for an exact count or recorded vote. If a roll call vote is taken, each member answers "yes" or "no" as his name is called. A motion passes with a majority vote, so a motion receiving a tie vote fails.

CIVIL SERVICE KEY TO SUCCESS

<p><i>The chairman votes. Some boards have been under the misconception that a chairman only votes in the case of a tie. This is simply not true. If the chairman were not permitted to vote, he would be disenfranchised as a board member.</i></p>
--

Three Words About Phone Polls -

Don't do it. While we know it is sometimes hard to meet and there may be pressing business before the board, the open meetings laws require that the board's business be conducted in open meeting. A telephone poll would prevent public comment.

A Word About Executive Sessions -

Executive sessions are legal exceptions to open meetings that are allowed under the public meetings laws. These are usually rare occurrences which are necessary in only a few special circumstances. The executive session exceptions that are most often used by civil service boards are:

- 1. To discuss the character, professional competence, or physical or mental health of a person, provided that the person is notified in writing at least twenty-four hours before the meeting.*
- 2. To conduct strategy sessions or negotiations with respect to prospective litigation, or to discuss pending litigation when an open meeting would have a detrimental effect on the litigating position of the board.*
- 3. To conduct investigative proceedings regarding allegations of misconduct.*

The State Examiner's Office has heard of instances where civil service boards have gone into executive session for reasons that do not seem to meet the definition of extraordinary or special circumstances. We urge your board to use the provisions for executive sessions with great discretion. Louisiana Revised Statute 42:4.1 states:

It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberation and decisions that go into the making of public policy. Toward this end, the provisions of R.S.

42:4.1 through R.S. 42:4.12 shall be construed liberally.

An executive session may only be convened upon the affirmative vote of two-thirds of the members present. The reasons for holding the executive session must be recorded in the minutes of the meeting, and the vote of each member on the question of holding the executive session shall also be recorded. Finally, no final or binding action may be taken during an executive session.



CIVIL SERVICE KEY TO SUCCESS

Remember that making an inappropriate move to go into executive session will generally receive formal objection from the media, the representatives of which have received extensive training in the Sunshine laws. If the topic is interesting enough to consider an executive session, it will probably make good news. Remember that most representatives of the media have access to a legal department and are not hesitant to use it.

What Is Our Responsibility For Establishing Eligibility Lists?

The board has a responsibility to establish and maintain eligibility lists. Promotional tests should be given at least once every eighteen months, while competitive tests should be given as often as the needs of the service require. The board may call for specific tests according to the age of the current list, when requested by the appointing authority

because of specific needs, or when provisional appointments are made to any class. Following passage of a motion to call for specific tests, the Office of State Examiner should be contacted and written documentation (such as minutes or letter) should be forwarded.

CIVIL SERVICE KEY TO SUCCESS

Please advise the Office of State Examiner as soon as examinations have been requested so that we may be responsive to your needs as well as conservative of our resources. We have had occasions when a board has not notified us until after the advertising period has been completed, thus seriously extending the amount of time between the board's motion to call for the test and the date test results are received. It is fine to notify our office by phone, then follow with the written request.

Civil service boards have a responsibility to post announcements of promotional and competitive examinations for a thirty day period, and to advertise competitive examinations in the official journal four times over the thirty day posting period. The civil service board receives applications, not the governing authority or the chiefs of the departments. (The Office of State Examiner provides applications for both competitive and promotional examinations upon request.) Once the closing date for applications has passed, the civil service board meets to approve applications. The list of approved candidates should be forwarded to the Office of State Examiner at least five days prior to the test date (earlier may be necessary in some North Louisiana cities). The Office of State Examiner will double check the eligibility of promotional candidates based upon the qualifications adopted by your board for each

examination, then notify you of any candidates apparently approved in error. The approved candidates must be notified at least five days prior to the examination of the date, location, and time of the test. The civil service board also has the responsibility for securing a suitable testing site.

CIVIL SERVICE KEY TO SUCCESS

<p><i>The board's review of applications should be limited to the qualification requirements adopted by the board for each examination. Leave the determination of the quality of the applicant up to the appointing authority.</i></p>

The grades will be returned to your board in a double sealed envelope which should not be opened until your board meets to approve the grades. The grades are not official until approved by board motion.

What Is Our Responsibility for the Classification Plan?

The board has a responsibility to adopt and maintain the classification plan as a "rule of the board." The classification plan is a grouping of classes in the fire and police departments by titles or ranks. The civil service board groups all positions according to their similarities in duties, responsibilities, and qualification requirements. The various classes are then arranged to show the principal and natural lines of promotion and demotion. The Office of State Examiner works closely with your civil service board in conducting job analyses and making class plan

recommendations based upon the data gathered locally.

It is important to remember that the appointing authority may assign duties as he sees fit. The civil service board, in turn, reacts to the new assignment of duties and determines if a new class has been created, or whether a position of an existing class has been changed to a different existing class.

When new classes are added, the Office of State Examiner sends the proposed specification to the board so that it may be posted for a thirty day period, following which a hearing is held to consider its adoption. If the new class is defined as competitive, according to civil service law, the current incumbent may be allocated to a probational appointment to the new class at the meeting during which the class is adopted. The board may, of course, elect to call for an examination if it so chooses. If the newly added class is promotional, according to civil service law, a test must be administered.

The requirement that the classification plan be adopted as a rule of the board means that the job description and qualifications may only be adopted at a public hearing. This is the appropriate time for the appointing authority to voice any objections or request changes.

What Is Our Responsibility For Reviewing Personnel Action Forms?

The personnel action form (PAF) is a vehicle created by the Office of State Examiner to facilitate the appointing authority reporting personnel movements to the civil service board.

The appointing authority is required, by law, to advise the civil service board of all appointments, terminations, resignations, promotions, demotions, layoffs, and disciplinary actions. The civil service board, in turn, reviews the action taken (as reported on the PAF), and approves the action by board motion if the action taken was in accordance with civil service law. If a personnel movement was not done in accordance with civil service law, such as the promotion of an employee other than the one with the greatest total departmental seniority, the PAF should be returned to the appointing authority for further consideration and corrective action. The Office of State Examiner assists the civil service board in this capacity by also reviewing the forms as they are reported to us.

CIVIL SERVICE KEY TO SUCCESS

<p><i>The approval by the board of the PAF indicates that the action taken was in accordance with civil service law as far as the board can determine by the information provided. It does not indicate either approval or disapproval of the substance of any disciplinary action.</i></p>

The PAFs reporting personnel movements and disciplinary actions form one component of the board's records and should be maintained throughout the career of the employee. It is through an analysis of these records that the board may determine and establish an overall seniority roster for the department. Seniority begins on the date of confirmation in the lowest class, for example, and must be reduced by calendar days lost due to suspensions. It is only by maintaining accurate contemporaneous records of seniority that the civil service board may evaluate promotions made by the appointing authority to ensure that they are done in

accordance with civil service law.

What Is Our Responsibility For Adopting Rules Governing Leave?

The civil service board is charged, by law, with the responsibility for adopting rules governing its own operations, as well as rules governing leave. Louisiana Revised Statute 33:2497 provides,

The board shall adopt rules to provide for leaves of absence in the various classes of the classified service. Such rules shall provide for annual vacation and sick leave with pay, and special leaves with or without pay. They may provide for special extended leaves with or without pay or with reduced pay for employees disabled through injury or illness arising out of their employment. The right to regulate the time at which any employee may take an annual leave, or any other leave which is not beyond the control of the employee, shall be vested at all times with the appointing authority.

This provision of the law has caused much confusion and ill will between the civil service boards and the governing authorities. Governing authorities either do not understand the board's authority in this area or resent such power being vested with the board. Once adopted, however, such rules have the force and effect of law (as long as they do not violate any other state or federal law), so how do we get past this roadblock for the two entities which must work together?

The adoption of any rule of the board requires public posting and notification of all parties involved, followed by a public hearing. The governing authority should be provided ample opportunity at the hearing to voice any objections and present any concerns to the board. It is hard to believe how many times in the past we have received calls from governing authorities following the adoption of such a rule, only to discover that no one representing the governing authority attended the hearing to voice an objection to the proposed rule. Civil service boards, on the other hand, should diligently consider any evidence and objections presented by the governing authority. Holidays, sick and annual leave benefits have exponential monetary impact due to existing pay provisions. There are state general laws governing such benefits in many cities, and the Office of State Examiner will be happy to provide boards with recommendations based upon the prevailing laws. A civil service board has the power and authority to adopt a rule providing for an excessive number of holidays, for example, but such action will not be in the public interest. Reality tells us that there is only so much money available for public safety protection for the community, and the provision of excessive benefits might result in a loss of available manpower. In other words, the civil service board is well advised to carefully consider the evidence presented by the governing authority in objection to any benefit not mandated by state law.

What Is Our Responsibility For Holding Appeal Hearings?

The civil service board has the responsibility for holding appeal hearings for any regular and permanent employee who feels he has been subjected to disciplinary action. The language in the law regarding these hearings is very subtle and is worth closer examination: notice that we said "any

employee who feels he has been subjected to disciplinary action.” The procedures for what everyone perceives as a disciplinary action are fairly obvious, but what about the employee who views his transfer as a disciplinary action? The law provides that he may appeal based entirely upon his perception that he has been subjected to a disciplinary action.

It is also important to note that only regular and permanent employees (those confirmed in the department) have the right to appeal disciplinary actions. What this means is that if a probational employee is suspended for one day, he has no basis for appeal before your civil service board. He also will not lose seniority inasmuch as his seniority has not yet begun to accrue. Probationary employees who are separated from the service may only appeal their termination based upon an assertion that they were not given a fair opportunity to prove that they could do the job. An employee in the three to six month period of a working test will also be granted a hearing by the board prior to his removal by the appointing authority.

Some Nuts and Bolts About Appeals

Notification:

In normal cases of disciplinary action of confirmed employees, the employee must appeal the action within fifteen days of official notification, and the board must grant a hearing within thirty days of receipt of the letter of appeal. Your board must advise both the appellant and appointing authority no fewer than ten days before the scheduled hearing. If either the appointing

authority or the employee fails to show for the hearing, your board may proceed to render a decision based upon the evidence brought before it.

Subpoenas:

Civil service law provides that your board may issue subpoenas, and confers upon the board the same power and authority as is possessed by the district courts of Louisiana. We recommend, however, that your board consider adopting procedural rules for appeals which address this issue. Your rules should require that requests for subpoenas should be submitted to your board at least eight days prior to the scheduled hearing. Your board may consider a limit on the number of subpoenas, or may consider a nominal charge (\$40, for example) for each subpoena requested over a certain number. We are all aware of those instances in which an aggrieved employee decides to subpoena every employee in the department as a character witness.

Recusal of Board Members:

Civil service law provides that board members shall recuse themselves in certain circumstances: if the board member were directly involved in the incident out of which the disciplinary action arose, for example, or if the appealing employee is a close family member of the board member. It is important to remember that only a board member may recuse himself from a hearing. A board may not "vote someone off", for example, upon the request of one of the parties involved. If a board member fails to recuse himself in a situation required by law, such action forms the basis

for appeal before the district court.

Conducting the Appeal Hearing:

The hearing is conducted much like any other meeting of your board with the chairman calling the meeting to order. Since the burden of proof rests with the appointing authority in disciplinary hearings, he should be the first to offer evidence and testimony. The appealing employee may then offer his or her testimony to convince the board that the action taken by the appointing authority was not in good faith or for cause. Remember that your board is not confined to the rules followed by the courts, and may conduct the hearing in the manner it deems most appropriate. Each side may present evidence and witnesses to support their view of the issue. Witnesses may be cross examined, and all board members are allowed to ask questions. Witnesses may also be sworn in and sequestered at the beginning of the hearing so as to protect the integrity of the testimony presented to the board.

Deciding the Issue and Rendering a Decision:

Your board should carefully consider all testimony presented and base a decision on whether or not the appointing authority acted in good faith, for cause in taking disciplinary action against the employee. Your board decides the issue by board motion which is recorded in the minutes of the hearing. If the appointing authority was found not to have acted in good faith, for cause, the board may modify the decision with a suspension, or may overturn the disciplinary action. If the disciplinary action is overturned, the board should issue an order to the

appointing authority which makes the employee whole.

CIVIL SERVICE KEY TO SUCCESS

<i>Remember that the board controls the hearing, not the attorneys.</i>

What Is Our Responsibility For Conducting Investigations?

Your board has a responsibility to conduct investigations based upon complaints brought by any citizen of the community. (You do not have to act on anonymous complaints.) A situation which might conceivably come before the board would be a case of misconduct by an employee that the Chief is aware of, but upon which he has refused to act. The board, either on its own motion or based upon a complaint, may investigate the situation and order the appointing authority to take disciplinary action against the employee.

Some complaints may be well founded, while others may simply be retaliatory in nature. Your board has the obligation to place the matter on the agenda and determine what action should be taken. There is no stipulation as to how in-depth the investigation should be, nor that the complainant must be satisfied.

What Is Our Responsibility For Managing the Department?

Okay, this was a trick question. The management of the department is vested with the appointing and governing authorities at all times. Your civil service board has responsibilities to advise and assist in matters related to

personnel, but has no controlling interest in the department. Despite this fact being fairly obvious to most individuals, we have had boards who insisted on getting involved in the day-to-day operations of the department. There was one board which decreed that any training attended by members of the department had to be approved by the board. In another case, a civil service board conducted employment interviews with applicants for entrance exams and excluded those individuals from testing who they felt would not make good employees. What was somewhat surprising to our office is that the appointing and governing authorities allowed such practices to continue.

A Word About Records -

Your civil service board is required to maintain minutes of all meetings. The minutes should be completed as soon as possible following the meeting and should be available to the public, if requested. Your board also must maintain the applications it receives for examinations, and correspondence either created or received in the normal course of doing business. Your board will also maintain the permanent records of personnel employed within the jurisdiction, including all appointments, promotions, and disciplinary actions. Your board records must be separate from those of the governing authority. Many jurisdictions in our system are still governed by the provisions of the Partial Consent Decree entered into between the respective governing authorities, the Office of State Examiner, and the U.S. Justice Department approximately twenty years ago in settlement of U.S. vs. the City of Alexandria, et al. There are special repor



ting requirements for the consent decree, and we will be happy to assist you in determining if these requirements apply in the case of your department.



CIVIL SERVICE KEY TO SUCCESS

Inasmuch as civil service board membership changes almost every year, having an experienced civil service secretary is what many civil service boards identify as the most important key to success. The civil service secretary is selected by, and serves at the pleasure of your board. The secretary may be one of the members of the board who agrees to serve in this capacity. If your board wishes to hire a secretary, it may hire any person to serve on a part-time basis. The secretary's salary becomes a justified expense of the civil service board. State law provides that secretaries for civil service boards in municipalities between 13,000 and 500,000 in population may be paid a salary of up to \$1,250 per month. Civil service board secretaries in small municipalities and fire protection districts may be paid a salary of up to \$750 per month. In justifying this expense to governing authorities, civil service boards are advised to be prepared to explain and document the work involved in functioning in this capacity.

Where Do We Obtain Funds With Which To Operate The Civil Service Board?

Even civil service boards in very small fire protection districts need funds with which to operate. You must maintain records and advertise for examinations. All civil service boards receive funding, office space, necessary supplies, and equipment from the governing authority. R.S. 33:2480 and 33:2540 provide that the governing authority shall make adequate annual appropriations in order that your board may operate and effectively carry out the duties imposed upon it by civil service law.

How Do We Obtain Legal Assistance If We Need It?

Practically speaking, many issues may be gladly handled by the city or parish attorney. Depending upon the nature of the problem, however, there may be a conflict of interest. You may, for example, be seeking to have the governing authority enforce a lawful order of your board. The Municipal Fire and Police Civil Service Law allows your board to obtain legal representation whenever civil service law or its enforcement by your board is called into question in any judicial proceeding, or whenever anyone fails to comply with your board's lawful order or direction. The law provides that your board may call upon the Attorney General, the chief legal officer of the area in which the board is domiciled, or it may employ independent counsel. However, R.S. 42:263 prohibits local boards from retaining or employing any special attorney or counsel to represent it in any special matter or pay any compensation for any legal services whatsoever unless a real necessity exists. In other words, a specific legal problem should be pending before the board. It is probably not appropriate to have an attorney present at all meetings on the outside chance that a legal problem might present itself.

