

Saratoga County DSBA



Disciplinary Procedures

The Burden of Proof

- Unlike contract grievance, the Employer bears the burden of proof
- Must establish misconduct by some standard
- Must justify penalty by some standard

The Standard of Proof

“... the Employer is here obligated to show that the Grievant's actions can reasonably be held to constitute misconduct and that the penalty imposed conforms to a standard of reasonableness in the judgment of a neutral observer.” (Sumner Shapiro, 1999)

“Reasonably held to constitute misconduct?”

- Must prove that the employee committed the act – but it’s a pretty low standard
- Must show that the conduct proven does, in fact, constitute misconduct
- The good news: Failing to prove either of these means discipline cannot be sustained
- The bad news: It’s a pretty low standard

“Penalty conforms to standard of reasonableness?”

- CSL Section 75 standard
- “Shocking to one’s sense of fairness”
- Employers are given great latitude
- Who defines “fair” and “reasonable”?

Article XVII Supersedes CSL Section 75 Procedure

This is a good thing because:

- The employee/association have a say in who serves as hearing officer
- The decision is binding
- No need to go to court for appeals

Disciplinary Interview

- You are entitled to a union representative in an interview if there is potential for disciplinary action against you
- You are entitled to a “reasonable amount of time”
- Not necessarily entitled to a specific representative
- Representative is observer only
- Don’t rely on “I didn’t do anything wrong.”

Notice of Disciplinary Action

- Must be in writing
- Served personally or by certified mail
- Must charge specific acts
- Must include penalty (penalty may not be imposed for at least one working day after service)
- Sign or not – not an admission of guilt
- Cannot be charged for acts occurring more than 18 months prior unless actions constitute a crime

Pre-Suspension/Termination Hearing

- Must comply with case law
- VERY little requirement for action
- Your “opportunity” to present your side
- Maybe they’ll dismiss it here
- Maybe John Carney will be appointed
Undersheriff – that’s more likely

Appeals

- The CHARGED EMPLOYEE must submit a WRITTEN REQUEST for independent arbitration within “8 working days”
- If you think you might appeal, do it immediately
- IF YOU MISS THE 8 DAY TIME LIMIT YOU LOSE YOUR RIGHT TO APPEAL

Now what?



- Settlement
- Triage
- Arbitration

What you need to do

- Make a copy of any documentation you are required to submit **BEFORE** you turn it in
- Provide copies to representative
- Make notes of any conversation you have with the administration, including your disciplinary interview
- Prepare a detailed written summary of the facts of the case – your actions, statements by supervisors, etc.
- Assist in your own defense