Progressive Discipline in the Unionized Work Force

The concept of

Progressive discipline occurs when an employee's conduct or performance falls below minimally acceptable levels. The supervisor takes progressively more severe disciplinary action seeking to have the conduct or performance raised to acceptable levels.
like Labor contracts across the nation contain "Just Cause" provisions[1] which have been found to incorporate the concept of progressive discipline.

Background

The concepts of just cause and progressive discipline grew out of the idea that an employee should be given a warning when they behave improperly or perform below expected norms. Also these ideas include the approach that employees should be given a chance to correct behavior or improve performance before they are fired. Over time these basic ideas have been filled out until we have the progressive discipline approach which characterizes unionized workplaces. Supervisors who want discipline to be effective and upheld can implement progressive discipline to avoid having an arbitrator later overturn their actions. This handout and training is designed to give supervisors the tools to achieve this end.

On the Amherst Campus, unions represent almost all University staff. This means that employees being disciplined are covered by a "just cause" clause in the union contract. From the manager's point of view, this means if the Union files a grievance alleging that an employee was not disciplined for just cause, at some point a labor arbitrator will hold a hearing to make the decision It does not mean that you cannot discipline a unionized public employee. If a few common sense approaches and procedures are applied you will find you are normally upheld when discipline is issued. In fact, an employer who does not enforce the rules may have more problems than one that enforces rules.

When Unions first organized in mines, plants, shipyards and other businesses, strikes were sometimes called when a worker was fired- this shut the business down so that the owner lost money. Such strikes also caused workers to loose pay. Companies wanted the Union not to strike and Unions wanted a way to ensure Companies followed the Contract if they could not strike. Slowly, the practice of trading a no strike clause for an arbitration clause grew. During World War II, the government banned strikes and sent trained industrial experts out to hear discipline cases. The practice of arbitration of discipline grew in this way. This concept is so common today that Arbitrators have been known to imply a no strike agreement from the existence of a grievance procedure.

[1] See Appendix A for the text of the Just Cause clauses in our UMASS, Amherst labor agreements.

Unions bargained for, and in most (but not all) cases, included contract language that said the employer could not discharge or discipline employees without just cause. The "Just Cause Clause" is the key element in distinguishing unionized workplaces from nonunion. In a non-union work place an employee can be fired at the will of the employer, provided that firing does not violate any law, such as the anti-discrimination.. For many years "at will" employees had little chance to sue their non-union employer successfully. Today that is changing; employment litigation against non-union employers is the fastest growing type of lawsuit in many states.

Characteristics of Progressive Discipline

☐ Discipline is prompt - Don't sit on the problem. Look into as quickly as fairness allows. Make your decision and let the employee know. Some arbitrators will void late discipline.

☐ Discipline is proportionate- Proportionality comes into the picture in two ways. First, discipline should be progressive unless the occurrence giving rise to the discipline is serious enough to warrant stronger action right away. The Stages of progressive discipline are Oral Warning, Written Warning, Suspension, and Termination. A second question of proportionality is the question of the seriousness of the incident and the seriousness of the punishment.

☐ Discipline is consistent- This means a similarly situated employee in terms of work record and length of service will get a similar punishment for a similar cause. Consistency does not mean you must always give the same punishment for tardiness. The more consistent we are over time the more likely we are to be successful in disciplining employees.

Basic Procedures

☐ The Supervisor looks into the facts before disciplining. If suspension or discharge is possible a meeting with the employee is proceeded by an oral or written notice. At this meeting the employee tells his/her side of the story. If the employee facing discipline has completed their probationary period and the supervisor believes the disciplinary action will be suspension or termination, they must offer the employee an informal pretermination hearing.

☐ The Supervisor allows the employee to ask to have a union representative present if they are going to talk about something that is likely to lead to discipline.

☐ The Supervisor sends a copy of any disciplinary letters to the Whitmore Permanent Personnel File, employee and union.

Documentation, Clarity of Expectations and Standards and the Role of Evaluations

Progressive discipline occurs when an employee fails to meet minimum expectations in regards to conduct and performance. Crucial to holding an employee accountable for not meeting applicable standards of performances or conduct is being able to show the employee had a clear understanding of such standards. There are a small set of expectations such as not stealing from the employer and not assaulting co-workers which all employees are expected to adhere to without any supervisory communication. Making such standards clear in most circumstances, especially when issues arise involving workplace processes or performance norms, is important to be able to show such standards have been clearly communicated to the employee. If the employer cannot show the employee should be aware of a given rule, productivity minimum or norm of conduct
will not prevail in grievance arbitration challenging disciplinary action.
Three excellent means of showing communication with the employee about such issues are annual performance reviews, day to day e-mail and disciplinary actions, such as letters of reprimand. Try to communicate three things. First, give a specific example or better examples of the conduct or performance you are concerned about. Second, explain the rule, standard of behavior or performance which is involved. Third, describe which satisfactory performance or conduct would constitute. Documentation is the collection of any document, contemporaneous notes of conversations or material given out generally to employees in your area or across campus which reasonably state the issues being addressed through disciplinary action.

Seven Tests for Just Cause

This is the classic arbitrator's tests of just cause first described in an arbitration decision issued in 1966 by Arbitrator Carroll Daugherty. While these are commonly noted and considered it is important to recall they were issued in a railroad case where a complex of long established practices made them somewhat unwieldy and not wholly applicable to a public employer in 2012. However they are a valuable set of considerations to consider:

1. Was the employee adequately warned of the consequences of his conduct? The warning may be given orally or in printed form. An exception may be made for certain conduct such as insubordination, drinking on the job or coming to work drunk or on drugs.

2. Was the employer's rule reasonably related to efficient and safe work operations?

3. Did management investigate before administering discipline? Investigation should be made before administering discipline. When immediate action is necessary, the best course is to suspend the employee pending the investigation.

4. Was the investigation fair and objective?

5. Did the investigation produce substantial evidence of guilt?

6. Were the rules orders and penalties applied evenhandedly?

7. Was the penalty reasonably related to the seriousness of the offense and the employee's past record?

Comments on Just Cause

A half-century of reported cases exist in labor arbitration in which one can establish what constitutes the standard of just cause. I suggest there are three (3) parts which make up the standard of just cause.

1. Did the employee breach the rule or commit the offense as charged?

2. Are there mitigating circumstances that would render improper the discipline or the degree of discipline imposed? Length of service, prior "clean" or "poor" record, the facts and circumstances present in the particular case. Was a proper investigation conducted prior to imposing discipline?

3. Does the discipline imposed fit the improper conduct? (Does the penalty fit the crime?)

Types of Offenses

1. Extremely Serious Offenses (i.e., stealing, drug use on the property)

☐ Usually justify summary discharge without any attempt at corrective or progressive discipline.
☐ Arbitrators are more willing to recognize the need for enforcing penalties that meet the seriousness of the offense.

2. Less Serious Offenses (i.e., tardiness, absence without permission)

☐ Usually not punishable by discharge but call for some penalty.

☐ Arbitrators continue to apply progressive discipline, exercise leniency, and modify disciplinary penalties imposed by management when there are mitigating circumstances that lead the arbitrator to conclude the penalty is too severe.

Guidelines for Establishing a Program of Progressive Discipline

1. The employer must prescribe rules of conduct which are reasonably comprehensible by all employees, enforceable, related to the department's function, applicable to all employees and which do not unduly infringe upon an employee's private life.

2. All persons in supervisory positions and particularly first-line supervisors should know the rules of conduct and be required to carefully observe them.

3. The rules of conduct should be carefully explained to all employees.

4. A regular warning procedure for infractions of rules should be worked out and applied.

5. When appropriate, discipline short of discharge should be used.

6. Avoid arbitrary or hasty action when confronted with a situation requiring discipline.

7. Progressive discipline does not mean each disciplinary action taken must necessarily be more severe than the preceding one, regardless of the offense involved.

Types and Progression of Discipline

☐ Verbal Warning

☐ Verbal Warning with Notation to the File

☐ Written Warning

☐ Demotion

☐ Transfer

☐ Suspension

☐ Termination

Questions to Consider When Implementing Progressive Discipline

A. Fairness and Consistency in the Process

1. Is progressive discipline necessary?

2. Was the employee adequately warned of the consequences of his/her conduct before disciplinary action was taken?

3. Did the employer make earlier efforts to educate/rehabilitate the person causing the problem?

4. Did management investigate before administering the discipline?

5. Was the employer's investigation conducted fairly and objectively and was it fully completed before disciplinary action was taken?

6. Was the employee given an opportunity to give his or her side of the case?

7. Did the investigation produce substantial evidence or proof that the employee had committed the offense?

B. Previous Record of the Employee

1. How long has the employee worked for the organization, and what was the quality of performance?

2. Have there been other discipline problems in the past, and over how long a time span?

3. Is the current problem part of an emerging or continuing pattern of discipline infractions?

C. The Work Environment

1. Was the rule or order reasonably related to the efficient and safe operation of the work area?

2. Had the employer applied its rules, orders, and penalties without discrimination (i.e. consistently throughout the organization)?

3. Was the employee provoked in whole or in part to commit the misbehavior?

4. Are there extenuating circumstances relating to the problem?

5. Did the employee commit the offense on the spur of the moment as a result of a momentary aberration due to strong personal impulses or was the offense premeditated?

6. Do financial pressures play a role?

7. Do industry pressures play a role?

D. The Severity of the Discipline/Penalty

1. Was the specific discipline based on the progressive discipline approach?

2. How severe is the problem or infraction?

3. Was the degree of discipline administered in the particular case reasonably related to:

4. The seriousness of the employee's proven offense, and

5. The employee's work record?

Requirements for Dues Process Termination

1. Knowledge of, and/or published, rules

2. Adequate warning

3. Opportunity to be heard

4. Notice of that opportunity

5. Notice and opportunity generally prior to discipline

6. No pre-judgment

7. Decision communicated to employee in timely fashion and generally in writing

Sample Reasons for Discipline

1. Absenteeism including tardiness

2. Insubordination
   - Refusal to Obey a Direct Order
   - Abusive Behavior towards a supervisor

3. Misconduct
   - Damaging Company Property
   - Dishonesty
   - Fights and Altercations
   - Gambling on University premises or on duty
   - Discourtesy to a customer, student or member of the public
   - Off-Duty Misconduct reasonably associated with the University
   - Moonlighting
   - Sleeping and Loafing
   - Sexual Harassment

4. Substance Abuse
   - Intoxication or possession of alcohol while on duty
   - Drug Abuse or possession of illegal drugs while on duty

5. Unsatisfactory Performance
   - Incompetence
   - Negligence
   - Current inability to perform the duties of an employee's position with reasonable accommodation if appropriate

LOUDERMILL RIGHTS

Where the Constitution Meets Public Employee Discipline

Loudermill rights are due process rights afforded a tenured public employee facing discharge or suspension. Because these rights fit neatly into the standards of review often applied by labor arbitrators, following Loudermill procedures is likely to help us in shaping a procedurally sound case before an arbitrator. I would note that, unlike Just Cause which is a standard of review

created by the Labor Agreement, Loudermill Rights are afforded public employees because of the Fifth Amendment to the Constitution of the United States and similar provisions in state constitutions. The Fifth Amendment says:

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

In a decision announcing a Constitutional right for public employees not possessed by private employees, the Supreme Court in Cleveland Board of Education v. Loudermill held that most public employees are entitled to a hearing before they are discharged. However, the "hearing" is not a full evidentiary hearing and need not include the opportunity to cross-examine your accusers. All that is required is:

1. Oral or written notice of the charges and time for hearing

2. An explanation of the employer's evidence: and

3. An opportunity to present "his side of the story."

Further, since the issuance of the Loudermill decision, the lower courts have strictly limited the remedy for Loudermill violations. Specifically, an employee deprived of his Loudermill rights is not entitled to reinstatement if the employer can prove that there was just cause for the discharge in any case.

Just as Public Employees have a right to a Loudermill hearing before termination or suspension they are not free to fail to follow the orders of a supervisoror to answer questions about a matter under investigation. The rules governing such investigations are known as the Garrity Rule. According to the Garrity Rule, before a public employer can discipline the employee for refusing to answer questions, the agency must:

☐order the employee to answer the questions

☐ask questions which are specifically, directly, and narrowly related to employee's duties or the employee's fitness for duty, and

☐advise the employee that the answers to the questions will not be used against the employee in criminal proceedings.

If the employee then refuses to answer appropriate questions, the employee may be disciplined for insubordination.

Characteristics of Loudermill Process

1.Notice of charges
Nearly all departmental discipline systems provide such notice.

2.A statement of the grounds for the charges and the supporting evidence
Some systems provide a description of the grounds, but many do not give the charged employee access to the supporting evidence. Few give the employee access to the evidence prior to demanding that the employee give evidence. In most cases of serious discipline, the evidence on which charges are sustained is based on the employee's own statements given prior to that employee's access to the evidence.

3. Right to respond
This right is usually given, but as mentioned, the response is required prior to gaining access to evidence of the charges and then often becomes the central basis of the evidence against the employee.

4.The right to call witnesses
This right is usually allowed at least in part in the post-hearing stage. Typically, however, the employee's right to call witnesses - and finance or compel their testimony - is more limited than that of the department.

5.Right to Counsel
Representation by counsel is usually, but not always, allowed.

6.Unbiased trier of fact
This is often given in states with collective bargaining but denied elsewhere. In too many departments, the same person who must initially approve the decision is also the authority of final review.

7.Record
A record is not always made of such proceedings.

8.Judicial review

This is not always available. In many jurisdictions, the law is unclear on this point. The implications of this review are important. When full due process is not available in the post-discipline stage, the Supreme Court's decision in Loudermill would indicate that more than a notice, a right to review the evidence, and a right to respond is due in the pre-discipline stage. A serious Loudermill issue arises when one or more elements of full due process are denied at both stages of the discipline review.

WEINGARTEN RIGHTS

Introduction

In 1975, in NLRB v. J. WEINGARTEN, INC., 420 U.S. 251 (1975) , the U.S. Supreme Court announced the rights of employees in the presence of union representatives during investigatory interviews. Since that case involved a clerk being investigated by the Weingarten Company, these rights have become known as Weingarten rights.

Summary

When management begins to ask you questions that could lead to your being disciplined, you don't have to face it alone. If you have a reasonable belief that answers you give could be used by the supervisor to discipline you, the U.S. Supreme Court says you can refuse to answer any questions until the union steward is on the scene and has had a chance to talk things over with you first. It's your right to have the steward present during the questioning to advise you, ask supervisors for clarifications, and provide additional information at the end of the session. The employee subject to the interview must reasonably believe that the investigatory interview will result in disciplinary action. A meeting called by the employer for the purpose of informing the employee of the imposition of discipline already decided, is not an interview subject to Weingarten rights. Management is not required to inform the employee of his/her Weingarten rights; though at the University our advice is if a manager thinks discipline is likely in a given situation an offer of Union Representation should be made to the employee even if not required.

There are Limits to Weingarten Rights

Just as it's important to know your employee’s Weingarten rights it's also important to know the limits.

You are not entitled to have a steward present every time a supervisor wants to talk to you. But if the discussion begins to change into questioning that could lead to discipline, you have the right to ask for your steward before the conversation goes any further. In fact, The Massachusetts Labor Relations Commission has ruled it is an unfair labor practice for an employee to repeatedly ask for a Union Steward when she was being asked to attend meeting about her performance review.

If you're called to the supervisor's office for an investigation, you can't refuse to go without your steward. All you can do is to refuse to answer questions until the steward arrives and you've had a chance to talk things over. If you are called at home and asked the same kind of questions, you have a right to insist on waiting to answer when in the presence of a steward.
Remember an investigatory interview is not a "True Confessions'" meeting or some infomercial psychic doling out to advice to an employee--it is a meeting which could possibly lead to disciplinary action including removal from the University.

The Role of a Union Representative

The role of a union representative in an investigatory interview is to observe the discussion and to assist and counsel workers during the interview. There is no right to silence similar to the Fifth Amendment, in a criminal case an employee must answer questions presented to them and the steward cannot tell them to refuse to answer or answer for them. Employees declining to answer questions are subject to discipline.

The Supreme Court has also ruled that during an investigatory interview management must inform the union representative of the subject of the interrogation. The representative must also be allowed to speak privately with the employee before the interview. During the questioning, the representative can interrupt to clarify a question or to object to confusing or intimidating tactics.

While the interview is in progress the representative can not tell the employee what to say but he may advise them on how to answer a question.

The Rules at a Glance

Under the Supreme Court's Weingarten decision, when an investigatory interview occurs, the following rules apply:

RULE 1:

The employee must make a clear request for union representation before or during the interview. The employee cannot be punished for making this request.

RULE 2:

After the employee makes the request, the employer must choose from among three options. The Employer must either:

- Grant the request and delay questioning until the union representative arrives and has a chance to consult privately with the employee; or
- Deny the request and end the interview immediately; or

- Give the employee a choice of (1) having the interview without representation or (2) ending the interview.

RULE 3:
If the employer denies the request for union representation, and continues to ask questions, it commits an unfair labor practice and the employee has a right to refuse to answer. The employer may not discipline the employee for such a refusal.

BACKGROUND INFORMATION

Dictionary Definition

To subject to discipline. In earlier use, to instruct, to educate, train; in later use more especially to train to habits of order and subordination, to bring under control.

History

When Unions first organized in mines, plants, shipyards and other businesses, strikes were sometimes called when a worker was fired; this shut the business down so that the owner lost money and such strikes also caused workers to lose pay. Companies wanted the Union not to strike and Unions wanted a way to ensure Companies followed the Contract if they could not strike. Slowly, the practice of trading a no strike clause for an arbitration clause grew. During World War II, the government banned strikes and sent trained industrial experts out to hear discipline cases. The practice of arbitration of discipline grew in this way. This concept is so common today that Arbitrators have been known to imply a no strike agreement from the existence of a grievance procedure.

Unions bargained for, and in most (but not all) cases, included in contracts language that said the employer could not discharge or discipline employees without just cause. The "Just Cause Clause" is the key element in distinguishing unionized workplaces from nonunion. In a non-union work place an employee can be fired at the will of the employer, provided that firing does not violate a law such as the anti-discrimination laws. For many years "at will" employees had little chance to sue their non-union employer successfully. Today that is changing; employment litigation against non-union employers is the fastest growing type of lawsuit in many states.

Overview of Discipline
Unlike matters such as vacation, the labor agreements tend to say very little about discipline. Contracts may just say no employee will be discharged or disciplined without just cause.

However, Arbitrators have built up a number of concepts that are advisable to apply, as most discharges will end up in arbitration. These concepts include making the employer prove its case first. Discharge (sometimes called industrial capital punishment) should not be imposed for minor infractions. The principal that discipline should be progressive, means that it starts with warnings and then builds through suspensions to discharge. Arbitrators and the National Labor Relations Board have created the obligation of the employer to offer an employee subject to possible discipline, a chance to seek Union representation. Arbitrators apply these ideas even when they are not included in contract language. To maintain an effective discipline process the University must also follow these ideas.

The University of Massachusetts is a unionized work place. Only a relatively small number of Employees are exempt as confidential and managerial from membership in a bargaining unit. For this reason, almost all employees for whom discipline is appropriate are covered by a just cause provision. I do not believe it is appropriate to compare the discipline system used to maintain order and efficiency in a work place to the system of laws used to maintain order in society.

Free Speech and Public Employees

The Supreme Court has determined that a public employee does not have a free speech right to criticize their employer and may be fired for such criticism. The case in which this was decided involved the District Attorney of New Orleans and a lawyer in his office who became unhappy with the way the office was run and criticized the DA's budget. The Supreme Court upheld that lawyer's discharge because the speech was not protected by free speech. Only when the criticism moves beyond the operation in which they work do free speech protections apply. Rather, the employee discipline system is meant to give an employee a chance to conform their behavior to the work place needs before they are fired.

Massachusetts

The State of Massachusetts in the late 1960s and early 1970s extended to public employees (including state employees) the right to join unions and bargain over the terms and conditions under which they are employed. Only the right to strike is denied to Massachusetts Public Employees. The Massachusetts Courts, in a series of cases, upheld and supported arbitration of discipline cases. For this reason, supervisors, managers and university employees must deal with the need to use a discipline process that is subject to review by a labor arbitrator.

SAMPLE DISCIPLINE LETTERS

1. Oral Warning-Noted in file

Oral warning given to (employee's name) on (date) for failure to (reason for discipline) . Told employee of expected proper course of action in the future.

2. Written Warning Sample Letter

Date

Dear (Employee's Name),

This is a formal written warning. A copy of this letter will be placed in your permanent personnel file. On (date) you (reason for discipline) . This is a violation of the standard of the performance/behavior/productivity/attendance policy which you must adhere to in this work location. Your adherence to proper standards of conduct must improve. If your adherence does not improve you will be subject to further disciplinary action up to and including discharge.

Sincerely

Name and Title of Supervisor

Cc: Personnel File
Labor Relations
Department
Union

3. Sample Suspension Letter

Date

Dear (Employee's Name),

This letter suspends you from work for _#_ days from start of work on _ (Beginning Date) _ to start of work on _(Expected day of Return)__. I met with you on _ (Dates of Investigation meetings) and asked you to provide me the reason your conduct. I have concluded you engaged in the following conduct:

Insert relevant date(s) and the behavior(s) in which the employee engaged.

After considering your response my investigation and the misconduct, I have concluded you engaged in the behavior indicated above and I determine a suspension is warranted.

Further incidents of this sort may result in further suspensions or discharge. This suspension letter will become a part of your permanent personnel file.

Sincerely

Supervisor's name and Title

Cc: Personnel File
Labor Relations
Department
Union

4. Sample Termination Letter

Date

Dear Employee's Name,

This letter is to inform you that you are terminated from the service of the University effective (Date)___. The reason for your termination is (Cause).

You should report to Human Resources prior to leaving the University grounds for an exit interview. Attached, please find a handout informing you of your right to unemployment compensation under certain circumstances. I regret your University service has come to an end in this way.

Sincerely,

Supervisor's Name and Title

cc:Personnel File
Labor Relations
Department
Union

5. **Sample Notice of Disciplinary Hearing**

Date

Dear Employee's Name,

This is a formal notice that I am directing you to appear at an investigatory hearing that I will conduct to determine if the possible instances of employee misconduct that I briefly summarize in this memo may warrant disciplinary action including suspension or termination from employment at the University or other disciplinary action.

This investigatory meeting will take place on _(Date)__ at (Room)_ in _(Location)_. You may bring a union representative. At that time you will have an opportunity to answer the allegations that I am raising in this letter as well as to present any information about the incidents at issue.

I am holding this hearing for various reasons, including:

1) On September 2002 you …… (give a brief description of each incident)
(Include any dates and behavior that will be considered during the hearing)

At the conclusion of the meeting I will assess all relevant and appropriate information and make a determination as to what action, if any, should be taken.

Sincerely,

Supervisor's Name and Title

Cc:Personnel File
Labor Relations
Department
Union

Appendix A

Professional Staff Union Unit A Contract

Article 8 Discipline and Discharge
Section 8.1
No employee shall be disciplined or discharged except for just cause.

Section 8.2
The parties agree that corrective and disciplinary action, when imposed, shall be implemented in progressive stages from minor to severe. However, in some serious circumstances, where acts or omissions of a bargaining unit member have resulted, or will result, in serious harm to the institution, or members of the campus community, severe sanctions may be imposed in the first instance.

Section 8.3
In the event of discharge of an employee, the Employer/University Administration shall notify the Union Campus Chair within two (2) working days of such action being taken.

Section 8.4
The Union shall receive concurrent notice of all disciplinary charges, hearings, and decisions

American Federation of State County and Municipal Employees Local 1776[2]

ARTICLE 29
DISCIPLINARY ACTION
Section 1.
A. The parties agree that corrective and disciplinary action, when imposed, shall be implemented in progressive stages from minor to severe. Such action is intended to be from a less severe to more severe corrective action in order to bring about the necessary change in work habits. An employee, having successfully completed the required probationary period, shall not be discharged, suspended, demoted, or given a written reprimand (the parties have agreed to exclude oral reprimands from the purview of just cause review) for disciplinary reasons without just cause.

B. The provisions of this Article shall not be applied in an arbitrary or capricious manner. However, in some circumstances, actions or omissions, which have resulted or will result in harm to the institution, academic community, or members thereof, may require imposition of severe sanctions in the first instance.

[2] Section 5 Drug and Alcohol Testing omitted.

C. Progressive disciplinary actions may include, but are not limited to oral reprimand, oral reprimand with notation to the personnel file, written reprimand, suspension with pay, suspension without pay, demotion, and discharge.

Section 2.

Just cause may include, but shall not be limited to the following with each discipline being treated on a case by case basis:

A. Willful neglect or non-performance of one (1) or more assigned duties;

B. Demonstrated incompetence in the performance of one or more assigned duties;

C. Behavior that seriously interferes with the normal operation of the institution, the department, or any members of the workforce;

D. Insubordination, which shall mean a refusal to carry out a direct order;

E. Dishonesty in the performance of assigned duties;

F. Chronic absenteeism or tardiness without reasonable excuse;

G. Unauthorized possession or use of alcohol or an unprescribed controlled substance during any period of assigned work;

H. Institutional theft;

I. Permitting another to use one's University identification, or using another person's identification or altering a University identification care (not UCard);

J. Threatening and intimidating or bullying an employee(s) or a supervisor.

Section 3.

When terminating a unit member, the CEO shall inform the member, in writing, with the reasons therefore.

Section 4.

The Union shall receive a concurrent notice of all disciplinary charges, hearings, and decisions. When an investigation may lead to the discipline of an employee, the supervisor shall advise the employee that s/he may be accompanied by a Union representative.

University Staff Association

ARTICLE 26
DISCIPLINARY ACTION

Section 1
No employee, who has been employed in the bargaining unit described in Article 1 of this Agreement for six (6) consecutive months, shall be suspended, dismissed, removed, demoted, or terminated for disciplinary reasons without just cause. An employee, who severs his/her employment with the Employer, must serve an additional probationary period upon reemployment, whether in the same or different job title.

Section 2
In the event that an employee is not given a hearing prior to the imposition of suspension, dismissal, removal, demotion, or termination for disciplinary reasons, then a grievance alleging a violation of section 1 of this Article shall be submitted in writing by the aggrieved employee within twenty (20) working days of the date such action was taken. The grievance shall be treated as a step 2 grievance and Article 27 (Grievance and Arbitration Procedure) shall apply.

Section 3
In the event that an employee is given a hearing prior to the imposition of suspension, dismissal, removal, demotion, or termination for disciplinary reasons, a grievance alleging a violation of section 1 of this Article shall be submitted in writing by the aggrieved employee within twenty (20) working days of the date such action was taken. The grievance shall be treated as a step 3 grievance and Article 27 shall apply.

Section 4
In the event an employee or the Association on his/her behalf seeks redress of any claim which could be brought under the grievance and arbitration provisions of this Agreement in any other forum, the Employer shall be relieved of any obligation to at any time process said claim through the grievance and arbitration procedure set forth in this Agreement.

Section 5
Should the Association submit a grievance alleging a violation of section 1 to arbitration pursuant to Article 27, the arbitration shall be conducted on an expedited basis. An employee and/or the Association shall not have the right to grieve pursuant to this Article or Article 27, disciplinary action taken as a result of the employee engaging in a strike, work stoppage, and slowdown or withholding of services unless the Association alleges that the employee did not engage in such conduct.

N.B. omitted is contract language from the contracts between the University and the New England Police Benevolent Association Local 190; the International Brotherhood of Police Officers, Local 432B; the Professional Staff Union/Massachusetts teachers Association, Unit B; American Federation of State County and Municipal Employees Local 1776 Unit B (CC/03)