DISCIPLINE

A BASIC OVERVIEW



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Introduction

- This session will provide an overview of the employee disciplinary process in an effort to educate the representatives of the Superior Officers Association.
- If every representative takes away at least one thing from this program, it will have been worthwhile.



Topics of Discussion

- Causes for discipline.
- Appeals.
- Dismissal.
- Suspensions and fines.
- Investigations.
- Employee rights.



There are two types of disciplinary action

- Minor
 - Formal Written Reprimand
 - Suspension/fine of 5 working days or less
- Major
 - ◆ Termination
 - Disciplinary demotion
 - Suspension or fine of 5 working days or more
 - Suspension or fine of 5 working days or less where the aggregate number of days is 15 or more in a calendar year
 - Suspension or fine where an employee receives more than 3 suspensions of 5 working days or less



General Causes for Disciplinary Action

- Incompetency, inefficiency, or failure to perform duties
- Insubordination
- Inability to perform duties
- Chronic of excessive absenteeism or lateness
- Conviction of a crime
- Conduct unbecoming a public employee
- Neglect of duty
- Misuse of public property, including motor vehicles
- Discrimination that affects equal employment opportunity (as defined in N.J.A.C. 4A: 7-101), including sexual harassment
- Violation of Federal regulations concerning drug and alcohol use by employees who operate commercial motor vehicles
- Other sufficient cause



Minor Discipline Appeal

- Appeal must be filed within 15 calendar days from date charge was served
- Suspensions of 1 to 5 days may be appealed to the Joint Association Management Panel
- May be appealed through the DOP only if it presents issues of general applicability in that it interprets law, rule, regulation, or policy
 - If this standard is met, the appeal is referred to OAL for a hearing
 - If this procedure is chosen, it is final and binding and absolute waiver of other disciplinary appeal processes



Major Discipline Appeal

- Appeal must be filed within 15 calendar days from date charge was served
- May be appealed to DOP within 20 calendar days of decision
 - If this procedure is chosen, it is final and binding and absolute waiver of other disciplinary appeal processes
 - ◆ This is then referred to OAL for "de novo" hearing
- May be appealed to Advisory Disciplinary Arbitration
 - May only be made through the President and within 20 days of the initial decision
- May be appealed to Alternate Dispute Resolution Program
 - Must be agreed to by employee, union, and employer



Disciplinary Processes

- Employer must serve Preliminary Notice setting forth the charges
 - Within 60 days for EED charges, or
 - Within 45 days for all other charges
- Employee must appeal charges within 15 days of receiving charges
- Employer must hold hearing within 20 days of receiving appeal
- Hearing Officer must render written decision within 20 days of hearing date
- Sanction may be imposed after service of Final Notice



Time Limits

All but EED charges must be served within 45 days of employer reasonably becoming aware of infraction, or charges shall be dismissed.

- EED charges must be served within 60 days of employer reasonably becoming aware of infraction, or charges shall be dismissed.
- All initial appeals must be filed within 15 calendar days from when the employee received the charges.
- The union shall be notified of any employee who the employer intends to suspend or terminate, within 72 hours of notice to the employee.
- Initial disciplinary appeal hearings shall be convened within 20 calendar days from the date the appeal was filed.
- The Hearing Officer shall render a written decision within 20 calendar days from the date of the hearing.
- The initial decision may be appealed to the Merit System Board within 20 calendar days from the date of the initial decision.
 - The initial decision may be appealed to Advisory Arbitration within 20 calendar days from the date of the initial decision.
- The Arbitrator shall hold a hearing within 30 days from the date s/he accepts the case.
 - The Arbitrator shall issue a decision within 30 days of the date of the arbitration hearing.
 - Minors (1 to 5 day suspension) may be appealed to the Joint Association Management Panel within 10 days of date of initial decision.



Time Limits (Continued)

- Loudermill hearings may not be conducted before the expiration of 24 hours from the time the employee has been served with charges
- Suspensions can not be implemented before an expiration of 72 hours from the beginning of the work shift when employee is served charges
- Suspensions may be immediate, pending termination charges, when the employer has an immediate need to maintain safety, order or effective direction of work assignments
- Suspensions must be started within 30 calendar days of the final notice of disciplinary action
- All suspensions must be served within 6 months of final notice
- At disciplinary hearings, Management must provide a witness list and discovery documents within 3 days (exclusive of weekends) before the scheduled appeal hearing
- All arrests, summons', or incarcerations must be reported to the employee's supervisor within 48 hours form the date of summons, arrest, or incarceration
- Employees have up to 8 hours to void a urine specimen, when ordered to do so as part of the employer's urine policy



Automatic Dismissal

- Charges shall be considered dismissed if not served:
 - Within 60 days for EED
 - Within 45 days for all other charges



Fines

- Employer may only impose fine
 - ◆ As form of restitution
 - In lieu of suspension, when suspension would be detrimental to public health, safety or welfare
 - When employee agrees to fine



Fine Limitations

- Limitations on fines
 - When a fine of \$100 or more is imposed, fine will be withheld pending final disposition of the appeal, if requested
 - No fine shall exceed 6 months

- Payment of fines
 - Fine of more than 5 days pay can be paid in lump or installments.
 - ◆ Installment may not be more than 5% of gross for fine under \$500, 10% of gross for fine of \$500 to \$1000, and 15% of gross for fine over \$1000.



Suspension Limitations

- No suspension shall exceed 6 months
- Suspensions are without pay unless directly authorized by Department Head.
- A suspension "on-the-record" may be imposed if agreed in writing by employee, union, and employer
 - Will have same force and effect for purposes of future discipline as a suspension actually served
- Suspensions cannot be implemented before 72 hours from the start of the shift during which notice of suspension was given, except in Loudermill cases



Immediate Suspensions

- Conditions for immediate suspensions
 - Employee is unfit for duty or a hazard to fellow employees or others
 - When necessary to maintain safety, health, order or effective direction of public services
 - ◆ When employee is charged with a crime of the 1st, 2nd, or 3rd degree, or the 4th degree on the job or directly related to the job

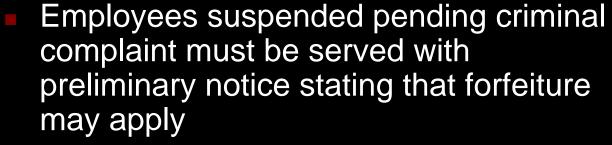


Loudermill Suspension

- Loudermill hearing notice must be provided to employee at least 24 hours before a hearing
- Employee is advised of why suspension is sought
- Employee may review charges and evidence and respond
- Employer must serve Preliminary Notice of formal charges within 5 days of Loudermill suspension
- Employer must hold disciplinary appeal hearing within 30 days of preliminary notice
- Hearing Officer's decision and final notice must be served to employee with 20 days from hearing date



Criminal Matters



- Department appeal hearing is limited to the issue of whether public interest would be best served by suspending employee with or without pay pending disposition of criminal charges
- Indefinite suspension may extend beyond 6 months but not beyond disposition of criminal charges



Progressive Discipline

- Employee's past record is not admissible to establish the charges but may be considered in determining the appropriate penalty
- Past record may include performance evaluations, reasonably recent history of promotions, commendations, and formally and informally adjudicated disciplines



Investigations

- Generally minor infractions should be investigated by employee's chain-ofcommand supervisor
- SID may investigate
 - Misconduct that may be criminal in nature or involves inmates
 - Serious administrative rule violations, especially involving inmates
- EED shall investigate all matters associated with violations/complaints involving EED policies



Burden of Proof

- In all disciplines the burden of proof is incumbent upon the Appointing Authority
- Guilt must be proven by a preponderance of credible evidence
 - ◆ This is greater than 50%

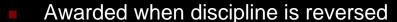


Merit System Appeals

- Appeal must be submitted in writing within 20 days of final notice
- A request for interim relief may be made but must show a clear likelihood of success on the merits, a danger of immediate or irreparable harm, and absence of substantial injury to other parties, and the public interest
- The MSB prepares the appeal for review by the OAL
- Early Settlement may be accomplished
- OAL Judge hears case and makes recommendation to MSB for approval
- All parties have 13 days to file exception to ALJ's report
- MSB may accept, reject or modify the ALJ's recommendation



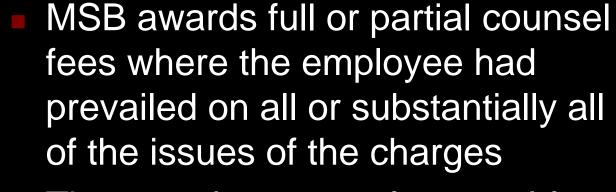
Back pay, Benefits & Seniority



- May be awarded when discipline is modified
- Awarded following disposition of criminal charges when verdict is not guilty at trial, at dismissal of complaint or indictment, or termination of prosecution
- Back pay includes salary, regular wages, overlap, increments, and across-the-board increases
- Back pay does not include overtime or holiday pay
- Benefits include vacation and sick leave credits and additional amounts expended to maintain health insurance during removal
- Back pay is reduced by taxes, social security, dues, pension and other normal payments
- Back pay reduced by by what was actually earned or could have been earned during separation
- Back pay may be reduced by delay caused on behalf of employee
- Back pay is not awarded when criminal charge is disposed of through PTI



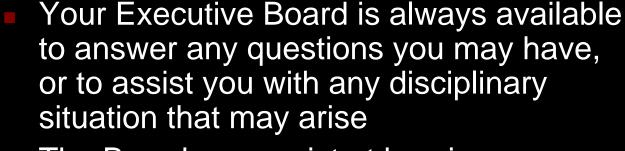
Counsel Fees



The actual amount of counsel fees is to be settled by the parties whenever possible



Help is available



- The Board can assist at hearings, serve as observers, or even present hearings with you as an observer
- Even in the middle of a disciplinary appeal hearing, we're available for you
 - If things seem beyond your control, or out of hand, simply request a brief recess and reach out by telephone

