Implementing the 1B.1 Decision
Jim Jorstad
Labor Relations

Decision-maker’s Responsibilities

• Reviews investigative report

• Decides if misconduct occurred

• Determines appropriate action

• Implements appropriate action

• Participates in appeal and/or grievance process
Who Makes the Disciplinary Decision?

Someone who:
• Accepts the responsibility
• Lacks bias or ill-will
• Has the authority (direct or delegated)
• Will be able to testify and is a good witness

Analyzing the Investigation Report

• Read the allegation or complaint to see what the report should cover
• Review the elements of the offense
• Read the report 3 or 4 times
• Do the facts in the report completely support each element of the offense? (if not, send it back)
• Are there inappropriate conclusions in the report? (if yes, send it back)
Analyzing the Investigation Report

• Are the witnesses, complainant and the accused credible? Is there corroborating evidence for their accounts?

• How did they react or behave after the incident?

• Did they talk to others or write about the conduct soon after it occurred?

• Has the accused been found to have engaged in similar behavior?

Reviewing the Investigative Report

Determine if additional steps should be taken before making a decision

• Additional investigative measures

• Request additional information, e.g., written response from complainant and or respondent

• Meeting complainant, respondent or other involved individuals
Meeting Complainant, Respondent or Others

- Tenessen Notice

- Non-Bargaining Unit Employee Representation Rights
  - May be accompanied by a support person

- Bargaining Unit Employee Representation Rights (AKA Weingarten Rights)
  - Per Collective Bargaining Agreement (CBA)

Meeting Complainant, Respondent or Others

Weingarten Rights

- Is the bargaining unit employee being questioned in connection with an investigation which could lead to discipline of that employee?

- If so, the employee has a right to union representation

- Check CBA representation rights provisions
Deciding if Misconduct Occurred

- Did discrimination or harassment occur in violation of Policy 1B.1?
- Did other misconduct occur?

Deciding if Misconduct Occurred

Burden of Proof
- 99% Beyond a reasonable doubt (criminal court matters)
- 75% Clear and convincing evidence (civil court matters)
- 51% Preponderance of evidence; e.g., more likely than not (most public institutions)
- <51% Good faith in investigation/reasonable conclusion (most private employers)

* Check the relevant CBA
Deciding if Misconduct Occurred

Gather all information and highlight the important points

What do the important points show or prove?
• If not relevant, put it aside.
• If relevant, is it credible?

Determine Appropriate Action

• Take corrective action for 1B.1 violations
• Refer non-1B.1 work problems or student misconduct to appropriate resource
• Complainant’s preference is informative but not controlling
Determining Appropriate Action

• Action must be sufficient to:
  - Ensure harassment will stop and not recur
  - Send clear messages that policy is meaningful and applies to everyone

• Factors
  - Severity of conduct
  - Degree of harm to complainant and others
  - Has the conduct potentially created a class of complainants?
  - Has offender a history of alleged behavior?

Determine Appropriate Action

• Progressive (or corrective) discipline is designed to correct an employee’s behavior so that the misconduct does not occur or is not repeated

• For egregious acts of misconduct, progressive discipline need not be strictly followed

• Review CBA disciplinary provisions
Determine Appropriate Action

Just Cause

- Did employee know and understand the consequences of violating the rule or standard?
- Was the violated rule or standard reasonable?
- Was the pre-disciplinary investigation fair and objective?
- Did the investigation result in proof of violation of the rule or standard?
- Was employee treated consistently with similarly situated employees?
- Was the penalty appropriate for the offense?

Determine Appropriate Action

Penalty Assessment Factors

- Aggravating Circumstances
- Mitigating Circumstances
Risk Assessment Prior to Taking Disciplinary Action

- Has the employee engaged in protected or concerted activity?
- Is the employee on or recently taken a job protected leave?
- Is the employee a member of a protected class?
- Has the decision maker made inappropriate statements about the employee?

Determine Appropriate Action

Employee

Non-disciplinary options

- Informal process (supervisory coaching, training, letter of expectation, alternative dispute resolution)
- Reassignment or administrative leave

Types of progressive discipline*

- Oral reprimand
- Written reprimand
- Suspension (with or without pay)
- Vacation reduction per CBA (e.g., MAPE, MMA, MSUAASF)
- Demotion
- Discharge

*Check the relevant CBA
Determine Appropriate Action

**Students**

Non-disciplinary options

- Informal process (coaching or counseling, training, alternative dispute resolution)

Types of progressive discipline

- Verbal warning
- Suspension
- Expulsion

Implement Appropriate Action

Components of Disciplinary Letter

- Level of discipline
- Reason(s) for discipline
- Past warnings and/or discipline the employee has received
- Opportunity for Loudermill meeting, when appropriate
Implement Appropriate Action

Components of Disciplinary Letter – cont’d.

- Corrective action required of employee
- Referral to EAP, if your practice
- Consequences of failure to measurably improve
- Employee’s appeal rights

Implement Appropriate Action

Distribution of disciplinary letter

- Employee
- Personnel file
- Union? Check CBA

Service of disciplinary letter in person or via mail

- Check CBA if certified mail required
Implement Appropriate Action

Follow up to Discipline (by supervisor)

- Work with employee to correct deficiencies
- Give employee a written plan of correction? It should be specific and include a timetable for improvement.
- Monitor employee’s progress
- Document changes or continued problems
- Follow up with EAP referral, if your practice

Available Appeal Processes

Procedure 1B.1.1 part 8

and/or

Collective Bargaining Agreement

and/or

Veteran’s Preference Hearing (classified discharge and demotion only)
THANK YOU

30 East 7th Street
St. Paul, MN  55101

651-201-1800
888-667-2848

MINNESOTA STATE IS AN EQUAL OPPORTUNITY EMPLOYER AND EDUCATOR