Guidelines for Determining if There Was Just Cause for Discipline

A basic principle underlying most disciplinary procedures is that management must have "just cause" for imposing the discipline. This standard often is written into union contracts or read into them by arbitrators.

While the definition of "just cause" necessarily varies from case to case, one arbitrator has listed these tests for determining whether an employer had just cause for disciplining an employee:

1. Was the employee adequately warned of the consequences of his/her conduct? The warning may be given orally or in writing. An exception may be made for certain conduct, such as insubordination, coming to work drunk, drinking on the job, or stealing company property, which is so serious that the employee is expected to know it will be punishable.

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

3. Did management investigate before administering the discipline? The investigation normally should be made before there is a decision to discipline.

4. Was the investigation fair and objective?

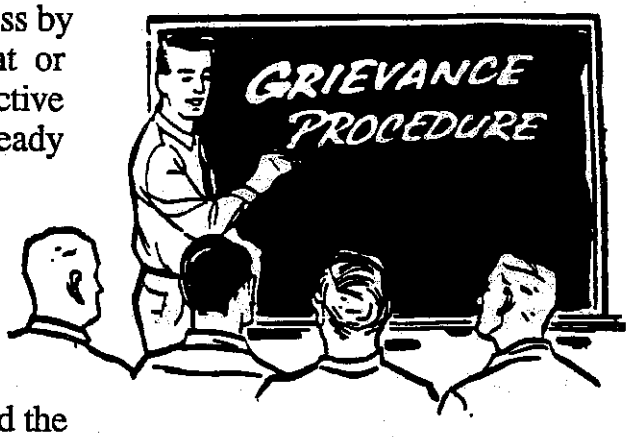
5. Did the investigation produce substantial evidence or proof of guilt?

6. Were the rules, orders, and penalties applied evenhandedly and without discrimination? If enforcement has been lax in the past, management can't suddenly reverse its course and begin to crack down without first warning employees of its intent.

7. Was the penalty reasonably related to the seriousness of the offense and the past record? If employee A's past record is significantly better than that of employee B, the employer may properly give A a lighter punishment than B for the same offense.

THE IMPORTANCE OF THE GRIEVANCE PROCEDURE

Collective bargaining is the process by which the workers in a given plant or office seek, by use of their collective strength, (1) to protect the gains already made by enforcing the contract provisions, and (2) to constantly improve their contract provisions through negotiations with their respective managements.



This subject matter is directed toward the end of stressing the importance of knowing and properly evaluating all of the facts surrounding any grievance or dispute involving the union and management in your particular plant or office. When we realize that under any contract, any issue that may arise might in the end be the subject of an arbitrator's decision - or the reason for the calling of a strike - we then understand the importance of getting started on the right foot when attempting to bargain on any issue with management.

The grievance machinery in an IUE contract offers a rational and reasonable approach to the solutions of the daily problems that confront our members in plants and offices throughout the United States.

Of course, there are times when reasoning fails and strikes occur. Speedups, health and safety hazards, and adverse working conditions are exceptional threats to the job security and human dignity of our members, and demand exceptional measures to resolve them.

But for every action committed against our members by managerial decisions, the grievance machinery, applied in hundreds of plants and office locations on a continuing, daily basis, is a vital factor in assuring equitable treatment for our members, and justice on the job.

"guide," you will soon learn to prepare a specific list of similar questions to apply to any and all kinds of complaint/grievance-oriented situations.

THE STEWARD AS A NEGOTIATOR

What You Do:	What You Need to Know:
1. Settle Grievances	1. Proper Grievance Handling
2. Eliminate Phony Grievances	2. How to Analyze a Grievance
3. Enforce the Contract	3. Meaning of Contract Clauses
4. Check Working Conditions	4. Health and Safety Hazards
5. Enforce labor Legislation	5. Federal and State Labor Laws
6. Keep Written Records	6. All Decisions Reached

HOW YOU GO ABOUT IT

1. Check all available facts before taking an issue to management.

2. Prepare your case so that it is clear, complete and to the point

3. Be careful to observe all contract requirements on grievance handling.

4. In dealing with your supervisor, be business-like, polite and firm.

    a. Don't bully or threaten.
    b. Treat the other person with respect, and demand that you be treated in the same manner.

5. Follow through all the way to final settlement.

TIPS ON INTERVIEWING GRIEVANTS IN DISCIPLINARY CASES

1. Asking the right questions

   Go through the 5 W's

   - Who
   - What
   - Where
   - When
   - Why

2. What is the alleged violation?
   - contract provision
   - company rule or policy
   - past practice
   - state or federal law
   - fair treatment rights of workers

3. Was there a fair procedure?
   - did the company do a fair investigation prior to issuing discipline?
   - did the company investigation turn up any substantial proof of wrongdoing?

4. Was the rule, policy or standard reasonable?
   - was it clear and known to the grievant?
   - was it related to the safety and efficiency of operations?
   - was it applied fairly and consistently?

5. Was the grievant aware of the alleged violation?
   - did the employee understand the consequences of action or inaction?
   - was the employee warned in advance?

6. Was progressive discipline applied?
   - was this a first offense?
   - how serious was the offense?
   - did the discipline "fit" the alleged crime?

7. Can management meet it's burden of proof?
   - is there clear and convincing evidence?
   - is the evidence firsthand or hearsay?
   - are there witnesses?
   - is the evidence measurable?

Representing Members at Investigatory Interviews

(For reference only 2023)

Under the *Weingarten* labor law doctrine, bargaining unit members have a right to request union representation when called in for questioning about matters that could lead to discipline. As a steward or other representative, you have important rights of your own.

STEWARD'S RIGHTS

* On arrival, you can ask for a description of the matter being investigated. The employer must comply. If the employer ignores your request, you can instruct the employee not to answer questions.

* After learning the reason for the interview, you can ask for a private meeting or "caucus" with the employee. The employer must allow adequate time and privacy. During the caucus you should find out what happened and give the employee advice on how to handle the interview.

* During the interview, you can give the employee further advice on answering questions and can object if questions are harassing or confusing. But you cannot force the employer to bargain over what questions to ask.

* At the end of the interview, you can bring up mitigating and extenuating circumstances. These might include the employee's

Some *Hints* For Settling Grievances

There's not a steward alive who doesn't really love winning grievances and really hate losing them. In keeping with the theory that love is always better than hate, here are some hints for winning, with thanks to a checklist developed by the Northern Michigan University Labor Education Program. Depending on the issues, you might be able to consider one or more of these ideas next time you're in a grievance meeting.

1 You can't win unless you're sure management knows exactly what you want, so you have to be specific in your proposed settlement. More than once, both sides have walked away unsatisfied after management grudgingly yielded to what it thought was the union's demand...but the union actually wanted something different. Thanks to bad communications, neither side got what it truly wanted.

2 You've got to be prepared to "sell" the requested remedy. You can't expect to win just because you've got right on your side. You have to be ready to strongly support your resolution with whatever it takes: facts, figures, emotion, logic...you've got to convince management that they want to "buy" what you're selling.

3 Explain how the union's proposed remedy won't create a hardship for management, and in fact may be good for everyone concerned. Changing a work procedure could, in fact, increase productivity. Adjusting break periods may, if implemented, end up in a smoother-running operation.

4 Leave yourself open to the possibility that there may be more than one solution to the problem. Maybe the supervisor will offer something different, something that works just as well as what the union wanted. Don't say "my solution or nothing," or at least not until other remedies have been explored, and after much discussion.

5 Don't make it so hard for the supervisor to agree to your remedy that, even if down deep she does agree, she's afraid to say so, or just doesn't want to. One way this can happen is if you've been so publicly tough on her she feels she's been humiliated, and now it's a question of pride that she not give in. Keep your goal in mind: winning. Keep your eyes on the prize.

6 If a supervisor is being reasonable and really trying hard to resolve the problem, tell him you appreciate it. He'll be more likely to want to work with you to work things out. If he's being stubborn and avoiding a settlement, though, tell him that, too.

7 Let the supervisor know that if you can't settle the grievance at the first step you'll have to take it to the next level — but you'd rather resolve it here. Occasional evidence to the contrary, supervisors are human, too, and they don't want to have to go to their bosses and admit they can't keep peace in the workplace without running to mommy or daddy. It looks a lot better for them if they don't have to drag their superiors into their departmental problems.

8 Find out exactly why your proposed remedy is not acceptable. Maybe just one part of your proposal is the problem, and that one part is not that important to the union. Maybe the supervisor needs something in return for giving her ok, and maybe it's something insignificant that can be granted.

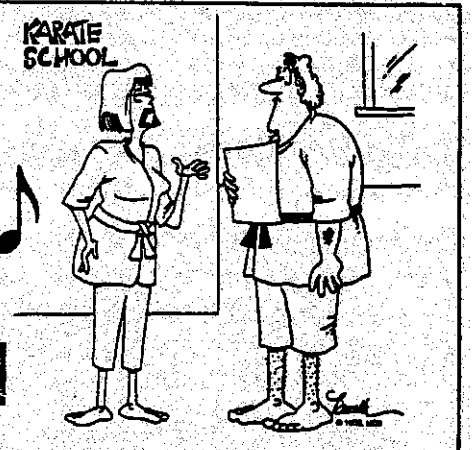
9 If your remedy is rejected, ask the supervisor what he thinks would work. He may well come up with a lousy solution that you'll have to reject, but it could open the door to an alternative idea ultimately acceptable to both sides.

— David Prosten. The writer is editor of Steward Update. With thanks to the Northern Michigan University Labor Education Program.

ON THE WEB? CHECK OUT

- THE LABOR CARTOON OF THE WEEK
- THE LABOR SONG OF THE WEEK

WWW.UNIONIST.COM



"I just want to learn enough to handle the office vending machines."

36 Reasons to Thank a Union

Did you know that labor unions made the following 36 things possible?

1. *Weekends without work*
2. *All breaks at work, including your lunch breaks*
3. *Paid vacation*
4. *Sick leave*
5. *Family & Medical Leave Act (FMLA)*
6. *8-hour work day*
7. *Social Security*
8. *Minimum wage*
9. *Civil Rights Act/Title VII - prohibits discrimination*
10. *Overtime pay*
11. *Occupational Safety & Health Act (OSHA)*
12. *Laws ending child labor*
13. *40-hour work week*
14. *Privacy rights*
15. *Unemployment insurance*
16. *Pensions*
17. *Workplace safety standards and regulations*
18. *Employer-provided health care insurance*
19. *Laws ending sweatshops in the U.S.*
20. *Age Discrimination in Employment Act of 1967 (ADEA)*
21. *Wrongful termination laws*
22. *Whistleblower protection laws*
23. *Employee Polygraph Protection Act (prohibits employers from using lie detector tests)*
24. *Americans With Disabilities Act (ADA)*
25. *Compensation increases (i.e., raises)*
26. *Sexual harassment laws*
27. *Veteran's Employment and Training Services (VETS)*
28. *Holiday pay*
29. *Employer dental, life, and vision insurance*
30. *Workers' compensation*
31. *Pregnancy and parental leave*
32. *Military leave*
33. *The right to strike*
34. *Public education for children*
35. *Equal Pay Acts of 1963 & 2011 - employers must pay men and women equally for the same work*
36. *Collective bargaining rights for employees*

Source: http://www.unionplus.org/about/labor-unions/36-reasons-thank-unio

THE SEVEN TESTS FOR JUST CAUSE

The Notes

Question 1.

Note 1: Said forewarning or foreknowledge may properly have been given orally by management or in writing through the medium of typed or printed sheets or books of shop rules and of penalties for violation thereof.

Note 2: There must have been actual oral or written communication of the rules and penalties to the employee.

Note 3: A finding of lack of such communication does not in all cases require a "no" answer to Question No. 1. This is because certain offenses such as insubordination, coming to work intoxicated, drinking intoxicating beverages on the job, or theft of the property of the company or of fellow employees are so serious that any employee in the industrial society may properly be expected to know already that such conduct is offensive and heavily punishable.

Note 4: Absent any contractual prohibition or restriction, the company has the right unilaterally to promulgate reasonable rules and give reasonable orders; and same need not have been negotiated with the union.

Question 2.

Note 1: If an employee believes that said rule or order is unreasonable, he must nevertheless obey same (in which case he may file a grievance thereover) unless he sincerely feels that to obey the rule or order would seriously and immediately jeopardize his personal safety and/or integrity. Given a firm finding to the latter effect, the employee may properly be said to have had justification for his disobedience.

Question 3.

Note 1: This is the employee's "day in court" principle. An employee has the right to know with reasonable precision the offense with which he is being charged and to defend his behavior.

Note 2: The company's investigation must normally be made *before* its disciplinary decision is made. If the company fails to do so, its failure may not normally be excused on the ground that the employee will get his day in court through the grievance procedure after the exaction of discipline. By that time there has usually been too much hardening of positions. In a very real sense the company is obligated to conduct itself like a trial court.

Note 3: There may of course be circumstances under which management must react immediately to the employee's behavior. In such cases the normally proper

action is to suspend the employee pending investigation, with the understanding that (a) the final disciplinary decision will be made after the investigation and (b) if the employee is found innocent after the investigation, he will be restored to his job with full pay for time lost.

Note 4: The company's investigation should include an inquiry into possible justification for the employee's alleged rule violation.

Question 4.

Note 1: At said investigation, the management official may be both "prosecutor" and "judge," but he may not also be a witness against the employee.

Note 2: It is essential for some higher, detached management official to assume and conscientiously perform the judicial role, giving the commonly accepted meaning to that term in his attitude and conduct.

Note 3: In some disputes between an employee and a management person there are not witnesses to an incident other than the two immediate participants. In such cases it is particularly important that the management "judge" question the management participant rigorously and thoroughly, just as an actual third party would.

Question 5.

Note 1: It is not required that the evidence be conclusive or "beyond all reasonable doubt." But the evidence must be truly substantial and not flimsy.

Note 2: The management "judge" should actively search out witnesses and evidence, not just passively take what participants or "volunteer" witnesses tell him.

Note 3: When the testimony of opposing witnesses at the arbitration hearing is irreconcilably in conflict, an arbitrator seldom has any means for resolving the contradictions. His task is then to determine whether the management "judge" originally had reasonable grounds for believing the evidence presented to him by his own people.

Question 6.

Note 1: A "no" answer to this question requires a finding of discrimination and warrants negation or modification of the discipline imposed.

Note 2: If the company has been lax in enforcing its rules and orders and decides henceforth to apply them rigorously, the company may avoid a finding

of discrimination by telling all employees beforehand of its intent to enforce hereafter all rules as written.

Question 7.

Note 1: A trivial proven offense does not merit harsh discipline unless the employee has properly been found guilty of the same or other offenses a number of times in the past. (There is no rule as to what number of previous offenses constitutes a "good," a "fair," or a "bad" record. Reasonable judgment thereon must be used.)

Note 2: An employee's record of previous offenses may never be used to discover whether he was guilty of the immediate or latest one. The only proper use of his record is to help determine the severity of discipline once he has properly been found guilty of the immediate offense.

Note 3: Given the same proven offense for two or more employees, their respective records provide the only proper basis for "discriminating among them in the administration of discipline for said offense. Thus, if employee A's record is significantly better than those of employees B, C, and D, the company may properly give a lighter punishment than it gives the others for the same offense; and this does not constitute true discrimination.

Note 4. Suppose that the record of the arbitration hearing establishes firm "Yes" answers to all the first six questions. Suppose further that the proven offense of the accused employee was a serious one, such as drunkenness on the job; but the employee's record had been previously unblemished over a long, continuous period of employment with the company. Should the company be held arbitrary and unreasonable if it decided to discharge such an employee? The answer depends on all the circumstances. But, as one of the country's oldest arbitration agencies, the National Railroad Adjustment Board, has pointed out repeatedly in innumerable decisions on discharge cases, leniency is the prerogative of the employer rather than of the arbitrator, and the later is not supposed to substitute his judgment in this area for that of the company unless there is compelling evidence that the company abused its discretion. This is the rule, even though an arbitrator, if he had been the original "trial judge," might have imposed a lesser penalty. Actually the arbitrator may be said in an important sense to act as an appellate tribunal whose function is to discover whether the decision of the trial tribunal (the employer) was within the bounds of reasonableness above set forth. - In general, the penalty of dismissal for a really serious first offense does not in itself warrant a finding of company unreasonableness.