



Using Your Skills: Compelling the Employer to Conduct a Fair, Impartial Investigation Prior to Imposing Discipline

Have you ever represented a member who was disciplined without being given an opportunity to hear and respond to the charges against him or her? The lack of a fair and impartial investigation can come up in a variety of contexts. It's a problem that can be difficult to address.

Inadequate investigations

The lack of a fair and impartial investigation violates the principle of "just cause." For example, if the employer

investigates a problem in a workgroup, many employees may be interviewed, including your member. If the other witnesses make allegations about your member, and he is not given a chance to answer them, there is no "just cause" to discipline him.

The employer's excuse

An employer may issue discipline without conducting any investigation with the member. Although that sometimes can be appropriate (if there is clear independent evidence of wrongdoing) there is usually some need to let the member confront the evidence before being disciplined. Too often the employer's excuse for issuing the discipline without an investigatory meeting is that the employee has been warned about this type of problem before. A past mistake is not proof that the member has made the same mistake again.

The employer may be convinced that its action is fair, and that it meets the standards of just cause required by many collective bargaining agreements, but it does not. This is like a person being convicted of driving under the influence today solely because he had a conviction in the past. A past action does not prove anything about a current behavior. New allegations need to be investigated. Unfortunately, some employers have developed an attitude about a member, and then believe everything negative that is said. The employer is not allowed to do that. A fair, impartial investigator would call the member in, allow for Weingarten Rights, and give the member a chance to respond to the charges.

Working with the employer for a fair investigation

Sometimes the employer refuses to give specifics of allegations to an employees, and relies on a vague summary statement that characterizes behavior, but does not give a clue about the specifics. Instead, the employer may say: "Someone asked to have you taken off of the project because you were rude." But there are no names or details given, presumably

to protect the complaining party's privacy. So how does one know what happened in these instances? The member has no way to know what type of behavior he or she is supposed to avoid in the future. Some employers presume guilt if there are several complaints made about the same person, even if they are never investigated.

During an investigation meeting, an employer may ask the member whether he did something like conduct an outside business at work. The member may say he or she knows nothing about this. However, chances are the employer is asking the question because there has been such an allegation made. Ask the employer if there is an allegation, and to be more specific so the member has a chance really respond and can then admit, deny or explain the behavior.

What else can you do to prevent or redress inadequate investigations?

Make an information request. Washington State law requires public employers to provide a lot of information that the union needs to represent members.

- Ask your union representative to request a copy of the Investigator's Report.
- Ask for documentary evidence on which the employer is relying. For example, ask what the employer has that proves that your member was often late. Ask for specifics—which days are they alleging? Are there witnesses, records? If the employer produces such evidence, you can and see if it is accurate, and will know whether you can refute it. But if the employer produces nothing, then you can argue that these are merely unsubstantiated allegations, and that discipline should not be imposed.
- File a grievance, citing the article(s) in the collective bargaining agreement that state(s) that discipline may be imposed "for just cause." (See "Just Cause" in the Local 17 Steward Resource Guide, www.ifpte17.org/member_resources.php).
- If you do not have a "just cause" provision in your contract, then it is something to add to the list for the next round of contract negotiations.
- Point out what reasons you have discovered that show that the accuser is biased, or is complaining for a self-serving reason like avoiding government penalties, or deflecting blame from themselves. Educate the employer about the problem of passing judgment without a fair and impartial investigation. Both the employer and the member are better off if it is done right.

— By *Local 17 Union Representative Patti Kieval*

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