

GUIDE FOR SUPERVISORS AND HUMAN RESOURCES REPRESENTATIVES IN HANDLING DISCIPLINARY MEETINGS WITH TECHNICAL-SERVICE EMPLOYEES COVERED UNDER THE AGREEMENT WITH THE TEAMSTERS

Article VI of the Agreement provides a framework for handling disciplinary meetings with technical-service employees. In addition, it is important that ongoing legal interpretations and court cases be integrated into the University's practices in conducting disciplinary meetings in a manner that is consistent with the Agreement, applicable law, and preserves your right to conduct such meetings in an effective, efficient manner.

This document, and accompanying questions and answers, is intended to provide assistance to you in conducting meetings with technical-service employees covered under the collective bargaining agreement with the Teamsters. Furthermore, your human resources representative is a resource for you in all of these matters, as well as the Employee Relations Division in the Office of Human Resources.

Supervisor/Steward Relationship

The relationship between the steward and the supervisor is important and can set the tone for the whole work group. In the course of the disciplinary (and grievance) process, this relationship should reflect mutual respect, whereby the steward recognizes the supervisor's role and the supervisor recognizes the role of the steward. Neither the steward nor the supervisor should be "dressed down", including in the presence of subordinates or coworkers. Personal and/or character attacks are not an acceptable behavior.

Prior to the Disciplinary Meeting

Supervisors have a responsibility, under Section 6.2 of the Agreement, to ensure that the steward is present for the disciplinary meeting. (The steward can only be excused if the employee objects at the beginning of the meeting.)

Prior to the beginning of the disciplinary meeting, both the employee and steward should be informed of the general nature of the reason for the upcoming meeting. A few examples:

- This is a disciplinary meeting to discuss performance issues.
- This is a disciplinary meeting to discuss absenteeism.
- This is a disciplinary meeting to discuss tardiness.
- This is a disciplinary meeting to discuss _____.

Once you've informed the steward and employee of the general nature of the reason for the upcoming meeting, should the steward and/or employee wish to consult with each other prior to the disciplinary meeting, they should be allowed reasonable, private time to do so.

Although the employee and steward are allowed reasonable time to consult prior to the meeting, such pre-meeting consultation should not unduly delay the meeting. Should you

determine that the consultation has gone beyond a level of reasonableness, you should indicate to the individuals that the meeting needs to commence.

Note: It is not necessary to give a steward or employee advance notice of a disciplinary meeting; i.e., notification and commencement of the meeting can occur simultaneously.

During the Disciplinary Meeting

The intent of the disciplinary meeting is to gather information and facts pertinent to the situation or topic that prompted the meeting. During the meeting, the employee has the right to privately consult with the steward. However, similar to the pre-meeting consultation, such steward/employee consultation during the disciplinary meeting should not unduly delay the flow of the meeting or the ability to gather facts and information from the employee. Further, the purpose of the consult is to provide the opportunity for discussion with people directly involved in the situation at hand.

During the meeting, should the employee decline to answer direct questions or should the steward suggest to the employee that he/she not answer, it is important to let the employee know that the intent of this meeting is to gather all facts so that a decision can be made with his/her response and version of events taken into account. (Likewise, it is not appropriate for the steward to respond on behalf of, or as a substitute for, the employee.)

Should a supervisor encounter an unlikely situation wherein an employee refuses to participate or answer questions, it is permissible to remind that individual of the following:

- that such refusal may be construed as possible insubordination, and may be dealt with accordingly;
- that the University typically views insubordination as grounds for summary dismissal consideration, and;
- that this is their opportunity to tell their side of the story and that if they do not answer the questions they are putting you in the position of making a decision without the benefit of their responses and version of events.

Both the steward and the supervisor can vigorously assert their position during the meeting, but must do so using appropriate workplace conduct. Individuals may be passionate while asserting their position, as long as the interaction is respectful, civil, and each individual is afforded the opportunity to express his/her point of view without interruption.

After the Disciplinary Meeting

Should the steward and employee wish to meet after the formal disciplinary meeting, such post-meeting consultation is permissible. Similar to any pre-meeting consultation, such post-meeting consultation should be for a reasonable amount of time. Should such

consultation be deemed to go beyond the bounds of reasonableness, the supervisor can interrupt and require that the employee and steward end their meeting.

Miscellaneous

All of the above reminders and parameters hold true for any type of disciplinary meeting involving technical-service employees. However, some specific issues may surface when there is a possibility of adverse action beyond the administrative level [criminal action or charges as a result of the infraction (for example, theft, violence, etc.)]. If the employee asks if criminal charges or other adverse action will occur, the employee can be informed that the disciplinary meeting underway is for administrative purposes and in accordance with the collective bargaining agreement. Should the employee have a reasonable expectation that adverse action beyond the administrative realm may occur, the supervisor may be faced with a situation wherein the employee may refuse to answer questions on the premise that they have a right against self-incrimination. Should that circumstance occur, the supervisor can inform the employee that the administrative decision will be made with the absence of his/her response taken into account.

Inherent in all of the issues surrounding the disciplinary meeting, a basic expectation is that the employee will present and share information in a truthful, candid manner.

QUESTIONS AND ANSWERS

Why do I, as a supervisor, have to take these issues into account when having a disciplinary meeting?

Both the University and the Union have an obligation to attempt, in good faith, to not only abide by the collective bargaining agreement, but also to adhere to evolving laws and regulations. This document is intended to deal with rights of unionized employees and employers based upon private and public sector laws. The most widely referred-to decision involving such matters was a Supreme Court decision, *NLRB v. Weingarten*. Like any decision, continued cases and interpretations then flavor the conduct of behavior for both employees and employers, and this document is intended to inform supervisors while preserving your rights and obligations to conduct meetings and gather information in the most effective manner.

Do I have to allow a steward to be present at every occasion when I talk to an employee?

No. Stewards are only required for disciplinary meetings or other situations where the employee has a reasonable concern that discipline may result. If you are meeting with an employee regarding a non-disciplinary issue and the employee asks for a steward, you should inform the employee that the meeting is not disciplinary. However, if the employee remains concerned that discipline may result and requests to have a steward present, have a steward present before proceeding with the meeting.

What if the steward takes “charge” of the meeting?

The intent of the meeting is to ascertain facts from the employee. However, the steward and the manager/supervisor are viewed as equals under labor law; that is, when acting as a steward, there is a relationship between University advocates and Union advocates engaged as equal parties attempting to resolve an issue. The steward has the right to vigorously represent the employee. Nonetheless, the role of the steward is not to interrupt or obstruct the investigation. The supervisor has a right to maintain control of the meeting and the steward has a right to ask questions and to participate in the meeting. Should the steward become disruptive or abusive so that his or her conduct goes beyond vigorous representation of the employee and unreasonably interferes with the ability to conduct the disciplinary meeting, it is appropriate for the manager/supervisor to suspend the meeting and privately advise the steward that his/her behavior is inappropriate. If such behavior continues, the manager/supervisor should conclude the meeting by invoking the seven-day investigatory period and follow up with the human resources representative to discuss next steps.

In the event that either the steward or the supervisor feels as though interactions are unprofessional and inappropriate, then either individual can request a break. During this break, management and the steward should discuss these concerns privately. After a cooling off period, management and the steward should use their best efforts resume the

meeting with due regard to the professional and civil forum to which both sides are entitled.

What if the steward asks for a caucus every time I ask a question?

You must apply the rule of reason to these types of situations. That is, the steward and the employee should be granted a reasonable amount of time for consultation before, during and after the meeting. Should any of these consultations become excessive, unreasonable or extreme, you should inform the steward of this and proceed with the meeting.

What if I talk to an employee about the manner in which he/she is performing a particular task or process – do I have to have a steward there?

No. Such a meeting is part of the normal supervisor/employee relationship and since it is not disciplinary in nature, the employee does not have a right to a steward at such a dialogue. Again, if an employee is concerned that discipline may result and requests a steward, even though you have no intention of taking disciplinary action, you should provide a steward before continuing with the discussion.

What if I'm talking to an employee about work instructions, training, or needed corrections in the employee's work techniques or process, but the tone of the meeting changes; for example, if the employee becomes argumentative or insubordinate in the course of what was intended to be merely a discussion and exchange of information?

If the tone or character of such a meeting changes into a setting wherein discipline may result, the supervisor can stop the meeting, contact a steward, and immediately proceed in a disciplinary setting taking into account all of the nuances and rights explained elsewhere in this document.

Does the employee have a right to request a particular steward?

Due to a Pennsylvania Supreme Court ruling, the answer is yes. Although the role of the steward is outlined in Article XXXVIII of the Agreement, should an employee request a different steward or another bargaining unit employee (non-steward) be present at the meeting, even if that individual is from another work unit, the supervisor is required to allow the individual to be present, provided he or she is reasonably available.

Can an employee refuse to answer questions posed during a disciplinary meeting?

Unless the matter being discussed may have criminal implications, typically the employee cannot refuse to answer questions, nor should the steward require or direct the employee to withhold answers. Should such refusal occur in a situation involving a matter that clearly would not result in criminal implications, the supervisor should inform the individual that

such refusal may be considered insubordinate, and that the University has typically viewed insubordination as grounds for dismissal consideration. After that has been said, allow an opportunity for the employee to re-engage in the dialogue and offer answers. Should the refusal continue after that notification of possible insubordination, the supervisor may wish to invoke the seven-day investigatory period, end the meeting and consult with his/her human resources representative.

What can I say if an employee refuses to answer a question?

“I am very interested in hearing your side of the story.”

“Your refusal to answer my questions could be considered insubordination.”

“If you do not answer the questions I am asking you, you may be at risk of losing your job as insubordination may be grounds for dismissal.”

“This is your opportunity to tell your side of the story. If you refuse to answer my questions you are forcing me to make a decision without the benefit of your responses and version of events.”

What if the steward answers the questions that are being posed to the employee?

It is inappropriate for the steward to answer questions being posed to the employee. If that occurs, you have a right to require the steward to refrain from answering on behalf of the employee. If it should happen, again, the supervisor may wish to say to the employee, “Do you understand that not having you answer our questions directly may put us in the position of making a decision about this issue without the benefit of your responses and recollection of the events.” Lastly, if the steward continues to answer the questions, you may want to consider closing the meeting and consulting with your human resources representative for guidance on such an unusual situation.

When allowing the employee and steward to meet before, during and after the meeting, what is considered “reasonable time”?

There is no set rule or standard for what that means, i.e., there is no set legal definition; therefore, you have the right to exercise your judgment in that determination and act accordingly. If you as a supervisor feel that the meeting is going beyond the bounds of reasonableness, you may ask the steward/employee to conclude their discussion and that you will give them X more minutes, and then the meeting must get started.

Prior to the disciplinary meeting, as well as during the disciplinary meeting, the words “unduly delay” have been used, i.e., the employee and/or steward consultations at either time cannot unduly delay the meeting. What is the definition of “unduly delay”?

There is no set rule or standard for what that means, i.e., there is no set legal definition; therefore, you have the right to exercise your judgment in that determination and act accordingly. If you, as a supervisor, are prepared to start the meeting and the delay is

going past bounds of reasonableness, you may want to ask the steward/employee to conclude their discussion and that you will give them X more minutes, and then the meeting must get started. During the meeting, should an employee/steward consultation break last beyond a realm of reasonableness and/or multiple interruptions occur, you may wish to let the individuals know that it is important to continue the meeting in an uninterrupted fashion, and those continual breaks or interruptions need to stop.

What if, during the investigation of an incident involving Employee A, it is necessary for a fact witness to be interviewed (Employee B) as part of conducting a thorough investigation. Am I obligated to have a steward present for Employee B's interview?

If the individual is a fact witness and there is no potential or intended discipline anticipated based on the interview, the individual is not entitled to a steward. However, if during that fact-finding interview, the nature of the dialogue changes such that you believe that Employee B may now be a possible subject of discipline, the supervisor may want to end that interview, contact a steward, and then proceed in a disciplinary setting taking into account all of the nuances and rights explained elsewhere in this document.

What if it appears that the steward is turning the disciplinary meeting into a mini-grievance hearing or behaving in a role similar to an attorney?

Although the steward's role can be more than merely an observer, you have a right to ask the employee questions and obtain the answers directly from the employee. The intent of a disciplinary meeting is not to engage in combative or argumentative dialogue – it is to gather facts so that an informed decision can be made.

Employee Relations Division
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