

## Preparing Discipline Cases

A majority of all grievance cases handled by local unions concern some form of discipline -- alleged absenteeism, poor job performance, insubordination, or inappropriate work behavior. The percentage of disciplinary cases can range as high as 70-80 percent of all grievances. This means that shop stewards and local union officers must spend a lot of time handling these cases.

In the long term, they must also develop strategies to handle management at the local level to prevent such cases from even arising.

### **Key is Credibility**

For the union, discipline cases deal often with the issue of credibility - whether the member's version of what happened can be reasonably believed. The issue must be handled by the local union in such a way so that if the case were to be submitted to arbitration, the union side would be believed by the neutral.

This means that the grievant's story must be constantly tested to determine exactly what happened. It's human nature to be emotionally involved in an incident. A grievant might describe what happened to himself or herself but their choice of words might give an inaccurate description of the chain of events.

Or they may stretch the truth in order to get you to believe them. Details of conversations might be invented. The member might mistakenly place a witness closer to the incident than they actually were.

### **Check the story**

A steward must constantly go over the story, checking every aspect of it. Challenge the story as you would expect management to challenge it. Explain to the member that you are not doing this to undermine him or her, but to help put forward the strongest case.

Try to find other credible witnesses who support the grievant's story. Different witnesses see the same event differently. Don't be surprised at this.

Talk to the supervisor or company witnesses beforehand. Check out their story and write it down. You might need to refer back to these conversations at the disciplinary hearing or grievance appeal. If you can show that the supervisor said one thing to you at your meeting and then he or she contradicts this story at a hearing, you begin to build a case that questions the supervisor's credibility.

### **Check Records**

As a representative of the union, you have a right to the member's personnel record. Employers may have specific procedural policies about getting the record, but you need it prior to any meeting with management.

If you can't get it in time, request a postponement of the meeting without prejudice to the negotiated time limits on hearings or grievance appeals. In most cases management will be reasonable about postponements because they may at some other time come to the union with a similar request.

Make certain that the member's record is accurate. If there are entries on the record that should have been removed after a certain time period (some contracts have time limits for adverse entries), hold the employer to those time limits.

Employers use personnel records to build their case against a member.

### **Check the Contract and Rule Book**

Hold the employer to the same standard that they use on union members. Refer to the contract and rule book to see if there was a violation. Even if there was a violation of the rulebook by the member, the rule must be reasonable and known. Ignorance of the employer's rule is not a strong defense, but there may be some mitigating circumstance such as poor communication of the rule by the company.

If the rule is not reasonable or related to the work, safety of others, or company image, you may be able to argue that the grievant should not be held culpable.

### **Is the Employer Consistent?**

Compare the member's actions with others. Make sure that he or she did not do things any different or worse than others who were not disciplined at all or received a lesser penalty. You may be able to argue that the company is being arbitrary or discriminatory.

### **Look for Motive**

In cases of insubordination, check to see if the grievant was provoked or tried to defend himself or herself. Consider the supervisor's motive. Was the member being set up?

Your role is to build the strongest case for the member and that means making a believable case.