

CONFIDENTIAL

LARRY
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CHIEF STEWARDS

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STEWARDS

STEWARDS,

THIS IS FOR YOU INFORMATION ONLY

★ DO NOT DISTRIBUTE

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(USE AS A REFERENCE FOR CONTENTIONS)

NOT FOR MANAGER'S EYES

~~Grievance
Attachments~~

CHAPTER 2



THE ISSUE: PREDISCIPLINARY INTERVIEW

Including: Pre-Disciplinary Interview for Preference Eligible Employee, and Pre-Disciplinary Interview for Employee Discharged after a Last Chance Agreement.



THE DEFINITION:

The Pre-Disciplinary interview is the multi-element due process right of each employee to be:

1. Forewarned of the specific charge in the intended disciplinary action;
2. Forewarned of the degree and nature of the intended disciplinary action;
3. Presented with the alleged evidence the intended discipline is based upon;
and
4. Asked for his/her side of the story. This is the employee's "Day-in-Court".



THE ARGUMENT(s):

All the above is required before the disciplinary action is initiated. Management must conduct a pre-disciplinary interview; that is, forewarn the employee that discipline is being contemplated, what that discipline will be, the charge the discipline is based upon, the evidence supporting the intended discipline and ask the employee for his/her side of the story. Whether or not management utilizes a written request for discipline, the pre-disciplinary interview must be conducted prior to the initiation of any request for discipline. The request for discipline is the initiation of discipline.

Must the pre-disciplinary interview be done in person? No. Management may conduct a pre-disciplinary interview over the telephone or even through correspondence, informing the employee of the charge, nature, and degree of the intended discipline and soliciting the employee's side of the story. However, if there is no in person interview, we must then argue that the employee has not been presented with the employer's evidence.

A typical pre-disciplinary interview should be conducted as follows:

Manager. Mr. Doe, I am considering issuing you a Notice of Removal for "Failure to be Regular in Attendance." Your attendance record is as follows. This is your chance to respond to that intended action. I want any information you may have from your side of The story prior to making my final decision.

In this manner, management has forewarned the employee and solicited the employee's side of the story. If management conducts an "interview" with an employee immediately prior to issuing a disciplinary action, i.e., at the same meeting in which the employee receives the disciplinary notice, then that is not a pre-disciplinary interview.

As the manager already has produced the Notice, discipline has already been initiated. To hold otherwise is both illogical and unreasonable. Pleadings from management that they had not yet made a final decision on issuance are irrelevant as the pre-disciplinary interview must occur prior to initiation, not issuance.



THE PRE-DISCIPLINARY INTERVIEW

vs.

OFFICIAL DISCUSSIONS and INVESTIGATIVE INTERVIEWS.

Managers often attempt to misrepresent their obligations to a due process, pre-disciplinary interview by claiming that official discussions and/or investigative interviews are also pre-disciplinary interviews.

The following are distinctions between the three:

OFFICIAL DISCUSSION

Under Article 16.2 of the Collective Bargaining Agreement, management has the responsibility to discuss minor offenses with employees with the purpose being to correct whatever behavior/deficiency the employee has demonstrated:

"Article 16 DISCIPLINE PROCEDURE

Section 2. Discussion

For minor offenses by an employee, management has a responsibility to discuss such matters with the employee. Discussions of this type shall be held in private between the employee and the supervisor. Such discussions are not considered discipline and are not grievable."

A proper official discussion goes as follows:

Manager: "Mr. Doe, this is an official discussion. The rule against being in the employee parking lot while on rest break is posted on the offices three bulletin boards. In addition, you were notified when hired of this prohibition. Last night, I had to call you

into the Post Office from the parking lot while you were on your rest break. I am telling you that if this occurs again, I will be initiating disciplinary action against you.

If there is any problem I am unaware of or if I can assist you in any way to prevent this from happening again, please let me know now.

That is an "official discussion" which complies with the Collective Bargaining Agreement--provided it occurs in private between the supervisor and the employee. It is not disciplinary in nature nor is it a fact gathering exercise. It occurs after a minor offense by an employee not as a preemptive measure.

INVESTIGATIVE INTERVIEW

Unlike a discussion, an investigative interview is a fact gathering effort by management to investigate a situation prior to coming to any decision as to whether or not discipline should be initiated. Unlike a pre-disciplinary interview, the investigative interview does not forewarn an employee or solicit a response as to any intended discipline because the investigative interview occurs as part of management's fact gathering investigation. This is before any intent is established toward possible discipline.

An investigative interview goes as follows:

Manager: Mr. Doe, I have some questions concerning your presence in the parking lot last night.

- What time did you leave the building?
 - What time did you return?
 - For what purpose did you leave the building?
 - What were you doing in the parking lot?
 - Were you on rest break when you left the building?
 - Who was with you?
-

This is an investigative interview--no forewarning or opportunity to respond to possible intended discipline.

AN INVESTIGATIVE INTERVIEW AND A PRE-DISCIPLINARY INTERVIEW? YES!

Management has an obligation to conduct a thorough, fair, and objective investigation prior to disciplining an employee. Investigative interviews, including an interview with a potential recipient of discipline, are essential elements of the aforementioned investigation process. The pre-disciplinary "day in court" forewarning and opportunity to respond follows the fact gathering investigation and is the last check and balance investigative step prior to initiation of discipline.



THE COLLECTIVE BARGAINING AGREEMENT

Article 19's EL-921 Handbook, "Supervisor's Guide to Handling Grievances", defines Just Cause under the Collective Bargaining Agreement. Within that definition, management's obligation to conduct a pre-disciplinary interview exists as follows:

"Was a thorough investigation completed?"

Before administering the discipline, management must make an investigation to determine whether the employee committed the offense. Management must ensure that its investigation is thorough and objective.

This is the employee's day in court privilege. Employees have the right to know with reasonable detail what the charges are and to be given a reasonable opportunity to defend themselves before the discipline is initiated."



THE INTERVIEW

Crucial in establishing the fact that no pre-disciplinary interview was conducted is our own interview of the manager responsible for the initiation of the discipline. The following are illustrations of how such an interview may proceed:

- Did you initiate the discipline against Mr. Doe?
- When did you decide to initiate that discipline?
- Did you submit a written request for discipline?
- When?
- To whom?

- Between the last absence cited in the Notice of Removal and the date you submitted your written request for discipline, did you meet with employee Doe?
- Did you call employee Doe at home to discuss the possibility of discipline with him/her between the last absence you cited and your submission of the request for disciplinary action?
- Did you write to employee Doe regarding the possibility of discipline with him/her between the last absence cited and your submission of the request for disciplinary action?
- Did you have any contact with employee Doe regarding the possibility of discipline between the last absence cited and your submission of the request for discipline?
- The first contact you had with employee Doe regarding this removal for the charge you included was when you gave him the Notice of Removal?

In this manner, the steward establishes that no pre-disciplinary interview was conducted. Notice that at no time were overly obvious questions asked such as, "Did you conduct an investigation?", "Did you conduct a pre-disciplinary interview?", "Aren't you required to conduct a pre-disciplinary interview?" Obvious questions will generate obvious responses which are, at best, other than useful ones, or worse harmful, for the steward's purpose. The steward must skillfully craft the questions so as to illicit responses supporting our arguments. The steward must orchestrate the interview through careful planning of the questions and in preparation for various responses.

For example, should the manager being interviewed answer that a pre-disciplinary interview has been conducted, then the steward must have detailed questions prepared to test the manager as to the veracity of that answer. Such questions may go as follows:

- During your interview, you told employee Doe the charge was going to be Failure to be Regular in Attendance?
- During the interview, you told employee Doe the discipline was going to be a Notice of Removal?
- During the interview, did employee Doe tell you anything regarding those absences?
- If so, what?

- During the interview, you went over the 3971s for absences cited with employee Doe?
- Did you receive any information from employee Doe regarding any of these absences during the interview?
- Where was the interview held?
- When was the interview held?
- Who else was present?

These questions will limit later deviations should arbitral testimony occur from the manager. If the manager does deviate, then serious credibility breaches will occur. In addition, the interview and eventual arbitral testimony of the grievant (and steward if one was present during the pre-disciplinary interview) can refute the testimony of the manager, even when the manager does meet with the employee in a pre-disciplinary setting. Should the manager not forewarn the employee of the detailed charge and the nature/degree of the discipline and solicit the employee's "side of the story", that exercise is not a pre-disciplinary interview.

The questions previously included are examples of suggested questions for stewards. Each steward must rely upon his/her own intuition, knowledge of particular fact circumstances, individual personalities, and history to develop questions which will best result in answers most useful in proving management violated its obligation to the pre-disciplinary interview as due process.



THE U.S. SUPREME COURT

The United States Supreme Court has embraced the principle of the pre-disciplinary interview as required due process when an employee may be disciplined. In Case No. 470 U.S. 532, Justice White, speaking for the majority, stated:

Justice White

Supreme Court of the United States

470 U.S. 532

Cleveland Board of Education v. Loudermill et al

Pages 9-10, 12, 13

"An essential principle of due process is that a deprivation of life, liberty, or property "be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950). We have described "the root requirement of the Due Process Clause as being "that an individual be given an opportunity for a hearing before he is deprived of any significant property interest." in *Boddie v. Connecticut*, 401 U.S. 371, 379 (1971) (emphasis in original); see *Bell v. Burson*, 402 U.S. 535, 542 (1971). This principle requires "some kind of a hearing" prior to the discharge of