

ARTICLE 44

DISCIPLINARY ACTIONS

SECTION 1

This Article applies to all employees who have completed the applicable probationary or trial period, as appropriate.

SECTION 2

- A. For purposes of this Article, disciplinary actions include suspensions for fourteen (14) calendar days or fewer and reprimands reduced to writing.
- B. Disciplinary actions exclude counseling/warnings, whether oral or in writing, and admonishments, whether oral or in writing. When an employee is counseled/warned in writing, the employee may respond in writing and have the response attached to the counseling document.

SECTION 3

- A. In effecting disciplinary actions, the Employer shall endorse the use of like penalties for like offenses and progressive discipline. The Employer shall consider the existence of any mitigating and/or aggravating circumstances, the nature of the position occupied by the employee at issue, and any other factors bearing upon the incident(s) or act(s) underlying the action. The degree of discipline administered will be proportionate to the offense and will be determined on a case-by-case basis.
- B. In determining the appropriate penalty to propose and/or impose in a disciplinary action, the Parties agree that it is appropriate for supervisors to consider and balance a variety of circumstances as pertinent to the case, which may result in mitigation or aggravation. Examples of such circumstances, may include, but are not necessarily limited to, the employee's past work and disciplinary records, length of service, the potential for her/his rehabilitation, the seriousness of the offense and its relation to the employee's duties and its impact on the agency, the consistency of the penalty with those imposed on others in similar situations, potential alternative sanctions to deter future misconduct, etc.

SECTION 4

- A. Disciplinary actions will not be taken for arbitrary and capricious reasons.
- B. No employee will be disciplined except for such cause as will promote the efficiency of the

service.

- C. An employee will not be disciplined for off-duty conduct unless a relationship (commonly referred to as nexus) is established between the charged conduct and the efficiency of the service. In cases of off-duty misconduct, the proposal and decision letters will describe the relationship (often referred to as nexus) between the misconduct and the employee's position.

SECTION 5

When the Employer takes a suspension action against an employee, the following procedures will apply:

- A. The written proposal will be delivered no fewer than fifteen (15) days prior to taking the disciplinary action and will contain the specific reasons for the proposed action, stated in detail. It is understood that the proposal notice is not grievable upon receipt. However, disputes regarding the proposal may be merged into a grievance concerning the final decision of the Employer, after that final decision is issued.
- B. The employee will be given fourteen (14) calendar days from the date he/she receives the notice of proposed disciplinary action in which to deliver an oral and/or written reply. Reasonable requests for extensions of time will be granted. The proposal notice will specify who will hear/receive the oral and/or written reply. This official will be the person who will be making the final decision on the matter, or his/her designee.
- C. The employee and his/her representative will be given reasonable time to prepare the reply, in accordance with the terms of Article 10, Official Time, and Article 5, Employee Rights, of this Agreement.
- D. The proposal notice will inform the employee of his/her right to review the material relied upon to support the proposed action, and the Employer will make a copy of such material available for review, concurrent with the delivery of the proposal notice to the employee. If requested by the employee or his/her representative, the Employer will furnish a copy of such material prior to the oral reply. The Employer reserves the right to sanitize any material that is provided to the employee, when required by law.
- E. Where management has relied upon witnesses to support the reason for the proposed action, the Employer will make available as part of the material relied upon any written statements taken from them. The term "materials relied upon" includes all documents relied upon to formulate the charges and specifications contained in the disciplinary action case file.
- F. In making a reply, the employee may set forth mitigating circumstances, refute aggravating circumstances, and/or give reasons why the proposed action should not be effected.
- G. If an employee chooses to make an oral reply, such reply will be made at the worksite of the employee if both s/he and the deciding official work in the same location. When the employee and deciding official are not in the same location, an oral reply will be delivered by audio-

or video-conference, as circumstances permit, unless otherwise determined by the Employer for purposes of that case only.

- H. The Employer will make a written summary of the employee's oral reply. A copy of the summary will be included in the material relied upon, and it will also be provided to the employee's representative (or to the employee if he/she is unrepresented). Within five (5) workdays after receiving the written summary, the employee or representative may submit a response. The response will be added to the official record and will be considered by the Employer before a final decision on the matter is rendered.
- I. The final decision in a disciplinary action covered by this Article must be made by a higher-level official than the official who issued the notice of proposed action, unless the official is the head of an OPDIV/STAFFDIV, in which case the decision will be made by an appropriate official identified by the Employer. The decision letter will state which charges is/are sustained and the reason(s) therefore, and will respond to relevant defenses raised by the employee.

SECTION 6

In the event the Employer sustains the charge(s) and effects a disciplinary action against the employee, s/he may elect to challenge the action in only *one* of the following ways:

1. Through the negotiated grievance procedures of this Agreement;
2. A formal complaint of discrimination filed under the administrative EEO process; or
3. An appealable action involving a prohibited personnel practice filed with the MSPB, to the extent allowable by law.

The final decision letter that is issued on the disciplinary action to the employee will contain a statement of her/his right to challenge the action in one of these three ways. Once an employee has elected one of these procedures, the employee may not change thereafter to the other procedure. Grievances over suspensions will start at the final step of the grievance procedure; grievances over all other disciplinary actions will start at the first step of the grievance procedure. After completion of the grievance procedure, the Union has the option to appeal a disciplinary decision to binding arbitration.

SECTION 7

- A. Letters of reprimand will be retained in the employee's Official Personnel Folder (OPF) for the period of time specified in the letter, which may not exceed two (2) years from the date of the incident.
- B. After no more than two years, a letter of reprimand will be timely purged from the employee's OPF. After no more than four years, the Employer will purge these records from all ER/LR files.

- C. Oral admonishments or oral reprimands that are reduced to writing will be retained by the employee's supervisor for the period of time specified in the admonishment, which may not exceed one (1) year from the date of issuance of the document. After no more than two years, a letter of reprimand will be timely purged from the employee's OPF. After no more than four years, the Employer will purge these records from all ER/LR files.

SECTION 8

To the extent not prohibited by law, the Employer will provide the Union with copies of all admonishments, written reprimands, and proposal and decision letters for suspensions of fourteen (14) days within one (1) workday of issuance to employee. One (1) copy shall be provided to the chapter office that represents the affected employee.

SECTION 9

Alternative discipline is an optional, non-traditional approach to employee discipline, which provides for a variety of both punitive and non-punitive remedial correction. The Employer and the Union encourage the use of alternative approaches to traditional disciplinary actions. The goal of such an approach is to positively change an employee's conduct by offering an alternative means of correcting such conduct. The Employer will publicize to supervisors the benefits of alternative discipline and will include such information on alternative discipline in its penalty guide policy. The Employer will recommend that traditional discipline and alternative discipline should not normally be combined. Alternative discipline is offered solely by agreement of the parties. Under no circumstances is alternative discipline required to be used.