

# MANAGING LABOR RELATIONS AT MICHIGAN STATE UNIVERSITY

## SUPERVISORY TRAINING PROGRAM

Office of Employee Relations  
MSU Human Resources  
1407 South Harrison Road, Suite 250 Nisbet  
East Lansing MI 48823-5239

### CONTENTS

- INTRODUCTION .....4
- MANAGING HUMAN RESOURCES AND DISCIPLINE .....4
  - Counseling .....4
  - Performance Development Program (PDP).....4
- Discipline .....5
  - Purpose of disciplinE.....5
  - Management's objectives.....5
  - Union's objectives when challenging disciplinary action.....5
  - Employee offenses.....5
  - The Collective Bargaining Agreement .....6
- Determining disciplinary action.....6
  - General .....6
  - Nature of the offense .....6
  - Employee rights .....6
  - Double jeopardy .....7
  - Just cause.....7
  - Employee's past record .....7

Employee's length of service with MSU .....	7
Knowledge of the rules .....	7
Local practice or policy .....	8
Mitigating or aggravating circumstances.....	8
Timely disciplinary action .....	8
Observance of contractual procedures .....	8
Documentation .....	8
Offenses warranting disciplinary action .....	9
Insubordination .....	9
Assault/Battery .....	9
Abusive language.....	9
Disrespect .....	10
Absenteeism .....	10
Tardiness.....	11
Leaving early.....	11
Misconduct .....	11
Unsatisfactory performance.....	12
Sexual harassment.....	12
Taking disciplinary action .....	13
Following procedures .....	13
Correcting employee behavior .....	13
Discharge .....	15
MANAGING GRIEVANCES .....	16
Grievance defined.....	16
Objectives .....	16
Why grievances arise .....	17

Discipline.....	17
Alleged contract violations (terms and conditions of employment) .....	17
Organizational factors .....	17
Employee problems .....	17
Union or association politics.....	<b>Error! Bookmark not defined.</b>
Minimizing grievances .....	17
Incorporating effective employee/supervisory managing principles .....	17
Understanding the role of union or association representatives .....	<b>Error! Bookmark not defined.</b>
Understanding the role of management .....	18
The grievance process .....	18
Oral step .....	18
The formal grievance procedure .....	18
Investigating grievances .....	20
Grievance meetings .....	21
Answering grievances .....	21
Timetables .....	21
Grievance procedure (non-bargained-for employees).....	22
Step I: Immediate supervisor.....	22
Step II: Administrative head .....	22
Step III: Appeal Board .....	23
Do's and don'ts of managing grievances .....	23
Do .....	23
Don't .....	24
CONTRACT ADMINISTRATION (interpreting contract languages) .....	24
Contract interpretation .....	24
Purpose.....	24

Objectives of contract interpretation.....	25
Concepts.....	25
Interpreting contract language.....	26
Office of Employee Relations (OER) .....	26
Functions .....	26
Professional staff .....	26

## INTRODUCTION

The Office of Employee Relations is responsible for the administration of collective bargaining agreements and labor relations policies for support personnel. Presently these employees are organized into ten unions or associations: American Federation of State, County and Municipal Employees (AFSCME) Local 999; Administrative Professional Association (APA); American Federation of State, County and Municipal Employees (AFSCME) Local 1585; Fraternal Order of Police (FOP) Lodge 141; Fraternal Order of Police (FOP) Sergeant's; International Alliance of Theatrical State Employees (IATSE) Local 274; International Union of Operating Engineers (IUOE) Local 547; Clerical Technical Union of Michigan State University (CTU); Michigan State University Administrative Professional Supervisors Association (APSA); and the Graduate Employee's Union (GEU). All of these units have negotiated contracts with the University.

Daily contact between support personnel and the Office of Employee Relations strongly suggests a need for managers to better understand their role in dealing with contractually-related issues. Such understanding ensures managers a more active and meaningful role in increasing their units' ability to conduct University business. This training program, developed and conducted by the Office of Employee Relations' staff, provides a viable means to effectuate the use of appropriate labor relations principles. The training modules are: Managing Human Resources and Discipline, Managing Grievances, and Contract Administration. The focus is practical application for the University manager.

## MANAGING HUMAN RESOURCES AND DISCIPLINE

Available measures to be used before pursuing disciplinary action

### COUNSELING

Bring any performance or behavioral problem to the attention of the employee in a timely fashion. Be specific when identifying the problem.

- Discuss why a problem exists
- Discuss ways the problem can be solved.
- Give both positive and negative feedback.
- Maintain open, two-way communication.

Confirm in writing that a counseling discussion took place for the departmental file: "I counseled 'so and so' on 'such and such' date for (general problem area)."

Offer continual assistance and feedback (positive and negative).

## PERFORMANCE DEVELOPMENT PROGRAM (PDP)

Use PDPs to accurately reflect the employee's positive and negative behavior and job performance. PDPs are not designed to be used as disciplinary tools, but to serve as aids to communications and employee development.

## DISCIPLINE

### PURPOSE OF DISCIPLINE

To correct any behavior that interferes with the orderly, efficient conduct of University business.

### MANAGEMENT'S OBJECTIVES

To consistently reinforce University, departmental and/or contractual rules, policies and/or procedures.

To prevent deficient behavior of employees.

- Communicate the deficient behavior directly to the employee. (There should be indirect communication of what is considered correct behavior by other employees through observance of official departmental practices.)
- Reduce the probability of more serious offenses occurring within the work force through the above-mentioned communications.

To correct deficient behavior of employees.

- The employee is viewed as a University investment. Attempt to maximize the employee's contribution to the University.
- Discipline to obtain compliance with established rules of conduct, not to punish an employee.
- Discipline appropriately for the offense committed. Don't "overkill."
- Discharge is not corrective in nature and therefore should only be considered when previous efforts to bring about corrective behavior have not succeeded.

To institute progressive disciplinary action.

Disciplinary action is fashioned to encourage behavioral improvement through management/employee communication and understanding.

Second and third offenses of the same nature as the first are cumulative in terms of the severity of the penalty imposed.

If behavioral improvement does not result, progressive discipline may ultimately lead to the discharge of the employee.

### UNION'S OBJECTIVES WHEN CHALLENGING DISCIPLINARY ACTION

To protect its constituents from disciplinary actions which are unfair, unjust, discriminatory, excessive or unsubstantiated.

### EMPLOYEE OFFENSES

Major offenses.

Offenses so serious in nature that discharge is appropriate without regard to the employee's length of service or prior conduct record. Examples include theft, fighting, drinking on the job, sabotage, or gross insubordination.

Discharge in these cases is not considered a disciplinary action.

Minor offenses.

All instances of misconduct which do not fall within the major offense category. Such offenses include absenteeism, tardiness, poor work performance and other violations of University or departmental policies or rules.

## THE COLLECTIVE BARGAINING AGREEMENT

Management has the authority to administer reasonable, effective discipline through its reserved management's rights, policies, procedures, rules and the Collective Bargaining Agreement (management's rights provision).

## DETERMINING DISCIPLINARY ACTION

### GENERAL

Disciplinary action requires a precipitating event.

Management should not unreasonably delay the administering of discipline.

Document all reasons for disciplinary action.

Make sure the employee committed the infraction.

Make sure the employee is aware (or should reasonably be aware) of the specific rule or policy.

Identify what written and/or verbal communications were given to the employee.

Identify previous discussion(s) and/or notice(s) that were given to the employee.

Did the employee acknowledge his/her understanding of the rule or policy?

### NATURE OF THE OFFENSE

- The degree of discipline should be appropriate for the seriousness of the offense.
- Among the serious offenses which require immediate discipline up to and including discharge are: unauthorized removal or possession of property, fighting, drinking on the job, sabotage, and sexual harassment.
- Among the less serious offenses that may require immediate discipline up to and including suspension are: misuse of materials and equipment, coming to work in an intoxicated condition, and insubordination.
- Some minor offenses which follow progressive discipline are: absenteeism, tardiness, and poor work performance.
- Counseling should precede discipline whenever practicable.
- Individual departments have the responsibility for determining the appropriate level of disciplinary action.
- Call personnel in the Office of Employee Relations (353-5510), or consult the MSU Policies and Procedures Manual for assistance.
- Approval for discharge must be obtained from the Office of Employee Relations in advance.

### EMPLOYEE RIGHTS

Are preserved if the employee is given reasonable notice and the opportunity to be heard in relation to the action taken or contemplated.

## DOUBLE JEOPARDY

Once disciplined for a given act, further discipline cannot be imposed for that act.

## JUST CAUSE

Disciplinary action must be reasonable.

Generally, just cause exists if all the following questions can be answered in the positive, but a negative response does not necessarily mean that just cause does not exist.

- Was the employee adequately warned (verbally or in writing) of the consequences of his/her conduct?
- Was the rule or order reasonably related to efficient and safe University operations?
- Did management conduct a thorough, unbiased investigation before administering the discipline?
  - Investigate before making the decision.
  - If immediate action is necessary, suspend the employee pending investigation. Do not use the Notice of Non-academic Disciplinary Action Form (NDAF). Instead use the Notice of Suspension Pending Investigation Form.
- Was the investigation objective?
- Did the investigation produce substantial evidence or proof of guilt?
- Were the rules, orders and penalties applied even-handedly and without discrimination?
- Was the discipline reasonably related to the seriousness of the offense and past record of the employee?

## EMPLOYEE'S PAST RECORD

A good past record may mitigate an offense.

Limitations.

- The official personnel file (located in Human Resources) should be the repository for the employee's past record.
- Past discipline limitations.
  - As specified in the contracts with AFSCME Locals 1585 and 999 and IUOE Local 547, disciplinary action more than two (2) years old may not serve as basis for additional discipline.
  - Contracts with APA, APSA and CTU specify that an employee's record is to be purged of record of all disciplinary action occurring more than eighteen (18) months prior, provided no additional discipline has been incurred.

## EMPLOYEE'S LENGTH OF SERVICE WITH MSU

Long service is a positive factor for the employee and may mitigate the severity of the discipline.

## KNOWLEDGE OF THE RULES

Rules or standards must be reasonable and consistently enforced.

Both supervisor and employee must have knowledge of the rules.

Failure to discipline over a period of time for a specific rule violation may lead employees to reasonably believe the conduct in question is tacitly approved.

The department may switch from lax to strict enforcement, but should give employees clear notice of intent to do so.

#### LOCAL PRACTICE OR POLICY

The penalty for the given offense should be as uniform as possible so as to assure even-handed discipline.

Consider the past practice (of the employer).

#### MITIGATING OR AGGRAVATING CIRCUMSTANCES

Mitigating circumstances: circumstances which do not excuse the employee's action completely, but make the action less subject to blame and thereby reduce the severity of the disciplinary action.

Aggravating circumstances: circumstances which could increase the severity of a penalty (such as persistently committing the same offense after previously being disciplined for that offense).

#### TIMELY DISCIPLINARY ACTION

Do not delay disciplinary action it should be administered promptly after the decision has been made.

#### OBSERVANCE OF CONTRACTUAL PROCEDURES

Observe all contractual procedures.

Union or association representation: offer the employee the opportunity to have his/her union or association representative present during investigatory meetings and disciplinary meetings.

#### DOCUMENTATION

Document all facts.

Keep a memorandum showing a timely record of the incident(s) to provide a complete record trail of the incident(s).

Determine the facts.

- Who was involved?
- What took place?
- When did it happen?
- Where did it happen?
- Who were the witnesses?
- What did the employee say?
- What did the supervisor say?
- Were there written communications?

## OFFENSES WARRANTING DISCIPLINARY ACTION

(In all instances, disciplinary action ranges from verbal warning to discharge.)

### INSUBORDINATION

Definition: an employee's refusal to carry out a supervisor's direct instruction/order.

- Instruction/order procedure.
  - Supervisor makes the instruction/order very clear to employee.
  - Supervisor confirms employee's understanding of the instruction/order.
  - Supervisor makes every possible effort to determine the employee's motive for refusing to comply with instruction/order.
  - Supervisor puts the employee on notice if employee refuses to comply with instruction/order: supervisor clearly states that the action taken by the employee constitutes insubordination and that his/her failure to comply with the instruction/order will result in immediate suspension pending compliance.
  - Supervisor should not create aggravating circumstances, such as the use of profanity or threatening tone, when instructing the employee.
- Legitimate instruction/order requirements.
  - Supervisor must be in the position of authority.
  - Instruction/order must not result in an action that will be
    - Illegal.
    - A danger to the employee's health or safety.

### ASSAULT/BATTERY

Assault: a verbal attack or threatened physical violence.

- Document the type of assault committed.
- Document the severity of the assault.
- To be considered a threat of physical violence.
  - The employee must not have been provoked or exercising the right of self-defense.
  - The employee's language must have been directed toward the supervisor, another employee, student or a visitor.

Battery: an intentional act which results in physical contact.

- Document the type of battery committed.
- Document the severity of the attack.

Mitigating circumstances may lessen disciplinary action.

### ABUSIVE LANGUAGE

Written or oral use of profane or obscene language.

- Language which disrupts or interferes with University operations.
- Language which by its use defames an individual in the presence of others.

Mitigating circumstances may lessen disciplinary action.

## DISRESPECT

Difficult to differentiate between disrespect and griping.

- Disrespect: absence of a subordinate relationship; lack of consideration for another person.
- Griping: complaining.

Approach: select a relatively stress-free period and privately discuss the problem with the employee.

## ABSENTEEISM

Definition: employee misses work for various reasons (a balancing of the employee's right to job security against the employer's right to expect a reasonable degree of job attendance).

Treat all employees in a reasonable, consistent and uniform fashion focusing on the particular facts and circumstances of the immediate situation.

Confront the employee with the absenteeism problem when the situation occurs. The confrontation with the employee over absenteeism is often "sidestepped" until management reaches a breaking point.

Types of absenteeism problems.

- Illness.
  - Employee's attendance record is below an acceptable range for a lengthy period of time even though an employee may have a maximum accrual of sick leave.
    - Compare employee's previous attendance records.
    - Consider length of employee's service.
    - Consider efforts made by the employee to improve the situation.
    - Consider the nature of the absences. (Important: An employee may not be disciplined for absences that qualify under the Family and Medical Leave Act [FMLA].)
    - Compare to other employees' attendance records.
- Imprisonment.
  - Disciplinary action can be different for each of the following circumstances.
    - An employee is incarcerated (suspension pending investigation) or charged and later released.
    - An employee is imprisoned (discharge due to absence).
  - Disciplinary action is determined by.
    - Nature of the offense causing imprisonment and the subsequent effect of the employee's reinstatement.
    - Employee's past record with respect to absenteeism generally.
- Religious beliefs: management is required by Title VII of the Federal Civil Rights Act to make reasonable accommodations to the religious needs of employees when this can be done without undue hardship to the University's operation.
- Personal matters.
  - Absence due to personal business is acceptable if approved by the supervisor for up to the designated number of personal days, provided absences do not create an unreasonable strain upon University operations.
  - The designated number of paid personal days granted, the supervisor makes the determination as to whether or not unpaid personal leave is granted.

Notification of absences: contractual and departmental policy requires notification and a reason by the employee to be given to his/her immediate supervisor.

## TARDINESS

Definition: employee reports tardy to his/her designated work station.

- The onset of tardiness depends on specific department policy.
- Likely occasions.
  - Beginning hours of duty.
  - Returning from meals.
  - Returning from breaks.

Management must treat all tardy employees in a fair, consistent and uniform fashion. The treatment of tardiness is similar to that of absenteeism.

Excessive or consistent tardiness can render an employee unsuitable for employment.

Confront the employee regarding a tardiness problem when the situation occurs. Do not "side-step" the issue by allowing the employee to make up the time.

## LEAVING EARLY

Definition: employee leaves for break, lunch, or home before designated time.

Treatment is similar to that of tardiness.

## MISCONDUCT

Definition: deficient behavior of an employee resulting in a violation of a University or departmental policy/rule.

- Types of misconduct.
  - Damaging or defacing University property.
  - Evidence must show willful behavior resulted in damage.
  - Value of property must be sufficient.
  - Sabotage or intent to commit sabotage requires proof beyond a reasonable doubt that the employee willfully and knowingly engaged in the alleged act, rather than an act resulting from carelessness or negligence.
- Dishonesty: clearly deceitful or untruthful behavior.
- Dress and grooming.
  - Dress and grooming requirements must be for legitimate business reasons (nature of employee's business and type of work), or for the safety of the employee's health.
  - If a standard is established it should be clearly understood and consistently enforced.
  - Standards must be reasonable and attuned to contemporary attitudes toward dress and grooming.
- Fights and altercations.
  - Management has the right to invoke disciplinary action in order to minimize disruptions which could have an adverse impact on the University.
- Horseplay: those interactions under the guise of "play" which could adversely affect the University because of personal injury and/or property damage.

- Substance abuse.
  - An employee may not at any time during his/her work shift be under the influence of alcohol or controlled substances.
  - Failed drug/alcohol test: an employee who is required to hold a commercial driver's license may be disciplined for failing a drug/alcohol test.
- Off-duty misconduct.
  - Definition: behavior off-duty that harms the company's product or reputation, renders employee unable to perform duties, or causes coworkers to refuse working with that individual.
  - Employee as a general rule may not be disciplined for off-duty behavior unless such conduct has an adverse effect on the University.
- Outside employment.
  - Outside employment, or "moonlighting," may have ramifications to an employee's employment at the University, which could result in disciplinary action.
    - An employee may falsely claim sick leave while holding a second job.
    - Outside employment may result in poor work performance, absenteeism or tardiness.
    - Work outside the University may detract from the performance of the duties and responsibilities of the University position, or may create a conflict of interest.
- Sleeping and loafing: using paid time in an unproductive manner.

## UNSATISFACTORY PERFORMANCE

Definition: an employee's incompetence, inability, carelessness, negligence or disregard for University property and procedures when performing assignments within his/her job classification.

Types of problems.

- Incompetence: when the employee knows how to do the job but lacks the presence of mind, attention, or commitment to consistently get the job done.
- Inability to perform the job: when the employee lacks the skills and cannot develop the skills within a reasonable time period.
- Carelessness: when an employee has the self-discipline and ability to perform the job, but randomly fails to meet acceptable levels of performance.
- Negligence: when an employee has the self-discipline and ability to perform the job, but fails to carry through on duties of the job.
- Disregard for University property: an employee's performance results in misuse or abuse of University property.

## SEXUAL HARASSMENT

Defined by the Equal Employment Opportunity Commission as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment,
- submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting that individual, or
- such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Where substantiated, strong summary action should be taken.

## TAKING DISCIPLINARY ACTION

### FOLLOWING PROCEDURES

In keeping with the principle of corrective discipline, a supervisor always applies University and/or departmental policies and procedures.

### CORRECTING EMPLOYEE BEHAVIOR

#### Verbal warning.

- Research the problem and discuss it with the employee.
  - Notify the employee of his/her right to representation and allow for a union or association representative to be present if requested by the employee.
  - State the facts of the situation to the employee.
  - Ask the employee if the facts stated are correct.
  - Discuss those areas where facts are conflicting or where mitigating circumstances exist.
- Arrange for a second meeting to inform the employee whether his/her actions warrant disciplinary action. Call the Office of Employee Relations for assistance if needed.
- Notify the employee of his/her right to representation and allow for a union or association representative to be present if requested by the employee.
- If discipline is warranted, prepare an NDAF and review it with the employee. Include the following.
  - Employee's name, classification, department, employment date.
  - Date, time, place of problem.
  - The reason why disciplinary action is necessary the first section only.
  - Whether union or association representation was present or if the employee waived his/her right to union or association representation.
  - Appropriate signatures.
- Discuss the disciplinary action taken.
  - State "This is a verbal warning regarding (state specific incident)." Give details of previous discussions and/or discipline.
  - Inform the employee how the behavior in question can be improved to meet appropriate behavioral standards (corrective action).
  - Warn the employee that failure to correct the behavior may result in further disciplinary action.
- Distribute the NDAF as follows:
  - a copy to the employee,
  - a copy to Human Resources Information Systems, and
  - a copy to the departmental file, and to the union or association, if required.
  - For other distribution requirements relative to employees covered by bargaining agreements, see appropriate contracts.
  - The NDAF is not used when administering a verbal warning to Local 999 employees.
- If disciplinary action is not warranted, treat the second meeting as a counseling session (see "Available measures to be used before pursuing disciplinary action - Counseling").

#### Written reprimand.

- Research the problem and discuss it with the employee.
  - Notify the employee of his/her right to representation and allow for a union or association representative to be present if requested by the employee.
  - State the facts of the situation to the employee.

- Ask the employee if the facts stated are correct.
  - Discuss those areas where facts are conflicting or where mitigating circumstances exist.
- Depending upon the circumstances, disciplinary action may be initiated at any point of the progressive disciplinary sequence; however, strong factual justification is necessary when bypassing earlier steps. Call the Office of Employee Relations for assistance if needed.
- Arrange for a second meeting to inform the employee whether his/her actions warrant disciplinary action. Call the Office of Employee Relations for assistance if needed.
  - Notify the employee of his/her right to representation and allow for a union or association representative to be present if requested by the employee.
  - If disciplinary action is warranted, prepare and go over the entire NDAF with the employee.
    - Obtain the employee's name, classification, department, employment date.
    - Explain to the employee why disciplinary action was taken include date, time, and place.
    - Explain to the employee the reason for disciplinary action include previous discussions and/or discipline.
    - Explain to the employee the appropriate behavioral standard expected, required.
    - Indicate to the employee that the employee's failure to correct his/her behavior may result in further disciplinary action.
    - Indicate on the NDAF whether union or association representation was present or if the employee waived his/her right to union or association representation.
    - Obtain the appropriate signature on the NDAF. So indicate if the employee does not wish to sign.
  - Distribute the NDAF as follows:
    - a copy to the employee,
    - a copy to Human Resources Information Systems, and
    - a copy to the departmental file, and to the union or association, if required.
    - For other distribution requirements relative to employees covered by bargaining agreements, see appropriate contracts.
  - If disciplinary action is not warranted, treat the second meeting as a counseling session (see "Available measures to be used before pursuing disciplinary action - Counseling," page 1).

### **Suspension.**

- Research the problem and discuss it with the employee.
  - Notify the employee of his/her right to representation and allow for a union or association representative to be present if requested by the employee.
  - State the facts of the situation to the employee.
  - Ask the employee if the facts stated are correct.
  - Discuss those areas where facts are conflicting or where mitigating circumstances exist.
- Depending on circumstances, disciplinary action may be initiated at any point of the progressive disciplinary sequence; however, strong factual justification is necessary when bypassing earlier steps.
  - Select the level of suspension that will best suit the offense committed. (Don't overkill.)
  - Suspension levels: flexible period of time to be used appropriately depending upon the facts of the case.
    - One to five days (first suspension).
    - One to ten days (second suspension).
  - Call the Office of Employee Relations for assistance if needed.
- Arrange for a second meeting to inform the employee whether his/her actions warrant suspension.
  - Notify the employee of his/her right to representation and allow for a union or association representative to be present if requested by the employee.
  - If disciplinary action is warranted, prepare and go over the entire NDAF with the employee.
    - Obtain the employee's name, classification, department, employment date.

- Explain to the employee why disciplinary action was taken include date, time, and place. Include also previous discussion and/or discipline.
- Complete the suspension date box on the NDAF and inform the employee of the specific suspension dates.
- Explain to the employee what corrective action is required for the employee to meet appropriate standards of behavior or performance.
- Indicate to the employee that the employee's failure to correct his/her behavior may result in further disciplinary action.
- Indicate on the NDAF whether union or association representation was present or if the employee waived his/her right to union or association representation.
- Obtain the appropriate signatures on the NDAF. So indicate if the employee does not wish to sign.
- Distribute the NDAF as follows:
  - a copy to the employee,
  - a copy to Human Resources Information Systems, and
  - a copy to the departmental file, and to the union or association, if required.
  - For other distribution requirements relative to employees covered by bargaining agreements, see appropriate contracts.
- Notify Human Resources Information Systems. Consult with the Office of Employee Relations if contemplating suspension of less than five days for AP or APS employees.
  - Consult with the Office of Employee Relations if contemplating suspension of less than five days for AP or APS employees.
  - For hourly employees and salaried employees losing less than ten (10) days due to suspension, a Notification of Deduction form will be filled out.
  - For salaried employees losing ten (10) days or more due to suspension, a Personnel Action Notification form will be filled out.
  - In both instances one copy of the form will be sent to Payroll and two copies will be sent to the department. Give one copy to the employee and retain the second for departmental files.
- If disciplinary action is not warranted, treat the second meeting as a counseling session (see "Available measures to be used before pursuing disciplinary action - Counseling.").
- Final warning letter.
  - Must be prompted by a precipitating event.
  - Is issued under the following circumstances.
    - When mitigating circumstances preclude a discharge.
    - After a series of suspensions.

## DISCHARGE

Research the problem and discuss it with the employee.

- Notify the employee of his/her right to representation and allow for a union or association representative to be present if requested by the employee.
- State the facts of the situation to the employee.
- Ask the employee if the facts stated are correct.
- Discuss those areas where facts are conflicting or where mitigating circumstances exist.
- In discharge cases, a warning letter may have been issued.
- Call the Office of Employee Relations for assistance.
- Obtain the Director of Employee Relations' approval for discharge cases.

Arrange for another meeting to inform the employee whether his/her actions warrant discharge.

- Notify the employee of his/her right to representation and allow for a union or association representative to be present if requested by the employee.
- Prepare Personnel Action Notice form.
  - Complete appropriately.
  - Sign form.
  - Obtain signature of departmental administrator.
  - Personally deliver to Human Resources Employee Records.

Prepare for final paycheck.

- Human Resources Information Systems will prepare an authorization slip for the final paycheck.

If discharge is warranted, prepare the NDAF and go over it with the employee.

- Obtain the employee's name, classification, department, employment date.
- Explain to the employee why he/she is being discharged. Include specific date, time, place of incident, previous discussion and/or discipline. Also include the employee's termination date.
- Indicate on the NDAF whether union or association representative was present or if the employee waived his/her right to union or association representation.
- Obtain the appropriate signatures on the NDAF. So indicate if the employee does not wish to sign.
- Distribute the NDAF as follows:
  - a copy to the employee,
  - a copy to Human Resources Information Systems, and
  - a copy to the departmental file, and to the union or association.
  - For other distribution requirements relative to employees covered by bargaining agreements, see appropriate contracts.
  - Collect from the employee all University property such as keys, parking gate card, tools, and MSU identification card.
- Give the employee his/her final paycheck.
- The employee may not work any additional hours.

## MANAGING GRIEVANCES

The grievance procedure

### GRIEVANCE DEFINED

A grievance is a charge by an employee or union/association that he/she or it has been acted upon in a manner which is a violation of provisions of the collective bargaining agreement. The grievance procedure is a series of meetings, called Steps, through which problems are defined and resolved through definition, discussion, and sometimes through third-party review.

### OBJECTIVES

- To provide employees with a means to interpret provisions in the collective bargaining agreement.
- To provide the union or association with a means to protect the integrity of the agreement.
- To facilitate uniformity in handling employee/employer disputes.
- To ensure against arbitrary and capricious actions by supervisors.
- To facilitate communications between employees and supervisors.
- To resolve problems with minimal disruption of University operations.

- To increase cooperation between management and employees so that there is minimal disruption of University operations.
- To ensure the rights of the employee to pursue resolution of perceived problems.
- To provide a recognized medium for employees to express concerns.

## WHY GRIEVANCES ARISE

### DISCIPLINE

### ALLEGED CONTRACT VIOLATIONS (TERMS AND CONDITIONS OF EMPLOYMENT)

- Wages.
- Hours.
- Job duties and responsibilities.
  - Alleged working out of classification.
  - Alleged failure to tell the employee what is expected of him/her.
- Safety, sanitation and facilities.
- Rules and regulations.

### ORGANIZATIONAL FACTORS

An organizational structure that does not listen to employee complaints.

Informal organizational practices which weaken standard organizational practices and which weaken organizational effectiveness.

Lack of uniform supervisory practices.

Insufficient communication and understanding of organizational policy, rules, and/or regulations.

Excessive delay in providing employees with information, answers, recognition and relief from objectionable situations.

Performance standards not fully understood by the employee. (i.e., "quality of work" and "quantity of work").

### EMPLOYEE PROBLEMS

Failure of the employee to adjust to changing conditions.

Outside influences carried into the work area.

Unsatisfactory behavior on the part of the employee with respect to the job, the supervisor, the department or co-workers.

## MINIMIZING GRIEVANCES

### INCORPORATING EFFECTIVE EMPLOYEE/SUPERVISORY MANAGING PRINCIPLES

Whenever possible, solicit subordinates' participation in the making of decisions which affect them or the work they are responsible for performing.

Provide positive leadership by encouraging team concepts.

Keep subordinates informed.

- Tell employees precisely what is expected of them as a team member.
- Make expectations reasonable, and consistent with efficient University operations.
- Make certain employees understand instructions and expectations.
- Provide employees with feedback.

Understand departmental policies/regulations and the collective bargaining agreement.

- Be consistent.
- Be available to your staff.
- Establish a reputation for honesty and fairness; don't give any assurances you can't keep. Stand behind your word.
- Pay attention to informal complaints. Be willing to discuss them.

## UNDERSTANDING THE ROLE OF MANAGEMENT

The department's role is to conduct University business within the framework of departmental and University philosophies, policies, procedures and the collective bargaining agreement.

Guard against erosion of management's rights.

- Be sure grievance answers don't expand union or association rights.
- Be sure managerial decisions don't expand union or association rights.

## THE GRIEVANCE PROCESS

### ORAL STEP

The employee or his/her union or association representative may orally discuss a potential grievance concern with the employee's supervisor.

Supervision should encourage employees to orally discuss a specific complaint with their supervisor before filing a formal grievance. (This may result in an early resolution of disputes and is, in fact, required by some of the Collective Bargaining Agreements.)

### THE FORMAL GRIEVANCE PROCEDURE

Step I.

- When the oral step answer is not satisfactory, the employee (often with the assistance of the union or association representative) reduces the complaint to writing using the Grievance Form.
- Written grievances are submitted to the immediate supervisor.

Step II.

- If the Step I answer is not satisfactory, the employee/union or association representative may appeal the grievance to the administrative head of the unit.

### Step III.

- If a Step II answer is not satisfactory, the employee/union or association representative may appeal the grievance to the Office of Employee Relations.

### Arbitration.

- When the Step III answer is not satisfactory, the union/association may appeal the grievance to arbitration the final recourse.
- Arbitration is a process whereby the University and the union/association submit a grievance to an arbitrator for final determination.
  - The decision is binding and must be followed unless a party can prove through the courts that the arbitrator has exceeded his/her authority.
  - Arbitration hearings usually last from 3 6 hours and cost approximately \$1,500 to \$3,000 (payment shared equally by both parties).
- Arbitration hearing format.
  - Opening statements by both parties acquaint the arbitrator with the relevant facts and issue(s) of the case.
  - Evidence is presented by both parties.
    - Direct examination testimony of witnesses.
    - Cross examination testimony of witnesses.
    - Documents and any physical evidence.
  - Closing statements give each party a chance to summarize its respective case.
  - Post-hearing briefs may be submitted by the parties to summarize their cases in writing.
- The arbitrator renders a decision within 30 days of the close of the hearing.
- General procedures and principles for serving as an arbitration witness.
  - Witnesses will be sworn to tell the truth.
  - Be serious.
  - Listen carefully to questions asked of you.
  - Before answering a question, make sure you understand the question fully.
    - Have questions repeated, if necessary.
    - Give a well thought-out answer, speaking audibly and clearly.
    - Give verbal responses; do not nod your head for an answer.
  - Explain or elaborate answers only if asked. Do not volunteer any information that is not specifically asked for.
    - Tell the truth at all times.
    - When asked, readily admit every material truth even if it is not to the advantage of the employer.
    - Do not stop to gauge whether your answer will help or hurt your side.
  - If an answer is erroneous, correct it immediately.
  - Do not exaggerate. Stick to the facts not hearsay, inferences, or opinions.
  - Stop instantly if the arbitrator interrupts you or if the union or association representative objects to what you say. Do not try to sneak in your answer.
  - Do not memorize what you are going to say. If necessary, refer to notes for refreshing your memory (do not rely solely on notes).
  - Do not be too final, e.g., "That's all of the conversation," or "Nothing else happened." Rather state, "That's all I recall."
  - Beware of questions involving distance and time. If an estimate is made, be sure that everyone understands that you are estimating and make certain your estimates are reasonable.
  - Avoid talking about the case in public areas when the hearing is recessed.
- Specific procedures and principles for arbitration witnesses during cross-examination.

- Always be polite to the union or association representative, but remember that no matter how friendly he/she may seem on cross-examination, he/she may be trying to discredit you as a witness.
- Answer all questions. If the question is improper, your representative will object.
- Be attentive to questions with a double meaning and questions which assume that you have testified to a fact when you have not done so. Answer all questions carefully, making clear exactly what is meant.
- Give definite answers.
  - Avoid saying, "I think," or "I believe."
  - If the answer is not known, say so; do not make up an answer.
  - If asked about details that a person ordinarily would not remember, it is best to just say, "I don't recall."
  - Don't guess or speculate.
- Don't hedge or argue with the union or association representative.
- Do not look to other people for help in answering a question.
- Never lose your temper.
  - Testifying for a length of time is tiring. Be careful of union or association representatives who, on cross-examination, may try to wear witnesses down to the point where they lose their temper or say things that are incorrect which will hurt their testimony.

## INVESTIGATING GRIEVANCES

The purpose of investigation is to gather facts (verifiable evidence excludes personal opinion and emotion as much as possible).

As soon as possible after the grievance has been received, conduct a thorough and unbiased investigation of the incident.

- Question the employee, his/her representative and University personnel to develop a full set of facts. Be careful not to confuse fact with personal opinion.
- During the investigation, hold back any emotional response.
- Determine:
  - who was involved,
  - what took place,
  - when the incident happened,
  - where the incident happened,
  - who else was there (any witnesses),
  - what the employee said,
  - what the supervisor said, and
  - if any written documents exist.
- Ask the employee to pinpoint specific contract provisions, policies, rules, etc., that have been violated and the remedy desired.
  - Listen attentively and with an open mind.
  - Verify all documents and facts collected.
  - Carefully review all documents and facts pertaining to the case and make a preliminary determination if the actions taken were appropriate.
  - Document in writing all pertinent data collected during each phase of the investigation.
    - Date, time, place.
    - Facts.
    - Reactions.

## GRIEVANCE MEETINGS

The purpose of hearings for grievances is to determine whether a contractual provision has been violated.

Schedule the meeting as soon as possible and within the specified time limit.

Guidelines for conducting a grievance meeting.

- Open the meeting by stating its purpose.
- Allow the union or association to present its case first.
- Management should determine and examine all the issues. The meeting should not become a debate.
- Discuss the action(s) taken. Determine what the union or association believes to be wrong with the action taken.
- Close the meeting.
- Keep a meeting record.

## ANSWERING GRIEVANCES

Purpose.

- Provides a written record of your grievance.
  - Establishes a precedent for future cases.
  - Documents what action was taken.
- Enables the representative to take a second look at the legitimacy of the grievance.

Determining an answer.

- Isolate the facts.
- Isolate the issue the specific action that has been challenged.
- Interpret corresponding contract section or University policy.
  - Consider past practice, both departmentally and University-wide.
  - Consult the Office of Employee Relations.

Consider possible answers to the grievance bearing in mind the issue(s), facts, and future implications.

Commit the grievance decision to writing.

- Be concise by avoiding excessive details.
- Write up the grievance answer as soon as possible.
- Avoid statements that unnecessarily antagonize the employee or union/association representative.
- Avoid broadening the issue.

Report the decision to your supervisor, to the grievant, and to the grievant's representative.

Follow up to make sure the decision has been carried out.

## TIMETABLES

Time limitations for meetings, decisions, and appeals vary from one union or association to the next and are subject to change with the renegotiation of contracts. When dealing with a grievance always consult the relevant contract to determine particular time limitations.

## GRIEVANCE PROCEDURE (NON-BARGAINED-FOR EMPLOYEES)

### STEP I: IMMEDIATE SUPERVISOR

In the event the problem is not suitably resolved through discussion with his/her immediate supervisor, the employee may reduce the problem to writing and present the grievance to their immediate supervisor or designated representative.

A written grievance must be presented to the immediate supervisor or his/her designated representative within fifteen (15) working days of its alleged occurrence in order to be a proper matter for this grievance procedure.

The written grievance shall be dated and signed by the aggrieved employee and shall set forth the facts, including dates of the grievance and the remedy desired. The grievance shall not be considered submitted until the immediate supervisor or designated representative receives the written grievance. At the time it is received, it shall be dated and a copy returned to the aggrieved employee.

The immediate supervisor or designated representative shall investigate the allegations and will then answer the grievance in writing to the aggrieved employee within ten (10) working days of the receipt of the grievance.

In the event the immediate supervisor or designated representative does not answer the grievance in the prescribed time limit, the grievance may be appealed to the next higher step of this grievance procedure within ten (10) working days after the expiration of the applicable time limit.

In the event the answer of the immediate supervisor or designated representative is unacceptable to the aggrieved employee, the grievance may be appealed to the next higher step of this grievance procedure. Any grievance not appealed within ten (10) working days after such answer shall be considered settled on the basis of the written answer of the immediate supervisor or designated representative and shall not be subject to further appeal and/or review.

### STEP II: ADMINISTRATIVE HEAD

If the grievance is not resolved, the aggrieved employee may refer the grievance in writing to the administrative head of the unit or designated representative indicating the reasons why the answer of the immediate supervisor or designated representative was unsatisfactory.

The grievance shall not be considered submitted until the administrative head of the unit or designated representative receives the written grievance. At the time it is received, it shall be dated and a copy returned to the aggrieved employee.

The administrative head of the unit or designated representative shall investigate the allegations and will then answer the grievance in writing to the aggrieved employee within ten (10) working days of the receipt of the grievance.

In the event the administrative head of the unit or designated representative does not answer the grievance in the prescribed time limits, the grievance may then be appealed to the next higher step of this grievance procedure within ten (10) working days after the expiration of the applicable time limit.

In the event the answer of the administrative head of the unit or designated representative is unacceptable to the aggrieved employee, the grievance may be appealed to the next higher step of this grievance procedure. Any

grievance not appealed within ten (10) working days after such answer shall be considered settled on the basis of the written answer of the administrative head of the unit or designated representative and shall not be subject to further appeal and/or review.

### STEP III: APPEAL BOARD

If the grievance is not resolved, the aggrieved employee may refer the grievance in writing to the Assistant Vice President for Human Resources indicating why the written answer of the administrative head of the unit or designated representative was unsatisfactory.

A grievance shall not be considered submitted until the Assistant Vice President for Human Resources receives the written grievance. At the time it is received, it shall be dated and a copy returned to the aggrieved employee.

The Assistant Vice President for Human Resources will, within ten (10) working days of the receipt of the grievance, impanel an Appeal Board which shall consist of three members: one (1) selected by the aggrieved employee's immediate supervisor, one (1) selected by the aggrieved employee, and the third member selected by the first two members. In the event the first two members cannot agree upon the third member within five (5) working days, they shall so notify the Assistant Vice President for Human Resources who shall within five (5) working days after such notice select a third member. The Appeal Board shall be convened for the purpose of reviewing and making a recommendation of the disposition of the grievance.

The Appeal Board shall meet within ten (10) working days of its impanelment and shall investigate the allegations and will then make its recommendations in writing to the Assistant Vice President for Human Resources within ten (10) working days of the completion of its investigation but no later than thirty (30) days after its first meeting. A majority decision by the Appeal Board shall constitute the recommendation of the Appeal Board to the Assistant Vice President for Human Resources.

The Assistant Vice President for Human Resources shall within ten (10) working days of the receipt of the recommendations of the Appeal Board render his/her final decision of the grievance in writing to the aggrieved employee.

### DO'S AND DON'TS OF MANAGING GRIEVANCES

#### DO

- Be thoroughly familiar with all circumstances surrounding the grievance.
- Review any records that bear on the case, such as time cards, absenteeism reports, and work performance records.
- Insist the union or association present its case first.
- Permit a full hearing of the issues. Be sure the union or association has presented its entire case; be sure you have everything on the record that is pertinent.
- Give the union or association representative reasonable latitude in the way he/she presents his/her case, but don't permit him/her to take an excessive amount of time or to demean management.
- Identify the relief the union or association is seeking.
- Examine the consequences involved.
- Make a full record of both the union's/association's and management's position, arguments, witnesses, evidence, and participants.
- Treat all parties involved with respect and demand the same.
- Investigate and handle every case as though it will eventually result in an arbitration hearing.

- Require the union/association or grievant to identify the specific contractual provision allegedly violated.
- Determine whether or not the grievance was filed, appealed, and processed from step to step within the contractual time limits and whether the grievance meets all other procedural requirements dictated by the agreement. Strictly adhere to time limits or waive them in writing.
- Examine the relevant contractual provision(s). Is it ambiguous? If so, how has the provision generally been interpreted by the parties? Has the employer been consistent in its administration?
- Determine whether you have treated employees differently under similar circumstances. If so, why?
- Examine grievance records for any similar issues that have been resolved in prior cases repeated grievances on the same issue.

## DON'T

- Don't make any settlements "outside" the terms of the agreement.
- Don't provide a remedy that is inconsistent with the violation.
- Don't count on the union or association to assume authority for resolving your problems; exercise your authority and act affirmatively.
- Don't interrupt or stop day-to-day operations to accommodate a union or association representative demanding instant handling of a grievance. However, don't postpone or delay without legitimate reason.
- Don't make settlements whereby management can only act with the union's or association's prior approval, mutual consent, or joint consultation.
- Don't settle the grievance if you have any doubts. Discuss the matter with your superiors and the Office of Employee Relations if needed.
- Don't panic.
- Don't argue with the union or association representative.
- Don't admit to the binding effect of a past practice for settlement of the grievance until you have first discussed it with your superiors and the Office of Employee Relations.
- Don't assume a judicial role. Hear the union's or association's case, then be an advocate of management's interests.
- Don't discuss the merits of the grievance if the grievance was filed late.
- Don't ask favors of the union or association. They will expect a reciprocal concession from you some day.
- Don't give lengthy written answers on grievance forms when denying a grievance.

## CONTRACT ADMINISTRATION (INTERPRETING CONTRACT LANGUAGES)

### CONTRACT INTERPRETATION

#### PURPOSE

To render meaning to contract language to make it clear and unambiguous.

Ambiguity occurs when plausible contentions may be made for conflicting interpretations of contract language.

Ambiguous language can result when:

- the parties have failed to express their intent with clarity, and/or
- the parties never conferred to the point of agreement.

Contract interpretation is simplified when:

- language is clear and unequivocal, and/or

- language is consistent throughout the agreement.

## OBJECTIVES OF CONTRACT INTERPRETATION

To ascertain the meaning of contractual language not to add, subtract, or modify language.

To enable the University to carry out its operations.

## CONCEPTS

Negotiations.

- Definition: parties meet and confer on both mandatory and permissive subjects of bargaining in an effort to reach agreement on matters which define the collective bargaining relationship.
- If a party attempts but fails in contract negotiations to include a specific provision in the agreement, most arbitrators will not interpret that provision into the agreement.

Letters of agreement.

- Definition: written interpretation, clarification or modification of contract language mutually agreed upon by the University and the union or association.
- The language contained in letters of agreement is binding.

Past grievance answers.

- Past non-disciplinary grievance answers include contract interpretations.
- Non-disciplinary grievance answers which are not appealed become the interpretation for the language in question.

Arbitration.

- Answers from past arbitrations provide interpretation for contract language.
- Arbitration answers are binding on both parties.

Past practice.

- In the absence of written language, past practice governs. To constitute a past practice, an action must be:
  - unequivocal,
  - clearly enunciated and acted upon, and
  - readily ascertainable over a reasonable period of time as a fixed and established practice accepted, implicitly or explicitly, by both parties.
- Where past practice has established a meaning for ambiguous language contained in past contracts and continued by the parties in a new agreement, the language will continue to have that meaning.
- Continued failure of one party to object to the other party's interpretation is sometimes held to constitute acceptance of such interpretation. However in most cases, clear contract language supersedes a contrary past practice.
- Changing past practice.
  - Change or clarify contract language.
  - Create a new practice.
  - Enforce specific contract language by first notifying employees of your intention.
  - Receive an arbitration ruling clarifying contract language.
  - Obtain agreement of employees.

## INTERPRETING CONTRACT LANGUAGE

The agreement must be construed as a whole, and not interpreted through single, isolated words or phrases.

Where there is a conflict between specific language and general language in an agreement, the specific language governs.

Never render an unlawful interpretation.

Give words their usual and popularly accepted meaning in the absence of any indication that they were used in a different sense or that the parties intended a colloquial meaning.

Interpretations should not be harsh, absurd, or nonsensical.

When the contract expressly states certain exceptions or guarantees, this indicates that there are no other exceptions or guarantees.

## OFFICE OF EMPLOYEE RELATIONS (OER)

### FUNCTIONS

Advice.

- OER provides advice to other departments on all matters of employee relations, including discipline and management's rights.

Contract negotiation/interpretation.

- OER negotiates all contracts with unions and associations affiliated with the University.
- In cases of contract ambiguity, OER interprets the contract language.

Step III grievances.

- OER represents the University in grievances at the third step.

Arbitrations.

- OER represents the University in arbitration cases.

### PROFESSIONAL STAFF

James Nash, Interim Director

Jeff Brodie, Human Resources Professional

Telephone: (517)353-5510

Fax: (517)353-3523