

# DISCIPLINE

## A BASIC OVERVIEW



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# Introduction

- This session will provide an overview of the employee disciplinary process in an effort to educate the representatives of the Superior Officers Association.
- If every representative takes away at least one thing from this program, it will have been worthwhile.



# Topics of Discussion

- Causes for discipline.
- Appeals.
- Dismissal.
- Suspensions and fines.
- Investigations.
- Employee rights.



# There are two types of disciplinary action

- Minor
  - ◆ Formal Written Reprimand
  - ◆ Suspension/fine of 5 working days or less
- Major
  - ◆ Termination
  - ◆ Disciplinary demotion
  - ◆ Suspension or fine of 5 working days or more
  - ◆ Suspension or fine of 5 working days or less where the aggregate number of days is 15 or more in a calendar year
  - ◆ Suspension or fine where an employee receives more than 3 suspensions of 5 working days or less



# General Causes for Disciplinary Action

- Incompetency, inefficiency, or failure to perform duties
- Insubordination
- Inability to perform duties
- Chronic of excessive absenteeism or lateness
- Conviction of a crime
- Conduct unbecoming a public employee
- Neglect of duty
- Misuse of public property, including motor vehicles
- Discrimination that affects equal employment opportunity (as defined in N.J.A.C. 4A: 7-101), including sexual harassment
- Violation of Federal regulations concerning drug and alcohol use by employees who operate commercial motor vehicles
- Other sufficient cause



# Minor Discipline Appeal

- Appeal must be filed within 15 calendar days from date charge was served
- Suspensions of 1 to 5 days may be appealed to the Joint Association Management Panel
- May be appealed through the DOP only if it presents issues of general applicability in that it interprets law, rule, regulation, or policy
  - ◆ If this standard is met, the appeal is referred to OAL for a hearing
  - ◆ If this procedure is chosen, it is final and binding and absolute waiver of other disciplinary appeal processes



# Major Discipline Appeal

- Appeal must be filed within 15 calendar days from date charge was served
- May be appealed to DOP within 20 calendar days of decision
  - ◆ If this procedure is chosen, it is final and binding and absolute waiver of other disciplinary appeal processes
  - ◆ This is then referred to OAL for “de novo” hearing
- May be appealed to Advisory Disciplinary Arbitration
  - ◆ May only be made through the President and within 20 days of the initial decision
- May be appealed to Alternate Dispute Resolution Program
  - ◆ Must be agreed to by employee, union, and employer



# Disciplinary Processes

- Employer must serve Preliminary Notice setting forth the charges
  - ◆ Within 60 days for EED charges, or
  - ◆ Within 45 days for all other charges
- Employee must appeal charges within 15 days of receiving charges
- Employer must hold hearing within 20 days of receiving appeal
- Hearing Officer must render written decision within 20 days of hearing date
- Sanction may be imposed after service of Final Notice





# Time Limits

All but EED charges must be served within 45 days of employer reasonably becoming aware of infraction, or charges shall be dismissed.

- EED charges must be served within 60 days of employer reasonably becoming aware of infraction, or charges shall be dismissed.
- All initial appeals must be filed within 15 calendar days from when the employee received the charges.
- The union shall be notified of any employee who the employer intends to suspend or terminate, within 72 hours of notice to the employee.
- Initial disciplinary appeal hearings shall be convened within 20 calendar days from the date the appeal was filed.
- The Hearing Officer shall render a written decision within 20 calendar days from the date of the hearing.
- The initial decision may be appealed to the Merit System Board within 20 calendar days from the date of the initial decision.
- The initial decision may be appealed to Advisory Arbitration within 20 calendar days from the date of the initial decision.
- The Arbitrator shall hold a hearing within 30 days from the date s/he accepts the case.
- The Arbitrator shall issue a decision within 30 days of the date of the arbitration hearing.
- Minors (1 to 5 day suspension) may be appealed to the Joint Association Management Panel within 10 days of date of initial decision.



# Time Limits (Continued)



- Loudermill hearings may not be conducted before the expiration of 24 hours from the time the employee has been served with charges
- Suspensions can not be implemented before an expiration of 72 hours from the beginning of the work shift when employee is served charges
- Suspensions may be immediate, pending termination charges, when the employer has an immediate need to maintain safety, order or effective direction of work assignments
- Suspensions must be started within 30 calendar days of the final notice of disciplinary action
- All suspensions must be served within 6 months of final notice
- At disciplinary hearings, Management must provide a witness list and discovery documents within 3 days (exclusive of weekends) before the scheduled appeal hearing
- All arrests, summons', or incarcerations must be reported to the employee's supervisor within 48 hours form the date of summons, arrest, or incarceration
- Employees have up to 8 hours to void a urine specimen, when ordered to do so as part of the employer's urine policy

# Automatic Dismissal

- Charges shall be considered dismissed if not served:
  - ◆ Within 60 days for EED
  - ◆ Within 45 days for all other charges



# Fines

- Employer may only impose fine
  - ◆ As form of restitution
  - ◆ In lieu of suspension, when suspension would be detrimental to public health, safety or welfare
  - ◆ When employee agrees to fine



# Fine Limitations

- Limitations on fines
  - ◆ When a fine of \$100 or more is imposed, fine will be withheld pending final disposition of the appeal, if requested
  - ◆ No fine shall exceed 6 months
- Payment of fines
  - ◆ Fine of more than 5 days pay can be paid in lump or installments.
  - ◆ Installment may not be more than 5% of gross for fine under \$500, 10% of gross for fine of \$500 to \$1000, and 15% of gross for fine over \$1000.



# Suspension Limitations

- No suspension shall exceed 6 months
- Suspensions are without pay unless directly authorized by Department Head.
- A suspension “on-the-record” may be imposed if agreed in writing by employee, union, and employer
  - ◆ Will have same force and effect for purposes of future discipline as a suspension actually served
- Suspensions cannot be implemented before 72 hours from the start of the shift during which notice of suspension was given, except in Loudermill cases



# Immediate Suspensions

- Conditions for immediate suspensions
  - ◆ Employee is unfit for duty or a hazard to fellow employees or others
  - ◆ When necessary to maintain safety, health, order or effective direction of public services
  - ◆ When employee is charged with a crime of the 1<sup>st</sup>, 2<sup>nd</sup>, or 3<sup>rd</sup> degree, or the 4<sup>th</sup> degree on the job or directly related to the job



# Loudermill Suspension

- Loudermill hearing notice must be provided to employee at least 24 hours before a hearing
- Employee is advised of why suspension is sought
- Employee may review charges and evidence and respond
- Employer must serve Preliminary Notice of formal charges within 5 days of Loudermill suspension
- Employer must hold disciplinary appeal hearing within 30 days of preliminary notice
- Hearing Officer's decision and final notice must be served to employee with 20 days from hearing date





# Criminal Matters

- Employees suspended pending criminal complaint must be served with preliminary notice stating that forfeiture may apply
- Department appeal hearing is limited to the issue of whether public interest would be best served by suspending employee with or without pay pending disposition of criminal charges
- Indefinite suspension may extend beyond 6 months but not beyond disposition of criminal charges



# Progressive Discipline

- Employee's past record is not admissible to establish the charges but may be considered in determining the appropriate penalty
- Past record may include performance evaluations, reasonably recent history of promotions, commendations, and formally and informally adjudicated disciplines



# Investigations

- Generally minor infractions should be investigated by employee's chain-of-command supervisor
- SID may investigate
  - ◆ Misconduct that may be criminal in nature or involves inmates
  - ◆ Serious administrative rule violations, especially involving inmates
- EED shall investigate all matters associated with violations/complaints involving EED policies



# Burden of Proof

- In all disciplines the burden of proof is incumbent upon the Appointing Authority
- Guilt must be proven by a preponderance of credible evidence
  - ◆ This is greater than 50%



# Merit System Appeals

- Appeal must be submitted in writing within 20 days of final notice
- A request for interim relief may be made but must show a clear likelihood of success on the merits, a danger of immediate or irreparable harm, and absence of substantial injury to other parties, and the public interest
- The MSB prepares the appeal for review by the OAL
- Early Settlement may be accomplished
- OAL Judge hears case and makes recommendation to MSB for approval
- All parties have 13 days to file exception to ALJ's report
- MSB may accept, reject or modify the ALJ's recommendation



# Back pay, Benefits & Seniority

- Awarded when discipline is reversed
- May be awarded when discipline is modified
- Awarded following disposition of criminal charges when verdict is not guilty at trial, at dismissal of complaint or indictment, or termination of prosecution
- Back pay includes salary, regular wages, overlap, increments, and across-the-board increases
- Back pay does not include overtime or holiday pay
- Benefits include vacation and sick leave credits and additional amounts expended to maintain health insurance during removal
- Back pay is reduced by taxes, social security, dues, pension and other normal payments
- Back pay reduced by by what was actually earned or could have been earned during separation
- Back pay may be reduced by delay caused on behalf of employee
- Back pay is not awarded when criminal charge is disposed of through PTI



# Counsel Fees

- MSB awards full or partial counsel fees where the employee had prevailed on all or substantially all of the issues of the charges
- The actual amount of counsel fees is to be settled by the parties whenever possible



# Help is available

- Your Executive Board is always available to answer any questions you may have, or to assist you with any disciplinary situation that may arise
- The Board can assist at hearings, serve as observers, or even present hearings with you as an observer
- Even in the middle of a disciplinary appeal hearing, we're available for you
  - ◆ If things seem beyond your control, or out of hand, simply request a brief recess and reach out by telephone

