



# **Supervision 101: The ABCs of CBAs**

Labor and Employee Relations

# AGENDA

- Public Sector Collective Bargaining
- The Purpose and Function of a Union
- Management Rights
- *Weingarten* Rights
- Progressive & Corrective Discipline
- DAIRs
- Dismissal During Probation
- Grievance Arbitrations

# Public Sector Collective Bargaining

In Illinois, two Public Acts control public sector bargaining. Both Acts discuss Employee Rights, Management Rights, Impasse Procedures, Unfair Labor Practices (ULPs), and Contract Requirements (i.e., grievance procedures, discipline & discharge, union dues, etc.).

## The Illinois Educational Public Labor Relations Act

- 115 ILCS 5/1
- This Act controls all aspects of bargaining for HIED, with one exception.

## The Illinois Public Labor Relations Act

- 5 ILCS 315
- This Act controls all aspects of bargaining for generally all other public sector employees (i.e., all state employees).
- Law Enforcement, Correctional Officers and Firemen

# The Purpose and Function of a Union

The primary purpose and function of a union is to represent members of a certified bargaining unit in all matters relating to their terms and conditions of employment.

These duties include:

- all aspects of collective bargaining for wages and benefits;
- representation of their members throughout the disciplinary and discharge process; and
- grievance administration.

# Management Rights

The IEPLRA clearly identifies what are inherent management rights.

- “Employers shall not be required to bargain over matters of inherent managerial policy, which shall include such areas of discretion or policy as the functions of the employer, standards of services, its overall budget, the organizational structure and selection of new employees and direction of employees.”
- “Employers, however, shall be required to bargain collectively with regard to policy matters directly affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by employee representatives.”

# *Weingarten* Rights

NLRB v. Weingarten, Inc., 40 US 251, 1975, is a U.S. Supreme Court decision that affirms the right of representation for an employee during a disciplinary interview by an employer.

- The employee has **an absolute right** to a union representative at a meeting that the employee *reasonably believes* could result in discipline.
- This absolute right to representation does not extend to general discussions, training, or discussions regarding corrections and work technique.

- The employee must request a union representative be present. The employee can request at any point prior to or during the interview.
- If an employee asserts his or her right to a union representative, the employer **must stop** an interview until a representative has been obtained.
- A union representative is there to:
  - clarify the facts and offer guidance to the employee;
  - assist in facilitating a professional and productive discussion; and
  - assist the employer is fleshing out pertinent facts or identifying additional witnesses.
- The employer may insist on hearing the employee's version of facts in their own words.

# Progressive and Corrective Discipline

The primary purpose of discipline is to correct behavior/performance.

- All CBAs and University Policy require managers to adhere to the tenet of progressive and corrective discipline.
- Discipline is not intended to be punitive or in response to personalities.
- It is the supervisor's responsibility to provide constructive feedback, mentoring, and career counseling to employees as necessary and appropriate.
- Progressive discipline should be applied uniformly and consistently (i.e., the same behaviors warrant the same discipline). However, if there are prior disciplinary incidents, the disciplinary track should progress.



# Disciplinary Action Incident Report form (DAIR)

Form that provides written notice to employee of reason(s) for disciplinary action and level of discipline recommended by supervisor.

- Conduct a fair, timely, and thorough investigation into the alleged incident.
- Hold interviews with witnesses, including the employee who is being investigated for discipline. Remember *Weingarten!*
- Obtain written statements from witnesses regarding situation and/or employee related to the reason(s) for discipline.
- Investigations should be handled in a confidential manner as necessary and appropriate.

- The DAIR is your report of the situation and explanation/justification for the recommended discipline.
  - Be accurate with dates, those involved, and situation description.
  - Thoroughly document information that supports your recommendation.
  - Include documentation of prior incidents as necessary and appropriate.
- Clearly describe:
  - What happened
  - Who was involved
  - Witnesses
  - Which work rule, policy, statute, and/or contract clause was violated
- Attach written statements obtained in the investigation

# Dismissal During Probation

- If employee is not meeting standards/expectations of the work unit, document how through:
  - Performance Evaluations
  - Performance Improvement Plans
  - Disciplinary Action Incident Reports
- Dismissal paperwork must be served **prior to the end of the Probationary Period**
- Dismissal paperwork requires coordination and **approval** by Labor and Employee Relations. Contact us early!

# Grievance Arbitrations

The final step in the CBA grievance procedure is Arbitration before a neutral party.

- Each CBA has a dispute resolution mechanism called a grievance procedure.
- Arbitration is an informal trial with a neutral person acting as the judge. The arbitrator is someone well versed in labor and employment law.
- The arbitrator will listen to the evidence presented by the parties, review the relevant language of the CBA, and rule on objections and evidence. The final binding decision is provided in a written award.
- The cost of arbitration is split between the parties. The average cost is \$10,000. Arbitrations should always be a last resort.

- Grievance arbitrations are separated into two categories: discipline or other.
  - If a grievance is filed by the union relating to a term or condition of a member's employment, **the union bears the burden of proof** (i.e., overtime payment was incorrect).
  - If a grievance is filed by the union claiming discipline by the employer is excessive, **the employer has the burden of proof**, meaning the employer must show evidence to demonstrate that discipline was appropriate.
    - Clear record of counseling, progressive discipline, etc., is vital to showing proof of good faith effort to correct behavior/performance.
    - Document, document, document.

# Questions?

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