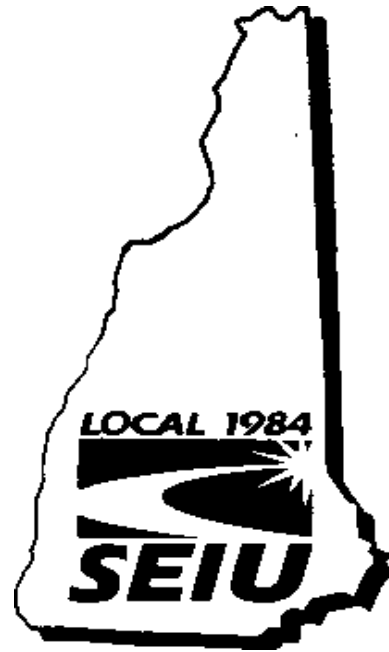


Discipline and "Just Cause"



**A Stewards' Handbook Supplement for
County, Municipal, and Private Sector
Union Stewards**

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This booklet has been prepared by the Stewards' Committee and staff of SEIU Local 1984, the State Employees' Association of New Hampshire.

Our approach is geared toward union stewards in the county, municipal, and private sectors, who most often have contract language establishing the standard of "just cause" in cases of disciplinary action against employees. Accordingly, it is our goal to help stewards in those sectors have a complete understanding of this important facet of their contracts.

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Introduction

If you are reading this booklet, then chances are that you have language in your collective bargaining agreement (CBA) that establishes a standard of “just cause” for disciplinary actions against employees.

Some examples from specific CBA’s:

Town of Exeter

“The Town shall not discharge or take other disciplinary action without just cause.”

Town of Seabrook

“Disciplinary action will be for just cause . . .”

Coos County Dept. of Corrections

“The County shall only have the right to discharge, suspend or discipline employees for just cause.”

Riverside Rest Home/Strafford County Dept. of Corrections

“The Employer shall have the right to discharge, suspend, or discipline employees only for just cause.”

What does “just cause” mean? It is a standard for discipline which management must meet. To discipline an employee, management must have “just cause” to do so. Without “just cause,” discipline is inappropriate.

When an employee is disciplined, the union can often claim that management lacked “just cause,” and therefore argue that the discipline should be reversed.



If you do not have language in your contract specifying the “just cause” standard for discipline, you should be cautious about trying to apply the principles described in this booklet!

The Seven Tests of Just Cause

In decisions made over the years, arbitrators have arrived at a set of seven commonly-accepted “tests” to determine if management has just cause for discipline.

When management decides to take disciplinary action against employees, their action must pass these tests. If they fail one or more, you may have an effective argument that they lacked just cause.

- 1 Was there an investigation?**
Did management investigate the situation adequately before they disciplined the employee? Or can it be shown that they made up their mind before they even checked the facts?
- 2 Was the investigation fair?**
Did management purposefully slant the investigation in order to find the worker guilty?
- 3 Did they find proof of guilt?**
Was there proof found, or not?
- 4 Was the employer’s rule or order reasonable?**
Was the rule or order reasonably related to efficient and safe operations?
- 5 Was the employee aware of the rule or order?**
Did the employee know that they were breaking a rule? Management has to tell employees what their rules and orders are.
- 6 How has this been applied to other employees?**
Has management always disciplined employees for this? Or never?
- 7 Did the “punishment fit the crime?”**
Was the penalty reasonably related to the seriousness of the offense and the employee’s past record?

Test # 7 In More Detail

As you saw on the previous page, Just Cause Test # 7 is “did the punishment fit the crime?”

This is an important test because in ruling on the fairness of discipline, arbitrators do not concern themselves only with the question of the employee’s guilt or innocence. They also examine the severity of the punishment and judge if it is appropriate.

Analyzing the Severity of the Punishment

- a. The nature of the offense. How serious is it?**
A minor offense does not deserve severe discipline.
- b. Was discipline progressive?**
A common pattern is: verbal warning, then some number of written warnings, then suspension, then termination. Keep in mind that progressive discipline may be bypassed for more serious offenses.
- c. Was discipline applied promptly?**
Was discipline administered promptly after the alleged offense, or was it an unreasonable amount of time later?
- d. What is the employee’s past work record?**
Do they have a record of good service, or not?
- e. What is the employee’s length of service?**
Length of service, particularly good service, should be taken into account.
- f. What is the history for this type of offense?**
Has management not enforced this rule or order consistently?
Is one employee punished more severely than others who committed the same offense?

Analyzing Just Cause

An employee is disciplined, and comes to you for an opinion because they believe the discipline was undeserved. How do you arrive at an opinion? What if the employee wants to file a grievance -- how do you determine the strengths and weaknesses of such a grievance?

If you take a step-by-step approach, you will find your answers.

Sit with the employee and review the Seven Tests of Just Cause with them. Explore with them in detail how their circumstances apply to each of the tests. This will help both you (steward) and the employee (potential grievant) achieve an understanding of the strengths and weaknesses of the case.

Taking a step-by-step approach also helps you determine what your arguments will be if the employee chooses to dispute the disciplinary action. Likewise, your analysis should give you some idea which points management will emphasize.

The following page contains a checklist for analyzing discipline on the basis of the Seven Tests of Just Cause. For each “no” box you can check, the stronger your case becomes in arguing that management did not have just cause. If you are unable to check many “no” boxes, then you will have a difficult time arguing that management did not have “just cause.” Feel free to make copies and use it each time.

Steward's Discipline Checklist

Determining "Just Cause"

| | Y | N |
|---|---|---|
| 1 Was there an investigation? | | |
| 2 Was the investigation fair? | | |
| 3 Did they find proof of guilt? | | |
| 4 Was the employer's rule or order reasonable? | | |
| 5 Was the employee aware of the rule or order? | | |
| 6 Has this been applied appropriately to others? | | |
| 7 Did the "punishment fit the crime?" | | |
| a. Was the penalty reasonable compared to the nature of the offense? | | |
| b. Was discipline progressive? | | |
| c. Was discipline applied promptly? | | |
| d. Does the employee have a bad record? | | |
| e. Is the employee a relatively new employee? | | |
| f. Has management consistently given the same punishment to others for the same offense? | | |

Additional Questions Based on the Seven Tests

ABSENTEEISM

1. How long was the length of time during which the employee had a poor attendance record?
2. What were the reasons for the worker's absences?
3. What was the nature of the employee's job?
4. What is the attendance record of other employees?
5. Does the employee have a clear policy on absenteeism which is known to all employees and is applied fairly and consistently?
6. Was the employee adequately warned that disciplinary action could result if their attendance failed to improve?
7. Is it likely that the employee's health will improve?

INSUBORDINATION

1. Was the order or procedure clearly expressed?
2. Did the employee refuse to comply, or simply fail to comply? There is a difference.
3. Was the employee made aware of the possible consequences of his/her action?
4. Was discipline applied in a nondiscriminatory and progressive manner?

FIGHTING

1. Was the employee's conduct a single incident or a series of acts?
2. What was the degree of violence involved?
3. Was the employee the aggressor?
4. Was the employee exercising self-defense?
5. Was the employee provoked?
6. Where and when did the fight occur? Did it disrupt the work area?
7. What is the employee's length of service and work record?

DRESS AND GROOMING

1. Was the standard clear, unambiguous, and consistently enforced?
2. Was the rule adequately communicated to the employees?
3. Was the standard reasonably related to a business need of the employer (or a safety consideration)?
4. Was the standard reasonably in line with contemporary attitudes toward dress and grooming?
5. Was the employee given an opportunity to comply with the standard?

DISCOURTESY TO PUBLIC, PATIENTS OR CUSTOMERS

1. Does the evidence support the allegation or is it hearsay?
2. Does the employee have a record of poor conduct toward the public, patients, or customers?
3. Are there clearly stated rules on employee behavior which were communicated to all employees?
4. What are the adverse effects resulting from the employee's discourtesy?

INTOXICATION AND ALCOHOLISM

1. Have there been absences because of drinking?
2. What is the evidence that the employee was intoxicated?
3. Did drinking result in an inability to perform work?
4. Does the employee have a record of other misconduct?
5. Has the employee made a good faith effort at rehabilitation?
6. What is the employee's length of service?

DRUG USE

1. Was the employee properly notified or previously warned that drug use would result in discipline?
2. Is there convincing evidence that the employee used drugs?
3. Has the employer been lax in enforcing its rule against drugs?
4. Was the worker's ability to work impaired? Did the drug use pose a health or safety issue?
5. Did the drug use take place on or off employer property?
6. Did the drug use take place during or outside of work hours?
7. What is the employer's length of service?

THEFT

1. Does the evidence support the allegation?
2. What was the value of the item taken?
3. What is the employee's length of service?

Grieving Disciplinary Actions

Since your contract contains language regarding the standard of just cause for discipline, then you are able to file grievances for employees who wish to dispute discipline they have received by arguing the standard of just cause.

The message of these grievances is simple -- since management needs "just cause" in order to discipline somebody, your argument would be that they did not have "just cause."

The process would look something like this:


1. Employee approaches you about a disciplinary action they received.
2. You run through the Seven Tests of Just Cause with them.
3. Your discussion of the Seven Tests leads to some further investigation on your part.
4. You meet with the employee again to review your investigation and how it may change your answers regarding some of the Seven Tests.
5. If management's case seems to have some problems with it, you file a grievance alleging that management "lacked just cause."
6. You use your analysis of the Seven Tests to shape your argument for the grievance meeting.

EXAMPLES:

1. You determine that management did a shoddy investigation and had unclear rules -- argue that *for those reasons, they lacked just cause.*
 2. You find that management gave a more severe penalty than usual, so the discipline was excessive -- argue that *for that reason, they lacked just cause.*
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Example of a Discipline Grievance

Here is an example of a completed grievance. Your form may look a little different.

| | |
|--|---|
|  | Grievance Form -- Step 1 SEIU Local 1984 |
| | Date <u>April 15, 1997</u> |
| Immediate Supervisor <u>Billy Boss</u> | Address <u>10 Wood Street</u> |
| Title <u>Manager</u> | City <u>Exeter</u> |
| Agency <u>Public Works</u> | State/Zip <u>NH 03833</u> |
| Dear <u>Mr.</u> / Ms. <u>Boss</u> | |
| The State Employees Association of New Hampshire, on behalf of the grievant, <u>Wanda Worker</u> , wishes to grieve a violation of Article/s <u>17.1</u> of the current Collective Bargaining Agreement. | |
| Specifically: <u>On April 10, Wanda Worker was given a written warning.</u> <u>This disciplinary action lacks just cause.</u> | |
| As a remedy, we request the following: <u>That the written warning be rescinded and</u> <u>removed from her file, and she be made whole in all ways.</u> | |
| Pursuant to Article 14.2, a meeting to discuss this matter is requested. Thank you. | |
| Steward <u>Sam Steward</u> | |

Final Preparations

When you have done your analysis of whether or not the employer had just cause to administer discipline, and you have written and filed the grievance, do not forget that there are some parts of the main **Stewards' Handbook** which will help you get ready for the meeting with management:

Page 4.7 Meeting With Management

Page 4.9 Management Tactics

In Section 8, Reproducible Tools:

Problem Fact Sheet

Preparing for Formal Meeting with Management

Disciplinary Meeting Notes