

ARTICLE 11

Counseling and Performance Review

The intent of performance review and counseling is to inform and instruct employees as to requirements of performance and/or conduct.

Section 1. Performance Discussion or Review.

The parties recognize that supervisors are required to periodically discuss and review work performance with employees. Such discussions are not investigations, but are opportunities to evaluate and discuss employee performance and, as such, are the prerogative and responsibility of the Employer. An employee shall not have the right to a Union Representative during such performance discussion or review. Any discussions or documentation related to performance review shall remain confidential within the department unless disclosed by the employee. Only authorized Employer representatives, the employee, and the Union representatives authorized by the employee in writing, shall possess or have access to such records. Authorized Employer representatives within the department shall be limited to the employee's supervisors and Office of Human Resources personnel who are assigned responsibility for the employee in question. This section shall not be construed to expand or diminish a right of access to records as provided by the Michigan Freedom of Information Act, being act 442 of Public Acts of 1976, as amended, or as provided by the Bullard Plawecki Employee Right to Know Act, being act 397 of Public Acts of 1978, as amended.

Section 2. Informal Counseling.

Informal counseling may be undertaken when, in the discretion of the Employer, it is deemed necessary to improve performance, instruct the employee and/or attempt to avoid the need for disciplinary measures. Informal counseling will not be written up or recorded, except for the personal use of the participants.

Section 3. Formal Counseling.

A. When, in the judgment of the Employer, formal counseling is necessary, it may be conducted by the appropriate supervisor. Formal counseling may include a review of applicable standards and policies, action which may be expected if performance or conduct does not improve, and a reasonable time period established for correction and review.

Formal counseling will be prepared on a record of counseling form, a copy of which will be given to and signed for by the employee and a copy kept in the employee's personnel file. The employee's signature indicates only that the employee has received a copy of the form and shall state that the employee does not necessarily agree. Formal counseling is grievable in accordance with Article 9 through Step Two (2).

B. An employee shall not have the right to a designated Union Representative during counseling.

- C. Formal counseling may not be introduced in a disciplinary proceeding except to demonstrate, if necessary, that an employee knew or knows what is expected of him/her.
- D. The distinction between informal and formal counseling shall be maintained and a counseling memo, if any, shall be considered formal.

Section 4. Removal of Counseling Records.

Neither performance review, informal nor formal counseling shall be considered as disciplinary action nor as prerequisites to disciplinary action. The record of counseling shall be removed from the employee's personnel file after twelve (12) months of satisfactory performance during which the employee has not received a less-than-satisfactory service rating, been the subject of disciplinary action which has not been reversed, or received further formal counseling for the same or similar reason(s). In the event the Employer fails to remove the above-cited material at the conclusion of 12 months of satisfactory service as defined above such removal shall take place immediately upon discovery of the error or following the request of the employee.

Upon removal, these records will be sealed and will only be opened in the event that such records are needed to provide a defense for the Employer's actions in Civil Rights litigation. These sealed records will not be used for the purpose of initiating discipline against an employee.

Section 5. Relationship to Disciplinary Action.

Nothing in this Article shall prohibit the Employer from taking disciplinary action without the necessity of prior informal or formal counseling against an employee who, in the judgment of the Employer, commits a sufficiently serious offense.