

ARTICLE 18
COUNSELING AND DISCIPLINARY ACTION

SECTION 1. COUNSELING.

A. Informal Counseling.

An employee shall not have the right to Union representation during 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 recorded in the employee's personnel file.

B. Formal Counseling.

A Union representative may attend formal counseling provided that the Employer and the Union are in mutual agreement about having the Union representative attend.

When, in the judgment of the Employer, formal counseling is necessary, it may be conducted by an appropriate supervisor. Formal counseling may include a review of applicable standards and policies, actions which may be expected if performance or conduct does not improve, and a reasonable time period established for correction and review. A narrative description of formal counseling will be prepared on a Record of Counseling or in memo 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, shall not indicate that the employee necessarily agrees therewith, and shall so state on the document. The distinction between informal and formal counseling shall be maintained and a counseling memo, if any, shall be considered formal. Formal counseling is grievable in accordance with Article 9 through Step Three (3).

C. Relationship to Disciplinary Action.

Neither performance review, informal nor formal counseling shall be considered as punitive/disciplinary action nor as prerequisites to disciplinary action. Formal counseling may not be introduced in a disciplinary conference or proceeding, except to demonstrate, if necessary, that an employee knew or knows what is expected of him/her. 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.

SECTION 2. DISCIPLINARY ACTION.

The parties recognize the authority of the Employer to reprimand in writing, suspend, discharge, or take other appropriate disciplinary or corrective action against an employee for just cause.

Allegations or other assertions of failure of proper employee conduct or performance are not charges, but constitute a basis for appropriate investigation by the Employer. Whenever an employee is formally charged with a violation of any obligation, rule, regulation, or policy, the employee shall be notified in writing of the claimed violation and disciplinary penalty therefore. Any employee who alleges that disciplinary action is not based upon just cause may appeal such action in accordance with Article 9, Grievance Procedure. Reassignment of an employee at the same level, and work location if feasible, incidental to a disciplinary action upheld or not appealed shall not be prohibited or appealable, provided the possibility of such reassignment was stated to the employee in the notice of disciplinary action. However, the Employer retains the option to reassign as part of the administration of discipline for just cause.

Any performance evaluation, formal counseling, reprimand, or document to which an employee is entitled under this Agreement shall not be part of the employee's official record until the employee has been offered or given a copy.

The parties agree that disciplinary action must be supported by timely and accurate investigation. An employee shall be given the opportunity to give prompt, full, and accurate answers, to the extent possible, to questions put to him/her by the Employer concerning any matter regulated by the Employer, related to conduct or performance, or which may have a bearing upon the employee's fitness, availability, or performance of duty.

Whenever it is determined that disciplinary action is appropriate, a disciplinary conference shall be held with the employee at which the employee shall be entitled to Union representation. The Union Representative must be notified and requested by the employee. No disciplinary conference shall proceed without the presence of a requested Union Representative. The employee shall be informed of the nature of the charges against him/her and the reasons that disciplinary action is intended or contemplated. Questions by the employee or Union Representative will be fully and accurately answered at such meeting to the extent possible. Response of the employee, including his/her own explanation of an incident if not previously obtained, or mitigating circumstances, shall be received by the Employer. The employee shall have the right to make a written response to the results of the disciplinary conference which shall become a part of the employee's file.

The employee shall be given and sign for a copy of the written notice of charges and disciplinary action if determined. Where final disciplinary action has not been determined, the notice shall state that disciplinary action is being contemplated. The employee's signature indicates only that the employee received a copy, shall not indicate that the employee necessarily agrees therewith, and shall so state on the form.

If the employee refuses to sign, the supervisor will write "Employee refused to sign" and sign his/her own name with the date. A witness signature should be obtained under this circumstance.

An employee shall be entitled to the presence of a designated Union Representative, if she/he requests one, at any meeting at which disciplinary or any adverse action may or will take place, or at an investigatory interview of the employee by the Employer related to one or more specific charges of misconduct by the employee. If an employee is to be represented at a scheduled meeting by an attorney, the employee or the Union shall give as much notice as possible to the Employer. It is agreed that where disciplinary or adverse action is intended as the subject of a meeting, or where such action will result directly and immediately depending upon the content of the meeting, representation is allowed.

In any investigatory interview with an employee where the employee has been suspended (with or without pay) or transferred from the employee's regular job assignment, the employee shall have the right to Union representation.

Nothing in this Article shall prohibit the Employer from the imposition of an emergency disciplinary suspension and/or removal of an employee from the premises in cases where, in the judgment of the Employer, such action is warranted. As soon as practicable thereafter, the disciplinary conference procedures described herein shall be undertaken and completed. An Appointing Authority may suspend an employee for investigation. The suspension shall be superseded by disciplinary suspension, dismissal, or reinstatement within seven (7) calendar days or within such extension as may be approved by the Appointing Authority. If disciplinary action is not taken against an employee within the seven (7) days, the employee shall receive full pay and benefits for the period of temporary suspension.

Formal notification to the employee of disciplinary action shall be in the form of a letter or form spelling out charges and reasonable specifications, advising the employee of the right to appeal. The employee must sign for the copy of this letter, if presented personally, or the letter shall be sent to the employee by certified mail, return receipt requested. If the employee has received and signed for a written letter of reprimand, no notice is required under this Article.

Where a decision is made to permit an employee to resign in lieu of dismissal, the employee must submit a resignation in writing. This resignation shall be held for twenty-four (24) hours, after which it shall become final and effective as of the time when originally given unless retracted during the twenty-four (24) hour period. This rule applies only when a resignation is accepted in lieu of dismissal, and the employee shall have been told that she/he will be terminated in the absence of the resignation.