

## ARTICLE 8

### DISCIPLINE AND AFFIRMATIVE ASSISTANCE

#### **PART A. DISCIPLINE MISCONDUCT**

##### **Section 1. Scope.**

The Employer will utilize disciplinary action only for just cause toward employees who engage in violations of the Code of Conduct. It is the intention of the Employer to utilize discipline by progression, when appropriate.

##### **Section 2. Definitions.**

- a. **Disciplinary Action.** Disciplinary action shall mean a written warning, written reprimand, suspension without pay, or discharge. For purposes of this Part, counseling, retraining, interim service ratings and demotions are not disciplinary action. Nothing in this Part is intended to preclude a supervisor from verbally discussing isolated instances of minor misconduct with an employee in lieu of administering disciplinary action.
- b. **Investigatory Leave.** Upon verbal notification followed within 24 hours by written delineation of the reasons, an employee may be placed upon investigatory leave with pay for up to 15 calendar days as a result of the Employer's reasonable belief that the employee participated in an event of significant consequence to the Department, the employee, or the public. Such investigatory leave with pay shall be for the purpose of investigating the event. At the time the verbal notification is given, an Association representative may be present if available, upon the employee's request. In the event an Association representative is not present, the Association shall forthwith be notified of the investigatory leave. Investigatory leave with pay shall create no negative inferences with reference to the affected employee, shall not be considered discipline, and is not subject to appeal.
- c. **Pay Forfeiture.** For the purposes of this Article, the forfeiture of pay for the period of any unexcused absence shall not constitute discipline; however, any order forfeiting pay shall be subject to the grievance procedures of Article 9.

##### **Section 3. Application.**

The various disciplinary actions are described as follows:

- a. **Written Warning.** A written warning delineates minor violation(s) of the Code of Conduct not involving a violation of law and advises the employee that official notice has been taken thereof and that further misconduct of a similar nature will subject the employee to further disciplinary action. A copy of all written warnings shall be given to the employee. If the employee

believes the warning to be inaccurate or excusable due to mitigating circumstances and the employee does not choose to appeal pursuant to Section 5(a), or is not satisfied with the results of the appeal, the employee may submit a Statement of Response, consistent with the "Bullard-Plawecki Employee Right to Know Act," to his/her supervisor, which shall be attached to the Employer's copy of the written warning and destroyed at the same time as the written warning.

- b. **Written Reprimand.** A written reprimand includes the personal discussion accompanied by a written notice that delineates violation(s) of the Code of Conduct. Its purpose is to advise the employee that further misconduct may result in additional disciplinary action including discharge. A written reprimand may be accompanied by other compatible disciplinary steps. A copy of the reprimand shall be given to the employee and to the Association. An Association representative shall be present at the employee's request during the investigation, interrogation and/or personal discussion of the written reprimand. If the employee believes the written reprimand to be inaccurate or that there are mitigating circumstances, and the employee does not choose to appeal pursuant to Section 5(a), or is not satisfied with the results of the appeal, the employee may submit a Statement of Response consistent with the "Bullard-Plawecki Employee Right To Know Act," to his/her supervisor, which shall be attached to the Employer's copy of the written reprimand and destroyed at the same time as the written reprimand.
- c. **Suspension or Discharge After Investigation.** If an investigation establishes just cause for disciplinary action, a suspension without pay not to exceed 30 calendar days or a discharge may be issued after a disciplinary conference. A copy of the statement of charges and a proposed penalty shall be given to the employee and contemporaneously to the Association at least ten calendar days before the conference. The notice shall advise the employee of his or her right to Association representation at the conference. Upon proper notice of the charges and the proposed penalty, the employee may, in writing, accept the discipline, in which event no conference shall be held and no appeal shall be taken. The employee may submit a written statement in response to the statement of charges.
- d. **Immediate Suspension Without Pay.** When the Director or Acting Director forms a reasonable belief that an employee has committed a felony, as defined by the Michigan Penal Code, or in the event of a misdemeanor for which a warrant has been issued, he/she may suspend the employee without pay for such period as is required to reach a final determination through the procedures of this Agreement. If, after a final determination is reached through the procedures of this Agreement, the employee is exonerated or the penalty is reduced to less than the time already served, the employee shall receive all appropriate back pay and

other benefits lost during the period of suspension, including full status and seniority. If the employee is issued a disciplinary suspension, the time served on the immediate suspension without pay shall be credited to the employee's disciplinary suspension. In the event criminal charges are brought against the employee, at the employee's written request, the holding of a disciplinary conference shall be postponed until after final adjudication of the criminal proceedings. When an employee has been suspended without pay based upon the Director's belief that he or she has committed a felony as described above, the employee shall be restored to full pay status within 20 calendar days from the date of the suspension unless and until the employee is formally charged or a warrant has been issued for the employee's arrest.

**Section 4. Association Participation.**

Whenever the Employer and the employee mutually request or the employee requests assistance from the Association in helping work with an employee who may have engaged in conduct for which the employee may be, or has been disciplined, the Association shall cooperate in rendering necessary assistance.

**Section 5. Grievances, Appeals, Disciplinary Conference and Arbitration.**

- a. **Written Warning or Written Reprimand.** If an employee believes that any written warning or written reprimand is unfair, unjust or inaccurate, the employee may appeal within 15 calendar days after notification in writing to their District or Division Commander, who shall promptly schedule a Discipline Panel pursuant to Section 6. The decision of the Discipline Panel shall be final.
- b. **Suspension or Discharge.** Upon receipt of written notice of the reasons for a suspension without pay or discharge, an employee may file a grievance pursuant to Article 9 of this Agreement, commencing at Step 3.
- c. Except as provided in Section 3(d) of this Article, no suspension shall be invoked against any employee who has not accepted the discipline until 60 days following the issuance of a Step 3 grievance answer. An employee discharged following a disciplinary conference shall remain in pay status for purposes of base wages for a period of 60 calendar days following the issuance of a Step 3 grievance answer or the discipline conference, whichever is later, and insurances until conclusion of the grievance process as provided for in Article 9. At the end of the 60-day period, a discharged employee shall be paid for their annual leave credits (excluding BLT hours) and/or compensatory time following their written request.
- d. Consistent with past practice, the parties agree that for the purposes of implementing suspensions, a suspension "day" is understood as consisting of eight hours regardless of the length of workday to which the affected employee is assigned, and that suspensions of five days or more will be

construed as calendar days.

**Section 6. Discipline Panel\*.**

The Discipline Panel shall consist of two command officers designated by the District or Division Commander, the District/Regional Association representative and the employee's Post or Unit representative. If any of the aforementioned members are personally involved in the proposed discipline, that member shall be replaced by a person in an equivalent position at the adjacent District, Post, Unit, or Region. The proceedings shall be conducted with decorum, but shall be informal; however, basic standards of due process and fairness shall apply. If a majority of the Discipline Panel is unable to agree with reference to a written warning or written reprimand appeal, the discipline imposed shall stand. All employees participating as panelists, the affected employee, the employee representative and witnesses in a Discipline Panel proceeding shall serve or appear without loss of time, pay or benefits. **\*See Appendix A for clarification of pay status for Discipline Panel Members.**

**Section 7. Disciplinary Conference.**

Whenever the Employer determines that disciplinary action may be appropriate, a disciplinary conference shall be scheduled with the employee and, if requested by the employee, an Association representative. The Employer's representative at the disciplinary conference will be a Human Resources representative and/or employee at the rank of Inspector or above. At the conference the response of the employee to the charges, including the employee's own explanation of an incident, if not previously obtained, mitigating circumstances and the employee's response to action intended or recommended shall be received by the Employer.

**Section 8. Arbitral Review.**

- a. Only the Association has the right to request that a discipline case proceed to arbitration.
- b. If the arbitrator reduces the suspension to less than the time already served, the employee shall receive all appropriate back pay and other benefits lost during the period of suspension, including full status and seniority.
- c. If the arbitrator reinstates an employee after discharge, the employee shall receive back pay and other benefits lost during the period of discharge, including status and seniority, consistent with the arbitration award.

**Section 9. Time Limits.**

All time limits throughout this Article must be complied with except that upon mutual agreement or good cause shown in writing, they may be extended. However, such extension cannot be more than twice the original time limit.

**Section 10. Removal of Pass Days or Forfeiture of Annual Leave.**

An employee may, upon agreement with the Employer, elect to work without pay on pass days in place of suspension without pay for acts of misconduct, up to a maximum of

one pass day per 28 day work period, or forfeit accrued annual leave or compensatory time credits in lieu of serving some or all the suspension time. Except for employees with more than 23 years of credited service (including up to two years of credited military service), the Employer may elect to require an employee on an alternative work schedule to forfeit accrued annual leave or compensatory time credits in lieu of serving some or all the suspension time. The employee shall determine the combination of annual leave and/or compensatory time to be forfeited. Notification of such action shall not require the presence of an Association representative; however, the employee shall have the right to consult with an Association representative prior to making his/her election. Where agreement is reached prior to hearing, no hearing shall be held.

**Section 11. Time Limits for Retention of Written Warnings/Written Reprimands.**

All written warnings shall be destroyed within one year and written reprimands within two years of the date of issuance unless the employee receives further disciplinary action for misconduct of a similar nature. A written warning or written reprimand may be destroyed earlier if the supervisor believes the employee's improvement warrants earlier destruction of the written warning or written reprimand.

After the time limit for retaining the written warning has expired, no reference to the written warning shall be made for purposes of unrelated discipline or selection process affecting the employee.

References to any investigatory suspension that does not lead to disciplinary action shall not be made a part of the employee's personnel file.

**Section 12. Limitation of Arbitral Review.**

No arbitrator shall have the authority to review or remove any written warning, or written reprimand.

**PART B. AFFIRMATIVE ASSISTANCE - COUNSELING, RETRAINING, INTERIM SERVICE RATING AND DEMOTION**

**Section 1. Scope.**

The Employer will utilize affirmative assistance to assist employees who are having difficulties performing their jobs satisfactorily and/or not responsibly fulfilling their employment obligations. Affirmative assistance is not to be considered as discipline.

**Section 2. Definition.**

Affirmative assistance means counseling (verbal and/or written), retraining, interim service rating and demotion.

**Section 3. Corrective Measures.**

In unsatisfactory job performance as opposed to misconduct, the Employer shall utilize affirmative assistance measures. Such measures may include counseling (verbal and/or written), retraining, interim service rating and demotion. If measures do not

succeed, then the employee may be demoted or dismissed for cause. It is understood that each and every item of affirmative assistance need not be utilized when working with unsatisfactory performance. The circumstances of each case will determine the measures to be utilized. However, counseling or retraining must precede by 15 calendar days an interim service rating, and an interim service rating must precede termination or demotion.

#### **Section 4. Application.**

The various affirmative assistance measures will be utilized progressively in the following order:

- a. **Counseling.** Verbal counseling includes the discussion of perceived improprieties in an employee's conduct or work. It also involves the explanation of Departmental expectations and analysis of the employee's work and/or conduct record in comparison therewith. No record of verbal counseling shall be placed in an employee personnel file. This, however, does not preclude a supervisor from referring to verbal counseling in the event a written counseling memo is issued. Written counseling means the discussion and/or explanation is reduced to writing with a copy submitted to the employee. Written counseling memos shall be removed from the employee's personnel file after six months unless, within that period, a retraining order, interim service rating or demotion is issued.
- b. **Retraining.** Retraining includes written counseling, and any or all of the following:
  - (1) The establishment of specific, written job performance criteria for the employee;
  - (2) The establishment of reasonable time limits to meet said criteria;
  - (3) The appointment of a fellow employee to assist the employee in meeting job performance criteria and monitoring his/her job performance;
  - (4) The requirement of attendance at any special schools or participation in any special programs designed to improve job knowledge, understanding and performance;
  - (5) Any other reasonable terms, conditions and criteria.
- c. **Interim Service Rating (Written).** This rating includes the personal discussion accompanied by a written summary, outlining unsatisfactory job performance by the employee, specifying improvement requirements, and setting a time limit of not less than 30 days nor more than 180 calendar days by which time specified improvement must be made and job performance must be satisfactory. A copy of the rating shall be given to the employee

and notice of it shall be given to the Association.

- d. **Demotion.** If after receipt of an interim service rating, the employee has failed to meet established job performance criteria, the employee may be demoted to a lower classification in which the employee previously exhibited satisfactory job performance.
- e. **Termination of Employment.** If after receipt of an interim service rating the employee has failed to meet specified improvement requirements within the time limits established, or fails to meet established job performance criteria, the employee's service with the Employer may be terminated.

**Section 5. Association Participation.**

The employee may also utilize the assistance of the Association representative in any appeal, grievance proceeding required by Article 9 of this Agreement, or when the employee is given a written counseling, retraining order, interim service rating or notice of demotion.

**Section 6. Appeals.**

- a. **Counseling (Verbal/Written).** No appeal. However, if the employee believes the written counseling is either inaccurate, unwarranted or that there are mitigating circumstances, the employee shall, within ten calendar days, submit a Statement of Response to his/her supervisor, a copy of which shall be attached to the Employer's copy of the written counseling.
- b. **Retraining.** If the employee believes that the retraining order is either inaccurate, unwarranted or that there are mitigating circumstances, or if he/she believes the retraining criteria are arbitrary, capricious or unreasonable, he/she may, within ten calendar days, appeal in writing to the next level of supervision above the level that imposed the retraining. The party to whom the appeal is directed may confer with the employee and the supervisor imposing the retraining and may set aside, modify or affirm the retraining order. The appeal shall be determined within ten calendar days. No further appeal shall be permitted.
- c. **Interim Service Rating.** If the employee believes the rating to be inaccurate, unwarranted, unfair, arbitrary or capricious, or fails to consider mitigating circumstances, or that the time limits for compliance are unreasonable, the employee shall, within ten calendar days of issuance of the rating, (1) submit a Statement of Dissent, answering and specifying each item in the rating that the employee disagrees with; and (2) appeal in writing to the next level of supervision above the level imposing the Interim Service Rating. The party to whom the appeal is directed shall confer with the employee and the supervisor imposing the Interim Service Rating, and may set aside, modify or affirm the Rating within ten calendar days. If dissatisfied with the action of the person to whom the appeal is taken, the employee

may, within ten calendar days, appeal to the Director. The Director or his designee shall respond within ten calendar days. No further appeal shall be permitted; however, the propriety of the Interim Service Rating may be an issue at any subsequent hearing if the employee is discharged or demoted.

- d. **Demotion or Termination of Employment.** Employees who have been demoted or terminated by reason of unsatisfactory performance may appeal by timely utilization of the grievance procedure commencing at Step 3 in a timely fashion.

**Section 7. Limitation on Arbitral Review.**

No arbitrator shall have the authority to review or remove any counseling (verbal or written), retraining or interim service rating. An arbitrator shall only consider prior counseling, retraining or interim service ratings in an appeal of a demotion or termination.