



What Coop & Condo Boards Should Know About the Union Contract

Presented by RAB President, Howard Rothschild, Esq.
For Argo University



Nature of the Industry

- Service Intensive
 - Cleaning, Maintenance, Mailroom
- Security Sensitive
 - Doormen are the first line of security for its residents.
- Expectations of courtesy, civility, confidentiality, and responsibility.

Interview and Hiring Process

- Have a current job description
 - Make sure the interviewee is comfortable with this description.
- Make sure candidate has the necessary certifications and licenses. (*If applicable*)
 - Must be current
- Do a thorough screening
 - You may request drug testing.
 - DO NOT perform a criminal background check BEFORE making a conditional offer of employment.
 - NEVER do a credit check.
- Check References
- If hired, check on candidate during probation for proficiency.



Probationary Period

- Regular Employee Covered by Union Contract
 - 60 days
 - May be fired without “just cause”
 - Not Arbitrable
 - After Probation – Discharge for “just cause”
- Superintendent
 - 6 months
 - May be fired for any reason
 - Not Arbitrable
 - After Probation – Discharge for a non- arbitrary reason.

Progressive (Corrective) Discipline

Please, please, stop doing that...

- After the end of the 60-day probationary period, there tends to be 2 paths of discipline that may be imposed based upon the severity or damage caused by an employee's action.
- Most ordinary workplace performance issues should be met with progressive discipline.
 - Issues that include, but are not limited to, tardiness or excessive absences, ordinary job performance deficiencies or mistakes, misbehavior, and misconduct.
- Some actions by employees, however, will rise to the level of summary termination of employment.
 - These include egregious acts of misconduct and insubordination, and those that place the lives, safety, and welfare of co-workers, residents, or the general public at risk.
 - Instances include, but are not limited to, workplace violence, intentional destruction of building property, and theft.

Discipline and Discharge

- The rule of thumb is proportionality, based upon totality of circumstances
- Increased severity of discipline imposed based upon consideration of the employee's prior record (length of service, typical performance, etc.) and the severity of the issue causing the disciplinary action.
- Do not get locked into a progression (e.g., verbal, written, suspensions, discharge) without consideration of the mix of factors involved. Employers should not be lock-step in imposing discipline without any discretion.

Posting/notifying employees of the rules, regulations and expectations in the workplace.

Verbal Warning

Written Warning

Suspension

Discharge

Verbal Reprimands

- Explain to the employee, who may or may not know, what was troubling about their job performance, and how they can correct it.
- Remember: even though the employee does not receive any documentation when given a verbal warning, the employer should write a full description of the warning including:
 - a reason for the warning
 - the date of the warning
 - the name of the employee
 - the name of the supervisor who gave the warning
 - what the employee was told



Written Warning (Files, files, everywhere...)

- If, after a verbal warning, an employee's behavior does not improve significantly, the employee should be given a written warning.
- The warning should be sent to the employee, via registered mail, with a copy to the union.
- It should include the following:
 - Reason for warning.
 - Reference(s) to past warning(s).
 - What is expected of the employee in the future
 - That the employee will be subject to harsher discipline in the future if he does not improve markedly.
 - Name of employee, supervisor, building, and date.
- If possible the supervisor should discuss the warning with the employee and reiterate what was stated in the letter.
- Employee should be asked to sign indicating that he received a copy of the warning (not that he/she agrees).
- If the employee refuses to sign, note the refusal to sign, initial and date.

Suspensions

- When warnings fail to correct a recurring problem, suspensions are the next step
- Time an employee is given out of work should correlate to the employee's disciplinary record and the severity of the offense
- The amount of time should increase with the number of suspensions, but the employer should avoid appearing punitive
- Final Warnings:
 - Prior to discharge, it may be necessary to issue a "final warning"
 - "Failure to improve your performance within 14 days will lead to your immediate dismissal. This is your final warning to improve."
 - Usually accompanies a suspension, but not necessary that it does



Discharge

- Strongest disciplinary action an employer can take against an employee.
- Should be carefully considered and carried out effectively and professionally.
- Ordinarily should be viewed as the last step in progressive discipline
- A letter detailing the reasons for the discharge should be sent to the employee, the personnel file, and the Union within 5 business days of the discharge.



Common Mistakes Made When Disciplining

- Fail to interview the employee to learn of any defenses to the allegations.
- Failing to interview all of the employees involved
- Inconsistency/Disparate Treatment.
- Overly severe/harsh.
- Disciplining without prior warning.
- Not taking action when a major infraction occurs.
- Disciplining employees in front of their co-workers.
- Not considering length of service.
- Depending on witness(es) who will not testify.
- Lack of Documentation
 - “No good deed goes unpunished.”
- Do not cause double jeopardy.
- Duty to accommodate.
- Retention of Evidence

Grievances

- Union Member
- Union has 45 days to grieve a suspension or a termination.
 - Must argue that Employer did not have Just Cause.
- All other grievances must be presented within 120 days.
- Union Superintendent
- Union has 15 days to grieve a termination.
 - Must argue that Employer acted Arbitrarily.
 - May also grieve lack of severance pay.
- Union may also grieve excessive workload or utilization of special skills.
 - If proven, relief would be additional compensation or stoppage of that work.
- Remember in discharge letter to the superintendent to also give notice to vacate apartment.

Negotiation and Arbitration of Resolution

Negotiation

- Parties will meet to discuss the grievance.
- Union may withdraw grievance if facts do not support the case.
- If parties can come to favorable terms, there can be a settlement.
 - Advantages to Settlement
 - Less time consuming
 - Arbitration may be unpredictable
 - Can receive release of all claims
 - Receive a more favorable outcome

Arbitration

- Parties will present the case to an Arbitrator.
- Parties can call witnesses to testify and present evidence, much like a trial.
- Arbitrator will make a decision based on the contract and the information provided to him/her.
- Arbitrator's decision is binding on both parties.

Negotiation and Arbitration of Resolution (cont.)

Possible Arbitrator Decision

- Termination was improper and reinstated with back pay.
- Termination was improper but reinstatement with no back pay.
- Termination was proper and is upheld.
- Reduce the suspension.
 - (Ex. Convert a 5 day suspension to a 2 day suspension)



New Hires vs. Vacation Relief (Problems to Avoid)

New Hires

- Newly hired in the “Other” category (not Handymen) and some Superintendents.
- Less than 21 months of prior Industry experience receive 75% of the current contract minimum wage.
- Up to 2 years of prior Industry experience (more than 21 months) or after 21 months of employment receive 85% of the current contract minimum wage.
- Health Benefits Start after 90 days of employment, other benefits per the Contract

Vacation Relief

- 60% of the Minimum Contract Wage only for those employees covering regular employees on vacation
- Not for “sick coverage” or for “leave coverage” or covering any other type of absence other than VACATION.
- No benefits due for the first 5 months.

Managing Vacation Relief Employees (Watch the Clock)

Four Months

- Anyone employed as a “vacation replacement, extra or contingent” employee with substantial regularity for a period of 4 months shall receive preference for steady employment.

Five Months

- Longest time a vacation relief employee may be paid 60% of the Contract Wage.
- If continued in employment longer, they will be eligible for the New Hire or Experienced Wage Rate based upon their experience.

Benefits

- No benefits contributions required for five months for vacation replacement employees.
- Entitled to benefits, however, after 1000 hours.

Credit for Vacation Replacement Experience

- If hired immediately following the vacation relief position, the employee will be credited with the time worked toward the completion of the 42 month New Hire period.

Sickness Benefits

- Each employee who with 1 year of service or more gets 10 sick days effective January 1st.
 - Employees with less than 1 years service on January 1st, get a prorated amount of days when they hit 1 year of service.
- Employees who do not use all of their sick days and work through December 31st, get paid those remaining days.
 - If the employee has his entire allotment unused, he gets a \$125 perfect attendance bonus.
- Employees may be disciplined for:
 - Failing to call-in with the proper notice time.
 - Exceeding their sick days.
 - Patterned absence.



Clinic Days

- Each employee who with 1 year of service or more gets 1 Clinic per calendar year.
- Must provide at least 1 week's notice prior.
- To be paid, must show proof employee went to Funds Office or his doctor.
- May receive 1 additional day only if the office requests it.
 - If day is for doctor, Employer may request HIPAA form to check if it was necessary.



Changes in the Law

(Are we done yet? Yes!)

- NLRB issued new guidance on handbooks:
 - Confidentiality, non-disparagement, company property (e.g., use of logos) and other conduct rules that restrict or inhibit speech can be found to violate Section 7 of the NLRA
 - Avoid overbroad policies
 - Narrowly tailor rules to address legitimate areas of concern and add a savings clause that makes clear it is not intended to inhibit protected rights
- New NYC law prohibits consumer credit checks on all but a few employees.
 - Cannot even ask the applicant or employee about their credit history.
- Ban-the-Box or Fair Chance Act
 - NYC prohibits inquiries into criminal convictions until a conditional offer of employment is extended to an applicant
 - If you decide to take action based upon a prior criminal conviction, you must engage in an analysis of the connection between the conviction and the job duties and responsibilities
- Employees covered by a collective bargaining agreement are exempt from the transit benefit law

“The only thing worse
than training your
employees
and having them leave
is not training them
and having them stay.”

- Henry Ford

Realty Advisory Board on Labor Relations (RAB)

- The Realty Advisory Board has represented Real Estate Owners and Managers in the NY Metropolitan Area since 1934.
- Since that time, Local 32BJ has represented most building service workers in the region.
- You can contact us via:
 - Phone #: (212) 889-4100
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