

# ANNOTATED MINUTES

Tuesday, October 15, 1996 - 9:30 AM  
Multnomah County Courthouse, Room 602  
1021 SW Fourth, Portland

## BOARD BRIEFINGS

*Chair Beverly Stein convened the meeting at 9:35 a.m., with Vice-Chair Dan Saltzman, Commissioners Sharron Kelley, Gary Hansen and Tanya Collier present.*

B-1 Storm/Emergency Management Debriefing. Presented by Michael J. Gilsdorf.

**MICHAEL GILSDORF PRESENTATION AND RESPONSE TO BOARD QUESTIONS AND DISCUSSION. MR. GILSDORF TO WORK WITH SHARON TIMKO OF THE CHAIR'S OFFICE ON ANY LEGISLATIVE ISSUES THE DEPARTMENTS AFFECTED BY THE FLOOD (SHERIFF'S OFFICE, HEALTH AND ENVIRONMENTAL SERVICES) MAY WANT TO RAISE FOR POSSIBLE DISCUSSION. COMMISSIONER KELLEY DISCUSSED NEED FOR LEGISLATIVE ACTION REQUIRING PUBLIC DISCLOSURE ON HOMES IN HAZARDOUS SLIDE AREAS, AND/OR IN A FLOOD PLAIN, NATIONAL INSURANCE AND OTHER LONG TERM SOLUTIONS. MR. GILSDORF TO PROVIDE COMMISSIONER SALTZMAN INFORMATION RELATIVE TO THE WORK METRO IS PERFORMING RELATING TO THE REGION'S PROPOSED MITIGATION PLAN. BOARD EXPRESSED APPRECIATION FOR THE EFFORTS OF MR. GILSDORF AND HIS STAFF DURING AND AFTER THE FEBRUARY FLOOD, AS WELL AS WITH THE ONGOING CONSOLIDATION DISCUSSION AND PROCESS.**

B-2 Labor Relations Update. Presented by Kenneth Upton.

**KEN UPTON, SUZANNE KAHN, JIM ROOD, JO'EY STEWART, ELLEN ULLRICK AND DARRELL MURRAY PRESENTATIONS AND RESPONSE TO**

**BOARD QUESTIONS AND DISCUSSION. BOARD TO REVIEW INFORMATION SUBMITTED AND GET BACK TO MR. UPTON WITH ANY ADDITIONAL QUESTIONS.**

*There being no further business, the meeting was adjourned at 11:30 a.m.*

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Wednesday, October 16, 1996 - 1:00 PM  
Justice Building, 15<sup>th</sup> Floor Chief's Conference Room  
1111 SW Second, Portland

**MULTNOMAH CITIES/COUNTY JOINT MEETING**

*Chair Beverly Stein convened the meeting at 1:05 p.m., with Vice-Chair Dan Saltzman, Commissioners Sharron Kelley, Gary Hansen and Tanya Collier present.*

JM-1 Elected Officials for Multnomah County and the Cities of Fairview, Gresham, Portland, Troutdale and Wood Village Will Meet Jointly to Discuss and Develop a List of Cities/County Coordination Issues.

**BEVERLY STEIN, BONNIE KRAFT, VERA KATZ, SHARRON KELLEY, DAN SALTZMAN, DON ROBERTSON, GARY HANSEN, CHARLIE HALES, TANYA COLLIER, GRETCHEN KAFOURY, MIKE LINDBERG, AND PAUL THALHOFER PARTICIPATED IN A DISCUSSION REGARDING OPERATION AND FUNDING OF HOMELESS SERVICES; TRANSFER WEST SIDE PATROL DUTIES TO CITY POLICE; TRANSFER/CONSOLIDATION OF EMERGENCY DISASTER RESPONSE SERVICES TO CITIES; WORK FORCE AND ECONOMIC DEVELOPMENT; EAST COUNTY TRANSIT FUNDING AND SERVICE NEEDS; EAST COUNTY DEVELOPMENT STANDARDS/IMPLEMENTING REGION 2040; AFFORDABLE HOUSING; EAST COUNTY PUBLIC SAFETY SERVICES; PUBLIC SAFETY COUNCIL; PUBLIC SAFETY EQUATION; TRANSFER OF MAINTENANCE RESPONSIBILITIES FOR ROADS AND BRIDGES TO CITY; SENIOR SERVICES FACILITIES; DOMESTIC VIOLENCE SERVICES;**

**JOINT POLICY FOR SITING GOVERNMENT FACILITIES; 2040 COORDINATION; FACILITIES CONSTRUCTION MANAGEMENT CONSOLIDATION; SHARED USE OF SCHOOL AND COUNTY FACILITIES; AND THE PORTLAND CENTER FOR THE PERFORMING ARTS. PARTICIPANTS DISCUSSED TIMELINE FOR RELEASE OF THE JOINT CITY/COUNTY HOUSING AUDIT WITH GARY BLACKMER. PARTICIPANTS CHOSE AFFORDABLE HOUSING, HOMELESS SERVICES AND DOMESTIC VIOLENCE AS THREE HIGHEST PRIORITY. NEXT MEETING 1:30 PM, TUESDAY, NOVEMBER 26, 1996: EACH JURISDICTION TO SHARE THEIR VISION; COMMISSIONER LINDBERG TO REPORT ON STATUS OF PERFORMING ARTS/MERC ISSUE; COMMISSIONERS SALTZMAN AND HALES TO REPORT ON STATUS OF 2040 PROGRESS; COMMISSIONER COLLIER TO REPORT ON PROGRESS OF EMERGENCY MANAGEMENT CONSOLIDATION; COMMISSIONERS HANSEN AND KAFOURY TO REPORT ON STATUS OF SITING POLICY DEVELOPMENT; AND MAYOR KATZ TO REPORT ON STATUS OF PROGRESS WITH CHIEF MOOSE AND SHERIFF NOELLE REGARDING TRANSFER OF WEST SIDE PATROL DUTIES TO THE CITY. CITY COMMISSIONERS-ELECT AND STAFF TO BE INVITED TO SHARE IN DISCUSSION.**

*There being no further business, the meeting was adjourned at 2:40 p.m.*

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Thursday, October 17, 1996 - 9:30 AM  
Multnomah County Courthouse, Room 602  
1021 SW Fourth, Portland

*Chair Beverly Stein convened the meeting at 9:30 a.m., with Vice-Chair Dan Saltzman, Commissioners Sharron Kelley, Gary Hansen and Tanya Collier present.*

## **REGULAR MEETING**

### **CONSENT CALENDAR**

***UPON MOTION OF COMMISSIONER KELLEY,  
SECONDED BY COMMISSIONER HANSEN, THE  
CONSENT CALENDAR (ITEMS C-1 THROUGH C-15)  
WAS UNANIMOUSLY APPROVED.***

**NON-DEPARTMENTAL**

- C-1 Appointment of Larry Naito to the CENTRAL CITY CONCERN BOARD
- C-2 Appointment of Susan Wade to the FOOD SERVICE ADVISORY COMMITTEE
- C-3 Appointments of Claudia Robertson, Helen Stacye, Sed Stuart, Tom Ciesielski, Rosalind Mirsky, and the Re-Appointment of Jim Duncan to the PORTLAND MULTNOMAH COMMISSION ON AGING
- C-4 Appointments of Barbara Miller, Sokhom Tauch and Joel Vela to THE PRIVATE INDUSTRY COUNCIL BOARD OF DIRECTORS

**SHERIFF'S OFFICE**

- C-5 Dispenser Class A Liquor License Renewal for MULTNOMAH FALLS LODGE, SCENIC HIGHWAY AND COLUMBIA GORGE, BRIDAL VEIL
- C-6 Package Store Liquor License Renewal for PLAINVIEW GROCERY, 11800 NW CORNELIUS PASS ROAD, PORTLAND
- C-7 Retail Malt Beverage Liquor License Renewal for PLEASANT HOME SALOON, 31637 SE DODGE PARK BLVD., GRESHAM

**DEPARTMENT OF HEALTH**

- C-8 Amendment 1 to Intergovernmental Agreement 201766 with Oregon Health Sciences University, Providing Additional Funding for Case Management Services for Persons Living with HIV/AIDS

**DEPARTMENT OF COMMUNITY AND FAMILY SERVICES**

- C-9 Amendment 1 to Intergovernmental Agreement 102177 with the Housing Authority of Portland, Providing Additional Funding for Services and

Administrative Costs of Richmond Place Transitional Housing for Low Income Homeless Families

- C-10 Intergovernmental Agreement 102957 with the Housing Authority of Portland, to Contract for a Local Cash Match for the County's Share of the Operating Costs of Richmond Place Transitional Housing for Low Income Homeless Families
- C-11 Budget Modification CFS 5 Increasing the Developmental Disabilities Program Budget by \$170,640 to Reflect Changes in the State Mental Health Intergovernmental Agreement, and Reclassifying a Case Manager 2 to Program Development Specialist in the Developmental Disabilities Specialized Services Program Budget
- C-12 RESOLUTION Authorizing Designees of the Mental Health Program Director to Direct a Peace Officer to Take an Allegedly Mentally Ill Person into Custody

***RESOLUTION 96-181.***

**DEPARTMENT OF ENVIRONMENTAL SERVICES**

- C-13 ORDER Authorizing Execution of Deed D971347 Upon Complete Performance of a Contract to James L. Jenkins and Allen R. Jenkins

***ORDER 96-182.***

- C-14 ORDER Authorizing Execution of Deed D971377 Upon Complete Performance of a Contract to Thomas D. Walsh

***ORDER 96-183.***

- C-15 ORDER Authorizing Execution of Deed D971378 Upon Complete Performance of a Contract to Bertha L. Harmon

***ORDER 96-184.***

**REGULAR AGENDA**

**PUBLIC COMMENT**

- R-1 Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.

**AL CLARK AND ROSE MARIE OPP COMMENTED  
IN OPPOSITION TO TRANSFER OF FLOYD LIGHT  
PARK.**

**NON-DEPARTMENTAL**

- R-2 Review and Board Acceptance of the Multnomah County Citizen Involvement Committee Annual Report for Fiscal Year 1995-96. Presented by Kay Durtschi.

**COMMISSIONER SALTZMAN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-2. KAY DURTSCHI PRESENTATION AND RESPONSE TO BOARD COMMENTS. BOARD ACKNOWLEDGED AND EXPRESSED APPRECIATION FOR WORK OF COMMITTEE MEMBERS. REPORT UNANIMOUSLY ACCEPTED.**

- R-3 RESOLUTION Assigning Board of County Commissioner Liaison Roles

**UPON MOTION OF COMMISSIONER HANSEN, SECONDED BY COMMISSIONER COLLIER, RESOLUTION 96-185 WAS UNANIMOUSLY APPROVED.**

- R-4 RESOLUTION Establishing a Parent Education Program in the Multnomah County Family Court

**COMMISSIONER SALTZMAN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-4. COMMISSIONER SALTZMAN AND ED KEATING EXPLANATION AND COMMENTS IN SUPPORT. DAN DENNEHY AND CHIQUITA ROLLINS TESTIMONY IN SUPPORT. BOARD COMMENTS IN SUPPORT. RESOLUTION 96-186 UNANIMOUSLY APPROVED.**

**DISTRICT ATTORNEY'S OFFICE**

- R-5 Budget Modification DA 3 Appropriating Local Law Enforcement Block Grant Funds, Adding 1 Deputy District Attorney to the Neighborhood DA Program and 1 Deputy District Attorney to the Drug Unit

**COMMISSIONER COLLIER MOVED AND  
COMMISSIONER SALTZMAN SECONDED,  
APPROVAL OF R-5. MICHAEL SCHRUNK  
EXPLANATION OF ITEMS R-5 AND R-6. BUDGET  
MODIFICATION UNANIMOUSLY APPROVED.**

R-6 Budget Modification DA 4 Appropriating Local Law Enforcement Block Grant Funds to the District Attorney for an Additional Legal Assistant in the Drug Unit

**UPON MOTION OF COMMISSIONER COLLIER,  
SECONDED BY COMMISSIONER KELLEY, THE  
BUDGET MODIFICATION WAS UNANIMOUSLY  
APPROVED.**

**DEPARTMENT OF HEALTH**

R-7 First Reading of an ORDINANCE Amending Sections of MCC 5.10, Relating to Food Service License Fees and MCC 8.30, Relating to Food Handlers

**ORDINANCE READ BY TITLE ONLY. COPIES  
AVAILABLE. COMMISSIONER COLLIER MOVED  
AND COMMISSIONER SALTZMAN SECONDED,  
APPROVAL OF FIRST READING. HILDA ADAMS  
EXPLANATION AND RESPONSE TO BOARD  
QUESTION. NO ONE WISHED TO TESTIFY. FIRST  
READING UNANIMOUSLY APPROVED. SECOND  
READING THURSDAY, OCTOBER 24, 1996.**

**DEPARTMENT OF SUPPORT SERVICES**

R-8 Second Reading and Adoption of an ORDINANCE Amending Ordinance No. 856, in Order to Add, Delete and Revise Exempt Pay Ranges and Titles and Make Special Adjustments

**ORDINANCE READ BY TITLE ONLY. COPIES  
AVAILABLE. COMMISSIONER SALTZMAN MOVED  
AND COMMISSIONER KELLEY SECONDED,  
APPROVAL OF SECOND READING AND  
ADOPTION. CURTIS SMITH EXPLANATION.  
ORDINANCE 867 UNANIMOUSLY APPROVED.**

R-9 RESOLUTION Adopting Multnomah County's Investment Policy

**COMMISSIONER SALTZMAN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-9. HARRY MORTON EXPLANATION. RESOLUTION 96-187 UNANIMOUSLY APPROVED.**

**DEPARTMENT OF ENVIRONMENTAL SERVICES**

R-10      Second Reading and Adoption of an ORDINANCE Adopting the West Hills Rural Area Plan, a Portion of the Multnomah County Comprehensive Framework Plan

**ORDINANCE READ BY TITLE ONLY. COPIES AVAILABLE. COMMISSIONER SALTZMAN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF SECOND READING AND ADOPTION. GORDON HOWARD EXPLANATION AND REQUEST FOR CORRECTION TO PAGE 5. BETTINA CHRISTENSEN, DAVE KOENNECKE, JAMEY HAMPTON AND STACY FOWLER TESTIMONY IN OPPOSITION TO VARIOUS PORTIONS OF THE ORDINANCE, AND MS. FOWLER RESPONSE TO QUESTIONS OF CHAIR STEIN. MR. HOWARD EXPLANATION IN RESPONSE TO TESTIMONY AND BOARD QUESTIONS. FOLLOWING DISCUSSION, AND UPON MOTION OF COMMISSIONER SALTZMAN, SECONDED BY COMMISSIONER KELLEY, A NON-SUBSTANTIVE AMENDMENT TO PAGE 23 WAS UNANIMOUSLY APPROVED. UPON MOTION OF COMMISSIONER SALTZMAN, SECONDED BY COMMISSIONER KELLEY, A NON-SUBSTANTIVE AMENDMENT TO PAGE 5 WAS UNANIMOUSLY APPROVED. MR. HOWARD RESPONSE TO BOARD QUESTIONS. COMMISSIONER SALTZMAN COMMENTS IN SUPPORT OF STAFF AND CITIZEN EFFORTS WITH RURAL AREA PLAN DEVELOPMENT. COMMISSIONER HANSEN'S MOTION TO CHANGE AN AREA TO A CFU-2 ZONE FAILED FOR LACK OF A SECOND. MR. HOWARD RESPONSE TO BOARD QUESTIONS AND DISCUSSION. ORDINANCE 868 UNANIMOUSLY APPROVED, AS AMENDED.**

R-11 Intergovernmental Agreement 300537 with the City of Portland for Coordination and Orderly Conversion of Certain Land on Hayden Island for Urban Uses

**COMMISSIONER SALTZMAN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-11. SCOTT PEMBLE EXPLANATION AND RESPONSE TO BOARD QUESTIONS. COMMISSIONER SALTZMAN TO DISCUSS POSSIBLE ANNEXATION OF AREA TO THE CITY OF PORTLAND WITH COMMISSIONER CHARLIE HALES. AGREEMENT UNANIMOUSLY APPROVED.**

*There being no further business, the meeting was adjourned at 11:10 a.m.*

*OFFICE OF THE BOARD CLERK  
FOR MULTNOMAH COUNTY, OREGON*

*Deborah L. Bogstad  
Deborah L. Bogstad*



# MULTNOMAH COUNTY OREGON

OFFICE OF THE BOARD CLERK  
 SUITE 1510, PORTLAND BUILDING  
 1120 SW FIFTH AVENUE  
 PORTLAND, OREGON 97204  
 CLERK'S OFFICE • 248-3277 • 248-5222  
 FAX • (503) 248-5262

BOARD OF COUNTY COMMISSIONERS		
BEVERLY STEIN	CHAIR	•248-3308
DAN SALTZMAN	DISTRICT 1	• 248-5220
GARY HANSEN	DISTRICT 2	•248-5219
TANYA COLLIER	DISTRICT 3	•248-5217
SHARRON KELLEY	DISTRICT 4	•248-5213

# AGENDA

## MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

FOR THE WEEK OF

**OCTOBER 14, 1996 - OCTOBER 18, 1996**

*Tuesday, October 15, 1996 - 9:30 AM - Board Briefings ..... Page 2*

*Wednesday, October 16, 1996 - 1:00 PM - Joint Meeting ..... Page 2*

*Thursday, October 17, 1996 - 9:30 AM - Regular Meeting..... Page 2*

*Thursday Meetings of the Multnomah County Board of Commissioners are \*cable-cast\* live and taped and can be seen by Cable subscribers in Multnomah County at the following times:*

*Thursday, 9:30 AM, (LIVE) Channel 30*

*Friday, 10:00 PM, Channel 30*

*Sunday, 1:00 PM, Channel 30*

*\*Produced through Multnomah Community Television\**

**INDIVIDUALS WITH DISABILITIES MAY CALL THE OFFICE OF THE BOARD CLERK AT 248-3277 OR 248-5222, OR MULTNOMAH COUNTY TDD PHONE 248-5040, FOR INFORMATION ON AVAILABLE SERVICES AND ACCESSIBILITY.**

AN EQUAL OPPORTUNITY EMPLOYER

*Tuesday, October 15, 1996 - 9:30 AM  
Multnomah County Courthouse, Room 602  
1021 SW Fourth, Portland*

**BOARD BRIEFINGS**

- B-1 Storm/Emergency Management Debriefing. Presented by Michael J. Gilsdorf. 1 HOUR REQUESTED.*
- B-2 Labor Relations Update. Presented by Kenneth Upton. 30 MINUTES REQUESTED.*
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*Wednesday, October 16, 1996 - 1:00 PM  
Justice Building, 15<sup>th</sup> Floor Chief's Conference Room  
1111 SW Second, Portland*

**MULTNOMAH CITIES/COUNTY JOINT MEETING**

- JM-1 Elected Officials for Multnomah County and the Cities of Fairview, Gresham, Portland, Troutdale and Wood Village Will Meet Jointly to Discuss and Develop a List of Cities/County Coordination Issues. 90 MINUTES REQUESTED.*
- 

*Thursday, October 17, 1996 - 9:30 AM  
Multnomah County Courthouse, Room 602  
1021 SW Fourth, Portland*

**REGULAR MEETING**

**CONSENT CALENDAR**

**NON-DEPARTMENTAL**

- C-1 Appointment of Larry Naito to the CENTRAL CITY CONCERN BOARD*
- C-2 Appointment of Susan Wade to the FOOD SERVICE ADVISORY COMMITTEE*
- C-3 Appointments of Claudia Robertson, Helen Stacye, Sed Stuart, Tom Ciesielski, Rosalind Mirsky, and the Re-Appointment of Jim Duncan to the PORTLAND MULTNOMAH COMMISSION ON AGING*

- C-4         *Appointments of Barbara Miller, Sokhom Tauch and Joel Vela to THE PRIVATE INDUSTRY COUNCIL BOARD OF DIRECTORS*

**SHERIFF'S OFFICE**

- C-5         *Dispenser Class A Liquor License Renewal for MULTNOMAH FALLS LODGE, SCENIC HIGHWAY AND COLUMBIA GORGE, BRIDAL VEIL*
- C-6         *Package Store Liquor License Renewal for PLAINVIEW GROCERY, 11800 NW CORNELIUS PASS ROAD, PORTLAND*
- C-7         *Retail Malt Beverage Liquor License Renewal for PLEASANT HOME SALOON, 31637 SE DODGE PARK BLVD., GRESHAM*

**DEPARTMENT OF HEALTH**

- C-8         *Amendment 1 to Intergovernmental Agreement 201766 with Oregon Health Sciences University, Providing Additional Funding for Case Management Services for Persons Living with HIV/AIDS*

**DEPARTMENT OF COMMUNITY AND FAMILY SERVICES**

- C-9         *Amendment 1 to Intergovernmental Agreement 102177 with the Housing Authority of Portland, Providing Additional Funding for Services and Administrative Costs of Richmond Place Transitional Housing for Low Income Homeless Families*
- C-10        *Intergovernmental Agreement 102957 with the Housing Authority of Portland, to Contract for a Local Cash Match for the County's Share of the Operating Costs of Richmond Place Transitional Housing for Low Income Homeless Families*
- C-11        *Budget Modification CFS 5 Increasing the Developmental Disabilities Program Budget by \$170,640 to Reflect Changes in the State Mental Health Intergovernmental Agreement, and Reclassifying a Case Manager 2 to Program Development Specialist in the Developmental Disabilities Specialized Services Program Budget*
- C-12        *RESOLUTION Authorizing Designees of the Mental Health Program Director to Direct a Peace Officer to Take an Allegedly Mentally Ill Person into Custody*

**DEPARTMENT OF ENVIRONMENTAL SERVICES**

- C-13      *ORDER Authorizing Execution of Deed D971347 Upon Complete Performance of a Contract to James L. Jenkins and Allen R. Jenkins*
- C-14      *ORDER Authorizing Execution of Deed D971377 Upon Complete Performance of a Contract to Thomas D. Walsh*
- C-15      *ORDER Authorizing Execution of Deed D971378 Upon Complete Performance of a Contract to Bertha L. Harmon*

**REGULAR AGENDA**

**PUBLIC COMMENT**

- R-1      *Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.*

**NON-DEPARTMENTAL**

- R-2      *Review and Board Acceptance of the Multnomah County Citizen Involvement Committee Annual Report for Fiscal Year 1995-96. Presented by Kay Durtschi. 9:30 TIME CERTAIN, 30 MINUTES REQUESTED.*
- R-3      *RESOLUTION Assigning Board of County Commissioner Liaison Roles*
- R-4      *RESOLUTION Establishing a Parent Education Program in the Multnomah County Family Court*

**DISTRICT ATTORNEY'S OFFICE**

- R-5      *Budget Modification DA 3 Appropriating Local Law Enforcement Block Grant Funds, Adding 1 Deputy District Attorney to the Neighborhood DA Program and 1 Deputy District Attorney to the Drug Unit*
- R-6      *Budget Modification DA 4 Appropriating Local Law Enforcement Block Grant Funds to the District Attorney for an Additional Legal Assistant in the Drug Unit*

**DEPARTMENT OF HEALTH**

- R-7      *First Reading of an ORDINANCE Amending Sections of MCC 5.10, Relating to Food Service License Fees and MCC 8.30, Relating to Food Handlers*

**DEPARTMENT OF SUPPORT SERVICES**

R-8            *Second Reading and Adoption of an ORDINANCE Amending Ordinance No. 856, in Order to Add, Delete and Revise Exempt Pay Ranges and Titles and Make Special Adjustments*

R-9            *RESOLUTION Adopting Multnomah County's Investment Policy*

**DEPARTMENT OF ENVIRONMENTAL SERVICES**

R-10           *Second Reading and Adoption of an ORDINANCE Adopting the West Hills Rural Area Plan, a Portion of the Multnomah County Comprehensive Framework Plan*

R-11           *Intergovernmental Agreement 300537 with the City of Portland for Coordination and Orderly Conversion of Certain Land on Hayden Island for Urban Uses*

NOTE: Amendmentss, renewals and revenue contracts need only be put on Consent Calendar. Individual need not be present for presentation.

MEETING DATE: OCT 15 1996  
AGENDA NO.: B-1  
ESTIMATED START TIME: 9:30am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: *Storm/emergency management debriefing.*

BOARD BRIEFING Date Requested: *October 17, 1996*

Requested By: *Michael J. Gilsdorf  
Emergency Manager*

Amount of Time Needed: *One Hour*

REGULAR MEETING Date Requested:

Amount of Time Needed:

DEPARTMENT: *Support Services*

DIVISION: *Emergency Management*

CONTACT: *Michael J. Gilsdorf*

TELEPHONE #: ~~252-2466~~ *251-2469*

BLDG/ROOM#: *313/203*

PERSON(S) MAKING PRESENTATION: *Michael J. Gilsdorf*

ACTION REQUESTED:

INFORMATIONAL ONLY  POLICY DIRECTION  APPROVAL  OTHER

SUGGESTED AGENDA TITLE:

*Storm/emergency Management debriefing.*

SIGNATURES REQUIRED:

ELECTED OFFICIAL:

*[Signature]*  
OR

DEPARTMENT MANAGER: *Sidnie S. Gales*

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Office of the Board Clerk 248-3277/248-5222

12/95

96 OCT - 8 PM 2:47  
MULTNOMAH COUNTY  
OREGON  
BOARD OF  
COUNTY COMMISSIONERS

BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM BRIEFING  
STAFF REPORT SUPPLEMENT

TO: BOARD OF COUNTY COMMISSIONERS

FROM: MICHAEL J. GILSDORF  
MULTNOMAH COUNTY EMERGENCY MANAGEMENT

TODAY'S DATE: October 7, 1996

REQUESTED PLACEMENT DATE: October 17, 1996

RE: Storm/emergency management debriefing for the Board of County Commissioners.

I. Recommendation/Action Requested:

Presentation of a Debriefing regarding "lessons learned" following the winter storms of 1995/1996, focusing on the February 1996 flooding and subsequent actions being taken.

II. Background/Analysis:

This will be an informational debriefing as requested by Commissioner Saltzman. No action by the Board is requested.

III. Financial Impact:

None.

IV. Legal Issues:

None.

V. Controversial Issues:

None.

VI. Link to Current County Policies:

Portland-Multnomah County Benchmarks 95, 96, and 97.

VII. Citizen Participation:

None.

VIII. Other Government Participation:

Joint planning is underway with the Cities of Gresham and Portland Offices of Emergency Management.

**MULTNOMAH COUNTY EMERGENCY MANAGEMENT  
FLOOD 96- DSR LOG**

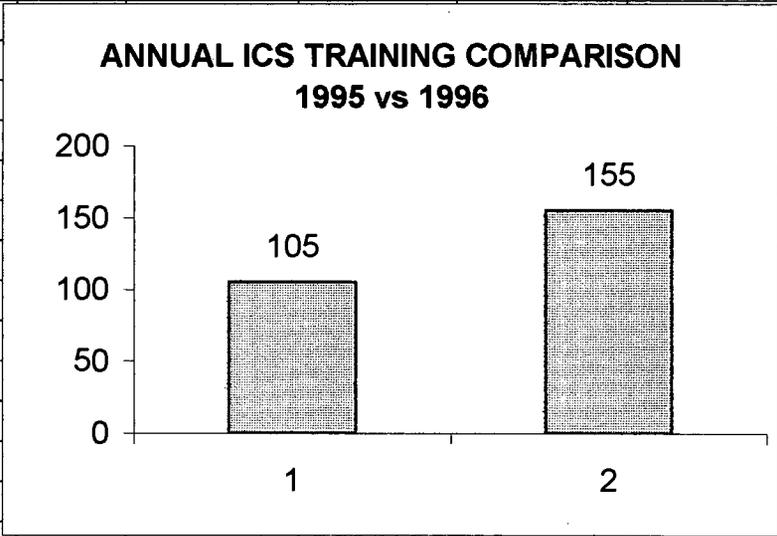
DSR NO.	CATEGORY	LOCATION	TOTAL \$	FEMA \$	MULTCO \$	CONCUR	PAYMENT REQUEST SENT OUT	PAYMENT REC'D
71047	A	COUNTY GRAVEL PIT	\$ 4,179.00	\$ 3,134.00	\$ 1,045.00	YES		
84380	A	DEBRIS REMOVAL	\$ 139,940.00	\$ 104,955.00	\$ 34,985.00	YES		
84390	A	DEBRIS REMOVAL	\$ 12,989.00	\$ 9,742.00	\$ 3,247.00	YES	8/9/96	9/29/96
		<b>TOTAL CATEGORY A</b>	<b>\$ 157,108.00</b>	<b>\$ 117,831.00</b>	<b>\$ 39,277.00</b>			
84384	B	PROTECTIVE MEASURES: EMERGENCY MNGMT., HEALTH, ANIMAL CONTROL, FACILITES, SHERIFF	\$ 91,241.00	\$ 68,431.00	\$ 22,810.00	YES	8/9/96	
84392	B	PROTECTIVE MEASURES: DES, TRANSPORTATION DIV.	\$ 102,828.00	\$ 77,121.00	\$ 25,707.00	YES	8/9/96	
		<b>TOTAL CATEGORY B</b>	<b>\$ 194,069.00</b>	<b>\$ 145,552.00</b>	<b>\$ 48,517.00</b>			
23315	C	NEWBERRY RD, MP 1.3 TO 1.5	\$ 1,618.00	\$ 1,214.00	\$ 404.00	YES		
23320	C	DODSON AREA ROADS	\$ 38,143.00	\$ 28,607.00	\$ 9,536.00	YES	9/11/96	9/18/96
23321	C	HEDLUND AVE	\$ 4,075.00	\$ 3,056.00	\$ 1,019.00	NO		
23322	C	ALEX BARR RD MP 0 TO 0.5	\$ 10,935.00	\$ 8,201.00	\$ 2,734.00	YES		
23323	C	LOGIE TRAIL RD, MP 0.7	\$ 7,675.00	\$ 5,758.00	\$ 1,917.00	YES		
23767	C	SUPPLEMENT TO DSR 23322	\$ 13,831.00	\$ 10,373.00	\$ 3,458.00	YES		
23768	C	SUPPLEMENT TO DSR 23323	\$ 3,705.00	\$ 2,779.00	\$ 926.00	YES		
24076	C	LOGIE TRAIL RD, MP 0.25	\$ 74,944.00	\$ 56,208.00	\$ 18,736.00	YES	9/11/96	
24079	C	HAINES RD, MP 0.25	\$ -					
24081	C	BELL RD, MP 0.2	\$ 37,037.00	\$ 27,778.00	\$ 9,259.00	YES	9/11/96	9/18/96
24082	C	WOODARD RD	\$ 3,266.00	\$ 2,450.00	\$ 816.00	YES	9/11/96	9/18/96
24083	C	REEDER RD, MP 0.4	\$ 21,076.00	\$ 15,807.00	\$ 5,269.00	YES		
24084	C	REEDER RD, MP 1.2	\$ 5,441.00	\$ 4,081.00	\$ 1,360.00	YES		
24085	C	NEWBERRY RD, MP 0.2	\$ 3,857.00	\$ 2,893.00	\$ 964.00			
24092	C	LIDLAW RD	\$ 2,674.00	\$ 2,005.00	\$ 669.00	YES	9/11/96	9/18/96
24096	C	KERSLAKE RD	\$ 588.00	\$ -	\$ -	NO		
24097	C	OXBOW PARKWAY	\$ 11,657.00	\$ 8,743.00	\$ 2,914.00	YES		
24101	C	OXBOW PARKWAY, MP 1.1	\$ 4,296.00	\$ 3,222.00	\$ 1,074.00	YES		

**MULTNOMAH COUNTY EMERGENCY MANAGEMENT  
FLOOD 96- DSR LOG**

DSR NO.	CATEGORY	LOCATION	TOTAL \$	FEMA \$	MULTCO \$	CONCUR	PAYMENT REQUEST SENT OUT	PAYMENT REC'D
24102	C	PALMER MILL RD S OF BROWER RD	\$ 6,277.00	\$ 4,708.00	\$ 1,569.00	YES		
24103	C	PALMER MILL RD N OF BROWER RD	\$ 1,275.00	\$ 956.00	\$ 319.00	YES		
24107	C	LOGIE TRAIL RD, MP 1.2	\$ 4,419.00	\$ 3,314.00	\$ 1,105.00	NO		
24108	C	ALEX BARR RD, MP 1.0 TO 1.7	\$ 19,796.00	\$ 14,847.00	\$ 4,949.00	YES		
24109	C	ROOSTER ROCK RD, MP 0.45	\$ 3,506.00	\$ 2,630.00	\$ 876.00			
80102	C	SEIDL RD, N OR WOODARD RD	\$ 3,415.00	\$ 2,561.00	\$ 854.00	YES	9/11/96	9/18/96
80103	C	NEILSON RD, MP 0 TO 0.25	\$ 1,604.00	\$ 1,203.00	\$ 401.00	YES	9/11/96	9/18/96
80105	C	LATARELL FALLS RD	\$ 16,871.00	\$ 12,653.00	\$ 4,218.00	YES	9/11/96	9/18/96
80106	C	DEVERELL RD	\$ 22,126.00	\$ 16,595.00	\$ 5,531.00	YES	9/11/96	9/18/96
80108	C	MANNTHEY RD	\$ 6,181.00	\$ 4,636.00	\$ 1,545.00	YES	9/11/96	9/18/96
80109	C	ROCK CREEK RD	\$ 5,421.00	\$ 4,066.00	\$ 1,355.00	YES	9/11/96	9/18/96
80596	C	LATOURELL HILL ROAD	\$ 71,547.00	\$ 53,660.00	\$ 17,887.00			
84442	C	MCNAMEE RD	\$ 2,040.00	\$ 1,530.00	\$ 510.00	YES	9/11/96	9/18/96
84533	C	SUPPLEMENT TO DSR 23315	\$ (293.00)	\$ (220.00)	\$ (73.00)	YES		
		<b>TOTAL CATEGORY C</b>	<b>\$ 409,003.00</b>	<b>\$ 306,314.00</b>	<b>\$ 102,101.00</b>			
		<b>GRAND TOTAL</b>	<b>\$1,363,252.00</b>	<b>\$1,021,563.00</b>	<b>\$ 340,513.00</b>			

**ICS Training Statistics  
Multnomah County  
Emergency Management**

YEAR	July	September	October	November	December	February	March	May	Total	Base %
1994-95	15	19			21		28	22	105	105%
1995-96	23		29	18			12, 20	28, 25	155	111%
1996-97	26		25							



Note: Base % is total number of attending student, divided by total # of classes and then divided by 20 (ideal seating capacity).

MEETING DATE: OCT 15 1996

AGENDA #: B-2

ESTIMATED START TIME: 10:30

(Above Space for Board Clerk's Use ONLY)

**AGENDA PLACEMENT FORM**

SUBJECT: Labor Relations: Local 88 Pre-Bargaining and Progress and General Briefing

BOARD BRIEFING: DATE REQUESTED: October 15, 1996

REQUESTED BY: Kenneth Upton

AMOUNT OF TIME NEEDED: 1 hour (approx)

REGULAR MEETING: DATE REQUESTED: \_\_\_\_\_

AMOUNT OF TIME NEEDED: \_\_\_\_\_

DEPARTMENT: Dept Support Svcs DIVISION: Labor Relations

CONTACT: Ken Upton TELEPHONE #: 248-5053

BLDG/ROOM #: B106/1400

PERSON(S) MAKING PRESENTATION: Kenneth Upton, others as needed.

ACTION REQUESTED:

INFORMATIONAL ONLY  POLICY DIRECTION  APPROVAL  OTHER

SUGGESTED AGENDA TITLE:

Labor Relations: Local 88 Pre-Bargaining Process and General Briefing.

SIGNATURES REQUIRED:

ELECTED  
OFFICIAL: \_\_\_\_\_  
(OR)  
DEPARTMENT  
MANAGER: \_\_\_\_\_

*Richie L. Gales*

BOARD OF  
COUNTY COMMISSIONERS  
96 OCT 10 AM 11:25  
MULTNOMAH COUNTY  
OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Office of the Board Clerk 248-3277 or 248-5222



# MULTNOMAH COUNTY OREGON

BEVERLY STEIN  
COUNTY CHAIR

EMPLOYEE SERVICES  
FINANCE  
LABOR RELATIONS  
PLANNING & BUDGET  
RISK MANAGEMENT

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PURCHASING, CONTRACTS  
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(503) 248-5111

2505 S.E. 11TH, 1ST FLOOR  
PORTLAND, OREGON 97202

## M E M O R A N D U M

TO: Board of County Commissioners

FROM: Ken Upton, Labor Relations Manager *KU*

DATE: October 14, 1996

SUBJECT: Agenda for Labor Relations Briefing, October 15

BOARD OF  
 COUNTY COMMISSIONERS  
 96 OCT 14 PM 4:29  
 MULTNOMAH COUNTY  
 OREGON

Immediately below for your information and review is a listing of the key topics to be discussed at tomorrow's briefing. I attempted to weave into the original notions for this briefing questions which arose in conversations with each commissioner. Candidly, the ideas generated from these conversations were extensive enough that several briefings will be in order. All matters raised not included in the briefing are addressed in the Attachment A, along with certain other current labor relations issues.

1. **Contract Administration: The Labor Relations Manual.**

This part of the briefing will involve review of training, integration of the manual with RESULTS, and next steps.

2. **Continuing Interest Exploration.**

As the County moved into the RESULTS process, there was an interest in exploring with Local 88 a more collaborative approach to solving contractual problems. The result is a home grown process which we have labeled Continuous Interest Exploration (CIE), which:

- Involves the Employee Relations Committee, a contractually-mandated committee which previously had focused exclusively on matters of contract administration.
- Is facilitated jointly by Union and Management members of the ERC.
- Is an process of open, unfiltered dialogue.

- Attempts to utilize standard techniques for "returning to interests" and "defining the problem" when the discussion becomes "positional."
- Utilizes sub-committees for technical or complex issues.
- Is well integrated with, in fact largely overlaps, the Operating Council on management side, and the Local 88 Executive Board.

- **Accomplishments to date:**

- Relationship: Greatly improved by all accounts.

- Involvement: Far more direct involvement of members on both sides in discussion.

- Contract reviewed to date: See Attachment B.

- Improved capacity to solve problems: Both as a result of the process itself and explicit training in Interest Based Bargaining (Outline Attachment C. ), by Nancy Brown.

- **The needs for the future:**

As the CIE process evolves, we clearly want to reach as much closure as possible so it doesn't become the feared "exercise in futility," but we also need to ensure that we not "get ahead of ourselves" by either implying probable agreement to the Union on a matter of Board concern, or by neglecting a Board concern entirely. A few concerns have surfaced which may need discussion, others are mentioned in Attachment A, and others will no doubt surface along the way. A few concerns which initial Board thinking may be helpful are:

- a. **Results**

- Several commissioners expressed a concern that the Contract be as congruent as possible with RESULTS processes. My current thinking is to involve Barry Crook and Joe Devlaeminck in a discussion with the group as to concerns about how the contract interfaces with RESULTS. As a preliminary to this discussion: **"Are there specific questions or concerns related to RESULTS concerning which the Board wants ERC to be mindful?"**

- b. **Support of Families**

- Commissioner Kelley in my review with her, wanted ERC to explore family support issues in a "conversation" which should "not be one sided" with the Union. **"Are there specific questions or concerns related to family support for employees which the Board wants ERC to be mindful?"**

c. **Timeliness and Staggering of Contracts.**

Commissioner Collier has expressed a concern for timeliness in resolution of Labor Relations issues. In light of the additional time related to several collaborative relations in process and the fact that virtually all contracts come due July 1, 1998: **"Is it the goal of the Board to have Agreements in place July 1, 1998?"**

And as a corollary to the above: **"What is the initial thinking of the Board as to the desirability following July 1, 1998 of staggering contracts as opposed to having them all come due at one date?"**

3. **Attachment A Review.**

If there is time following the above review and Board discussion of issues, I will review key elements of Attachment A, "I. Commissioners Concerns" and "II. Other Labor Relations Matters of Potential Board Interest."

If you have any preliminary questions, please call.

c: ERC  
Vickie Gates  
Curtis Smith  
Darrell Murray  
Ellen Ullrick  
Melinda Petersen  
Bill Farver

File: Local 88 Contract Administration  
CIE Binder

JSKU0167.DOC

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I. Commissioners Concerns

- A. **Measure 8.** Commissioner Saltzman has expressed a desire for briefing Multnomah County regarding legal and contractual matters related to Measure 8. Certain questions have also been directed to Counsel. It would appear that a briefing by Counsel and Labor Relations may be in order, perhaps sometimes in November.
- B. **Benefits: Consolidation of City-County and Participation of Employees.** Commissioner Saltzman has raised the issue of the possibility of consolidating the benefit program between City and County. This concern will be directed to the new Benefits Administration. I have also communicated to the management, Employee Relations Committee to the issue raised by Commissioner Collier regarding participation of employees in the benefit Stakeholder process.
- C. **CareOregon.** Commissioner Hansen was concerned regarding impediments to the CareOregon transfer. Contract amendments have been drafted and tentatively approved by ONA and Local 88 which appear to address the immediate issue by utilizing a bridging device based on a Personal Services Agreement between CareOregon and Multnomah County. These difficulties do, however, raise the possibility of legislative action regarding PERS in intergovernmental transfers, which has been noted for discussion as part of the legislative strategy.
- D. **Compensation.** Chair Stein and Commissioner Collier raised issues regarding matters of compensation as follows:
- Classification/pay broadfunding<sup>BANDING</sup> (Stein).
  - Pay for performance (Collier).
  - Techniques for determining "what is fair for wages, e.g., average of agree upon comparables (Collier).
- The Management ERC Team has made clear to me that in light of the improvement in the relationship with Local 88 they view early involvement in compensation issues, to be a "strategic error." Additionally, the data relevant to the compensation discussion will not begin to be available until July 1997. I would thus suggest that this date be set as a tentative time to further dialogue on the above. Clearly, the policy issues raised are threshold questions to the gathering of data.
- E. **How to avoid another "First Responder."** Commissioner Kelley wanted to ensure that the Board not stumble into another "First Responses situation," i.e., drift into a bargaining situation without knowing it, and then have a difficult time getting out: To assist in this regard, I will:
- Prepare in the near future a brief memo to the Board: "How to Avoid the Pitfalls of Collective Bargaining," and

-Include in a Board briefing closer to the actual bargaining season a role clarification discussion which hopefully will further assist the process.

II. **Other Labor Relations Matters of Potential Board Interest.**

- A. **Prosecuting Attorneys Association Bargaining.** Mediation was held with MCPA utilizing Nancy Brown, the state Conciliator. While closure was not achieved, a new approach was discussed. I will be able to discuss this further with the Board, hopefully within the next week.
- B. **Payroll System Transition.** Darrell Murray, Deputy Labor Relations Manager, has been involved with MCOA, MCDSA, Local 88, ONA and Management staff in discussing certain apparent errors in certain paychecks. These issues are complex and may involve legal implications. Meetings and discussions are ongoing.
- C. **Health Department.** Darrell is also working with the Health Department on developing a potential experimental problem solving process involving School Based Health scheduling. He is also working with the Health Department regarding potential Interest-Based approach to a pre-bargaining process for a review of the ONA seniority and layoff article.
- D. **Health and Welfare.** Pursuant to discussion with, and direction from, the Board, an Amendment for all bargaining units is being prepared regarding a number of Health and Welfare matters. Consideration is underway of adding a Catastrophic Leave program on a pilot basis to this Amendment. This would allow leave sharing in certain instances and conditions. The Sheriff and others have an interest in this program.



MULTNOMAH COUNTY OREGON

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COUNTY CHAIR

EMPLOYEE SERVICES  
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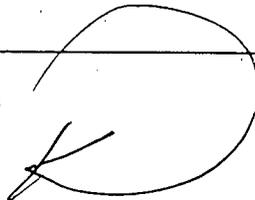
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2505 S.E. 11TH, 1ST FLOOR  
PORTLAND, OREGON 97202

MEMORANDUM

TO: All Management and Union ERC Members  
FROM: Kenneth Upton, Labor Relations Manager  
DATE: October 8, 1996  
SUBJECT: Status Report of Contract Review to Date



BOARD OF  
COUNTY COMMISSIONERS  
96 OCT 14 PM 4: 29  
MULTNOMAH COUNTY  
OREGON

The Continuous Interest Exploration process has lead to the review to date of nine articles of the Agreement with differing degrees of finality. I thought it would be useful at the end of our training today to take stock as to where we are, so that we not get lost in the details. I have detailed below a listing of each article, a proposal of what we mean by "Sign off" in the ERC process, and a review of the status of the Temporary issue:

A. Status of Articles

Article 1-Preamble: Ready for initialing.

Article 5-Union Security and Check-Off: Ready for initialing with changes to reflect the move to twice monthly payroll and the change from "National People" to "People". The Union desires to set aside one issue: "Why aren't probationary employees paying dues?"

Article 12-Workers Compensation: Article was reviewed by subcommittee and a draft prepared by Ellen is attached which has not yet been further reviewed by that committee.

Article 17- Disciplinary Action: A previous draft has been reviewed by the Union and a new version is attached.

Article 18-Settlement of Disputes: This Article was reviewed by subcommittee and a very extensive redraft was made by Ellen, attached, which has not yet been further reviewed by that committee. This is a major rewrite trying to put all of the elements into comprehensible order so that the article serves not only the technical need of contractual obligation but also serves a guide for conduct regarding grievance processing.

**Article 21-Seniority:** The Article was extensively redone and reviewed at a past ERC meeting. Further questions were raised by the Union in caucus which will need review.

**Article 25-Savings Clause:** This article was reviewed by the parties with only the issue of clarification, if needed, of the issue of strikeability outstanding. This relates to impasse in any negotiations for a section deemed illegal. Since this is an issue of policy importance in which the Board has direct interest, I would suggest we initial this Article for ERC review and table that issue for later.

**Article 26-Entire Agreement:** This is the so called "Zipper Clause" of the Agreement. I was asked to take a look at this language regarding possible redundancy. Upon review, I found:

- The final paragraph of this Article is transition language regarding Measure 8 and will not be necessary in the new agreement.
- The next to the last paragraph on page 132 deals with the authority and limitations on amending and entering into exceptions and understandings to the Agreement. In some organizations there is no such authority and this language has served us well.
- The first paragraph, beginning on p 131 to 132 is not redundant on the terms of Article 24, Sec. 6. The latter exclusively deals with existing conditions. The main purpose of this section is, to the greatest degree allowable by law, to waive the obligation to bargain regarding new matters.

Upon reflection it would appear that the best thing to do would be to initial the article absent the final paragraph.

**Article 27-Termination:** The only question that arose concerning this Article regarded the final sentence:

"The contract shall remain in full force and effect during the period of negotiations." This sentence is a so called "evergreen clause", which forces the County to continue existing provisions both economic and other. The phrase "during the period of negotiations" distinguishes this obligation from post negotiations periods during which the County as a matter of law could impose a final offer. Since the entire substance of this article deals with these substantive issues of duration and continuation, I would suggest that we shelve this article until the review later by the Board and Executive session during the formal bargaining process.

B. **Meaning of ERC Sign-Off.** There have been a number of discussions and references in memoranda to the meaning of ERC Sign-Off. The reason for the circularity of some of these discussions is that there is a tension between our joint desire for closure and "getting real business done" on the one hand and the realization that July 1, 1998 is a long way off on the other. During the coming year a lot can occur in our own thinking and the political environment (on both sides) may shift. My view is that agonizing over these uncertainties will not make them go away. It is suggested that the group affirm that when we initial an article as "ERC Review Completed" we affirm as a group":

- That if the day of the initialing were bargaining day, we would be initialing this as TA'ed, but--
- We reserve the right to change our minds in good faith , and--:
- If there is a section of the Article, or a topic, which we cannot resolve, then it should be so designated, the remainder affirmed by initialing, and we should move on.

The key to all of the above must be our collaborative desire to work together to create a better Agreement. If that is absent, then all the technique and paper exchanges in the world won't matter anyway.

C. **Temporary Employees Update.** The new computer run has produced a "running year total" of all temporary employees. Attached is a copy of the relevant three pages of this run which contain all of the names of employees who have the "relevant" magic number of 1044 hours or more during the running year. This includes overtime which is noted. Kathy Nash of this Office has noted the Department of each individual for your further information. Attached also is a copy of Jim's appeal of the matter to the Merit System Council. My understanding is that the issue will be scheduled for hearing, rather than being heard tomorrow, Oct 10. I have requested management ERC representatives to review the above run and am getting back responses. Eventually I hope to be able to give all concerned an annotated listing of the nature of each appointment.

I trust the above status report has been helpful.

---

## The Principles of Interest Based Problem Solving

---

- Focus on the Problem--  
separate the people from the  
problem
  
- Focus on interests, not  
stated positions
  
- Create options to satisfy mutual  
interests, whenever possible
  
- Evaluate options using interests

BOARD OF  
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96 OCT 14 PM 4:29  
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# A Labor Relations Guide for Managers and Supervisors

- Building a Quality Workforce: Managing Employee Performance Problems from a Systems Perspective

and

- Labor Contract Administration and Grievance Handling



Program Coordination  
Provided by the Labor Relations Section  
Management Support Services  
Kenneth Upton, Labor Relations Manager

[REDACTED]

[REDACTED]





## Beverly Stein, Multnomah County Chair

Room 1515, Portland Building  
1120 S.W. Fifth Avenue  
Portland, Oregon 97204

Phone: (503) 248-3308  
FAX: (503) 248-3093  
E-Mail: MultChair@aol.com

To: All Managers and Supervisors  
From: Beverly Stein, <sup>new</sup> Multnomah County Chair  
Subject: Labor Relations Guide for Managers and Supervisors  
Date: November 6, 1995

Attached is a copy of "A Labor Relations Guide for Managers and Supervisors". This document was prepared by the Labor Relations Section and is part of our attempts to align Labor Relations with the new direction set for County government in the RESULTS Initiative.

The Guide is divided into two main sections:

### I. Building a Quality Workforce: Managing Employee Performance Problems from a Systems Perspective.

The County is engaged in a major initiative to improve our performance as an organization. A key focus in RESULTS is to improve the way we manage people and programs. We must create an environment where each individual employee is valued for his or her talent, skills and expertise. Employees must have the authority and responsibility to carry out their jobs, and organizational accountability must occur at all levels in the County.

Believing in an employee's potential is not incompatible with taking progressive and corrective action where appropriate. When performance is not acceptable, managers must take affirmative steps. Of course, we must distinguish problem performance from poor performance due to poorly designed systems and processes.

In cases where inadequate or unacceptable employee performance has been identified, it is imperative that we respond with promptness, thoroughness, fairness, and firmness. Public perception of our entire work organization can be influenced by the misconduct of only a few, and our employees are looking for evidence that we "walk the talk" of accountability and high expectations.

### 2. Labor Contract Administration and Grievance Handling.

We cannot build a truly productive organization as envisioned in the RESULTS Initiative without the active involvement and support of our labor organizations. In order to achieve this goal, I am asking each of you to actively examine the basic approach you take in Labor Relations matters at the line level. We need to ensure that we are moving toward a more



cooperative model as envisioned in the RESULTS initiative and this manual (Section XIII.B.).

This does not mean that we will not have differences with our Unions, nor does it mean "giving in" or "being soft" on management issues. It does mean, however, that the Unions are our partners, and if the County and Unions are to achieve our mutual goals, the structure and attitudes which we bring to bear in dealing with our differences must be substantially transformed.

I am excited by the new approaches contained in this Guide. It does not contain significant new procedural requirements, but places the existing procedural requirement in an advisory context. This advisory material is intended to be compatible with the move toward an environment of teamwork and continuous quality improvement.

The Guide is thus to be viewed as a tool. As such, it should be viewed as a work in progress. We are all learning about how to do these things "right" as we move forward. I have asked Ken Upton, the Labor Relations Manager, to solicit and incorporate input from all of you for revisions of the Guide as we learn together in the months and years ahead.

# Table of Contents

		<u>Page</u>
I.	Introduction .....	1
II.	The Systems Approach to Managing Substandard Performance .....	4
III.	Managing Ourselves in the System: The Personal Dimension of Managing Substandard Performance .....	7
IV.	Prevention of Problems .....	12
V.	Oversight: Supervisory Observation of Performance .....	16
VI.	Behavioral Description of Performance Problems .....	20
VII.	Confrontation .....	22
VIII.	Analysis of Performance Problems .....	24
IX.	An Important Aside: Team Dysfunction .....	27
X.	The Employee Assistance Program and Drug and Alcohol Policy .....	29
XI.	Discipline .....	49
	A. The Just Cause Standard: Questions an Arbitrator May Ask .....	49
	B. Executive Order No. 225: Policies and Procedures - Discipline and Dismissal ..	56
	C. Beyond Procedures: How to Write a Letter of Discipline .....	72
XII.	Labor Contract Administration and Grievance Handling .....	80
	A. General Legal and Organizational Background .....	80
	B. Developing a Good Relationship with the Union or Association .....	81
	C. Contract Administration .....	83
	D. Flexibility in a Quality Environment .....	84
	E. Grievance Handling .....	86
	F. Standardized Grievance Response Format (including guidance on each step of the response) .....	91
<b>Supplements</b>		
	Supplement A. Constructive Discharge .....	96
	Supplement B. Insubordination and Violation of Orders (including sample letters) .....	99
	Supplement C. Performance Related Discipline: Incompetence, Inefficiency, Non-Performance of Work, and Related Misconduct (including sample letters) .....	110
	Supplement D. Absence from Work: Excessive Absenteeism and Misconduct Related to Absence (including sample letter) .....	127
	Supplement E. Countywide Rules .....	135

# I.

## Introduction

### A. The Vision

This manual must be placed in the larger context of the change in direction which the County is pursuing through the RESULTS Initiative. The RESULTS Initiative is Multnomah County's commitment to improve the quality of County services. RESULTS stands for "Reaching Excellent Service Using Leadership and Team Strategies." Our goal is excellence in customer service. Our strategies are new forms of leadership with emphasis on teamwork and continuous quality improvement.

The intent of the Initiative is to assist managers and employees to provide quality services and efficient use of tax dollars through valuing innovation, improving responsiveness, and practicing continuous quality improvement. To achieve our goals, we must orient ourselves to be customer-focused and to emphasize timely, accountable, and measurable performance.

RESULTS is a labor/management partnership that acknowledges the value of all employees and is designed to tap into their wisdom. It is linked to our County's goal of utilizing skills of a diverse workforce and implementation of a budgeting process that focuses on measurable outcomes. RESULTS provides the tools to connect measurable goals for the County's day-to-day work with the County's community-based vision and long-term benchmark goals. Unions support RESULTS as it gives employees a voice in their workplace, enhances their skills, and improves the image of all public sector employees.

### B. This Guide as a Tool to Help Achieve the Vision

#### 1. Dealing with Problem Employees

To achieve the vision of the RESULTS Initiative as stated above would appear to conflict with a focus on problem employees within the organization. Such a primary focus would indeed be a mistake, and you will find that this manual repeatedly underscores that substantially moving the productivity of the County can only come from "**shifting the whole performance curve**" and not in dealing with a few problem employees. As long as this cautionary note is sounded and understood, the effort to deal with employee problems can play an important supportive role. Three key reasons which require that such problems be effectively addressed are:

- **Public Perception.** The public support for government and government employees is undermined by the perception that public employees can engage in misconduct and poor performance with indifference. For

example, Measure 8, which was designed to reduce employee pensions, was to a significant degree a fruit of this perception.

- **Effect on Norms.** While bringing a poor performer up to a barely passible level may not in and of itself have a dramatic effect on the overall performance of an organization, failure to act on such matters undermines the norm of excellence. This can have important consequences.
- **Interference with Team Functioning.** Employees who engage in insubordinate and/or disruptive behavior substantially interfere with team functioning. In an organization in which this functioning is of increasing importance, such behavior cannot be tolerated.

## 2. Contract Administration and Grievance Handling

The RESULTS vision includes more cooperation between labor and management. The day-to-day duties of managers and supervisors related to contract administration and grievance handling may appear to be far removed from this broad vision, but they are not. Day-to-day activities form the true foundation of a cooperative relationship. This manual:

- Assists the supervisor and manager in a clear understanding of the contractual and legal framework in which union and management operate. This clear understanding is necessary to pursue County contractual interests without being adversarial.
- Provides a model in which cooperation is a key goal and offers concrete, principled steps to achieve this goal while pursuing the primary goal of public service.

## 3. Organization of the Guide and Resources to Help Use it Successfully

This Guide is designed to provide a basic outline of issues related to dealing with problem employees as well as contract administration and grievance handling. It is used primarily as a training manual and is meant to be supplemented by case studies and dialogue. Elements of the Guide are also utilized independently for coaching purposes, which may result in a purposeful repetition of certain points. A key feature of the Guide is the clear distinction drawn between the Guide's advisory and procedural elements:

- Procedural: Pages 56 to 71 are a copy of Executive Order 225. These procedures are necessary for a consistent administration of the disciplinary and grievance response processes, as well as the requirements of applicable labor agreements and federal and state laws. **Compliance with the Executive Order is required. Also required is the**

**standardized grievance response in Section XII.F. and the Administrative Procedure governing the Drug and Alcohol Policy in Section X.**

- Advisory. The remainder of this Manual contains advisory material based on the professional experience of the Labor Relations staff. Compliance with these materials is advised for successful execution of the relevant processes.

This Guide is part of a four-part program sponsored by the Labor Relations Section and the Employee Services Division to assist supervisors in dealing with employee problems. The other program elements are:

- Training. All new supervisors receive comprehensive training in:
  - Management of Employee Performance Problems from a Systems Perspective;
  - Labor Contract Administration and Grievance Handling; and
  - Drug and Alcohol Policy and Procedures.
- Professional Assistance. Part of the role of each Employee Services Analyst is to provide consulting assistance regarding employee problems. This consultation includes assistance with disciplinary actions up to and including the level of a letter of reprimand. Your Employee Services Analyst is also aware of the content of the applicable labor agreements and contractual matters which have already been clearly interpreted. **The phone number for Employee Services is 248-5015.** The receptionist will direct your call to the appropriate analyst.

For assistance with disciplinary issues involving exempt employees, contact the Employee Services Director.

For nonexempt disciplinary issues of a complex nature and/or which may involve legal issues or discipline at the level of suspension, reduction in pay, demotion, or discharge, contact the Labor Relations Section. For contractual matters involving a pending grievance or request for a contractual interpretation, also contact the Labor Relations Section. **The phone number for Labor Relations is 248-5135.**

- Employee Assistance Program and Drug and Alcohol Policy and Procedure. Many employee performance problems have their origin in personal problems or drug and alcohol abuse. **For information regarding the County's EAP Program or Drug and Alcohol Policy, call Employee Health Promotion at 248-5015.** Also, see Section X below.

## II.

# The Systems Approach to Managing Employee Performance Problems

### A. The Appropriate Discipline Model

The traditional model for dealing with employee problems focuses on ensuring that any employee who is found to have violated a rule will be subject to appropriate discipline. Such a system typically is based on complaints which are brought to the responsible manager. This model focuses on assuring that the complaint is fully addressed and that a thorough investigation ensures justice for the employee who has allegedly done wrong.

### B. The Systems Alternative

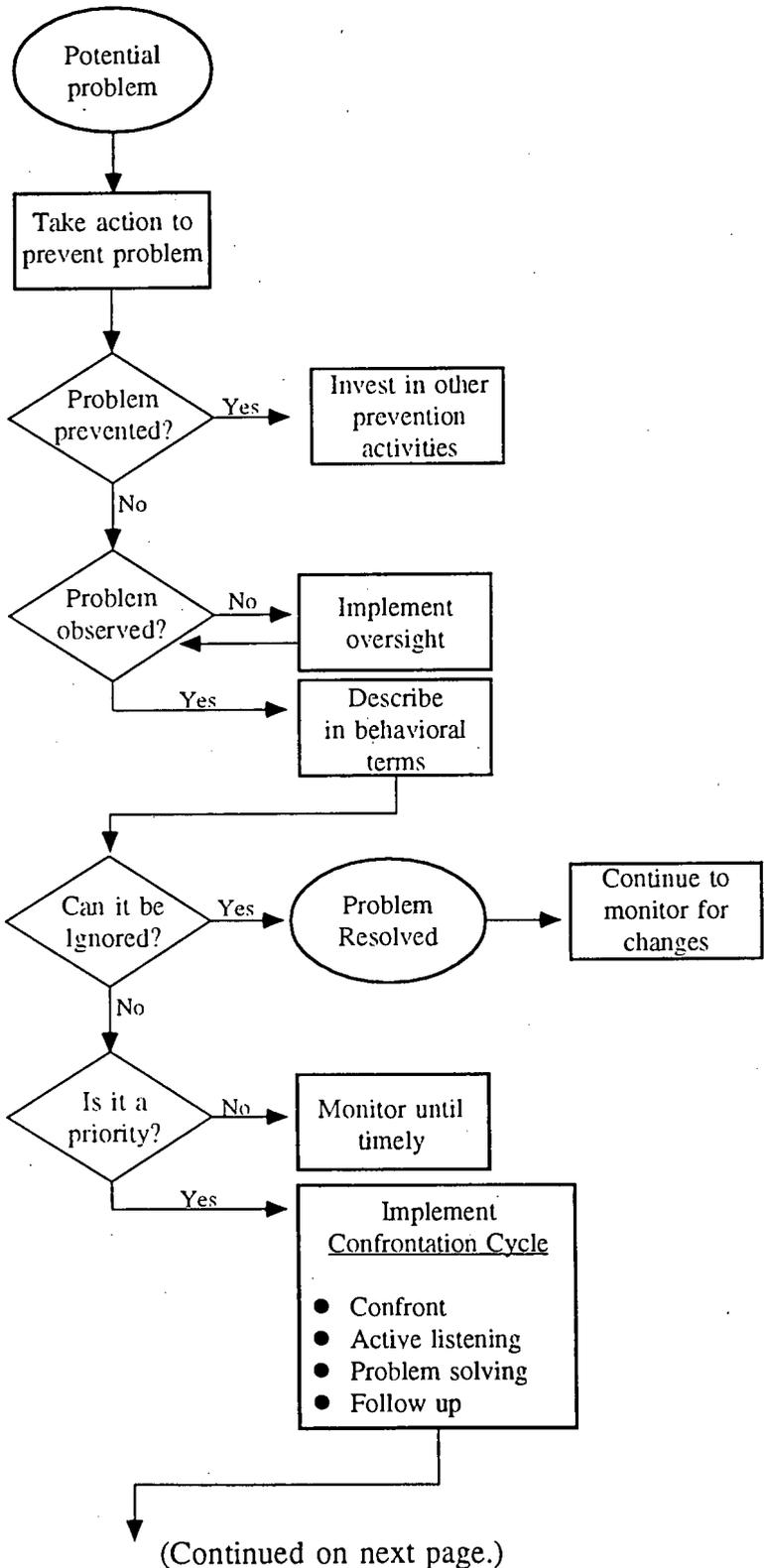
The systems alternative to the Appropriate Discipline Model begins with a broad question, "How can the Human Resource systems of the County be organized so as to optimize the contributions of all its employees?" Only when the importance of this broader question is fully absorbed can the narrower question addressed by this manual be addressed:

"How can we deal with employee performance problems in a way which supports the broader goal of optimizing organizational performance?"

A systems answer to this question does not look exclusively at the employee but at the broader question of the performance system of which the employee is a part. To use a mechanical analogy, if we have a car which won't start, we don't simply blame the starter motor, but view the failure of the car to start as stemming from several potential sources within the mechanical and electrical systems of the automobile. Similarly, the attached flowchart diagram follows the analytical process related to employee problems. Individual employee accountability is not rejected by the systems perspective, but rather placed in the context of a large system for which many persons in the system have accountability, most especially supervisors and managers. As the elements of this system become familiar to you through training and experience, you will:

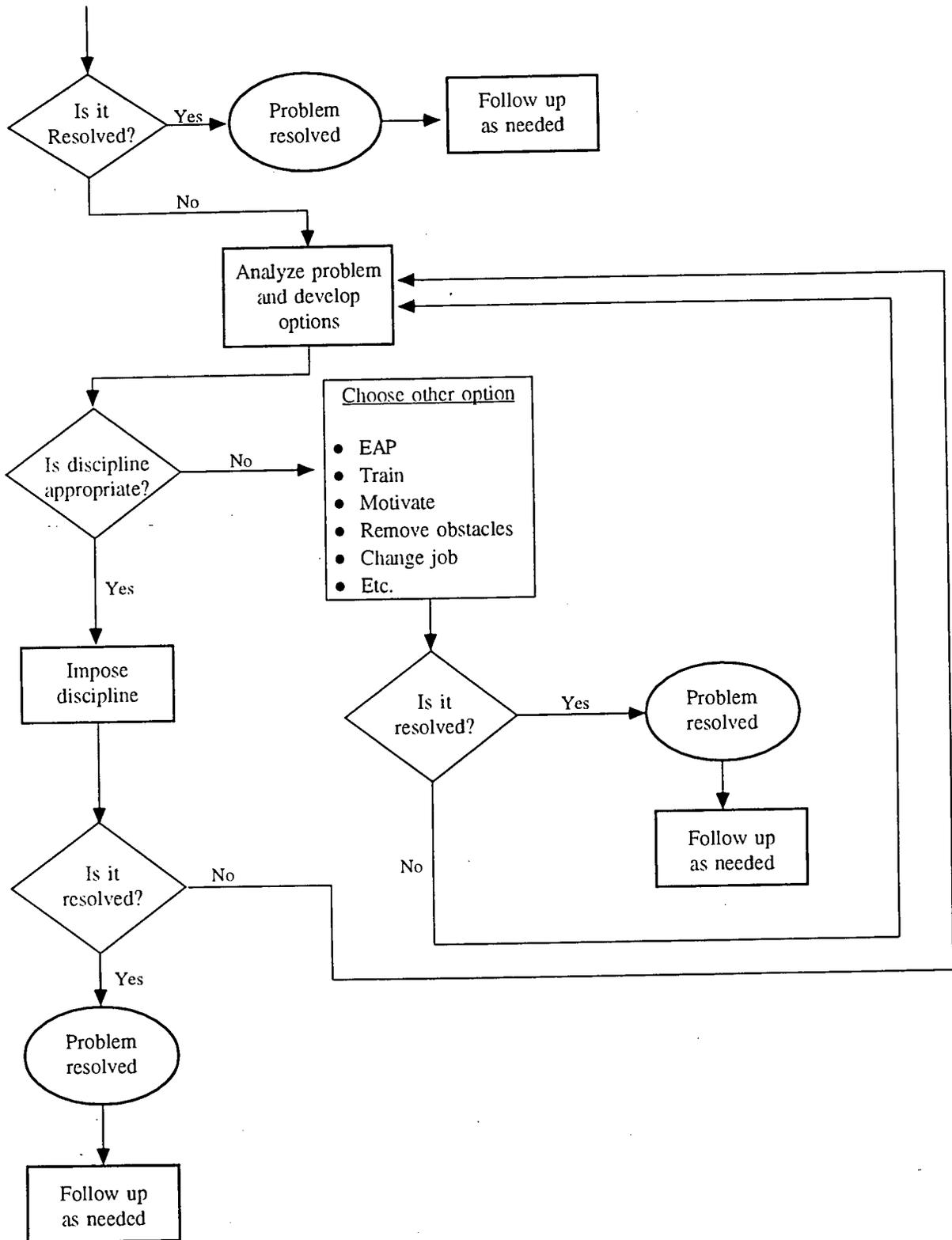
- Be able to optimally deal with performance issues; and
- Become part of a system learning and modification process.

# Employee Problem Systems Flowchart



2) CHART

(Continued from previous page.)



### III.

## Managing Ourselves in the System: The Personal Dimension of Managing Substandard Performance

The focus on systems understanding presented in the prior section is critical to transcending an overly narrow focus on individual employee fault finding. **Focusing on what is "out there" in the broader organization, however, does not preclude the personal accountability of the employee or deny the key role of supervisory behavior.** Experience has shown that substandard performance issues are frequently the most personally difficult which a supervisor may face. In addition to systems thinking, utilizing an "inside out" approach to some of these issues is critical and is a useful supplement to a focus on external systems thinking. A full exploration of such matters is complex<sup>1</sup>, but two key particulars need special focus:

#### 1. Dealing With Your Own Emotions.

The goal of conformance of employee behavior to requirements is often not reached. The healthy and mature reaction to such a problem situation is behavior which is characterized by variability in thought and action in reaching a goal. When an individual is unable to reach the goal and substitutes are not available, or when pressures for solving the problem are present and escape is blocked, failure may introduce tension and the person may become frustrated rather than employ problem-solving behavior. Some psychologists make a fundamental distinction between goal-oriented behavior (motivated) and behavior arising out of frustration. The major characteristics of frustrated behavior are aggression, regression, fixation, and resignation.<sup>2</sup>

#### A. Aggression.

Aggression in behavior represents some kind of attack. An example would be a supervisor who resentfully tolerates the marginal performance of an employee, then fires him/her responsive to a minor act of misconduct.

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<sup>1</sup> See one approach, Covey, Stephen R., The Seven Habits of Effective People, 1989.

<sup>2</sup> Maier, Norman, Psychology in Industrial Organizations, 1973, p 69.

B. Regression.

Regression is a breakdown of constructive behavior and a return to a childish action. An example would be a supervisor who pouts when an employee repeatedly won't respond to direction.

C. Fixation.

Fixation designates a compulsion to continue a kind of activity (to include mental imagery or ideation) when the activity has no adaptive value. A fixated action is repeated, despite the fact that the person knows it will accomplish nothing. An example would be obsessional thought and observation directed toward an employee who has not responded to direction, or continuous documentation of employee misconduct with no follow up.

D. Resignation.

Resignation is the ceasing of any effort toward the goal, i.e., "giving up." An example would be a supervisor whose efforts at improving employee performance have failed and who ceases trying. Typical verbal expressions of resignation are:

- "There's no use to try to do anything around here."
- "I've stood it this long and can wait until I retire."
- "It's always been this way, and it will always be this way."

A combination of emotions related to aggression and fixation are frequently associated with protracted, difficult cases of substandard performance. This powerful combination is sometimes referred to by Labor Relations personnel as "The Thing." At the precise time when the mythical "ideal supervisor" would be methodically solving the performance problem, many of us are so emotionally joined to the problem that we cannot rationally move forward. A few TIPS may be of assistance:

- Take a time out and problem solve. Taking a few days off frequently heals many wounds. This is particularly valuable when joined with a scheduled talk with a trusted supervisory friend to help explore obstacles and alternatives.
- Accept the risk: Act early. There is a prevailing belief that someone, somewhere has the answer to each problem of substandard performance. This is a myth. This manual represents a set of advisory remarks and procedural requirements aimed at minimizing risk, but risk remains. Most difficult problems of substandard performance are not only complex

but involve ambiguity, even when the complexity is fully comprehended.  
In the face of uncertainty there is a tendency to:

- Delay action; and/or
- Over document.

In such a case, the supervisor delays action, accumulating documentation along with frustration behavior. There then may be a precipitating event and an explosion of supervisory response. (See graph Figure III. 1.) This is jokingly referred to as the "I gotcha" or "exploding gunny sack" phenomenon. A discharge case sometimes thus results in which a case turns on major charges but very borderline and strained evidence. The potentially useful past documentation is worse than useless, since it documents lack of progressivity, as well as an absence of completed administrative acts. The documentation thus calls into question the credibility of the supervisor. The key TIP for avoiding this result involves choosing a progressive, low-risk form of intervention early on with the employee, specifically: confrontation, oral reprimand, and letter of reprimand. This is a low-risk strategy which avoids supervisory frustration, maximizes rational decision making, and optimizes the potential for prevailing in the event of a later contested serious disciplinary event.

- EAP Consultation. If you find yourself excessively emotionally engaged in a situation, consultation with the EAP may assist. (See Section X.D.)

## 2. Dealing With Values and Moral Issues.

The exercise of discipline is deeply related to decisions related to choice of styles of leadership. Such choices frequently involve deeper questions around matters of value, or as Dr. Thomas Gordon has offered, are answers to key questions:

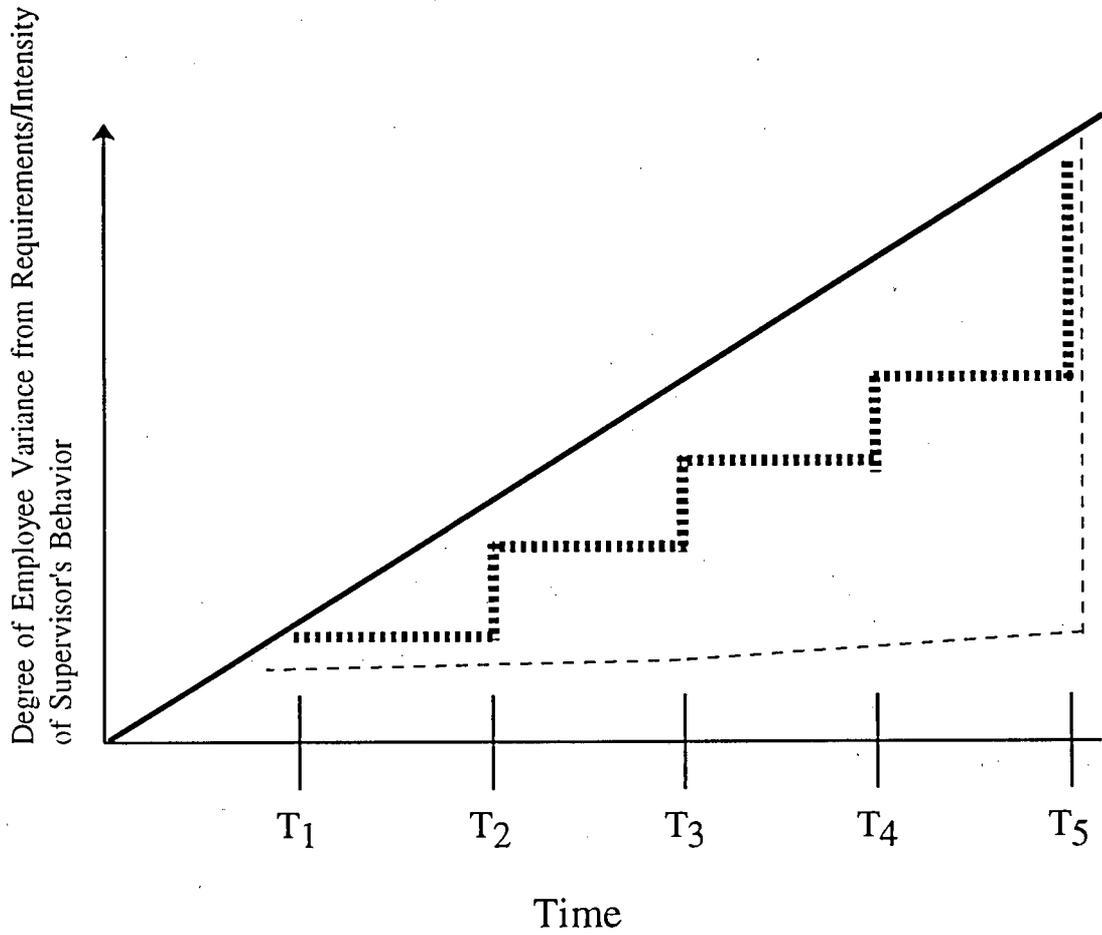
- " • What kind of person do you want to be?
- What kind of relationships do you want?
- What kind of organization do you want?
- What kind of society do you want?"<sup>3</sup>

Our actions in organizations constitute much of each of our waking lives and are behavioral answers to Dr. Gordon's questions. In the end, we become the things we do. Three key value issues related to discipline are of special importance.

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<sup>3</sup> Gordon, Thomas, Leadership Effectiveness Training, 1978, page 256.

Figure III. 1.



- Employee's behavior
- Path of risk avoidance on part of supervisor
- ..... Path of moderate risk on the part of the supervisor

A. The Infliction of Unnecessary Harm.

The integrity involved in timely imposition of discipline has a moral dimension. Taking action early takes courage and integrity. It also involves avoiding the angry infliction of harm which is associated with the earlier discussed "exploding gunny sack" of frustrated reaction to employee conduct. Few supervisors would affirm as ideal the actions which flow from such incidents. By an early intervention, which clearly outlines expectations, the supervisor allows the employee to make the choice. In the best of all possible worlds we would hope for employee improvement. If such corrective efforts fail, we could affirm with regret, "I did not fire the employee; he or she fired himself."

B. Honesty.

The honesty necessary to the development of trust with a troubled employee does not thrive in a highly emotional environment. Memories are distorted and acts are exaggerated. Only in the an orderly, thoughtful process can the truth be fully told and heard.

C. Truth Seeking.

The admonition to take care in our labeling of others as detailed in Section VII, below, is not simply a technique for successful interpersonal interaction, but has a deeper moral dimension. As one student of organizational behavior has stated, "The labels people use to describe others tell us more about the person who is speaking than about the person being described."<sup>4</sup> Expressive honesty, frankness, is indeed a virtue, but not an isolated one. If not associated with responsibility, it can become irresponsibly harmful, even cruel. Just as importantly, if frankness is not combined with reflection on our own assumptions, labels, and filters, we avoid our moral responsibility to seek truth, even uncomfortable truth, when the welfare of others is at stake.

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<sup>4</sup> Crosby, Robert P., Walking the Empowerment Tightrope, 1992, page 79.

3) PREVENT

## IV.

# Prevention of Problems

The prevention of performance problems requires an investment of time and self-discipline on the part of the supervisor. However, such efforts are rewarded in the long run. The simplest tools for preventing performance problems are:

A. Select Quality.

The legalities and policy guidelines associated with background checks, criminal background checks, and psychological testing are complex and are not the focus of this manual. Suffice it to say that many of the most extreme cases of substandard performance, particularly conduct cases, brought their problems with them to County employment. These problems were theoretically ascertainable at the time of hire, although there are frequently legal and practical difficulties associated with such an identification. Managers and supervisors should work carefully with the Employee Services Division to ensure that, to the fullest extent allowable by law, such screening and background checks are implemented. Such care should also be extended to temporary hires, since problems drift into the permanent system based on the false view that "we already know" the employee. Special care should also be taken not to rehire problem employees terminated elsewhere in the County.

B. Probationary Review.

Even the best selection process is a relatively poor predictor of performance. The best predictor of future performance is past performance. Most of the County's labor contracts provide for a full six-month probationary period. During this period an employee is subject to termination without recourse to the grievance procedure. **One should be aware, however, that probationary employees, as well as temporary and on-call employees, have the same legal rights as other citizens except for the grievance process.** This should not discourage you from a vigorous use of the probationary period, but should be a forewarning of the need for systematic care in the treatment of these employees. To assist you, each County organization should have a probationary review process in place which will assist in a systematic and fair review of each employee. Call your Employee Services Analyst if you have any questions regarding the procedure in effect in your Department. The probationary period should be a positive experience in which the expectation of success is conveyed to the employee and every assistance is offered. However, if the employee does not meet reasonable requirements, he or she should not be allowed to pass the probationary period. **Many, if not most, performance problems among regular employees were identifiable during the probationary period.** A supervisor's failure to act during the probationary period can have repercussions for years to come. See the sample probationary employee termination memorandum on page 15. You will note that this

letter includes nothing regarding the reason for termination. This is a purposeful effort to avoid issues of defamation. This is not to say that the reasons for termination should not be discussed with the employee, documented in the supervisor's log, and, if appropriate, become part of the probationary review evaluation form. No positive purpose is seen, however, in reciting reasons for termination in the letter terminating a probationary employee.

On occasion you may feel that you have had insufficient time to evaluate an employee. You should approach consideration of extension of the probationary period with great caution. Experience has generally taught that the six-month period is adequate, and that if substantial doubts exist based on the employee's performance, termination is warranted. **If you wish to consider an extension, then contact Labor Relations. A formal Memorandum of Exception to the appropriate labor contract is necessary. This must be executed in writing by the affected employee, the Union/Association, and Labor Relations. Any other "extension" is not legally binding.**

C. Clear Expectations of Performance and Conduct.

Clear expectations are critical to the success of the organization. Three important principles in communicating expectations are:

- Behavioral specificity. Expectations should be as behaviorally specific as possible and avoid or clarify vague terms ("punctual," "polite," etc.). This is of particular importance regarding expectations which have been matters of contention or are critical to the functioning of the organization.
- Two-way communication. Employees must understand not only the meaning of expectations but the purpose of such expectations. Mechanisms for achieving this goal are various and have positive implications far beyond the scope of performance problems. Key tools are:
  - Group discussion of general rules and organizational goals; and
  - Frequent coaching sessions with employees.
- Review. It is important to review the expectations, including rules, which have been communicated to employees. Expectations should be a living part of the organization's life. Revisiting these expectations not only reaffirms the importance of the standards set but reminds employees of the standards. Additionally, the resulting dialogue not only assures understanding, but should give rise to modifications of expectations as employees and the organization learn from experience. (See also Supplements B and C below.)

D. Identification and Monitoring of Problems.

If priority employee problems are identified and monitored by the organization, there is not a time lag for action. Since "problems tend to be caused by problems," the roller coaster ride of intense involvement and neglect is avoided. Additionally, the organizational monitoring and support needed to take on the hard, complex cases is absolutely critical. The supervisor should not feel alone, but as part of a team working on such a problem.

E. Building on Strength.

This guide emphasizes the need for thoughtful action in dealing promptly with performance problems. Such activities in isolation, however, may be worse than useless. Rewarding and celebrating the positive contributions of all your work force, as well as the contributions of the "problem" employee, is perhaps the most successful strategy for extinguishing negative behavior. The common sense strategy is to let the good drive out the bad. One should also keep in mind that even if all employees met minimum standards that this would not have a transformative effect on the performance of the organization. It is moving the average upward which has the most dramatic effect on the overall productivity of the organization. (See also Supplement C.)

F. Focus on Team Building.

A specific and important extension of the general principle of building on strength is a focus on the team. Not only does the team focus remove the need for over-reliance on formal authority in employee direction, but a major advantage of a well functioning team is peer enforcement of group norms. This can't help but reduce the "unseen" substandard performance discussed elsewhere in this manual, which is the most important component of the total "Problem Pyramid." (See Section V, below).

G. System Debriefing of Problem.

If seriously debriefed, employee problems can be a deep learning experience for an organization. Flaws in our system which deserve attention and action are frequently revealed by such problems. There is a tendency, however, to treat these matters as unfortunate, "one of a kind" incidents to be put quickly behind us. It is hardly a surprise that over time the same problems arise again and again.

## Sample Memo: Termination of Probationary Employee

### MEMORANDUM

---

TO: Joe Doe, \_\_\_\_\_ (Title) \_\_\_\_\_  
FROM: George Smith, \_\_\_\_\_ (Title) \_\_\_\_\_  
DATE: Current Date  
SUBJECT: Probationary Termination

---

As I stated in our conversation earlier today, my judgment is that your continued employment would not be in the best interest of Multnomah County. You are therefore terminated from employment with Multnomah County effective \_\_\_\_\_.  
(DATE)

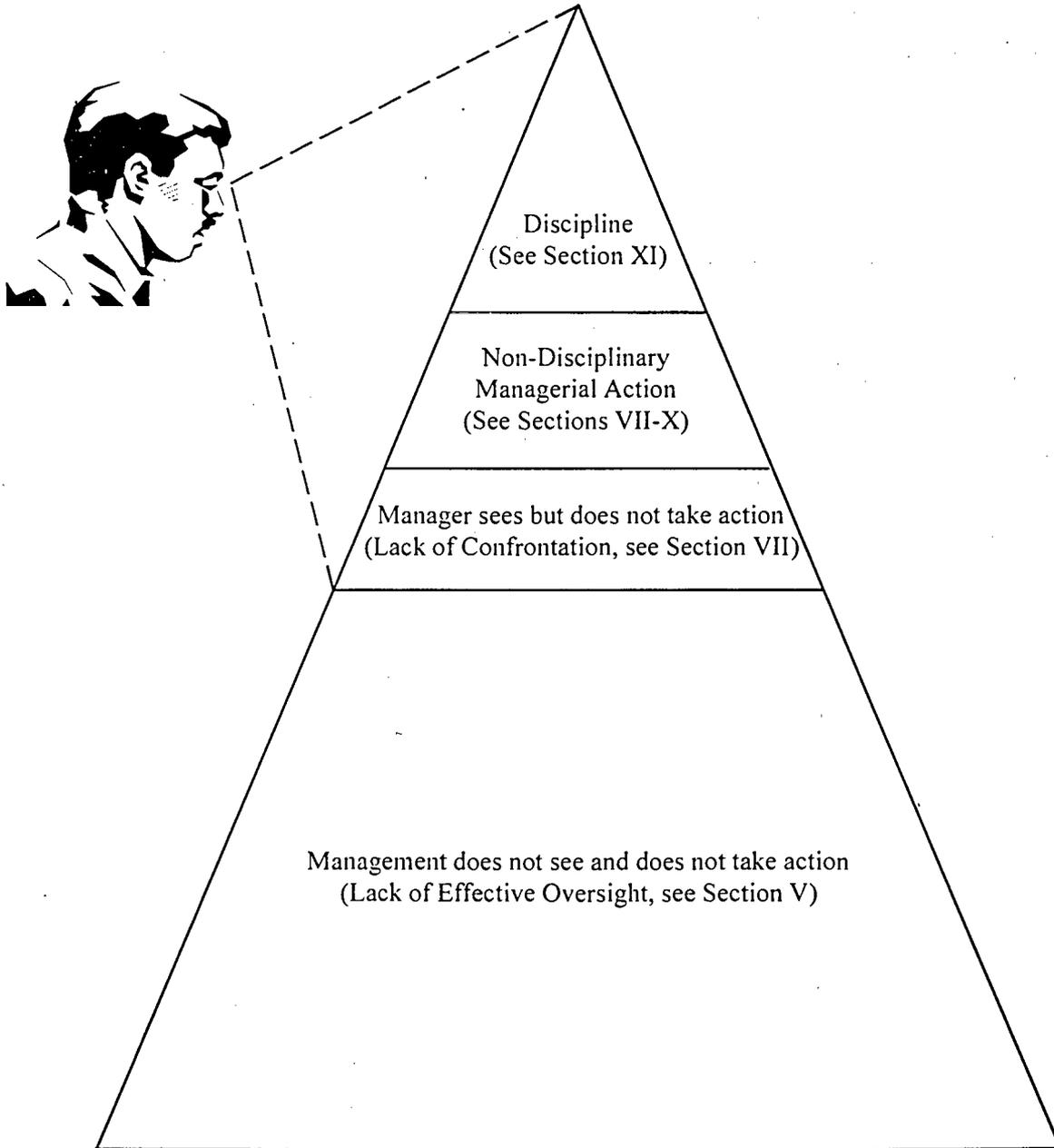
c: Personnel File

NOTE: In no event should the effective date be later than the last date of probation. Generally, notice of fourteen (14) days or more is given to ease employee transition. The effect of notice of termination on the work group is a supervisory judgment, however, and determining the length of such notice is left to the Department.

NOTE: This form letter does not contain reasons for termination. See Section IV.B. for explanation.



# Employee Problem Pyramid (Figure V.2.)



Given the above difficulties with even simple outcome sampling techniques, what is a supervisor to do? One student of organizational development has in fact stated that "only when the system is healthy can one begin to identify individuals who are not functioning well because of individual traits rather than faulty organizational systems."<sup>5</sup> Lest we give license to a variation of an old refrain, "The system made me do it," however, we need to be very cautious at this point. The full scope of a system improvement process, to include measurement techniques, is beyond the scope of this manual. The practical key is for the supervisor to be viewed as having responsibility for overseeing the system within the context of team functioning. Since development and implementation of a fully functioning team system is a long-term project, a few TIPS for supervisors in exercising oversight in the short to medium run are:

1. Be aware of the sampling issues in a complex system. This is not a council of despair but only a caution as to how complex outcome measuring and cause determination can be. Cast a critical eye on each stage of your process.
2. Become involved in the system. The process of deep involvement in the system brings the manager or supervisor to the work site in an involved role which expresses the value of system outcomes. Much richer information flows out of interaction with employees around systems in which both outcomes and causal mechanisms are examined.
3. Do "Walk Around" but Avoid the Perception of "The Secret Journal Supervisor"

Full involvement in systems and systems improvement as stated above will naturally involve avoiding the least effective form of involvement in process, "seeing if anyone is doing something wrong." Negative "secret journal" supervision is the source of endless employee fears and tales. This is not an admonition, however, to avoid a richer "walking around." Most successful corporations are filled with tales of the boss who cared so much about the product and employees that he or she got out in the field to see what was up. This natural, helpful encouragement and offering of help is generally warmly received. The "secret journal" is dreaded.

4. Don't Meddle with Delegations.

When a responsibility area has been delegated, subject to specific reporting specifications, special care should be taken to avoid the interfering "hovering" behavior that implies lack of trust. Let it go until the agreed upon reporting process.

If the oversight function has been performed with care, the process of behavioral description and confrontation dealt with in Sections VI and VII will be measurably assisted for several good reasons:

- a. The identified behavior will be placed in a larger context of causes and effects;

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<sup>5</sup> Crosby, Robert P., Walking the Empowerment Tightrope, p. 78.

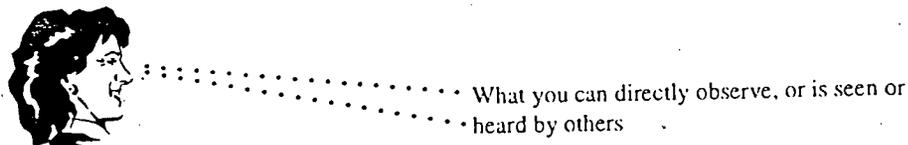
- b. The issue of discrimination is lessened, since the supervisor has seen the full spectrum of the behavior of many employees; and
- c. The credibility and authority of the supervisor is enhanced by the perception that he or she truly cares about employees and system performance.

# VI.

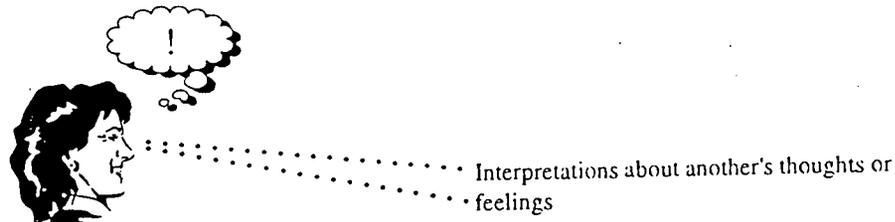
## Behavioral Description of Performance Problems

The cornerstone of a program for managing substandard performance is a behavioral description of the problem. This forms the foundation for problem analysis as well as the basis for non-blameful confrontation. In the event these informal techniques are unsuccessful, precise behavioral descriptions enable formal discipline to be applied successfully.

The distinction between behavior and label may be widely understood, but a review reveals certain difficulties:



What you can directly observe, or is seen or heard by others



Interpretations about another's thoughts or feelings

The distinction is frequently clear:

---

- She spoke very loudly to her boss. (Behavior)

versus

She was disrespectful to her boss. (Label)

---

- He has a bad attitude towards work. (Label)

versus

He sits and stares at the window approximately 10 - 15% of the day. (Behavior)

---

In other instances, the interpretation is indirect and the statement thus has the form of a behavioral description, but not necessarily the complete substance:

---

- She was never at work on time.

versus

She was ten minutes late to work four times this week.

---

- He turned in five plates with clear evidence of poor draftsmanship in three months.

versus

He turned in five plates in three months with multiple visible erasures.

---

- He utilized passive resistive mechanisms for avoiding compliance with policy.

versus

- He didn't disobey my order to clean his desk every week; now he takes four hours each Friday to accomplish the task.
- 

Labels are not simply a common, natural mode of expression. They have a powerful effect on interaction, affecting all parties. For example:

#### The Employee

Labels arouse emotions, such as resentment, which interfere with problem solving.

#### The Supervisor

The label may lead the supervisor to disregard relevant information. Items which contradict the label are simply filtered out. Expectations may thus be self-fulfilling, the so called "Pygmalion Effect."

#### Others

Labels transfer both through informal channels and formal personnel records. The label then becomes a "reputation" which interferes with both current performance and the possibility for future change.

In sum, any strategy for managing substandard performance which begins with a label will probably fail. Frequently the labeling process itself will worsen rather than improve the problem behavior.

## VII. Confrontation

Confrontation is the process of bringing substandard performance to the attention of an employee and developing a work plan to change that behavior. Confrontation is a difficult and sometimes emotional process. For this reason, it is frequently avoided. As earlier discussed, when performance problems are not confronted, frustrations accumulate. The result may be an unplanned, explosive confrontation. Such delayed confrontations are a major cause of premature and indefensible suspensions and discharges.

Developing the full range of skills involved in confrontation is a complex process and is a key element of supervisory training. It is just as important, however, to have a timely confrontation as a perfect one, so the following "TIPS" are offered to supervisors as a summary of the training content. These techniques have been "field tested" by hundreds of line supervisors during recent years with considerable success.

- A. **To be effective, a confrontation must take place at the proper time and in an appropriate setting.**

### TIPS

- Confront problems immediately, before they escalate to a level requiring disciplinary action.
- Delay confrontations, however, when you are upset.
- Avoid storing up a collection of stale and unrelated problems concerning an employee's behavior.
- Confront employees in private, with sufficient time and freedom from interruption to ensure a thoughtful discussion of the problem.

- B. **Use the confrontation steps developed in supervisory training.**

1. Describe the problem. (See Section VI of this guide.)

### TIPS

- Describe only employee behaviors and avoid judgments about the employee's personality. (For example, avoid: "I'm worried about your bad attitude.")
- Illustrate your statements with recent, specific examples.

- Eliminate terms which blame or evaluate the behavior. (For example: "You have been making numerous, vicious, backbiting remarks.")

2. Describe how the behavior makes you feel as a supervisor.

TIPS

- Identify your initial, or "primary," feeling as precisely as possible, the feeling which underlies the secondary feeling, which is usually anger. (For example: "foolish," "threatened," or "overwhelmed.")
- Avoid using judgmental language when you describe your feelings. (For example: "I feel justifiably irritated.")

3. Describe how the behavior affects the organization.

TIPS

- If possible, specify effects on the final product or output of the section.
- Also detail effects on the performance or feelings of coworkers or the team as a whole.

4. Solve the problem.

TIPS

- Attempt to elicit a solution from the employee to which he/she can give a personal commitment.
- Schedule in writing several follow-up sessions to ensure continuing commitment to the problem solution.

**Since perfect confrontations are seldom possible, follow-up is perhaps the key step cited above. Scheduled follow-up forces review and resolution of the problem. In the process, your confrontation skills will be tested and refined.**

Having reviewed the above steps, those who desire assistance with a particular confrontation may receive assistance from the Employee Assistance Program (See Section X), Employee Services, or Labor Relations depending on the nature and severity of the problem. In difficult cases, walking through a confrontation in advance with a coach can be very helpful.

## VIII.

# Analysis of Performance Problems

That the section of this guide regarding problem analysis should follow rather than precede the section on confrontation is perhaps a surprise. Understanding the problem would appear to be a useful preliminary to the confrontation process. A key difficulty with pre-confrontation analysis is that it may presuppose that the supervisor has all the facts and understands the problem before talking to the employee. Unfortunately, these pre-confrontation "understandings" can be just as disruptive to problem solving as labels, and in fact frequently result in labels as the conclusion of the "analysis." A process which should involve sharing of facts can easily disintegrate into a debate regarding interpretations. It may be the case that we all bring theories about others to our interactions, but in the confrontation process, it is critical that these be "bracketed" or set aside in a disciplined way. Analysis will have its key place soon enough in the problem solving stage of the confrontation process and in follow up following an initial confrontation.

Problem analysis can be quite complex, but a simple model can address many issues. This particular version is a modified form of the analysis suggested by Robert Mager in his classic text, Analyzing Performance Problems, 1971.

### A. Skill Problems.

Many employees don't do what is required because they don't know how. Sometimes these skill problems will become obvious as you discuss the problem with the employee. Just as frequently, however, the skill deficiency is so much a "part" of the employee that he/she may not realize that a skill is involved; for example:

- Time management skills.
- Organization skills.
- Interpersonal skills.

### B. Motivational Problems.

A frequent lament of public sector supervisors is that they do not have the money to motivate employees. The good news is that research indicates monetary rewards are usually ineffective motivators. Focusing on rewards in the interpersonal environment and/or the structure of the job itself is possible in the public sector and is generally the most cost effective strategy. Of course, in restructuring assignments, care must be given to restrictions which apply to assignments out of class, which may create an unfair promotion to a higher classification. (See Personnel Rule 16 governing reclassification.)

C. Obstacle Dimension.

Many employees want both to contribute and have the skills to contribute, but face obstacles. The source of the obstacle frequently becomes clear with discussion. For example, an employee may not have the tools necessary for the job. An important source of obstacles, however, is sometimes avoided, the supervisor's or manager's own behavior. One reason for avoidance is that the supervisor's or manager's behavior may be so institutionalized as to have become part of the organizational "wallpaper." Just as frequently, the problem is avoided because the employee is afraid to "attack" the boss, because of a fear of retaliation. Questions which may solicit more frankness are:

- "What can I do to help?"; or
- "Have I given you sufficient tools to do the job?"

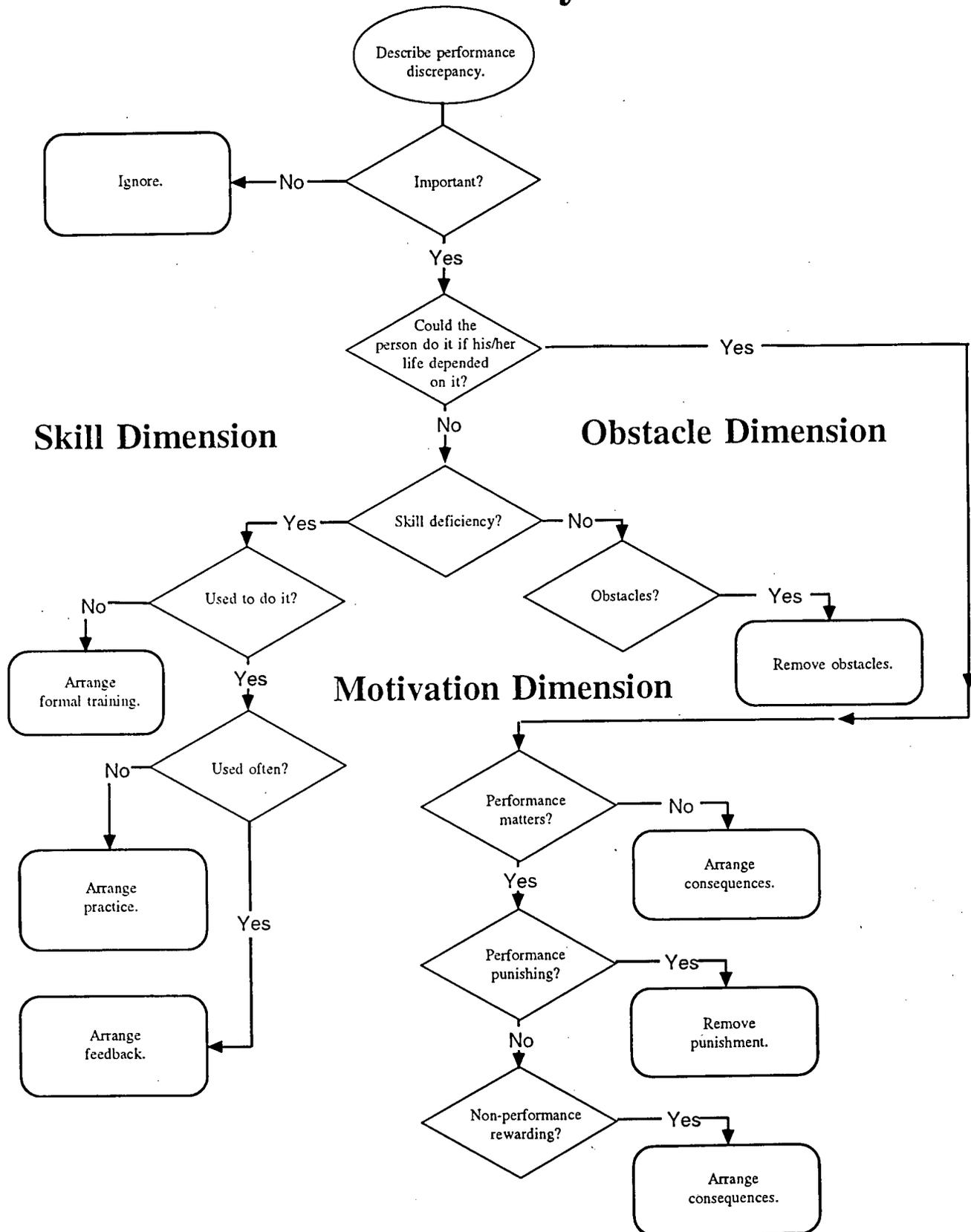
Other obstacles which originate with the supervisor are:

- Lack of a clear behavioral description of expectations;
- Lack of a clearly stated delegation of authority;
- Interference in delegated processes;
- Lack of support resources, such as tools, money, or clerical assistance.

A flow chart which is frequently helpful in targeting the source of behavior problems appears on the following page. After using the flow chart, the supervisor should ask certain questions before implementing a solution:

1. Is there a simpler way? For example: Could the employee change jobs?
2. Does the employee have potential? For example: Arranging formal training for the fifth time might not be as sensible as a transfer.
3. Can it be ignored? For example: An "important" problem may have such an expensive solution that doing nothing may be the best approach.

# Problem Analysis



4) TEAMS

## IX.

# An Important Aside: Team Dysfunction

It is a commonplace of family therapy that focusing on the dysfunction of an individual family member may neglect the proper level of analysis and therapy, namely the family system. As the County organization moves toward increasing use of teams, the level of problem analysis may increasingly be that of the dysfunctional team system, rather than the individual employee. At one level most of us are aware of common critiques of team utilization and functioning:

- Inappropriate use of teams. Teams are sometimes used when simple delegation would be more effective and/or are used to escape individual responsibility.
- Group think. Groups sometimes act dumber and/or more malevolently than the individual members would act alone.

While it is always important to keep such common problems under consideration, students of team functioning have identified a variety of functional dimensions which provide a broader, more detailed level of analysis:

1. Inappropriate leadership.
2. Unqualified membership.
3. Insufficient group commitment.
4. Unconstructive climate.
5. Low achievement orientation.
6. Undeveloped corporate role.
7. Ineffective work methods.
8. Inadequate team organization.
9. Soft critiquing.
10. Stunted individual development.
11. Lack of creative capacity.
12. Negative intergroup relations.

A full questionnaire and analysis packet is available upon request for the purpose of team analysis. The material is derived from Improving Work Groups by Dave Francis and Dan Young, 1979. (Call Labor Relations for the materials.)

After using the above questionnaire, or other means of self-analysis, some supervisors may wish to utilize an outside resource. A number of vendors have been screened and identified by the Employee Services Division to provide training and facilitation in a variety of topics related to the RESULTS Initiative. These include a number of individuals providing team-related services. Call the Training Section of the Employee Services Division for access to file materials by topic regarding each trainer/facilitator. It is advised that you read the article, "How to Choose a Consultant," by Theodore B. Kinni available from Employee Services, before proceeding through the selection process.

Supervisors who find the process of self-analysis of team process and selection of consultant alien and threatening may find another approach more appropriate. The Health Promotion Specialist is available as a resource. If you think you have a team issue, call Wendy. She will arrange a phone consultation with the appropriate person at our EAP program. The EAP may be as appropriate:

- Offer phone consultation;
- Arrange for individuals to come to the EAP; or
- Come to the work site to do individual or group work.

The number of hours available for such functions under the EAP contract are strictly allocated by the Health Promotion Specialist. After these hours are exhausted, additional hours are available on a fee basis from the EAP or, in the alternative, the supervisor may feel confident enough about the assessment to use the resources discussed in the prior paragraph.

## X.

# Employee Assistance Program and Drug and Alcohol Policy

Many employee problems do not have their origin in the workplace, and their solution is beyond the expertise of the supervisor. Professional assistance is needed. The mechanism for encouraging the use of such professional assistance is Multnomah County's Employee Assistance Program (EAP). The program currently offers up to ten free counseling sessions per fiscal year for a wide range of problems ranging from alcohol and drug abuse to family-related issues. On page 32 is a pamphlet regarding our current program as provided by Providence Employee Assistance. The role of the supervisor in the success of this program is critical. Supervisors should be aware that the County's EAP program has already served a substantial portion of the work force. The program is not focused on rare behavior but is directed at dealing with problems such as divorce, loss of a loved one, career setbacks, and financial crises that most of us face during the course of our lives. Important elements of the program are:

### A. General Information

Each supervisor should ensure that EAP bulletin announcements are prominently posted, that literature is distributed to all employees, and that the program is periodically mentioned to all employees during staff meetings. EAP staff can come to staff meetings to briefly describe services provided. Call Health Promotion to request a presentation and/or for EAP outreach materials (brochures, posters).

### B. Targeted Referrals

Any time a supervisor becomes aware of an employee's personal problem, even though it may not yet have interfered with work, he or she may remind the employee in private that EAP resources are available. For example:

"John, I've noted that you haven't seemed as cheerful the last six months as you were earlier. I'm not a professional, but I know your father's death was a great blow to you. Our EAP program may be an option to work this through. Here's their leaflet."

### C. Referral in Lieu of Discipline

If an employee is behaving in a manner which would otherwise result in discipline, you may wish to refer him/her to the Employee Assistance Program in lieu of discipline. Because of the delicate nature and complexity of each case, you should consult with the Labor Relations Section in advance for assistance in drafting a letter detailing this option. (Alcohol and drug abuse issues are dealt with separately in Section E below.)

D. Unlimited Phone Consultation for Supervisors

The Providence professional counseling staff are available to consult with you via phone on a variety of worksite issues and problems, including: ways of managing a problem employee; ideas for team building; preparing for a potentially difficult performance review or coaching session; dealing with grief at the death of a work team member; and managing workplace changes, to name only a few. To use this service, simply call Providence EAP at 249-3561 or (800) 255-5255 and identify yourself as a Multnomah County manager or supervisor who would like to speak to a counselor about a worksite issue.

E. Drug and Alcohol Policy

The elements of the County's Drug and Alcohol Policy, as well as the nature of Drug and Alcohol problem identification and treatment, are the subject of a full day's mandatory training for supervisors and a mandatory two-hour training for employees. Key elements which should be kept in mind are:

1. We hold our employees responsible for adherence to written rules regarding alcohol and drugs. specifically:

In addition to existing work rules, while on duty or operating a County vehicle an employee shall:

- a. Not possess, consume, manufacture, distribute, cause to be brought, dispense, or sell alcohol or drugs, including alcohol containers and drug paraphernalia, in or to the work place except when lawfully required as part of the job. An exception will be sealed alcohol containers for gift purposes.
- b. Not report for duty while under the influence of alcohol or drugs.
- c. Not absent him/herself from duty or be unfit to fully perform duties for reasons attributable to, or produced by, use of alcohol or prohibited drugs except as provided in the section "Use of Leave" for assessment and/or rehabilitation purposes.
- d. Not interfere with the administration of this Drug Policy. Examples include, but are not limited to, the following: tainting, tampering, or substitution of blood or urine samples; falsifying information regarding the use of prescribed medications or controlled substances; or failure to cooperate with any tests outlined in this policy to determine the presence of drugs or alcohol.

## **What is an Employee Assistance Program?**

An Employee Assistance Program (EAP) provides confidential counseling for employees and members of their families. EAPs help companies retain valued employees by offering help in solving problems that affect personal well-being, job performance and family life.

The EAP's professional staff can clarify problem areas, identify possible solutions and arrange referrals to community experts.

The Providence EAP gives employees a systematic way to find professional help for personal problems. The employer pays for the EAP as a resource for managers and employees.

## **Why provide an EAP?**

Business—any business—is about people. Employees are individuals with increasingly complex lives. When personal problems affect personal and family lives, those problems can make work more difficult too.

At one time or another, everybody has problems, but most of us can resolve or control our problems if we identify and address them at an early stage.

## **How do you use the EAP?**

- On your own initiative. You call because you want to talk to someone.
- At the urging of a family member, friend or co-worker.
- At the suggestion of your supervisor, who may be concerned about problems that affect your work. A referral to the EAP gives you an opportunity to resolve a personal problem that affects your work life.

## **How does it work?**

An employee or family member seeking help calls the EAP at (503) 215-3561 or (800) 255-5255 to arrange for a meeting.

The employee or family member and an EAP counselor meet to talk about the problem and develop a plan of action.

Meetings with the counselor will often lead to resolving the problem. Or the counselor may refer the employee to qualified community resources for support or specialized help.

When referrals are necessary, the counselor considers the employee's insurance coverage, work schedule, convenience and personal preference.

The EAP counselor follows up on referrals and counseling to keep track of progress on solving problems.

All discussions of personal problems are private and confidential.

Employees and immediate family members may use the EAP at no charge.

## **The Providence EAP**

In 1983, St. Vincent and Providence Hospitals in Portland, Oregon developed an EAP to support the well-being and productivity of their own employees. Since 1984, the Providence EAP has provided comprehensive EAP services to many organizations, large and small, public and private. Providence Business Health Services provides the EAP along with other health programs for businesses.

The Providence EAP staff includes professionals in psychology, social work, psychiatry and addictions treatment. The staff consults with an occupational medicine physician, a psychiatrist and other specialists as needed.

**EAP can help with:**

- Family concerns
- Career changes
- Life crises caused by death, divorce, and other major events
- Personal pressures
- Alcohol or drug concerns
- Relationship conflicts
- Financial and legal questions
- Child care and elder care

**© Providence Employee Assistance Program**

500 N.E. Multnomah St., Suite 450  
Portland, Oregon 97232  
Phone: (503) 215-3561  
Toll Free: (800) 255-5255  
Fax: (503) 215-4574

The Providence Health System is an equal opportunity organization in the provision of health care services and employment opportunities.

**Providence  
Employee  
Assistance  
Program**

*Questions  
and  
Answers*

(503) 215-3561  
(800) 255-5255



**Providence  
Health System**

# Employee Assistance Program Brochure

\* \* \*

- e. Notify his/her supervisor prior to beginning work or operating equipment or a vehicle of any prescription or nonprescription medications which may interfere with the safe and effective performance of duties or operation of County equipment or vehicles.
- f. Bring prescription drugs onto work premises in their original container with the name of the physician, patient and drug, and its dosage on it; or provide within twenty four (24) hours of request a current valid prescription in the employee's name for any drug or medication identified by the employee as the cause of his/her behavior.
- g. Disclose promptly (upon the next working day) and fully to his/her supervisor all drug or alcohol-related convictions, guilty pleas, or no contest pleas or diversions that:
  - a. are employment-related (i.e., conduct leading to conviction occurred while on-duty, on County property, or in a County vehicle); or
  - b. result in a loss or limitation of driving privileges and the employee's job is identified as requiring a valid license; or
  - c. adversely impact an employee's ability to perform his/her job.

The above rules are distributed and explained.

- 2. It is the job of the supervisor to enforce these rules.

In enforcement of these rules, employees are to be held fully accountable for their conduct. Use of alcohol or drugs, or alcohol or drug dependence will not mitigate the discipline imposed for misconduct or poor performance except as provided in a last chance agreement.

- 3. Employees whom the supervisor reasonably suspects are under the influence of alcohol or drugs are subject to testing.

The procedures governing this process are contained in Administrative Procedure EMP-9, the text of which begins on page 33.

- 4. The County wants employees with problems to seek treatment.

The County's training focuses on 1-3 above as the context for urging employees to seek help either from the EAP or a health care provider. Call the Health Promotion Specialist for assistance with regard to this spectrum of resources.

## MULTNOMAH COUNTY, OREGON ADMINISTRATIVE PROCEDURE

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SUBJECT: Drug and Alcohol Policy Implementation

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PURPOSE: To describe the procedures for implementing the drug and alcohol policies referenced below

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ORGANIZATION RESPONSIBLE: Employee Services Division

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DATE:

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ORGANIZATIONS AFFECTED: All Departments/Offices

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LEGAL CITATION/ REFERENCE: Drug Free Workplace Act of 1988, Executive Order No. 197, Executive Order No. 215, various collective bargaining agreements

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### TABLE OF CONTENTS

	Page
I. SCOPE .....	2
II. CONFIDENTIALITY .....	2
III. USE OF LEAVE .....	3
IV. NOTIFICATION BY EMPLOYEES OF MEDICATIONS .....	3
V. NOTIFICATION BY EMPLOYEES OF DRUG/ALCOHOL CONVICTIONS	4
VI. MANDATORY REFERRAL FOR DRUG OR ALCOHOL ASSESSMENT .	5
VII. DRUG/ALCOHOL TESTING OF EMPLOYEES .....	6
VIII. LAST CHANCE AGREEMENT .....	8
EXHIBIT A .....	10
EXHIBIT B .....	11
EXHIBIT C .....	12
EXHIBIT D .....	13
EXHIBIT E .....	14
EXHIBIT F .....	15

I. SCOPE

The following procedure applies to most employees, including exempt employees and employees covered by the following contracts: Local 88 General Employees unit, Juvenile Groupworkers, Electricians, Operating Engineers, Painters, and Deputy Sheriffs. For other employees, check the appropriate collective bargaining agreement or call Labor Relations before proceeding. Prosecuting Attorneys are covered under existing administrative procedures of the District Attorney's Office.

II. CONFIDENTIALITY

A. Confidential File Requirements: All drug/alcohol test reports and drug/alcohol dependency evaluations must be filed according to the following requirements:

1. In a medical record file separate from any personnel file.
2. The medical record file must be kept locked.
3. Medical records shall be made available only to supervisors with a job-related need to know, for the purpose for which the record was created.
4. Medical records shall not otherwise be released, except in the circumstances described in Section C below.

B. Location: Departments may establish their own medical files following the above requirements or transmit medical records in a sealed, confidential envelope to:

Medical Records File Clerk  
Employee Services Division  
106/1430.

C. Release of Information: All information from drug/alcohol tests and drug/alcohol dependency evaluations is confidential, and only those with a legitimate legal need to know may be informed of the results. Disclosure of confidential information will not occur unless written authorization is obtained from the employee, except for the following circumstances:

1. The information is compelled by law or by judicial or administrative process; or
2. The employee waives, by virtue of an overt action, his/her right to confidentiality, for example by placing the information at issue in a formal dispute between the County and the employee; or
3. The information is needed by medical personnel for the diagnosis or treatment of a patient who is physically unable to authorize disclosure.

III. USE OF LEAVE

Time used for purposes of assessment, evaluation, counseling, and treatment of drug and alcohol dependency may be charged against accrued and available sick and vacation leave in accordance with the same requirements which would apply to any other illness or injury. Granting of a leave of absence without pay for the above stated purposes shall be governed by the same rules as would apply to any other request for such leave.

IV. NOTIFICATION BY EMPLOYEES OF MEDICATIONS

- A. Notification Responsibilities: Prior to beginning work or operating County equipment or vehicle, an employee has the responsibility to fully and promptly notify his/her supervisor of the use of any prescription or nonprescription medications which may interfere with the safe and/or effective performance of duties or operation of equipment or vehicles.
- B. Notification Guidelines: The employee has no obligation to report the medical condition that requires the use of medication. This notification is not intended to apply to medications such as aspirin or birth control pills which, under normal use and circumstances, would not be expected to impair work performance.

As a general guideline, the notification requirement is based on either or both:

1. The possible effects of the medication; and/or
2. The nature of the job duties.

For example, an employee who uses equipment, machinery or vehicles on the job takes an antihistamine which has on the label "may cause drowsiness" should report this because of the potential safety hazard. Another employee taking the same medication, but who has a desk job, may not need to report the medication to the supervisor if the potential effect would not pose a safety hazard or a significant reduction in efficiency, given the person's job duties. . . . .

C. Notification Procedure:

1. The employee shall contact the supervisor, indicating that he/she believes notification is required according to the drug and alcohol policy which applies to that employee.
2. The supervisor shall immediately provide a copy of the "Drug and Alcohol Policy Notification Form" (see EXHIBIT B) to the employee.
3. The employee shall promptly complete the "Drug and Alcohol Policy Notification Form" and submit it to the supervisor.

4. The supervisor shall:
  - a. Determine whether the employee may be assigned to other duties which do not constitute a risk to the employee or others; or
  - b. If no safety hazard exists and the supervisor determines that the potential reduction in efficiency is acceptable, the employee may be assigned to his/her regular duties; or
  - c. Require that the employee return home until the risk no longer exists. Time not worked under this provision shall be charged according to the sick leave policies of the appropriate collective bargaining contract or Ordinance. If returning home requires the employee to operate a vehicle, the supervisor shall arrange for alternative transportation; or
  - d. If the supervisor cannot make a determination regarding the safety hazard, the supervisor shall request the employee to provide an authorization to release medical information (see EXHIBIT A for example) and not allow the employee to work until the medical provider releases the employee for work. Time not worked under this provision shall be charged according to the sick leave policies of the appropriate collective bargaining contract or Ordinance.
5. Completed "Drug and Alcohol Policy Notification Forms" indicating current prescription or nonprescription drug use are medical records and shall be maintained as indicated on the form according to the requirements in Section II.

V. NOTIFICATION BY EMPLOYEES OF DRUG/ALCOHOL CONVICTIONS

- A. Notification Responsibilities: An employee has the responsibility to fully and promptly notify his/her supervisor upon the next working day, of all drug or alcohol-related convictions, guilty pleas, or no contest pleas that:
  1. Are employment-related (i.e., conduct leading to conviction occurred while on duty, on County property, or in a County vehicle); or
  2. Result in a loss or limitation of driving privileges and the employee's job is identified by the supervisor as requiring a valid driver's license; or
  3. Adversely impact an employee's ability to perform his/her job (e.g. such as being sentenced to jail or being required to attend drug education classes during the regular work shift).

B. Notification Procedure:

1. The employee shall contact the supervisor, indicating that he/she believes notification is required according to the drug and alcohol policy which applies to that employee.
2. The supervisor shall immediately provide a copy of the "Drug and Alcohol Policy Notification Form" (see EXHIBIT C) to the employee.
3. The employee shall promptly complete the "Drug and Alcohol Policy Notification Form" and submit it to the supervisor.
4. The supervisor shall:
  - a. Ensure that the funding federal agency (if any) is notified within ten days of receipt of notice from the employee or independent notification of such information.
  - b. Within 30 days of receiving such notice or independent notification of such information, ensure that the appropriate disciplinary action is taken against the employee (see Executive Order No. 197 Policies and Procedures for Discipline and Dismissal and disciplinary section of drug and alcohol policy which covers the employee) or require the employee to be assessed by a dependency specialist (See Section VI of this Procedure, Mandatory Referral for Drug or Alcohol Assessment).
5. Completed "Drug and Alcohol Policy Notification Forms" indicating a conviction, guilty plea, or no contest plea, shall be maintained as indicated on the form, as part of the employee's personnel file.

## VI. MANDATORY REFERRAL FOR DRUG OR ALCOHOL ASSESSMENT

- A. Circumstances When Allowed: Mandatory referral for drug or alcohol assessment may be utilized but is limited to the following circumstances:
  1. The employee acknowledges having a drug/alcohol problem when being confronted on a job performance issue; or
  2. The employee has been found to be under the influence of drugs or alcohol by the testing procedures and a diagnosis is required; or
  3. The mandatory referral is in conjunction with and in conformity with the requirements of the disciplinary section of the applicable drug and alcohol policy.

4. The supervisor receives notice of drug or alcohol-related conviction, guilty plea, or no contest plea.

B. Referral Procedure: The supervisor shall:

1. Contact a Personnel Analyst or Benefits Specialist in the Employee Services Division for a list of approved dependency specialists, and make an appointment for the employee to be assessed by one of the specialists on the list. Each Department shall be responsible for paying the charges for drug and alcohol assessments for employees within that Department.
2. Inform the employee of the appointment in writing.
3. Obtain a signed authorization (see EXHIBIT A for example or use form provided by dependency specialist) for release of medical information from the employee so that the results of the assessment may be received by the supervisor. Failure of the employee to sign this waiver shall result in disciplinary action.
4. Receive the results of the assessment from the dependency specialist and determine the appropriate action based on these results:
  - a. If no dependency is diagnosed, require the employee to successfully complete a drug education program. The dependency specialist or the Health/Benefits section of the Employee Services Division will provide a list of resources for such programs.
  - b. If dependency is diagnosed, require the employee to successfully participate in and complete a treatment program and all follow-up requirements as determined by the dependency specialist.

VII. DRUG/ALCOHOL TESTING OF EMPLOYEES

- A. Circumstances When Allowed: Employees are only subject to testing in the following circumstances:
  1. Based on reasonable suspicion of being under the influence of alcohol or prohibited drugs; or
  2. As part of a Last Chance Agreement which includes "random drug testing." "Random drug testing" is defined as mandatory, unannounced testing initiated by management.
- B. Supervisor Training Required: Only supervisors who have completed the training session on drug and alcohol policy required by Executive Order or collective

bargaining agreement are authorized to make determinations of when there is reasonable suspicion that an employee is under the influence of alcohol or prohibited drugs.

- C. Procedure for Determining Reasonable Suspicion: When a trained supervisor believes there are grounds for reasonable suspicion that an employee is unfit to fully perform the duties of his/her job, the following steps must be followed:
1. Except in field or shift circumstances which render contact difficult, consult with another trained supervisor regarding the grounds for reasonable suspicion.
  2. Document in writing the specific observations that led to the "reasonable suspicion." If the situation demands immediate action, go to Step 3 (below) and complete the documentation as soon as possible.
  3. Articulate orally to the employee a summary of the specific facts which form the basis for believing that the employee is under the influence of alcohol or drugs.
  4. If requested, provide the employee within 48 hours of the request, with a copy of the written specification of the grounds for reasonable suspicion.
- D. Procedure for Obtaining Drug/Alcohol Tests: Once a determination of reasonable suspicion has been made, the following steps must be followed by the supervisor:
1. Transport, or assign another supervisor to transport, the employee to the collection site and remain at the collection site until the employee is released. See EXHIBIT C for list of collection sites.
  2. Transport, or assign another supervisor to transport, the employee home. Time not worked under this provision shall be charged according to the sick leave policies of the appropriate collective bargaining contract or Ordinance.
  3. If use of drugs under medical supervision is claimed by the employee, the supervisor shall require documentation from the employee within 24 hours of collection of the sample.
  4. As soon as practical, inform the Senior Personnel Analyst or the Employee Services Division Manager that a drug/alcohol test has been ordered and the identity of the responsible supervisor.
  5. The Employee Services Division will receive the results of the drug/alcohol test from the laboratory and promptly inform the responsible supervisor of the results. Within three working days of receipt of the results, Employee

Services will send a copy by certified mail or hand-deliver to the employee along with the Drug/Alcohol Test Appeal Form (see EXHIBIT E).

6. If the employee returns the Drug/Alcohol Test Appeal Form within 5 days of receipt, Employee Services will arrange with the laboratory to retest the original sample and notify the supervisor of the appeal. The retest is done at the employee's expense. Any disciplinary action is stopped pending the results of the retest.
7. The supervisor shall determine appropriate action based on the test and retest results received from designated laboratory. If test is negative, no action may be taken. If the test is positive, the following shall be done:
  - a. Refer the employee to a designated chemical dependency specialist for a diagnostic evaluation. (See Section VI of this procedure.)
  - b. Determine the appropriate discipline, based on the guidelines in the discipline section of Drug and Alcohol Policy which covers the employee and the provisions of Executive Order No. 197 Procedures for Discipline and Dismissal.
8. Whether the test result is negative or positive, maintain the information as a confidential medical record, according to the guidelines in Section II of this Procedure.
9. Should an employee refuse to submit a urine sample, such a refusal shall be dealt with as a violation of an order and insubordination in accordance with the applicable disciplinary standards and procedures (Executive Orders 197 and 213 and/or applicable collective bargaining agreement).

#### VIII. LAST CHANCE AGREEMENT

- A. When Used: Last Chance Agreements (see EXHIBIT F) may, at the County's option, be used in the following circumstances:
  1. An employee's conduct and performance is deemed by the supervisor to warrant termination, and
  2. Prior to termination, the employee is diagnosed by a County-selected chemical dependency specialist as having a chemical dependency. (See Section VI Mandatory Referral for Drug or Alcohol Assessment.)
- B. Contents: At minimum, a Last Chance Agreement will include the following provisions:

1. A requirement that the employee successfully enroll, participate in, and complete a treatment program as recommended by the dependency specialist; and
  2. The right of the County to administer random drug or alcohol tests following any treatment for a period of two (2) years from the date of completion of the treatment.
- C. Signatures: All Last Chance Agreements must be agreed to and signed by the employee and by an exempt supervisor with authority to terminate the employee. Other agreements and signatures that apply in some circumstances:
1. The recognized labor representative, for agreements with employees who are represented.
  2. Multnomah County Labor Relations, if the terms of a labor agreement are waived or excepted.
  3. The employee's immediate exempt supervisor, if that supervisor does not have authority to terminate the employee.

Approved this 1st day of July, 1995.

Beverly Stein

Beverly Stein  
Multnomah County Chair



EXHIBIT A  
**MULTNOMAH COUNTY OREGON**

BEVERLY STEIN  
COUNTY CHAIR

EMPLOYEE SERVICES  
FINANCE  
LABOR RELATIONS  
PLANNING & BUDGET  
RISK MANAGEMENT

(503) 248-5015  
(503) 248-3312  
(503) 248-5135  
(503) 248-3883  
(503) 248-3797

(503) 248-5170 TDD

PORTLAND BUILDING  
1120 S.W. FIFTH, 14TH FLOOR  
P.O. BOX 14700  
PORTLAND, OREGON 97214

PURCHASING, CONTRACTS  
& CENTRAL STORES

(503) 248-5111

2505 S.E. 11TH, 1ST FLOOR  
PORTLAND, OREGON 97202

**AUTHORIZATION TO RELEASE MEDICAL INFORMATION**

I hereby authorize the medical or other service provider identified below to release all job-related medical information about me, as requested by Multnomah County.

\_\_\_\_\_  
Name of medical or other service provider

\_\_\_\_\_  
Address/Phone of medical or other service provider

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Employee Social Security Number

Filing instructions: Authorization to Release Medical Information shall be maintained as part of the employee's personnel file.

EXHIBIT B

DRUG & ALCOHOL POLICY NOTIFICATION FORM

Instructions: This form is to be completed by the employee and submitted to the immediate exempt supervisor.

Section I. Notification by Employees of Medications

Prior to beginning work or operating County equipment or vehicle, an employee has the responsibility to fully and promptly notify his/her supervisor of the use of any prescription or nonprescription medications which may interfere with the safe and/or effective performance of duties or operation of equipment or vehicles.

Employee Name: \_\_\_\_\_

Medication taken and possible effect as described by medical provider and/or warning label:

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Signature

Date

Filing instructions: Notification by Employees of Medications is a medical record and must be maintained according to the requirements for maintaining confidential medical files described in Administrative Procedure # EMP-9 Section II.

EXHIBIT C

DRUG & ALCOHOL POLICY NOTIFICATION FORM

Instructions: This form is to be completed by the employee and submitted to the immediate exempt supervisor.

Section II. Notification by Employees of Drug/Alcohol Convictions

An employee has the responsibility to fully and promptly notify his/her supervisor upon the next working day of all drug or alcohol-related convictions, guilty pleas, or no contest pleas that meet the requirements outlined below.

Employee Name: \_\_\_\_\_

My conviction, guilty plea or no contest plea (check one):

- Is employment related (i.e., conduct leading to conviction occurred while on duty, on County property, or in a County vehicle).
- Resulted in a loss or limitation of driving privileges and my job has been identified as requiring a valid driver's license.
- Adversely impacts my ability to perform my job (e.g. such as being sentenced to job or being required to attend drug education classes during the regular work shift).

Describe conviction, guilty plea or no contest plea and its impact on your job duties:

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Signature

Date

Filing instructions: Notification by Employees of Drug/Alcohol Convictions shall be maintained as part of the employee's personnel file.

**EXHIBIT D**  
**LIST OF COLLECTION SITES FOR DRUG/ALCOHOL TESTING**

Good Samaritan Occupational Medical Center  
2850 SE Powell Valley Road  
Gresham, OR 97030  
Contact: Bambi Condi 661-2677  
Hours: 7 am - 3:30 pm M-F

Portland Adventist Clinic  
1700 SW 257th  
Troutdale, OR 97060  
Contact: Sandy Hayes 661-1305  
Hours: 9 am - 5 pm M-F

Legacy Occupational Health  
1650 NW Front, #180  
Portland, OR 97209  
Contact: Linda Beasley 222-5205  
Hours: 8 am - 5 pm M-F

Providence Milwaukie Hospital  
10150 SE 32nd Avenue  
Milwaukie, OR 97222  
Contact: Jan Zacker or Diane Maley 331-4567  
Hours: 7 am - 7 pm M-F

Providence Medical Center Occupational Health  
541 NE 20th, Suite 210  
Portland, OR 97232  
Contact: Linda Lopes 872-2454  
Hours: 8:30 am - 12:00 & 1:30 pm - 4:15 pm M-F

Columbia Occupational Health  
123 NE 3rd, Suite 260  
Portland, OR 97232  
Contact: Cheryl 325-1156  
Hours: 7 am - 5 pm M-F

Providence Medical Center Occupational Health  
5050 NE Hoyt, Suite 626  
Portland, OR 97213  
Contact: Mary Normand 230-6378  
Hours: 9 am - 5 pm M-F

**AFTER HOURS ONLY:**

Good Samaritan Emergency Room  
1015 NW 22nd  
222-5205

Willamette Falls Occupational Health  
9775 NE Sunnyside Road  
Clackamas, OR 97015  
Contact: Karen 698-7777  
Hours: 9 am - 9 pm 7 days a week

Metro Lab  
4509 N. Channel Avenue  
Portland, OR 97217  
Contact: Christine Britz 280-4050  
Hours: 6:30 am - 7 pm M-F

Progress Medical Group  
9370 SW Greenburg Road  
Portland, OR 97223  
Contact: Kim Day 245-2411  
Hours: 9 am - 1 pm & 2 pm - 5 pm M-F

Northside  
6234 N. Greeley  
Portland, OR 97217  
Contact: Diane Johnson 283-0191  
Hours: 8 am - 5 pm M-F

St. Vincent Hospital Occupational Health  
9205 SW Barnes Road, Suite 736  
Portland, OR 97225  
Contact: Linda Stabio 291-2635  
Hours: 8 am - 4:15 pm M-F

Portland Adventist Convenient Care Center  
18750 SE Stark  
Portland, OR 97233  
Contact: Steve Parker 251-6330  
Hours: 8am - 8pm M-F & 10am - 6pm Sat/Sun

SW Washington Medical Center  
400 NE Mother Joseph Place  
Vancouver, WA 98660  
Contact: Cherie Dolezal (206) 695-1297  
Hours: 8 am - 5:30 pm M-F

Portland Adventist Emergency Room  
10123 SE Market  
251-6155

EXHIBIT E

DRUG/ALCOHOL TEST APPEAL FORM

Employee Name: \_\_\_\_\_

I have received notification of the results of my drug/alcohol test and wish to appeal those results. I understand that my original sample will be retested by the laboratory and that I will be responsible for the cost of this retest.

Instructions: This appeal form must be received by the Employee Services Division by \_\_\_\_\_ in order to be valid. Place form in a sealed envelope marked CONFIDENTIAL and hand deliver to Employee Services Division on the 14th floor of the Portland Building, or mail to P.O. Box 14700, Portland, OR 97214 or Interdepartmental Mail #106/1430.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

EXHIBIT F

LAST CHANCE AGREEMENT

The following agreement is entered into between the Employer and the Employee. This agreement serves as a guide for the Employee as to what is expected for continued employment with the Employer.

1. I agree to be evaluated by a qualified alcohol/substance abuse counselor, and if required, I shall immediately enroll and continue in a bona fide alcohol/drug inpatient or outpatient rehabilitation program approved by the Employer. I fully understand that should I fail to complete either the inpatient or outpatient program, my employment with the Employer will be terminated.
2. I agree to comply with and complete the conditions of my "Aftercare Plan" as recommended by my treatment counselor. If I must be absent from my aftercare session, I must notify the Employer. The Employer has my permission to verify my attendance at required meetings. If I do not continue in the aftercare program, I understand that my employment will be terminated.
3. I understand that the signing of this agreement shall allow the Employer the right to communicate with my physician and/or counselors regarding my status and progress of rehabilitation and aftercare.
4. (A) If the Employer believes that I am using drugs or alcohol, I agree to submit to an alcohol/drug test (blood test, urinalysis, or breath test) at any time required by the Employer for a period of 24 months from the date I return to work. I understand that if I refuse to take the alcohol/drug test or if the test is positive, my employment will be terminated immediately.  
  
(B) I agree to submit to periodic, unannounced, unscheduled alcohol/drug testing (blood test, urinalysis or breath test) by the Employer for a period of 24 months from the date I return to work. (This time period will increase accordingly if I am absent from work, for any reason, for a cumulative period of one month or more.) I understand that if I refuse to take a drug test or if the test is positive, my employment will be terminated.
5. I agree to return to work upon successful completion of the alcohol/drug rehabilitation program.
6. It is understood that this agreement constitutes a final warning and is non-precedent setting for any other employees with the Employer in the future. Each case will be reviewed on its own merit.
7. I understand the Employee Assistance Program is available to me should personal problems arise in the future that may have an effect on my ability to remain in compliance with the Drug and Alcohol Policy and/or this agreement.

8. I realize that violation of the Drug and Alcohol Rules and/or policies at any time in the future is cause for termination.

9. I realize that upon my return to work, if my performance does not match the standards outlined in the attachment hereto, I will be terminated.

10. (For unclassified employees only.) I understand that as an unclassified employee I am an "at will" employee of Multnomah County and that the County retains the right to terminate me for any or no reason without appeal. In executing this agreement I understand and agree that the standard for terminating me is in no way amended by this agreement. I waive any and all rights to sue the County based on an allegation that this agreement has been breached.

Personal Commitment: I pledge and agree to abide by the terms of this agreement. I understand that a violation of or noncompliance with any of the terms will result in my being terminated. Further, I pledge to remain free of all illegal drugs and also not to abuse legal drugs (including alcohol). I hereby consent to the County's contacting any treatment or health care provider who may have information on my alcohol or drug dependency condition and/or compliance with the terms of this agreement and authorize the provider to furnish such information to the County.

I understand the terms and conditions of this agreement. I also understand that, except as expressly stated in this agreement, my terms and conditions of employment will be determined by the County's policies and rules, and that this agreement does not guarantee me employment for any set period of time. I have had sufficient time to study it away from the work place and to consult anyone I desire about it. I sign it free of any duress or coercion. This agreement will become part of my personnel file.

---

Employee \_\_\_\_\_ Date \_\_\_\_\_

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Employee's Supervisor \_\_\_\_\_ Date \_\_\_\_\_

Filing instructions: Last Chance Agreement shall be maintained as part of the employee's personnel file.

# XI.

## Discipline

To assist supervisors in approaching discipline, the following tools are offered:

- A. A list of test questions frequently used by arbitrators in examining disciplinary actions, "Discipline and Just Cause: Questions An Arbitrator May Ask."
- B. Executive Order 225, "Policies and Procedures: Discipline and Dismissal," which mandates the procedures to be followed in imposing discipline.
- C. A general guide to writing disciplinary letters, "Beyond Procedure: How to Write a Letter of Discipline."

A.  
Discipline and Just Cause:  
Question an Arbitrator May Ask

The meaning of the terms "cause" or "just cause" as they are used regarding discipline has evolved over the years. Originally these terms were used simply to distinguish job related reasons for termination from the right to terminate for any or no reason. As arbitrators have reviewed thousands of cases under the provisions of a variety of labor agreements, a new, more substantive meaning has been given to these terms. "Cause" and "just cause" now imply a fully justified basis for discipline. A particularly important arbitration case decided by Professor Carroll R. Daugherty explored the key elements of a fully justified termination. This arbitration case was the origin of the widely used "Daugherty test questions."<sup>6</sup> If the answer to any of these test questions is "no," a supervisor can expect to have the arbitrator substitute his or her judgment for the supervisor's. A modified version of the test questions follows. Use them to test your case before you impose discipline.

1. Did the employee have knowledge of employment and work rules and the probable consequences of violating them?

An employee has an obligation to obey the orders and rules issued by supervisors and to perform at or above minimum performance standards. An employee also has duties which are often not incorporated in rules because they are implied duties of the employment relationship or a labor agreement. Violation of these duties may, even absent a rule, result in discipline. Such charges include:

- a. Absence without leave.

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<sup>6</sup> Enterprise Wire Company, 46LA359, pp. 362-365.

- b. Excessive absenteeism.
- c. Non-performance of job duties, e.g., incompetence and inefficiency.
- d. Insubordination.
- e. Disruptive relations with co-employees, e.g., violence and provoking language.
- f. Lying and falsification adversely affecting the employment relationship.
- g. Theft of County property or theft of other property adversely affecting the employment relationship.
- h. Corruption, e.g., accepting fees, gifts, or other valuable items in the performance of the employee's official duties for the County.
- i. Negligent damage to County property or other property.
- j. Disabling conduct, e.g., drinking intoxicating beverages on the job.
- k. Disreputable outside conduct, e.g., outside financial fraud on the part of an individual in a position of financial trust with the County adversely affecting the employment relationship.
- l. Behavior which subjects the County to potential financial liability, e.g., careless driving or possession of a weapon.
- m. Behavior which damages the County's reputation for service delivery, e.g., horseplay during working hours in public.
- n. Violation of a clearly understood code of professional ethics.

The difficulty for management with the above listing is that arbitrators differ greatly in what they believe to be an employee's obligation when there is no work rule. For this reason, if there is any ambiguity from an employee's point of view concerning required behavior, it would be wise to issue a rule under the terms of the labor agreement rather than to be second-guessed by an arbitrator later. Before doing so, you will want to ensure that you have reviewed the terms of already promulgated County rules to ensure consistency.

Just as important as issuance of an appropriate rule, is clear and unequivocal transmission of the rule to the employee. In cases in which the seriousness of a rule may not be obvious to the employee, it may also be wise to indicate in advance the seriousness of the offense. For example: "Every operator is expected to remain on his/her assigned bridge

during duty hours. Because of the safety hazard associated with leaving a bridge unattended, any unexcused absence from the bridge may subject the employee to dismissal."

2. Was the rule, order, or performance standard reasonable and related to the orderly, efficient, and safe operation of the County's business and in compliance with the relevant labor agreement?

An employee who believes a rule or order is unreasonable or improperly promulgated must nevertheless obey the rule unless there is reasonable belief that obedience would seriously and immediately jeopardize the employee's safety, or the rule violates either the law or universally accepted moral standards, e.g., an order to tell a lie. Despite this "work now - grieve later" standard, the relative reasonableness of a rule or order may have substantial impact on an arbitrator's judgment regarding the level of discipline to be imposed.

As to job performance standards, supervisors have the right to establish reasonable standards, but the supervisor may not subject an employee to disciplinary action unless the standards have been communicated in accordance with the requirements of the applicable collective bargaining agreement. See, for example, Article 24, Section 5, pages 124-125 of the 1992-95 Local 88 Agreement as extended through 1998.

3. Before administering discipline, did the supervisor make an effort to discover whether the employee did in fact engage in misconduct or fail to meet a job performance standard?

To effectively meet this "due process" test, the supervisor must investigate and document the facts supporting allegations of misconduct. Court decisions have additionally made it clear that prior to taking a property interest (imposing a suspension, reduction in pay, demotion, or discharge), the employee has a right to an informal interview to rebut the charges. In other words, an employee should be allowed to say, "I did not do that," before a decision is made to impose discipline.

4. Did the supervisor conduct the investigation and interviews in a fair and lawful manner?

All investigatory and disciplinary interviews should be conducted in private. The supervisor should afford the employee time to fully respond to all charges. The interview should be conducted in a calm, professional manner. Any intimidating behavior should be avoided. The supervisor should be aware that an employee has the right to union representation at an interview with his/her supervisor when the employee has a reasonable belief that such an interview is part of an investigation which could result in disciplinary action. Such a right would exist, for example, in the case of an interview in which charges of misconduct were being presented to an employee for rebuttal. (Note: This does not create a blanket right to the presence of a union representative during all conferences and discussions between supervisors and employees.)

The right to the presence of a union representative at an investigatory interview is not absolute, but exists only if such representation is requested by the employee. The supervisor has no obligation to inform the employee of this right. The employee may also choose to forego this right. Furthermore, the right to union representation does not extend to the right to delay an interview in order to have a particular representative present.

When the union representative is present at a purely investigatory interview, the supervisor has no obligation to bargain or debate with the representative, although the supervisor may request information from the union representative. The reason for the representative's presence is solely to assist the employee. This right to assistance specifically extends to the employee's right to have a private, pre-interview consultation with the union representative.

As to the behavior of Union representatives during an investigatory interview, the Employment Relations Board of the State of Oregon has established the standards for the representatives of public employees in this State in a case involving Washington County and the Washington County Police Officers Association. The standards are as follows:

1. The representative may inquire, at the outset of the interview, regarding its purpose, including inquiring about the general subject matter of the questioning to follow.
2. During the questioning of the employee by the employer, the representative may participate only to the extent of seeking clarification of questions.
3. After the employer has completed the questioning of the employee, the representative may ask the employee questions designed to clarify previous answers or to elicit further relevant information.
4. Before the end of the meeting, the representative may suggest to the employer other witnesses to interview and may describe relevant practices, prior situations, or mitigating factors that could have some bearing on the employer's deliberations concerning discipline.

These standards do not imply that the supervisor cannot allow a more active role for the Union representative in an investigatory interview, but absent a particular provision in the applicable labor contract, **this is all that the supervisor is required to allow.** In responding to a petition for reconsideration in this case, the Washington County Police Officers Association tried to expand the legally mandated role to include "counseling" by the representative during the interview. The Board responded:

"We grant reconsideration for the limited purpose of emphasizing a point we thought we made clear in the Order: that the representative's role, during the actual questioning of the employee by the employer, is limited to seeking clarification of the employer's questions. We assume by "counsel" the

Complainant means the act of consulting with the employee about how to answer a question - or even advising the employee on the wisdom of whether or not to answer. To that extent, the representative does not have the right, under our holding, to "counsel" the employee during the questioning. We believe such counseling would tend to interfere too much with the employer's right to hear initially the employee's own account of the matter under investigation. We also believe that such counseling would tend to transform pre-grievance, investigatory interviews into adversarial proceedings."

The Board left other issues of the role of the Union representatives to the collective bargaining process.

In the above discussion, the term "investigatory interview" and "purely investigatory interview" were used. Whether our "pre-discipline" interviews, as required by Executive Order 225, are purely investigatory is an interesting legal question. Therefore, if you have a delicate investigatory process in which frank, unfiltered responses are critical, then an investigatory interview before the issuance of a pre-disciplinary letter is well advised.

5. Is the supervisor able to prove that the employee actually committed the acts for which the employee is to be disciplined?

This question addresses a critical factor in a successful disciplinary action. If the discipline is grieved, you will have to prove your case against the employee before an arbitrator. The arbitrator will rely solely on sworn testimony and documentary evidence. To "know" in some subjective sense that an employee has engaged in misconduct is different from being able to prove it. In particular, hearsay evidence will be either inadmissible or given little weight. Proving misconduct thus requires that you:

- a. Keep accurate and timely records of counseling and/or disciplinary actions taken relative to the employee as well as details of any specific misconduct or performance failures.
- b. Make sure that directives given to employees are in specific behavioral terms with the importance of the directive(s) and consequence(s) emphasized when these elements are not obvious.

The standard of proof which a supervisor is expected to meet in a disciplinary case varies depending on the nature of the charge and the severity of the penalty imposed. The general standard is preponderance of the evidence; but for charges involving moral turpitude or relating to alleged criminal activity, the standard may approach the beyond a reasonable doubt standard of criminal cases. Proving guilt is even more difficult when the employee is willing to commit perjury to save his/her job.

6. Did the supervisor apply the rules, orders, and penalties without discrimination to all employees?

If the answer to this question is "no," the disciplinary case may well be overturned, or the penalty modified, no matter how clear the misconduct and how well prepared the case. This problem frequently occurs when a supervisor is so frustrated by the continued pattern of misconduct of a particular employee that, in the zeal to punish the employee, heavy reliance is placed on a recent infraction to substantiate the discipline imposed, neglecting the fact that others have committed this infraction without consequence.

Because of this standard, many disciplinary hearings are less a trial of the grievant than of the supervisor and/or the organization, i.e., an effort may be made to prove that the organization does not act in a principled, consistent way. A recent modification of the Public Employees Collective Bargaining Act may have an affect on certain extreme cases related to this standard, although it is anticipated that litigation will result. If you have a case which would otherwise result in severe disciplinary action but for the discrimination standard, you should consult with Labor Relations.

It must be pointed out that this standard does not chain the organization to the past. At any time the supervisor may issue and post a letter of intent to change the approach taken in the past to a rule. For example:

"My review of administrative responses to infractions of the used hypodermic and intravenous needle security rule indicates considerable inconsistency in enforcement and supervisory actions taken. Employees are advised that due to the extreme health hazards associated with violations of this rule, future violations, whether due to negligence or intent, will be consistently dealt with by severe disciplinary action."

To avoid any potential charge of unilateral change in an "existing condition," it is best for such a posting to meet the fourteen (14) day standard for such changes as per Article 24 of the Local 88 Agreement.

7. Was the penalty imposed by the supervisor reasonably related to the seriousness of the employee's actions and the employee's work history?

Responsive to this question, there are occasions when the behavior of an employee is such a severe violation of written or implied duties that immediate discharge is called for. Such instances are rare, however, and are almost invariably associated with prolonged neglect of an employee's lesser misconduct. The spirit of *corrective* discipline calls for specifying the behavior which is desired on the employee's part and imposing discipline not to punish, but to give clear notice of the County's intention not to tolerate misconduct or poor performance. When the employee does not respond, the discipline must become

*progressively* more severe until it is evident that the employee is unwilling to live by the expectations of the organization, in which case discharge is warranted. An example of such a progressive pattern is as follows:

- Counseling Session
- Oral Reprimand
- Written Reprimand
- One Day Suspension
- One Week Suspension
- Discharge

**The severity of the first step to be imposed in the steps cited above, as well as subsequent steps, is dependent on the nature of the offense and the work history of the employee as discussed below.**

There is no doubt that sustaining consistent, progressive discipline is a difficult job. There is an understandable tendency to follow such a pattern for a few steps, neglect the employee for many months, and then suddenly impose severe discipline. The key is to keep the corrective program within a manageable time frame. If an employee does not respond within the time frame specified at one step of the process, the next step should be taken. What must be done at each step, however, is to measure the length and severity of the disciplinary "chain" relative to the severity of the employee's behavior. Because of the great variety of misconduct, there is no single "right" answer to disciplinary measures, but rather a range of reasonable actions.

Turning to the issue of work history, you should be aware that a long-service employee whose misconduct or poor performance has been tolerated for years, and thus implicitly condoned, cannot be dealt with in the same manner as a new employee. Moreover, it may be proper to impose a severe penalty on an employee with a poor record and a lesser penalty on others who have better records. Discrimination on the basis of record is not only allowed, but required. By "record," however, what is meant is not subjective memories but more reliable "hard evidence," such as grievable file documents of prior discipline. Be also aware in this regard that many labor contracts have provisions for purging discipline after certain periods.

B.  
MULTNOMAH COUNTY, OREGON  
EXECUTIVE ORDER NO. 225

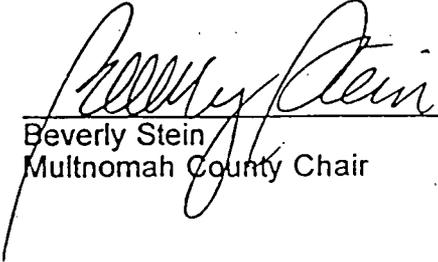
WHEREAS, there exists a need for a uniform policy and procedure governing discipline and dismissal to aid in achieving the policy goal of maintaining standards of performance and conduct for employees of Multnomah County; and

WHEREAS, the increasingly complex legal and contractual requirements relating to matters of discipline and dismissal create a continuing need to proceduralize these requirements to aid managers and supervisors in the prompt and consistent application of discipline; and

WHEREAS, there exists a need to consolidate and update the provisions of Executive Orders 197 and 213 for the purposes of coherent communication of requirements; it is

ORDERED that Executive Orders 197 and 213 are hereby repealed and the Policies and Procedures, Discipline and Dismissal, attached to this Order and by this reference made a part hereof is established as the policy and procedure governing discipline and dismissal for employees of Multnomah County under the executive direction of the Multnomah County Chair.

DATED this 9 day of November, 1995.

  
\_\_\_\_\_  
Beverly Stein  
Multnomah County Chair

REVIEWED:

  
\_\_\_\_\_  
Laurence Kressel, County Counsel  
Multnomah County, Oregon

MULTNOMAH COUNTY  
LABOR RELATIONS SECTION  
POLICIES AND PROCEDURES  
DISCIPLINE AND DISMISSAL

PURPOSE:

To provide for managers and supervisors an orderly administrative procedure for actions imposing discipline and dismissal which incorporates the requirements of collective bargaining agreements as well as MCC 3.10 and other applicable law. No rights are thus extended by these procedures, which are in no way intended to amend or supersede the disciplinary or grievance procedures set out in MCC 3.10 or the applicable collective bargaining agreements.

POLICY:

Managerial and supervisory personnel are charged with fairly administering provisions governing discipline for infraction of established rules of work and conduct. They are also responsible for discontinuing the services of employees who do not reach acceptable standards of performance and/or conduct. The principles embodied in the administration of discipline recognize the dignity of the individual and shall not serve to demean, but rather to encourage and correct.

The following is a listing of definitions pertaining to the section on Discipline and Dismissal:

DEFINITIONS:

1. Appointing Authority: Includes the Multnomah County Chair, the directors of County departments; division or section directors not under the aegis of a department; and any person or persons to whom such officials lawfully delegate authority to take actions relating to discipline and dismissal.
2. Bargaining Agent: The organization designated to represent the appropriate collective bargaining unit.
3. Cause: Misconduct, inefficiency, incompetence, insubordination, indolence, malfeasance, or other unfitness to render effective service.
4. Classified Employee: An employee of the County whose position is not exempted from the classified service by Multnomah County Code 3.10.
5. Council: Merit System Civil Service Council established by Multnomah County Code 3.10.

6. County: Multnomah County, Oregon.
7. Days: Calendar days, time to be computed in accordance with State law.
8. Demotion: A change of regular employee for disciplinary reasons from a position in one class to a position in another class having a lower maximum salary.
9. Disciplinary Action: Actions that may be taken against employees for cause including oral reprimand, written reprimand, suspension, reduction in pay, demotion, dismissal, or any combination thereof.
10. Dismissal: Complete separation of an employee from County service for cause.
11. Executive Secretary: The Executive Secretary of the Merit System Civil Service Council.
12. Exempt Employee: A regular employee who is not a member of a collective bargaining unit.
13. Exempt Salaried Employee: A classified employee who is not covered by any collective bargaining agreement and who is excluded from the overtime provisions of the Fair Labor Standards Act.
14. Grievance: A complaint arising exclusively out of the application, meaning, or interpretation of a collective bargaining agreement and processed exclusively according to the provisions of that agreement.
15. Supervisor: The individual who has responsibility for the discipline of a group of employees and can impose or effectively recommend formal discipline and dismissal.
16. Minimum Qualifications: The training, experience, and other qualifications established for a given class and required of an applicant for admission to the examination for that class.
17. Nonexempt Employee: An employee who is a member of a bargaining unit.
18. Oral Reprimand: A formal verbal rebuke for disciplinary reasons.
19. MCC 3.10: Multnomah County Code 3.10.
20. Labor Relations: Labor Relations Section, Multnomah County.
21. Position: A group of related duties and responsibilities requiring the full-time or part-time employment of one person.
22. Reduction in Pay: Placement of an employee's salary at a lower step as a result of a disciplinary action.

23. Regular Employee: The status an employee acquires after successful completion of a probationary period for the particular position to which the employee was appointed.
24. Suspension: An enforced absence without pay for disciplinary reasons.
25. Unclassified Employee: An employee of the County excluded from the classified service by MCC 3.10.
26. Written Reprimand: A written rebuke for disciplinary reasons.

SCOPE:

1. Classified-Exempt Employees: These employees are not in a bargaining unit but do have rights under MCC 3.10. These procedures apply to them with the exception of references and requirements relative to a bargaining agent.
2. Classified-Nonexempt Employees: These employees are both in a bargaining unit and have rights under MCC 3.10. These procedures apply to them except as regards references to appeal rights to the Council.
3. Unclassified-Exempt Employees: These employees are neither in a bargaining unit nor classified employees with rights under MCC 3.10. These employees are not covered by these procedures. The main restrictions in the application of discipline to these employees are embodied in state and federal constitutional requirements, EEO laws and administrative rules, and certain common law principles. Since the legal status of such cases varies widely, the Employee Services Director should be consulted prior to the termination of an unclassified-exempt employee.
4. Temporary and On-Call Employees:

These procedures do not apply to such employees. With respect to discipline or dismissal, these employees have no right to grieve under a labor agreement or appeal to the Merit System Council, but they can bring legal action against the County with respect to all other employment-related laws, such as EEO, Whistle Blower, defamation, etc.

AUTHORITY FOR DISCIPLINARY ACTION:

Authority for disciplinary action shall reside with the Appointing Authority. The delegation of disciplinary authority shall be in writing in accordance with Attachment I. Copies of this delegation shall be distributed to all affected exempt employees and to the Labor Relations Manager. Amendments to this authority may be implemented by memorandum at any time. A comprehensive, updated memorandum of delegation shall be issued on a yearly basis with distribution as cited above.

RESPONSIBILITY FOR ADMINISTERING EXECUTIVE ORDER:

It is the responsibility of the Labor Relations Section to provide general administration of the terms of this Executive Order. With respect to consultation:

- Inquiries with respect to employees who are included in a collective bargaining unit should be directed to the Labor Relations Section, specifically to include consultation with County Counsel;
- Inquiries concerning employees exempted from collective bargaining representation should be directed to the Employee Services Director or his or her designee, specifically to include consultation with County Counsel.

CAUSES FOR DISCIPLINARY ACTION:

Any County employee may be subject to disciplinary action for cause, including but not limited to violation of countywide Personnel Rules related to employee conduct as contained in:

- Rule 3 Employee Responsibilities
- Rule 4 Political Activity
- Rule 5 Code of Ethics
- Rule 6 Outside Employment
- Rule 7 Nepotism
- Rule 21 Equal Employment Opportunity (prohibited discrimination)
- Rule 25 Prohibited Merit System Conduct

FORMS OF DISCIPLINARY ACTION: Unless prohibited by the terms of the applicable collective bargaining agreement, any of the following disciplinary actions may be imposed, provided, however, that no exempt salaried employee shall be subject to discipline by suspension without pay or reduction in pay. An exempt salaried employee also shall not be subject to suspension without pay prior to termination as provided in Section 7, below, and Attachment V.

1. Oral reprimand
2. Written reprimand
3. Suspension without pay
4. Demotion
5. Reduction in pay
6. Dismissal
7. Any combination of the above.

## NOTIFICATION PROCEDURES:

### 1. Notice of Contemplated Discipline

Except in the instance of oral reprimands, an employee shall be notified of the charges against him/her and the key elements of the evidence that supports the charges prior to imposition of discipline by the supervisor. This notification shall be in writing except:

- For written reprimands; or
- For contemplated suspension in which the supervisor deems delay to be disruptive to the discipline of the work place.

(Note: See Attachment II.)

### 2. Imposition of Discipline

Any notice of discipline shall be mailed to the appropriate collective bargaining agent and delivered to the affected employee or to his/her last known mailing address by the date the discipline is to be imposed. If the discipline imposed is a suspension, reduction in pay, demotion or discharge, the letter of notice to the employee shall be either sent by certified mail/return receipt requested or be hand delivered with a dated written receipt obtained.

## FORMAT AND PROCEDURES FOR ALL DISCIPLINARY ACTIONS AND NOTICES:

### 1. Sample Letters. Sample letters of discipline are attached as follows:

- Letter of reprimand - Attachment III.
- Letters of suspension, demotion or pay reduction - Attachment IV.
- Letter of dismissal - Attachment V.

### 2. Letter content. Any letter of discipline issued to an employee shall contain a statement of:

- The nature of the discipline imposed, e.g., suspension without pay.
- The charge against the employee, e.g., absence without leave.

- A detailed specification of the charge, e.g., "Specifically, on March 6-8 you were absent without leave," and the key elements of the evidence, e.g., "You were witnessed, leaving the work site, etc."
  - A description of previous efforts to correct the employee's conduct to include, but not limited to, a citation of relevant disciplinary actions.
  - A description of future behavioral expectations to include the consequence of further misconduct or non-performance.
  - A statement of the employee's appeal rights (see "4" below).
  - A statement of the right to respond in writing within ten (10) days and to have that response placed in the Personnel File.
  - The signature block of the exempt employee authorized to impose the discipline and, if applicable, the signature block of the exempt supervisor effectively recommending the discipline.
  - A notation of all copies furnished, specifically to include:
    - Central Personnel File
    - Collective Bargaining Representative
    - Labor Relations Manager
3. Privacy. Every reasonable effort will be made to effect discipline in a manner that will not embarrass the employee before other employees or the public.
4. Appeals and Grievances
- Any classified, non-exempt employee shall have the right to appeal any discipline other than an oral reprimand in accordance with the terms of the applicable collective bargaining agreement.
  - Any classified, exempt (non-represented) employee shall have the right to appeal a suspension, demotion, reduction in pay, or dismissal to the Merit System Council.
- Appeals to the Council must:
1. Be in writing;
  2. Be signed by the employee;
  3. Be addressed to the Council;
  4. Contain an explanation of the action being appealed;
  5. Contain a statement of the redress desired;

6. List the names of those whose presence would be requested at a Council hearing; and
7. Be delivered to the Executive Secretary of the Council not later than ten days after the effective date of the action being appealed.

The hearing shall then follow those steps outlined in Multnomah County Code 3.10.320 - 3.10.430.

5. Imposition of a lesser penalty: In cases in which a decision is made to impose a lesser penalty, two letters shall be prepared:

- The first shall simply state that the earlier discipline is withdrawn and a lesser penalty is anticipated;
- The second shall impose the lesser penalty under the procedure for that penalty and without reference to the withdrawn penalty.

That more severe sanctions were anticipated shall not affect an employee's appeal rights for the lesser penalty unless it was imposed as part of a written and properly executed settlement agreement involving the employee, Labor Relations Unit and, if appropriate, the collective bargaining representative.

6. Withdrawal of Charges: Appointing Authorities may withdraw or modify any of the above disciplinary actions by notifying, in writing, all those originally notified. In cases in which all the procedures to affirm a disciplinary action have taken place, however, a question of legality may arise. In such instances, contact the Labor Relations Section. When charges are withdrawn, the copy of the notice of discipline in the central personnel file shall be destroyed. A notated copy shall be retained by the Labor Relations Section in case of litigation.

7. Requirements Specific to a Particular Form of Discipline:

- Oral Reprimands

The supervisor shall make a notation of such action in his/her journal or calendar. Such notation shall not be placed in the employee's personnel file.

- Suspension

- Time Card Entry form is used to effect the suspension.
- No exempt salaried employee shall be subject to discipline by suspension without pay.

- Reduction in Pay

- The appointing authority shall use the Payroll/Personnel Data Form to effect the reduction.
- No exempt salaried employee shall be subject to discipline by reduction in pay.

- Demotion

- The employee shall be paid at the highest step in the lower classification which would result in a pay decrease.
- The appointing authority shall use the Payroll/Personnel Data Form to effect the demotion.

- Dismissal

- The employee shall be suspended without pay for fifteen (15) days prior to dismissal, and the letter of dismissal shall so state. (Note: Exempt salaried employees shall not be subject to a suspension without pay.)
- The letter of dismissal shall state the effective date of dismissal.
- The appointing authority shall use the Payroll/Personnel Data Form to effect the dismissal.

Attachment I  
Sample: Delegation of Disciplinary Authority

[ON LETTERHEAD]

M E M O R A N D U M

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TO: All Exempt Employees - Department of Ecological Services

FROM: Jane Doe, Director  
Ecological Services

DATE: June 30, 19\_\_

SUBJECT: Delegation of Authority

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The following positions in Ecological Services are delegated authority to act as Appointing Authorities for disciplinary purposes for the specific forms of discipline indicated and for any combination thereof:

	Written Reprimand	Suspension Without Pay	Reduction In Pay	Demotion	Discharge
Waste Water Director	X	X	X	X	X
Solid Waste Director	X	X	X	X	
Dump Supervisor	X	X	X		
Sewage Plant Supervisor	X				

cc: Labor Relations Manager  
Employee Services Director

Attachment II

Sample: Notification of Contemplated Discipline

[ON LETTERHEAD]

Date: \_\_\_\_\_

Employee's Name  
Division  
Department

OR

Employee's Name  
Address

Dear (Employee's Name):

This is to notify you that the charge of absence without leave has been brought against you. If confirmed, this charge may warrant your dismissal.

The specific basis for the above charge is the allegation that you were absent without leave from January 5, 19\_\_, - February 6, 19\_\_. According to your supervisor, George Smith, you notified no one in the office that you contemplated a leave, never contacted the office regarding your whereabouts, and refused to explain your absence upon your return on February 7.

Prior to making a decision as to your dismissal, I wish to have any evidence or argument you may have to offer to rebut the charges against you as well as any matters in extenuation or mitigation which you may feel are relevant. You are therefore directed to be at my office at 9:30 on February \_\_ to respond to the above charge. You are advised of your right to have a Union Representative present at this interview. **[NOTE: This sentence applies only to non-exempt personnel.]** If you also wish to respond in writing, please ensure that I am in receipt of such a response the day prior to the scheduled meeting.

If I do not receive any new evidence or argument in this case, I must rely on my own analysis of the current record.

If you have any questions regarding this letter, please contact me immediately.

Sincerely,

Appointing Authority  
Signature Block

cc: Labor Relations Manager  
Collective Bargaining Agent (Optional)  
Employee Services Director (For employees exempt from collective bargaining representation)

Attachment III  
Sample: Written Reprimand

[ON LETTERHEAD]

Date: \_\_\_\_\_

Employee's Name  
Division  
Department

OR

Employee's Name  
Address

Dear (Employee's Name):

This letter is a reprimand for tardiness.

On July 27 and 28 you were twenty minutes and fifteen minutes late, respectively. I counseled you with respect to this matter several times, and you were given an oral reprimand on July 1 for being twenty minutes late.

In the future you are expected to meet the punctuality requirements of this Division. You are furthermore specifically notified that if you are tardy more than once in the next thirty days, you will be subject to further disciplinary action.

Within the next ten (10) days you may respond in writing, and your response will be placed in your personnel file.

You are also advised that you may elect to grieve your reprimand in accordance with the terms of (insert title of collective bargaining agreement). [NOTE: This paragraph does not apply to exempt employees].

Sincerely,

Appointing Authority  
Signature Block

Recommending Supervisor  
(If different)

cc: Personnel File  
Collective Bargaining Representative (if any)  
Labor Relations Manager  
Employee Services Director (For employees exempt from collective bargaining representation)

Attachment IV

Sample: Suspension/Reduction in Pay/Demotion

[ON LETTERHEAD]

Date: \_\_\_\_\_

Employee's Name

Division

Department

OR

Employee's Name

Address

Dear (Employee's Name):

This letter is to notify you that....(Note: Choose one):

- You are hereby suspended without pay for ten (10) working days effective July 27, 19 \_\_\_\_.
- You are hereby reduced in pay effective July 27, 19 \_\_\_\_, from Step 6 (currently \$11.25) to Step 4 (currently \$10.51).
- You are hereby demoted effective July 27, 19 \_\_\_\_, from County Worker 2 at Pay Step 4 (currently \$14.00) to County Worker 1 at Pay Step 6 (currently \$10.50).

The charge that is the basis for your (suspension, etc.) is unsatisfactory performance of the duties of your job. Specifically:

- You failed to report a defect on the brake lining of Truck AB-40 on June 23 in accordance with Directive 100-12. As a result Operator Tim McCoy was in a minor accident on that same date.
- You filled out none of the repair reports for June 1-June 25 as required by shop procedure.
- Ten of the twenty repair reviews undertaken on your work in the months of May and June evidenced major deficiencies. Copies of each of these documents are available in my office.

Efforts which have been made to correct your behavior include:

- Four counseling sessions on April 15, May 2, May 15, and May 17.
- Oral reprimand on May 19.
- Letter of reprimand on May 25.
- Suspension without pay for five days effective May 28.

In the future you are expected to correct your behavior by:

(Insert Requirements)

(NOTE TO SUPERVISOR: Nature of requirement should be behavioral and time specified.)

Within the next ten (10) days you may respond in writing and your response will be placed in your personnel file.

You are also advised that you may elect to . . .

(Choose one)

For classified, nonexempt

". . .grieve in accordance with the terms of (insert title of contract)."

For classified, exempt

". . .appeal to the Merit System Council in accordance with the requirements of Section \_\_\_ Multnomah County Code 3.10."

Sincerely,

Appointing Authority  
Signature Block

Recommending Supervisor  
(If different)

cc: Personnel File  
Collective Bargaining Representative (if any)  
Labor Relations Manager  
Employee Services Director (For employees exempt from collective bargaining representation. **Note:** With respect to suspensions and reduction in pay, note restrictions which apply to certain exempt personnel.)

Attachment V  
Sample: Dismissal Letter

[ON LETTERHEAD]

Date: July 10, 19\_\_

Employee's Name  
Division  
Department

OR

Employee's Name  
Address

Dear (Employee's Name):

Effective July 14 you are hereby **suspended without pay** for fifteen (15) days and dismissed from employment with Multnomah County effective July 29. The charge that is the basis for your **suspension and dismissal** is insubordination. **(NOTE: Bolded language above should be deleted in letters for exempt salaried employees.)**

The specification of the charge against you is that on July 1 at 10:30 a.m. you were ordered by your supervisor, Mary Thomas, to deliver the mail to the East County Office and that you directly and defiantly disobeyed that order. Specifically, you stated, "I won't do it. Get someone else to do the scum work." Your supervisor advised you that the consequences of another insubordinate act would be dismissal and advised you to take a few minutes to think the matter over. Fifteen minutes later she repeated the order and you stated, "I don't care what happens. I won't be demeaned by such work again." Following your second refusal, your supervisor put you on administrative suspension with pay.

Following is a summary of prior efforts to correct your behavior:

1. (Offense) (date) Oral Warning for use of foul language (date).
2. (Offense) (date) Written Warning for failure to deliver mail (date).
3. (Offense) (date) Suspension Without Pay for Three Days for failure to deliver mail (dates).

During the fifteen (15) days you are under suspension, you may resubmit facts or argumentation which you submitted to me in response to my letter of contemplated dismissal of (date) in writing or in person to the Department Head.

**You are also advised that you may elect to . . .**  
**(Choose one)**

**Nonexempt**

". . . grieve your dismissal in accordance with the terms of (cite title of collective bargaining agreement)."

**Exempt**

". . . appeal your dismissal in accordance with the terms of Section \_\_ of Multnomah County Code 3.10."

Sincerely,

Appointing Authority  
Signature Block

Recommending Supervisor  
(If different)

cc: Personnel File  
Collective Bargaining Representative (if any)  
Labor Relations Manager  
Employee Services Director (For employees exempt from collective bargaining representation)

C.  
Beyond Procedure:  
How to Write a Letter of Discipline

1. **The Letter of Contemplated Discipline.**

Writing a letter of discipline, or of contemplated discipline, is not a technical detail which is added on to a process which is already clearly understood. Experience has shown that the process of drafting a letter, while it must contain the procedural element dealt within Executive Order 225, is generally the process by which the supervisor systematically thinks through the substance of the charges themselves. Key considerations are:

a. **General.**

Letters of discipline should be concise enough to be read quickly, and yet must be detailed enough to contain all key elements of the County's case. For example, if such key elements are absent from a letter of contemplated discipline, the claim can easily be made that fundamental due process was denied, since vague charges and a poorly articulated case are potentially un rebuttable.

b. **The General Charges.**

The key questions to ask with respect to the charge section of a letter of discipline are:

- What are the proper charges to describe the conduct in question?
- Are there charges which should be dropped?

Answering these questions may seem obvious, but discipline is frequently associated with the "exploding gunny sack" and "frustration" behavior phenomena discussed elsewhere in this manual. This may result in a large number of unrelated incidents spanning a significant time period. A useful mental device for walking through this jumble is to imagine a video camera focused through time which only recorded incidents when:

- (1) The employee was doing something wrong;
- (2) The employee knew or should have known that the conduct was wrong;

- (3) The matters are not overly stale and/or do not involve condonation of similar conduct by the employee or of other employees; and
- (4) There is substantial evidence supporting the charges.

The criteria above will greatly reduce the number of incidents on the table for consideration. The matters you will be considering will at least roughly meet the key test questions of the Just Cause standard. At this stage one must examine each incident to determine which charge or charges apply. It is not unusual for a single incident to give rise to several charges, for example:

The employee lost his temper when his supervisor directed him to immediately clean up the office. "You give pickiness a bad name," the employee shouted. He stormed out of the office while the entire office watched in amazement. The employee didn't return for two hours.

The potential charges here are:

- Disobedience of a direct order.
- Insubordination.
- Disruption of the workplace.
- Absence without leave.

It is very common to focus on one of the charges and neglect others, even when the other charge is more serious, e.g., focus on the absence without leave and neglect the more important charge of insubordination. In a letter of contemplated discipline, the citation of charges is followed by the contemplated disciplinary act:

"The charges of disobedience of a direct order, insubordination, disruption of the workplace, and absence without leave have been brought against you. If sustained, these charges may warrant your termination..."

The choice of contemplated action is the highest level which might flow from the charges, i.e., if they were all proven true and there were no matters in extenuation or mitigation.

c. Specifications.

Citing the specifications of each charge is a form of "unpacking" the charges so that the specific behavior in each incident is directly related to each charge. Usually this is simply the reverse of the charging process. For example:

"The specifications of the charges are related to an incident which occurred on June 13 in which you lost your temper. These specifications are:

1. Disobedience of Direct Orders.

On June 13, at approximately 2:00 p.m., you failed to obey a direct order from your supervisor, Larry Boyd. The words used by your supervisor were, "Joe, I'm directing you to clean up your office right now."

2. Insubordination.

a. Rejecting your supervisor's authority by refusing to obey a direct order and performing other defiant acts in front of other employees. Those present were Arlene Thomas and Joe Hall.

b. Shouting disrespectful remarks to your supervisor in the office and walking out on him, in the above detailed incident. The specific words you shouted were, "You give pickiness a bad name."

c. Walking out on your supervisor after refusing to obey an order and shouting at him.

3. Disruption of the Workplace.

The above incident totally disrupted the workplace. The entire staff was in an uproar all afternoon about "Joe's blow up."

4. Absence without Leave.

You were absent for two hours in the above incident. This absence was without any permission from your supervisor.

The particulars of this case are not nearly as important as the need to always focus on a detailed linkage between the charge and the specification of the facts of the case as substantiated by your investigation.

## 2. The Disciplinary Letter.

The disciplinary letter itself frequently involves a decision to drop several charges or specifications and to focus on those which have withstood careful examination and scrutiny. (See the procedural guidelines of the Executive Order.) Key points in addition to those earlier cited which may be of assistance in drafting this letter:

- a. Your letter should reflect what you learned as a result of your "presentation of charges" interview as well as other discussions with the employee and Union.

Despite the procedural delays sometimes associated with the final due process interview, it frequently substantially modifies contemplated discipline. This is not only reflected in the elimination of charges and specifications, but in the reasoning which leads to retention or modification of charges; for example:

"In arriving at the above disciplinary action related to the cited charge and specification, I took into account your explanation for each action you took on that date. This led to the dropping of the charge of absence without leave and modification of the penalty which had been contemplated. Special weight was given to the information offered by the Union as to how other recent similar cases in this office had been dealt with. Your offer of mitigation for your outburst was not accepted, specifically your detailing of the personal problems which you had the morning of the incident. While I am sympathetic with these issues, they were within the range of events with which most of us have to deal on a day-to-day basis, and cannot justify the behavior which you engaged in that day."

- b. Looking to the future.

The key element of a letter of discipline which is most neglected are those which look to the future. This is, of course, of central importance in letters of reprimand and suspension. Points which are sometimes neglected are:

- (1) Consequences.

A sentence which is frequently included in a letter of reprimand involves the consequences which will flow from further violation of a particular rule or standard. Such a sentence should give firm guidance to the

employee and allow him or her to make the choice with respect to future employment. However, the consequence should be realistic and in proportion to the offense in question.

For example, with respect to a letter of reprimand for tardiness:

Text

Remark

"If you are tardy again you will be subject to suspension."

This is not time limited and is thus unrealistic.

"You are to make every reasonable effort to call in advance if you are going to be late. In addition, if you are late more than two (2) times in the next sixty (60) days you will be subject to suspension without pay. Any time late will be docked from your paycheck."

This is not as concise, as the above but is certainly more realistic. In this particular instance discharge was actively considered. Such conduct is intolerable. A bright line was needed.

For example, with respect to a severe suspension without pay for a threat of violence.

"Any further threat of violence from you to a fellow worker will result in discharge."

Threats of violence are totally unacceptable. A consequence without time limitation is appropriate.

(2) The work plan and review conference.

Rather than simply specifying a consequence, if the matter is at all complex or serious, consequences should be combined with a work planning process. This allows you to provide coaching and assist the employee. This is particularly the case in instances in which the problem is complex and alters over time. This approach allows you to modify your expectations.

For example, in response to a complex performance problem which has changed its form of expression, and in which a short suspension was imposed.

Text

Remark

"In the future, the expectations stated in the conference of last week shall remain standing. You are placed on a 60-day review cycle ending April 16. You are to meet with me every other Monday morning at 9:00 a.m. beginning February 5 for the purpose of discussing your progress. If you fail to conform with all stated dimensions, you will be subject to further disciplinary action at the end of the review cycle. I reserve the right to take action prior to that time based on:

Note that this lengthy expectation section is necessitated by the broad, but changing, nature of the conduct and the difficulty of laying down simple, one dimensional expectation parameter.

- The totality of your conduct; or
- A single, or several, significant failures to conform with stated expectations which warrant immediate action."

3. When Speed is Essential.

Assuming due process has been dealt with as provided by Executive Order 225, there are occasions in which a swift application of a letter of reprimand is called for to immediately deal with an issue. In such instances, a handwritten letter utilizing a xerox of the attached form may be in order, with xerox copies of the completed form distributed as appropriate.

TO: \_\_\_\_\_  
(Name/Job Title)

FROM: \_\_\_\_\_  
(Name/Job Title)

SUBJECT: Letter of Reprimand

DATE: \_\_\_\_\_

This is a letter of reprimand for \_\_\_\_\_:  
(State: general charge)

The specifications of this charge are (State: specific events that are instances of the charge and related facts):

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In the future, you are expected to correct your behavior by:

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Within the next ten (10) days you may respond in writing and your response will be placed in your personnel file.

You are also advised that you may elect to grieve in accordance with the terms of your collective bargaining agreement.

Yours truly,

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

c: Personnel File  
Collective Bargaining Representative \_\_\_\_\_  
Labor Relations Manager

## XII.

# LABOR CONTRACT ADMINISTRATION AND GRIEVANCE HANDLING

### A. General Background Information.

Under the terms of Oregon law (the Public Employees Collective Bargaining Act, ORS 243.650 - 243.782), employees have the right to join together for the purpose of collectively bargaining with their employer regarding wages, hours, and working conditions. The agreed upon terms are by law reduced to writing and are termed a "labor contract" or "labor agreement." The law designates the group of employees who will engage in any particular such process as a "bargaining unit." The boundaries of these units are determined by several legal factors, including the factor of "community of interest." The law specifies a process by which employees within a bargaining unit choose a "bargaining agent." The term "bargaining agent" refers to the organization which represents a bargaining unit. Bargaining agents are generally traditional unions, typically belonging to the AFL-CIO, or they are locally established, and normally referred to as "Associations," although certain Associations, such as the American Nursing Association, are national in membership. Internally, Unions and Associations typically have offices of various kinds:

- President. Vice President. Secretary. Treasurer. Executive Board.

These positions are elected by Union or Association members. (Members are distinguished from "Fair Share" employees who choose not to join the Union or Association, but must pay a service fee in lieu of dues.)

- Union or Association Representative (sometimes called "Business Representative").

This is an employee hired by the Union or Association for the purposes of representing employees under the terms of the contract and the Public Employees Collective Bargaining Act.

- Shop Steward or Grievance Representative.

This is a County employee elected or appointed by the Union or Association for the purpose of on-site representation of employees.

As of July 1995, Multnomah County, an employer of about 3,724 permanent employees, had about 3,190 of these employees in bargaining units represented by Unions or Associations, an 86% unionization rate. These bargaining units vary greatly in size:

•	<u>General Employee</u> Local 88, AFSCME	2,281
•	<u>Corrections Officers</u> Multnomah County Corrections Officers Association (MCCOA)	346
•	Nurses Oregon Nurses Association (ONA)	279
•	Deputy Sheriffs Multnomah County Deputy Sheriffs Association (MCDSA)	108
•	Deputy District Attorneys Multnomah County Prosecuting Attorneys Association (MCPAA)	70
•	<u>Crafts</u>	
	- International Brotherhood of Electrical Workers	16
	- International Union of Operating Engineers	12
	- Brotherhood of Painters and Allied Trades	2

Most supervisors will have, at most, two of these bargaining agents representing employees under their direct supervision; but certain worksites, such as the Multnomah County Detention Center, will have a large number of Unions or Associations represented at one worksite.

For the manager or supervisor who has been assigned authority to administer a labor contract or contracts, a complex unionized environment can be intimidating. Not only are the labor agreements complicated documents, but the employees involved frequently are represented by shop stewards, hired Union representatives, and/or Union labor attorneys. The advocacy role of these individuals will lead them to defend employee interests. Assisting you in protecting management's interests are the Labor Relations Section of Multnomah County and Employee Services Division. In grievance disputes between the County and a Union or Association, the Labor Relations Section will normally represent the County in any resulting hearing. The important point is that you are not alone but have support available.

B. Developing a Good Relationship with the Union or Association.

An aside may be helpful on steps to take for developing a good relationship with the Union or Association before the contract administration and grievance resolution processes are discussed. Experience has shown that without such a relationship, both the complexity and frequency of conflict is assured; with such a relationship, there exists a significant chance for smooth business dealings. The basic foundation for such a relationship is illustrated in the model below, which focuses on the basic attitude patterns to be found in relationships between employers and Unions.

5) MODEL

Attitudinal Components of the Relationship Patterns<sup>7</sup>

Attitudinal Dimensions	Pattern of relationship				
	Conflict	Containment-Aggression	Accommodation	Cooperation	Collusion
Motivational orientation and action tendencies toward other	Competitive tendencies to destroy or weaken		Individualistic policy of hands off	Cooperative tendencies to assist or preserve	
Beliefs about legitimacy of other	Denial of legitimacy	Grudging acknowledgment	Acceptance of <i>status quo</i>	Complete legitimacy	Not applicable
Level of trust in conducting affairs	Extreme distrust	Distrust	Limited trust	Extended trust	Trust based on mutual blackmail potential
Degree of friendliness	Hate	Antagonism	Neutralism-Courteousness	Friendliness	Intimacy - "Sweetheart relationship"

Our goal should be to move toward a cooperative relationship, while strictly avoiding any hint of collusion.

Since the relationship with Unions is defined not just by the activities of the Labor Relations Section, but by ongoing relationships between stewards and line managers and supervisors, the supervisor has a key role to play. In the end the aggregate of these line relationships substantially affects the overall relationship. Key points which may assist the supervisor in working on his or her key part of the relationship are:

- Be patient.

Good business relationships are a mutual process. You can work on such processes, but can never guarantee a particular outcome. Time helps. Generally, slow incremental efforts build trust and understanding. Quick efforts to go from hostility to "friendliness" are fragile. When employer interests are sacrificed for interpersonal comfort, or service delivery is compromised, one has gone too far.

- Focus on Legitimacy.

The focus on the business relationship frees one from the merely psychological. The question is not, "Do I like this steward?" but rather, "How can I deal with the legal, legitimate, exclusive representative of all my employees productively?"

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<sup>7</sup> Walton, Richard and McKersie, Robert, A Behavioral Theory of Labor Negotiations, (2nd Ed.), 1991, p. 189.

Once one treats this person as having a legitimate and important role, personality becomes a side issue, one that can be worked around - or with - but which is never key.

- Friendliness.

Once legitimacy is established, those natural friendly gestures of respect, such as going to coffee or simply chatting about "What's up?" flow naturally. **You are friendly because this person is not an intrusive, interfering stranger, but a member of a functional family in which the Union or Association plays a legitimate role.**

Remember, having a knowledgeable, pragmatic, and conciliatory shop steward can be a key asset to an organization. Working on your relationship can help bring this about.

C. Contract Administration.

Contract administration is the process of ensuring that the terms of the labor contracts are implemented in a timely and correct manner. Key players in the contract administration process are the first line supervisors and managers who are responsible for the service delivery provided by unionized employees. A few principles need to be kept in mind by anyone who must administer a labor agreement.

1. Strict Adherence to Contract.

The authority for a County supervisor to expend public funds usually stems from a legally binding labor contract. Expenditures of funds which are not made in adherence to that contract are what is legally known as ultra vires, or "without authority." The general rule for expenditure of public funds is: "That which is not specifically authorized is forbidden." When you stray from what the contract requires, you essentially spend public funds or otherwise act in adherence with your own private values and purposes rather than those of officials elected to make such judgments, e.g., the Board of County Commissioners. Even when no money is involved, strict adherence to the contract is important because deviance from the contract may:

- Injure the interest of employees, which can result in a grievance;
- Create a practice which will bind future supervisors, perhaps adversely to the County's interests;
- Foster inconsistency, which makes for unfairness to employees.

To ensure compliance with the contract, you should adhere to standard principles for interpreting the contract, which are discussed later in this guide with respect to grievance response. If you have any questions, contact:

- Employee Services Division.

Your Employee Services Analyst is the initial contact for contractual inquiries. Most contract questions have already been asked and answered by the Labor Relations Section. Your analyst is aware of the contracts in your section/division and the standard interpretations which have already been placed on the language of those contracts.

- Labor Relations Section.

When there is a new matter to be interpreted, or when your Employee Services Analyst is simply unaware of the interpretation, the Labor Relations Section provides, and is responsible for, the official interpretation as the Chair's designee. With respect to the MCCOA, MCDSA and MCPAA contracts, interpretative advice is provided by the Labor Relations Section to the appropriate elected official or their designee, and to ensure that Board interests are protected.

2. Fairness.

The "strict but fair" standard requires consistency in application. Without adherence to the contract, there will be no consistency. Varying results for similar cases violate what is perhaps the only element of fairness which is recognized by all: that like cases should be treated in a like manner. Inconsistency results in the perception of favoritism. Conversely, favoritism leads to the desire to be inconsistent, since it is natural to want to do good things for those we like. The only way to avoid this dilemma is to adhere to a technical, neutral approach to administering the contract. This can sometimes seem cold to those who do not understand the underlying reason for your reactions, but it ultimately makes for a more consistent and therefore fairer contract administration process. To avoid the perception of being uncaring in contractual matters, it is important for the supervisor to:

- Affirm the worth of the employee and his or her concern; and
- Explain the reasoning behind management's position. In truly special cases, before responding to employees, you may wish to explore what contractual flexibility may be available as is detailed in "D" below.

D. Flexibility In a Quality Environment: How to deal with special problems in the workplace without violating the contract or law.

The County is not only a very complex working environment with an ever changing mix of services, but it has made a move to a Quality Environment. This changing context may lead you and/or employees to question whether a particular provision of the

applicable labor agreement meets your organization's needs. The following points should be of assistance:

1. Avoiding an Unfair Labor Practice.

Under Oregon law, the Union or Association is the exclusive representative of the employees. **Dealing directly with employees for the purpose of modifying wages, hours, and working conditions, or even with local shop stewards not designated for the purpose of bargaining, is a violation of Oregon law.** Additionally, since you have no delegated authority to enter into such discussions, such discussions are inherently fraught with the problems of promises broken, or promises kept by entering into unenforceable "deals."

2. Formal Involvement of the Union/Association and Labor Relations.

Once a contractual problem is identified as a potential barrier to productivity by yourself or by a team, it is the view of Local 88, ONA, and Labor Relations that the proper procedure is for a concerned employee to contact his or her respective representative and for the supervisor to contact Labor Relations **before discussions even begin.** There then are several possible options:

- Existing Contractual Provisions.

Very frequently there is a way to achieve the desired result under existing contractual provisions.

- Memorandum of Exception of Agreement.

The Labor Relations Manager has considerable authority to work with the Union to solve problems by way of Memorandum of Agreement and Exception. These agreements are limited, however, to matters related to "contract administration." The limitation on this delegated authority has never been tested, but Labor Relations has exercised great care not to abuse this flexibility, and thus the Board's trust. There is a need to ensure that this flexibility is a continuing part of our contractual authority to solve problems.

- Contract Amendments.

On certain occasions, when it is clearly warranted, the Union and County may jointly agree to modify the Agreement to deal with an issue which arises mid-term by amending the contract. Other than the law, there is no limitation on the content of such amendments. Generally, when there appears to be sufficient reason, Labor Relations will develop a policy

option memorandum for the Board, and formally obtain direction and bargaining authority, prior to the negotiations which are necessary for such an amendment to be drafted and implemented.

- Pending Consideration.

Some issues, while potentially important, may need to be placed in a pending status for evaluation in tandem with other issues for the next formal bargaining process. This is not because they are unimportant, but because they must be prioritized and handled in sequence. For example, it may be that this issue has already been addressed by the parties and that the current arrangement is, with all its imperfections, an approach we have decided to live with for a few more years. In the alternative, issues may have to await processing of other "groundwork" issues, which must be resolved before more sweeping changes can be planned.

What is critical in the above process is that these issues are brought forward and are placed into a systematic process of consideration and review, either on an ongoing or periodic basis.

E. Grievance Handling.

1. Introduction.

A good contract administration process will prevent many grievances from occurring, since, hopefully, it will result in a "strict but fair" application of the agreement. An additional factor of primary importance is supervisory style. Studies of grievance rates have shown that, *other things being equal*, supervisory behavior which demonstrates high consideration for employees is correlated with lower grievance rates. In these studies, "consideration" is defined as behavior indicating mutual trust, respect, and a certain warmth and rapport between the supervisor and his/her group. This does not mean that this dimension reflects a superficial "pat-on-the-back, first name calling" kind of human relations behavior. This dimension appears to emphasize a deeper concern for group members' needs and includes such behavior as allowing subordinates more participation in decision-making and encouraging more two-way communication. The correlation of high consideration behavior with lower grievance frequency is significant and has been the subject of continuing comment in the academic literature regarding grievance behavior for many years.<sup>8</sup>

It is important to note, however, that the purpose of the organization is not to avoid grievances (more on that later) and that high supervisory consideration

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<sup>8</sup> For example, as cited in, Fleishman, Edwin, Studies in Personnel and Industrial Psychology, 1974, p. 300.

may be tied to low task orientation; the result, a happy but unproductive workforce. **The goal must be to combine employee consideration and task orientation, a truly delicate balance. This, however, is the key labor relations challenge in a Quality Environment.**

Furthermore, independent of task orientation level, there are several reasons why a high consideration supervisor could still have many grievances.

a. Asserting management's contractual interests may result in grievances.

You may discover a situation where the contract has been erroneously interpreted liberally in past attempts to placate the Union or certain employees. Attempting to regain clear contractual rights may result in grievances. Similarly, attempting to clarify ambiguous contractual language in a manner advantageous to the productivity of the organization may result in a contractual dispute.

b. The Union may choose your organization as a test case.

When the Union decides to test contract language, they sometimes pick the most favorable fact pattern. The grievance may thus be filed in your organization for reasons having nothing to do with your supervisory conduct.

c. The attributes of the Union's representative may be as important as management actions.

The number of grievances may be related not to the quality of your contract administration or your supervisory style but to the belief system and personality of the shop steward, as well as to the particular Union's general method of operation.

d. Organizational history may be as important as personal attributes.

The history of an organization has an influence on that organization's labor relations culture, which, in turn, has an influence on relationships. If you inherit long standing grudges and bitterness, don't expect immediate transformations.

e. Bad contract language may be outside a supervisor's control.

Frequently vague or ambiguous language is agreed upon through oversight, unforeseeable circumstances, or the pressures of the bargaining process. You may be the unhappy recipient of the fact pattern which

reveals the flawed language. That the grievance arose is not your fault, but in an important way the grievance is yours. You will have to cope with the dispute until it is resolved.

The above analysis is offered not as an academic exercise, but to address the common tendency to blame supervisors for grievances. This is unfair. A supervisor can be responsible only for his or her own behavior. Grievances are a natural product of the contract administration process and generally are not the responsibility of any one individual.

Considering the list of factors which may drive grievances cited above can be intimidating. Experience has shown, however, that focusing on the development of a positive relationship with the Union as detailed in Section B, attempting to work on consideration behavior within your work group as per Section E-1, and applying the "firm but fair" rule to contract administration, will have a positive affect on the grievance behavior of the Union.

2. The Grievance Meeting.

Most grievance procedures require an informal process of attempted resolution of a grievance prior to formal filing of grievance (see, for example, Article 18 of the Local 88 Agreement). **This is the most critical and most neglected stage of the grievance procedure.** Several key questions need to guide this process. These same questions should guide the formal grievance meeting itself, which is either mandatory or highly advised under the County Labor Agreements, and is held *after* a formal written grievance is filed.

a. Is this a grievance?

A grievance is a dispute over the application, meaning, or interpretation of the labor agreement. If there is no such dispute, you have something other than a grievance before you. You may have a complaint. Complaints deserve attention, but don't involve a claim of contract violation. For example, a complaint that an office is constantly too hot may be critical to comfort and productivity. No provision of the contract, however, may be involved.

b. What is the general nature of the grievance?

Does the grievance allege prohibited discrimination, failure to pay overtime when required, or some other contractual misdeed?

- c. What specific provisions of the agreement are alleged to have been violated?

Be very careful to record the specific provision(s) of the agreement which the grievant alleges to have been violated.

- d. What are the relevant facts?

This can be broken down into several questions which you should ask of the grievant or steward. You should take careful, dated notes of the responses:

- What event(s) prompted the grievance? (Record each event.)
- When did this (these) occur? (Record dates.)
- Who witnessed the event(s)? (Record the names, other identifying information, and what each allegedly witnessed.)
- What documents exist which might be relevant to proving or disproving the claim? (List these by title, how they relate to the grievance, and, if available, date.)

- e. What is the rationale?

Why does the grievant believe the facts stated constitute a violation of the Agreement? (This is sometimes the most neglected portion of a grievance. Fully explore the reasoning linking facts with contract language.)

- f. What remedy does the grievant seek, and does it correspond with the damages he or she incurred, if any?

With the responses to the above questions in hand, you are ready to begin looking to sources other than the grievant. Talk to the named witnesses and try to identify others who may have relevant information. Collect and check the documents referenced by the grievant and others. When you have gathered all relevant facts you are ready to begin the contractual analysis.

While all the above cited elements (a-f) of the informal grievance process are important, it is the fact finding process which is most frequently neglected. **No one expects a first line supervisor or manager to be a contract language expert. No one, however, is as close to the involved person(s) and the fact pattern than the line supervisor or manager. You understand what**

**happened and why better than anyone else in the grievance chain and are better placed to ask key questions.** It is absolutely critical that you obtain, and if necessary demand, from the Union all relevant facts supportive of the grievance process. Under Oregon law, the Union and County have a mutual obligation to supply all facts which have a possible or potential relevance to the processing of a grievance. (Note: If you have any doubts regarding the reasonableness of a Union demand for information, or your own demand of the Union, call the Labor Relations Section.)

3. The Formal Grievance Response.

If the informal effort to respond to the employee's problem has failed, then a written grievance may be filed. Following a meeting in which you have asked the questions cited in the prior section, and conducted any needed follow-up investigation, you should be prepared to formally respond. **Attached immediately is the standardized grievance response format. This format is to be utilized in all grievances.** For ease of use, instructions for using each section are contained in the memorandum itself, so that you can simply read the memorandum format and utilize your notes from the grievance meeting. Compose your response in the stated order.

F. Standardized Grievance Response Format.

MEMORANDUM

---

TO: \_\_\_\_\_

FROM: \_\_\_\_\_

DATE: \_\_\_\_\_

SUBJECT: Grievance Response

Name of Grievant: \_\_\_\_\_

Subject of Grievance: \_\_\_\_\_

Date of Grievance: \_\_\_\_\_

---

I am in receipt of your grievance of \_\_\_\_\_ (Date)

concerning \_\_\_\_\_ (Subject Matter). Responsive to your grievance:

**1. Timeliness and Procedure**

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Comments: All responses should note whether time lines and procedures have been adhered to and specifically cite any time extensions which have been granted by either party. The date of any grievance meeting held should be cited with the names of those in attendance.

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2. Contract

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Comments: A copy of the written grievance should be attached and cited.

The specific Articles which the Union claims have been violated should be listed. Where the Union's citations were vague or overly broad, the results of your efforts to clarify should be explained. Articles which you deem relevant, which the Union hasn't cited, should be noted.

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3. Facts

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Comments: This statement should generally be in chronological story form, beginning with setting the scene and citing the series of events leading up to and including the filing of the grievance. This section is the heart of a grievance response and the most neglected. It takes time and care to craft a good fact statement. **Remember, this will be read by persons who have no knowledge of your operations or the personalities involved. A good question to ask is, "Would a stranger off the street be able to read this narrative and understand the complete story of what was in dispute?"** If the answer is "no," it needs to be rewritten.

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4. Response

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Comments: This is both the hardest and easiest part of a grievance to write: hard, because it requires a decision; easy, because it is relatively short. In general:

- If the Union is right, state:

The grievance is hereby allowed.  
The remedy is \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
**Note:** The rule for the remedial powers of a supervisor or manager is that he/she has the power to undo what was initially done, i.e., to make the employee whole for the contractual misstep. For examples:

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- If overtime was not paid, to pay overtime for the hours missed.
- If the employee was suspended, to reinstate the monies lost by undoing the suspension.

If a remedy seems appropriate which goes beyond your ordinary scope of administrative acts, then you are probably entering into a Memorandum of Agreement or even a contract amendment, which as a matter of law are appropriate tasks only for Labor Relations and/or the Board of County Commissioners. It is very easy to cross the line and stumble into what amounts legally to a form of collective bargaining. Call Labor Relations for assistance if there is any uncertainty.

- If the Union is wrong, state:
- If the matter is unclear, state:  
(Note: These are the tough ones. Make sure Sections 1-3 are in good order.)
- If the matter is trivial, murky, and the remedy is of little fiscal consequence, **consult with Labor Relations**. If approved, state:

The grievance is hereby denied.

The grievance is hereby denied.

An offer of compromise without precedence is offered, as follows:

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5. Discussion

---

Comments: In this section, you lay out the line of reasoning, based on the facts and application of the contract which led you to your conclusion. It is just as important; however, to explain the Union's arguments and claim of facts and to explain why you disagree, or agree, with their particular claims and arguments. For example, why do you believe one witness over another?

Several particular factors in contract interpretation are sometimes utilized in this section which are problematic. They are:

A. Intent

"Intent" in labor relations is limited to the *mutual* agreement of the County and Union negotiators as expressed in words and deeds at the bargaining table. It is therefore not a "soft" concept, but an objective one based on behavior. Since this factor requires access to prior bargaining notes, it is exclusively dealt with by Labor Relations. Furthermore, intent is relevant *only* if language is ambiguous. If it isn't, intent is not a factor.

B. Equity

Once again, fairness or equity is relevant only if the contract is ambiguous. Then the factor is not subjective but rests on:

- Values jointly shared by the parties and expressed in the contract, and/or
- Universally accepted standards of good faith and fair dealing in business conduct.

In general, grievances rarely turn on the equity factor, but it is frequently used as a claim, "Why can't you just be fair!"

C. Practice

Once again, past practice is generally of importance only when language is ambiguous. (Note: A mere claim of ambiguity by the Union does not make it so.) When ambiguity is evident, practice can be a key. It is of importance because it reveals the meaning of the parties through the *unequivocal, consistent, and mutually understood* behavior which surrounds the contract language. In general, line supervisors and managers are hesitant to draw a conclusion on such

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messy matters and for good reason. A line supervisor or manager can't possibly know what is happening elsewhere in an organization as complex as the County. **If practice is an issue, however, gathering and citing the facts can be of great value in helping the analysis of the grievance at a higher level.**

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6. Appeal Procedure

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Comments: This section should detail for the Union to whom and under what time constraints an appeal is due at the next step. A request should also be made to the Union: "If you choose to appeal, please explain the facts or reasoning which are the basis of your appeal." (Note: Remember to forward a copy of this response with a copy of the Union's grievance to the c's below.)

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- c with Attachment:
- Department Head or, where appropriate, Elected Executive
  - Labor Relations

## Supplement A

### **Managing Substandard Performance: A Guide for Supervisors and Managers Constructive Discharge**

Normally, the distinction between involuntary termination ("discharge" or "dismissal") and voluntary termination ("resignation") is clear to all. Discharges are usually clearly labeled as such and are based on a stated managerial claim that the employee engaged in misconduct or performed poorly. On occasion, however, an employee will claim during a termination proceeding that no resignation has occurred: "Call it what you will; I was fired." This amounts to a claim of constructive discharge, i.e., a claim that, however management wishes to label it, an involuntary termination has occurred. Examination of several possible issues related to constructive discharge should assist supervisors in understanding the pitfalls associated with such terminations:

1. Did a resignation occur?

Many resignations are given to supervisors in a private, oral form. There is no inherent magic in a written resignation, but a written resignation:

- Eliminates the problem of proof of the resignation; and
- Is supportive of a thoughtful, cool demeanor on the part of the employee at the time of resignation.

For these reasons, a supervisor is advised to require that any oral resignation be placed in writing by the employee for documentation purposes.

A related problem with some resignations, whether oral or written, is that they are predictive or conditional rather than completed acts. Compare:

- a. "I, John Doe, hereby resign employment with Multnomah County effective July 1, 1993."
- b. "I plan to resign in July for the purpose of a career change."
- c. "If my cabin on the beach is completed, I will be leaving employment on or about July 5."

Only "a" above is unarguably a completed act; "b" and "c" may, depending on context, be an invitation to a later argument. Supervisors are urged not to rely on conditional or predictive resignations.

2. Withdrawals of Resignations.

Assuming that an unambiguous resignation has occurred, what is a supervisor to do with an employee who wishes to withdraw an already tendered resignation? Alternatively, when will refusal to accept such withdrawal of a resignation be deemed a constructive discharge? Unfortunately, arbitrators have not been consistent in their analysis of these matters and one can reliably only point to key factors which may be taken into account:

a. Emotionality.

An explosive resignation ("I quit!") is viewed by some arbitrators more as an expletive than a completed act, or viewed as involuntary, since it may have resulted from stress. Certainly many other arbitrators would frown on an employer's refusal to accept withdrawal of such an emotional resignation, particularly if there were no accompanying employee action, e.g., walking off the job. For this reason, one would be well advised to confirm any emotionally delivered resignation after the employee has calmed down.

b. Reliance.

Perhaps the clearest grounds for refusing to accept the withdrawal of a resignation is reliance on the resignation by the supervisor. The degree of reliance is key. Virtually no arbitrator would view as a constructive discharge a refusal to accept a withdrawal when the employer has offered the job to another person and that offer had been accepted. Lesser degrees of reliance become more problematic, depending on the particular arbitrator.

3. Coerced Resignations.

Whether or not alleged employer "threats" of firing constitute grounds for deeming a resignation a constructive discharge was recently addressed for a non-Union employee by the Oregon Supreme Court (Sheets v. Knight, 1989). Fragments of that award may be instructive:

"Where the employee unconditionally has been told 'resign today or be fired,' the employer has decided that the employment relationship is at an end and that the employee shall leave. The employee merely selects the manner in which the employer's will is accomplished. Under such circumstances, a fact finder may find that a 'resignation' was a discharge. . .

To conclude that a resignation may never amount to a discharge, would exalt form over substance and allow employers to use a ruse to escape liability if their conduct was otherwise improper.

...

This is not to say that every resignation tendered in response to a threatened termination is a constructive discharge. In this case, the defendant's alleged threat to fire the plaintiff unless he resigned was unconditional. He could not avoid the day of reckoning. Contrast this with a situation in which an employee resigns after being told by the employer that 'I will fire you unless your job performance improves.'

..."

The wisdom to be gained from the above analysis is not to rely unduly on resignation as a shield against problems which might arise from a discharge.

4. Job Abandonment.

Job abandonment is sometimes labeled "resigning with your feet." It is a claim that an employee by his or her acts has communicated an intent to not return to employment. It is distinguished from the charge of absence without leave discussed in Supplement D, which is a form of misconduct. The justification for labeling an employee's conduct "job abandonment" is sometimes supplemented, or perhaps complicated, by labor contract language. For example, the Local 88 Agreement states with respect to a leave of absence without pay that an employee who "fails to return to work within five (5) days from a leave shall be considered to have voluntarily resigned his or her position."

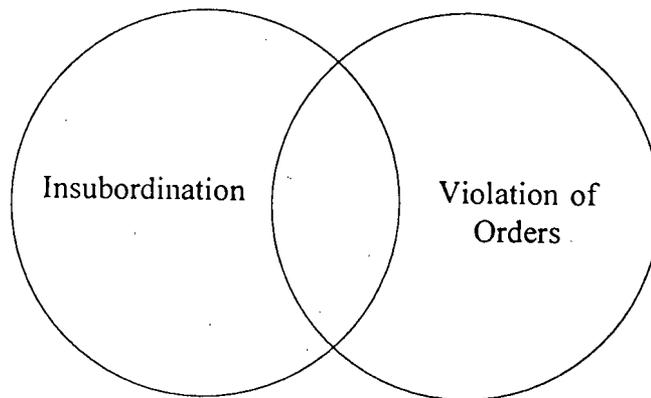
Too often supervisors are quick to claim job abandonment with a "bad" employee, while blinking at the same behavior on the part of a "good" employee. Experience in many organizations would indicate that charges of job abandonment may be correlated with disciplinary problems or problematic workers' compensation claims. These claims, however, give affected employees strict contractual and legal protections. For this reason, any claim of job abandonment should by way of process be dealt with as potentially disciplinary and should involve consultation with the Labor Relations Section.

## Supplement B

### **Insubordination and Violation of Orders**

Insubordination and violation of orders are two key charges which form the foundation of most discipline for misconduct. In fact, the majority of charges for both non-performance and absence related charges have elements of these conduct elements when closely examined. (See Supplements C and D.) Insubordination and violation of directives are overlapping but not synonymous concepts:

- Some acts of insubordination do not involve a violation of orders.
- Some acts of violating orders are not insubordination.



#### 1. Insubordination.

Any employee behavior which denies the authority of the supervisor is deemed "insubordination." The most common form of insubordination is an intentional violation of orders. There are other forms of insubordination which are less well known or understood. Examples are (when directed toward the supervisor):

- A physical assault to include any "offensive touching."
- Insulting, abusive, and obscene language or gestures.
- Threats of harm or disruption to the work place.
- Shouting or "booing."
- Mocking or taunting tone of voice or related gestures.
- Speaking disrespectfully concerning the supervisor to a coworker within the supervisor's hearing.
- Intentional rudeness.
- Constantly disputing the advisability of supervisory actions.

- Assuming the authority of the supervisor, e.g., giving orders to coworkers.
- Obstructing implementation of directives, including inciting the disobedience of coworkers.
- Knowingly making false accusations or complaints against the supervisor or spreading false rumors.
- Any other behavior which tends to undermine the authority of the supervisor.

All of these acts, particularly in clear and repeated form, are as insubordinate as an intentional violation of orders.

Nothing is more critical to the morale of the supervisor than dealing with such issues promptly. Effective supervision presupposes the formal and perceived exercise of authority. A supervisor who allows insubordination to continue erodes his/her capacity to function, since other employees may soon come to disrespect the supervisor. Just as importantly, insubordinate conduct is felt as a personal assault. All the emotional factors discussed in Section IV come directly into play. Since constructive discipline is only possible "in the context of an affirmation of the worth of the employee," if insubordinate conduct is not dealt with firmly and early, it erodes the possibility of a positive relationship between the employee and supervisor, sometimes irretrievably. Due to the potentially emotionally charged nature of confrontations regarding insubordination, a consultation or "perception check" with a fellow supervisor may assist in creating a constructive encounter with the employee.

In addressing the issue of insubordination, several questions are frequently asked:

- a. In the movement to a Quality Environment isn't the entire notion of "insubordination" outmoded?

No, what is outmoded is a personality based, autocratic style. Clarity about hierarchy becomes more not less necessary in a fluid environment in which employees are shifting roles. (There are important implications, however, with respect to over-reliance on orders. See 3.d. below.) As in classic problems surrounding delegation activity, initial clarity removes the need to "hover" and the harsh "taking back of the reins" when vague parameters of authority and accountability are violated. **Perhaps even more importantly, insubordinate, negative employees are totally destructive of team functioning, the heart of the Quality Environment.** What might be barely tolerable in an employee in a rigid, isolated function is unacceptable in a more fluid, team setting.

- b. This manual focuses on the prevention of problems. Are there any particular ways of preventing of insubordinate conduct?

Yes, variations on the general prevention strategies outlined in Section V and a few additional points would appear to be in order. The foundation of such an approach must be the recognition that the willingness of employee to accept



authority without engaging in insubordination is dependent in good part on the supervisor's behavior, especially the "consideration behavior" discussed in Section XIII.

The key point is to avoid issuing directives in a manner which may be perceived as autocratic. **Directives should be seen as stemming from and serving organizational goals.**

The above point is of such key importance that certain points of contrast between the Autocrat and the Quality Supervisor must be drawn sharply:

The Autocrat	The Quality Supervisor
<ul style="list-style-type: none"> <li>• My ideas are inherently better.</li> </ul>	<ul style="list-style-type: none"> <li>• The source of an idea is irrelevant to its validity.</li> </ul>
<ul style="list-style-type: none"> <li>• My intuitions are the measure of a successful idea.</li> </ul>	<ul style="list-style-type: none"> <li>• Data is the measure of the success of an idea.</li> </ul>
<ul style="list-style-type: none"> <li>• My personality is the source of my authority.</li> </ul>	<ul style="list-style-type: none"> <li>• The requirements of the system are the source of my authority.</li> </ul>

The key personal skills which must be enhanced to make progress in the shift to Quality Supervision are listening and problem solving skills. Full development of these skills is beyond the scope of this manual, although a brief review of certain elements is included in Section VI and VII.

The Multnomah County supervisory training package includes three days of interpersonal skills training with a focus on listening and problem solving skills. Helpful references are:

- Gordon, Thomas. Leadership Effectiveness Training. (This is the source text for supervisory training.)
- Covey, Stephen. The 7 Habits of Highly Effective People. (Especially Habit 5, "Seek First to Understand, Then to be Understood: Principles of Empathetic Communication.")

If you as a supervisor are making efforts to shift your behavior in the listening and problem solving dimensions, you should be aware of certain pitfalls:

- A directive is still a directive.

The move to Quality Supervision is not an abrogation of authority, but a move in the style, frequency, and justification context in which authority is

asserted. Turning clear directives into vague requests is the antithesis of Quality.

- The Personal Relationship Supervisor is not a Quality Supervisor.

The "easy out" of the hard road to Quality Supervision is to try to develop personal relationships with employees and base the supervisory relationship on friendship and requests. The pathologies of this style, manipulation, favoritism, misunderstandings, and the explosive organizational equivalents of "lover's quarrels" ("We used to be friends, but...") are hardly an improvement over clear, honest autocracy. Despite superficial appearances to the contrary, this approach is founded on the "Personality Ethic" (see Stephen Covey) rather than on principles rooted in system requirements.

- Other TIPS directly related to preventing insubordinate conduct which may be of assistance in prevention are:

- Maintain a businesslike dignity in the content and style of speech addressed to employees. (For example: If you use foul language with employees, it should hardly be a surprise that you receive the same in turn.)
- Maintain firmness and consistency in imposing directives, thus removing the temptation to "test the boss."
- Avoid issuing directives in an emotional atmosphere. Further, if possible, allow an emotionally distraught employee to "save face."
- Examine your supervisory behavior for evidence of personal grudges against certain employees.
- Without unnecessary intrusiveness, attempt to remain informed about problems in the employee's personal life which may spill over into the work place. (This last point may be especially key. Experience of Labor Relations personnel would indicate that insubordinate conduct disruptive to team functioning is frequently based in substantive part on severe psychological or social disfunction. See Section X regarding EAP referrals.)

2. Violation of Orders or Directive.

As earlier indicated, all violations of orders are not insubordination. Two key dimensions are important in analyzing charges of violation of orders, the Intentionality Dimension and the Importance Dimension. Only if intentionality is present is the act insubordinate.

Importance	High	Employee inadvertently left a used needle on a counter at an HIV clinic.	Employee violated a clear safety directive not to drive the "High Crane" over 20 MPH by driving it at 45 MPH.
	Low	Employee inadvertently turned in the wrong reimbursement form in violation of a directive.	Employee violated directive to not wear an unironed shirt.
		Low	High
		Intentionality	

Each case must be analyzed along these dimensions based on its own merits. Only when intentional disobedience is present does the dual charge of insubordination and violation of orders ripen. Special attention also must be focused to those extreme cases of violation of orders sometimes labeled "defiance." Such a case goes beyond the already serious act of willful disobedience to a circumstance in which the supervisor's authority is the target of the disobedience. For example:

- Joe was personally directed to take the package back to the office. He replied, "Take your order and this package and shove it."
- Henry was directed to remain in the office to finish the briefing. In the presence of the entire crew, he looks the supervisor in the eye, then glanced at the crew and strode out the door.

While each case must be examined on its own merits, both severe cases cited above would certainly be candidates for discharge.

3. How to properly issue an order, and the key alternative to issuing orders.

The requirement to obey directives is not based on personality but on the functional requirements of supervision. Without the supervisor's expectation that directives will be obeyed and the willingness of employees to accept these directives, no organization can function. The process of issuing directives in your organization can be aided by a few fundamental principles.

a. Orders must be obeyed.

Orders are to be distinguished from other communications to employees in that they mandate certain actions and thus eliminate alternative, perhaps very reasonable, choices. Supervisory orders are thus a substitute for employee judgment. **This is their strength and their weakness.**

## TIPS

- Don't confuse statements of advice or persuasion with orders. To give employees advice implies that they have a right to exercise their own judgment.
- Don't allow orders to be disobeyed without consequence.
- Don't give so many orders that:
  - Compliance cannot be monitored, or
  - A reasonable employee cannot absorb and comply with your directives.
- If there are certain conditions under which you wish an order to be inoperative, specify these conditions very carefully; e.g., there may be certain emergency situations in which you wish employees to exercise complete discretion with only an after-the-fact reporting obligation.

### b. Orders must be communicated.

For an employee to have an obligation to obey an order, it must be communicated in a time and manner that makes clear the required behavior.

## TIPS:

- Give orders in the language of the employee. Don't use obscure words or complex sentences.
- Don't use vague terms or broad concepts if you wish to mandate specific behavior. Such orders create needless uncertainty.
- Orders to all employee should generally be put in writing and given to each employee or prominently posted on the employee bulletin board.
- Inform employees of the special importance of an order if that importance is not obvious.
- Provide employees with an opportunity to ask questions concerning orders. Encourage employees to paraphrase complicated verbal orders.
- Periodically review and communicate to employees all orders which you desire to remain standing. Old orders should not "fade away" but should rather be formally rescinded.

- Give new employees copies of all general orders.
- c. Orders must be based on authority.

An employee has an obligation to obey an order only if:

- (1) The supervisor has the authority to give the order; and
- (2) The employee knows the supervisor has that authority.

TIPS:

- Ensure that delegation of authority is clearly communicated in your organization. (Many bosses with uncertain authority make for complete confusion.)
- Introduce each new employee not only to his or her immediate superior, but also to all others who may have the authority to issue directives.

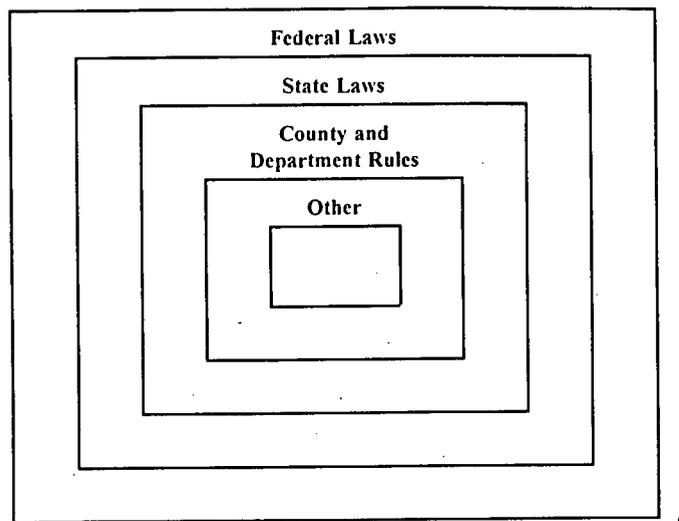
- d. Don't over-rely on orders.

Over-reliance on orders to motivate employees, particularly when orders are personalized and the punitive consequences of non-compliance emphasized, can easily create a non-productive atmosphere of fear, hostility, and rebellion. Unfortunately, a frustrated supervisor may tend to "solve" the problems of such an environment by issuing even more orders.

TIPS:

- Take "time out" to explore the problem with a few supervisory colleagues.
- Utilize with key employees the confrontation and problem solving techniques outlined in your supervisory training. (See Section VII.)
- Minimize the number of new orders. (When such an order is necessary, take particular care to field employee questions and to focus on the purpose of the order.)
- Attempt to find ways of positively motivating employees.

**Once the above basic concepts regarding directives are understood, it is important to realize that the individual and/or group that the supervisor is interacting with should properly be left considerable discretion in arenas which do not flow mechanically from the requirement of the organization. Orders cannot be the foundation of a Quality Environment. Utilizing the L.E.T. framework:**



Within these "non-negotiable" parameters of the organizational constraint system, it is critical that the remaining arena not be excessively directive bound. There is much which can and should be negotiated between a supervisor and the work group, based on individual needs or interests. In this context, the supervisor's role can shift to that of a facilitator or party to a negotiations process.

An advantage of negotiated solutions is that the resulting problem solving can create a superior solution which was not contemplated by either party in advance of the process. Perhaps even more importantly in organizational life, it is ownership of a solution which motivates employees to make it work.

If the above sounds very much like what goes on in classically executed delegation, it is because it is. Delegation is also bound by organizational constraints, but its power flows from the delegation of decision making to the individual.

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<sup>9</sup> Gordon, Thomas, *Ibid*, p. 204

# Sample Letter Insubordination and Violation of Orders

## Commentary

1. Procedural. The attached letter presupposes that:
  - A letter of Contemplated Discipline has been issued in accordance with Executive Order 225, and that a Contemplated Discipline interview has occurred.
  - The Local 88 contract applies rather than another Collective Bargaining Agreement or a situation involving an Exempt Classified Employee. (See Executive Order 225 for procedure and general sample letter.)
2. Substance. Note in this particular letter the efforts of the writer to utilize the drafting suggestions contained in Section XII, C of this Manual, specifically:
  - Outline Format, keying charges and specifications.
  - Explanation linking the actions taken with evidence presented by employee.
  - Future expectations and process, which makes clear the substance of what is expected in the future and the process of review.

September 30, 2001

Henry Caruthers  
Suite 1400  
Portland Building

Dear Mr. Caruthers:

This letter is to notify you that you are hereby suspended without pay for ten (10) working days, effective October 12, 2001. The charges which are the basis for your suspension are violation of a direct order and insubordination. The specifications of the charges are:

1. Violation of a Direct Order

On September 8, 2001, you were in my office with Alice Armstrong and Charles Smith. I was briefing you on the new requirements of the Contract Planning Process. About half way through the process you became agitated, rose from your seat and started to walk out the door. At that time I directed you to remain with the following words: "Henry, I know you are upset, but take your seat so we can get on with laying out our process." In response to this order you looked everyone in the room in the eye, including myself, one by one and then turned, walked out of the room, and slammed the door.

2. Insubordination

The above failure to comply with a direct, personal order in itself constitutes insubordination. The conduct which surrounded this failure to comply with the directive was even more grave. When faced with the order, you acknowledged it to each person present with your eye contact. You then rejected the order and my authority by walking out of the door. You added the insult to myself of a loud slam of the door. These actions constituted, in conjunction with the violation of the order, the worst form of insubordination, a clear act of defiance.

Efforts in the past which have been made to assist you in dealing with your problems of self control include:

- Counseling session on January 15, 2001, including urging you to seek EAP assistance.
- Letter of reprimand for shouting in your office when this shouting could be heard in the adjoining hall.

I take an act of defiance very seriously and actively considered your termination. Your behavior was of such serious nature that issues of progressivity simply do not apply. In the end, I chose, after hearing your side of the matter at the Contemplated Discharge interview of September 20, 2001, not to terminate you for several reasons:

- Your passionate involvement and hard work during the past year on the Planning Process has lead to a personal involvement which made the personal reaction at least understandable.
- You have twenty years of service with this organization, unmarred except for your behavior this year.
- You explained, on a confidential basis, issues surrounding the status of your teenage son which were affecting you on September 8.

Despite the fact that I have decided not to terminate you on this occasion, I remain gravely concerned about your acts of September 8 and the actions which preceded them, therefore:

1. EAP. You are urged to consult the EAP program regarding issues of anger control as well as the family issues we have discussed.
2. Future Behavior and Consequences. Effective October 27, you are placed on a 180 day review cycle regarding the expectations which were stated in your prior Letter of Reprimand. You are to meet with me every thirty (30) days beginning October 27, the date of return from your suspension, to discuss progress. If you fail to conform with all stated dimensions, you will be subject to further disciplinary action at the end of the review cycle. I reserve the right to take action prior to that time based on:
  - The totality of your conduct;
  - A single, or several, significant failures to conform with state expectations which warrant immediate action.

You are placed on specific further notice that act(s) of insubordination or defiance may well lead to your immediate termination.

Within the next ten (10) days you may respond in writing and your response will be placed in your personnel file.

You are also advised that you may elect to grieve in accordance with Articles 17 and 18 of the Local 88 Agreement.

Sincerely,

George Schwartz  
Department Planning Director

c: Personnel File  
Local 88 Union Representative  
Labor Relations Manager

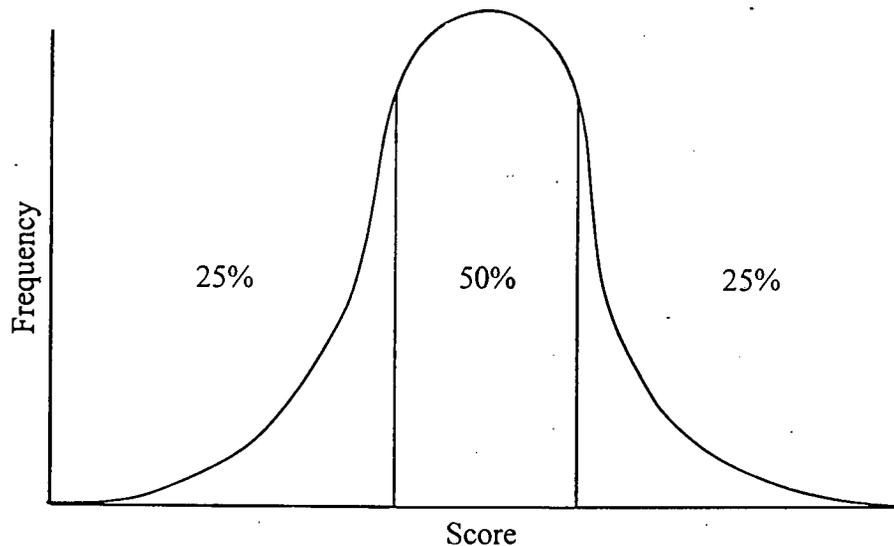
## Supplement C

### **Performance Related Discipline: Incompetence, Inefficiency, Non-Performance of Work, and Related Misconduct**

Nothing is as damaging to the reputation of public employees as the widespread belief that significant numbers of public employees are "lazy and incompetent." Unfortunately this perception is bolstered by a supervisory mythology that employees can only be fired for gross misconduct. While termination cases involving pure misconduct are undoubtedly easier to develop and sustain than those related to task performance, it is critical for the purpose of the productivity and reputation of the County that the broader issue of performance-related charges be specifically addressed.

1. Returning to Basics: Individual Differences and the Setting of Minimum Standards.

Before exploring the varying forms of performance-based causes for discipline and termination, it is important to revisit some basic principles regarding individual differences which frequently get buried in the disciplinary process. The most important principle to clarify the outset is: **"Having below average employees is not a problem, it is an inevitability."** Garrison Kellor says as part of his radio talk show humor that Lake Woebegon is a town where "all the children are above average." Lake Woebegon, however, is a statistical as well as

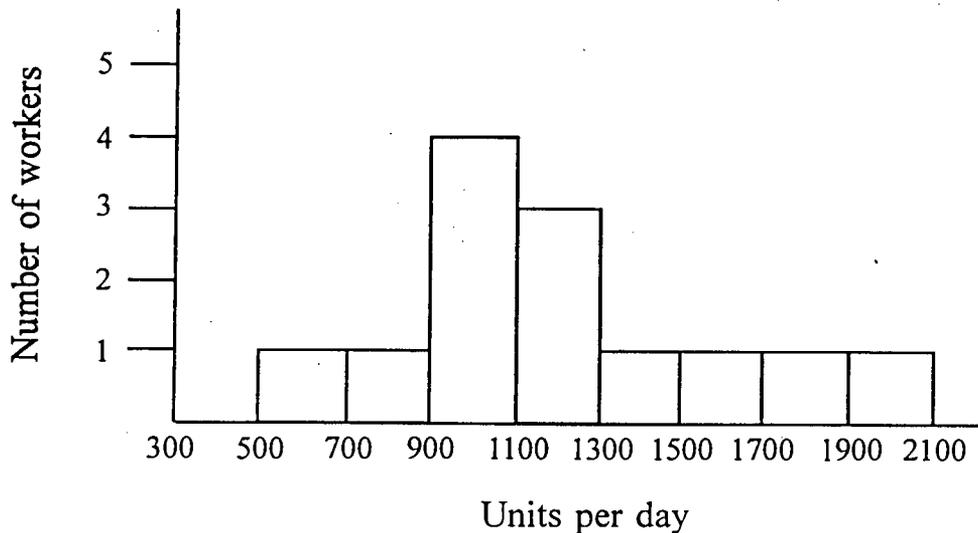


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<sup>10</sup> Maier, Norman, Psychology in Work Organizations, 1973, p. 155

literary fantasy. While one would hope that the focus on quality in hiring (See Section IV) would have some effect on the range of variation found in the population of only nominally qualified individuals represented by the normal bell curve, one shouldn't be unduly optimistic.

A real example of a classic production spread is as follows<sup>11</sup>:



Faced with production data like the above, a noted industrial psychologist has stated:

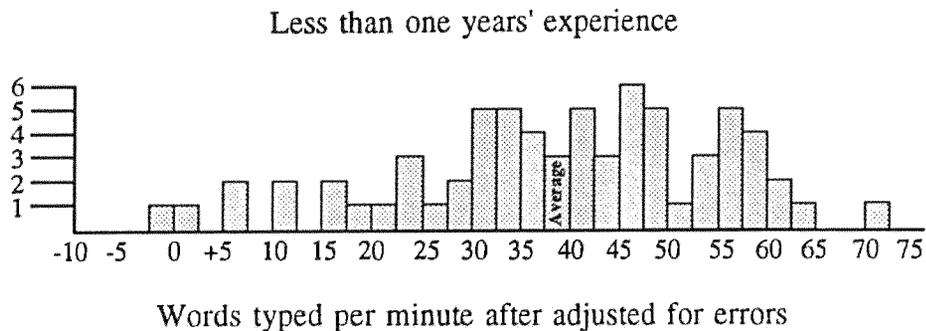
"The slowest worker is less of a problem when it becomes apparent that superior workers more than make up for the deficiency. Since every group must have a slowest worker, study of the distribution of production scores reveals when this condition is acceptable and when it needs correction. In this example, the slowest worker does not deviate enough to be classified as unsatisfactory...in this instance the poorest performers have been removed by one method or another. To continue removing the poorest performers will cause anxiety on the part of others, and this condition leads to morale problems. **Large differences in productivity are a healthy condition; because they stem from the fact of abilities spread over a wide range. As long as the superior producers are definitely farther above the central grouping than the less gifted producers are below, a good selection of employees is indicated.**"<sup>12</sup>  
(Emphasis added.)

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<sup>11</sup> Maier, Norman, *Ibid*, p. 158.

<sup>12</sup> Maier, Norman, *Ibid*, p. 158.

An alternative production distribution might look like the below<sup>13</sup>:



In this case one is faced with four individual cases of an "outrider" pattern of low production; cases which are palpably below the group "norm."

The above discussion and cases illustrate two of the four classic methods of setting minimum standards:

- Outrider (utilizing statistical display).
- Statistical (school teacher style grading based on standard deviations from the mean).
- Objective Analysis (typically utilizing a time motion or other task flow process).
- Rational Rule of Thumb (utilizing the supervisor or other "average employee" to do the task/tasks and using this information to establish a "rational rule of thumb.")

In facing the difficult choice of standard, the supervisor will also may be faced with a contractual standard for evaluating the result. For Local 88 employees:

"1. Workloads and Standards.

It is the County's right to establish the workload for employees. In addressing the assigned workload the employee's supervisor may establish reasonable job performance standards, and may, from time to time, revise them. Such standards shall be posted or individually stated to each affected employee, in order to assure advance comprehension and understanding of performance requirements. No

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<sup>13</sup> Maier, Norman, Ibid, p. 162

employee shall be subject to disciplinary action for failure to meet standards of performance unless such employee has been fully advised of such expected performance standards, in advance of the work period in question." (Emphasis added.)

(Article 20, Section 1)

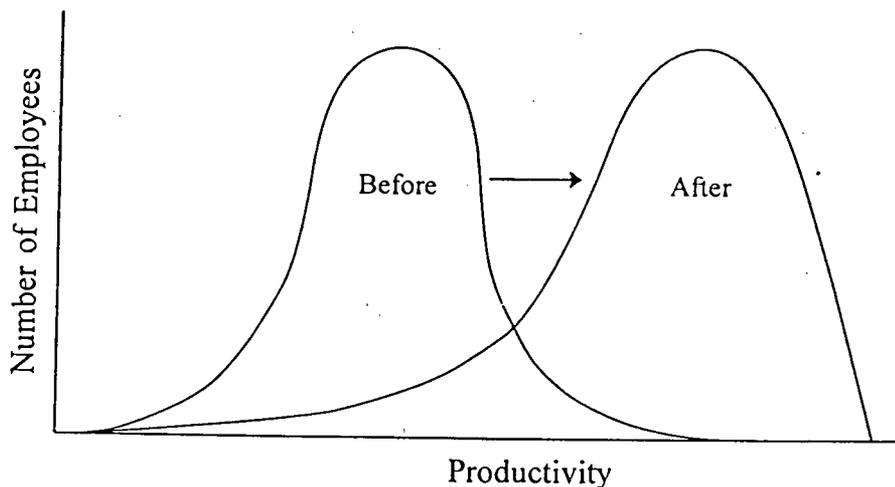
Under this particular language, it is incumbent on the employee to grieve the reasonableness of the standard at the time of its issuance. Knowing this, the supervisor must be prepared, in advance, to offer cogent reasons for the stated standard.

2. An Aside: Placing Discipline for Substandard Performance in a Quality Context.

The above difficulties in setting minimum standards are not meant as a counsel of despair, but they should constitute a cautionary tale as to the difficulty of, nay the impossibility of, substantially improving organizational performance by improving the performance of a few outliers. Raising a few employees from (F-) to (D-) on the productivity dimension will not substantially alter organizational production. What will substantially alter production is:

a. Shifting the Curve.

Altering either the technology or systems environment in which the entire work group functions can shift the entire curve.

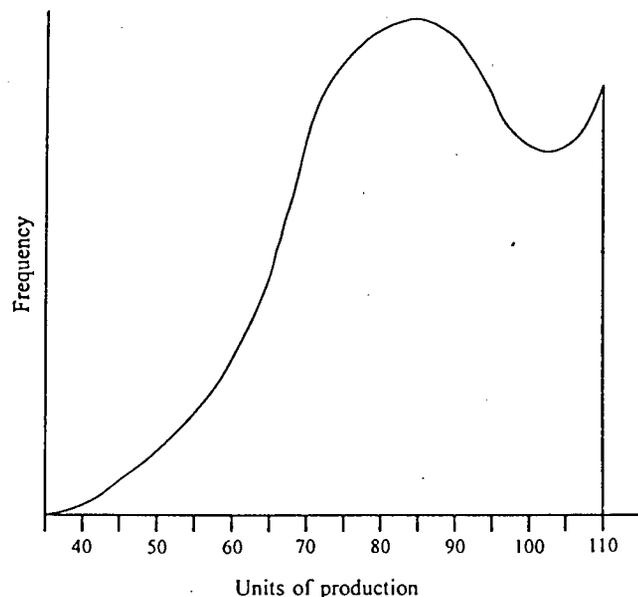


There is still variation here. That is normal. The shift of average production, however, has significantly increased, as has the range of distribution, particularly on the low side. Clearly the organization is better served by such a major shift than any contribution which can be made by a slight improvement in a marginal employee. Such a shift, however, raises a new

problem attendant on the shift to a Quality Environment, namely the issue of the employee who is left behind. It is critical that such "left behind" individuals be treated with great care, particularly when there is no element of conduct involved in what was formally a marginal, but acceptable, level of performance. Group commitment to participation in transformation is best served by a sense of security that participants will not be casually sacrificed to the process itself. (To paraphrase from the Ranger's motto, "We do not leave our wounded on the battlefield of productivity.") This is not an admonition that anyone who is engaged in a productivity process will be granted life long job tenure, but it is an admonition to sensitively craft solutions resulting from such transitions with a good faith desire to minimize any harm which may result.

b. Removing Normative Restrictions on Productivity.

The normative effect on group productivity and the broader goal of substantially increasing the group's productivity not only entail shifting the curve, but changing the shape of the curve itself. The phenomenon of group normative restriction on production is frequently dramatic and substantially affects overall productivity.



14

It is important to note that focusing on the level of analysis of the individual not only misses, but can actively interfere with the key issue of team involvement and group pressures on productivity as illustrated above. **The principle is clear: most productivity does not result from imposition of minimum standards, since most of each employee's productivity is a free**

<sup>14</sup> Maier, Norman, *Ibid*, p. 174.

**will gift resulting from a proper alignment of the individual's needs with that of the organization. This alignment is the key challenge to the supervisor and manager in a Quality Environment.**

If the group is the key focus, why does one even bother with the substandard performance of the individual? In certain extreme cases, of course, individual contribution shift can make a difference. The deeper answer, however, as stated in the Introduction to this Manual lies with group dynamics:

#### Norms

- Lack of attention to marginal employees violates the group norm of excellence, thus resulting in a norm of mediocrity. Individual expectations thus can affect group productivity by the indirect effect on others.

#### System/Team Interaction

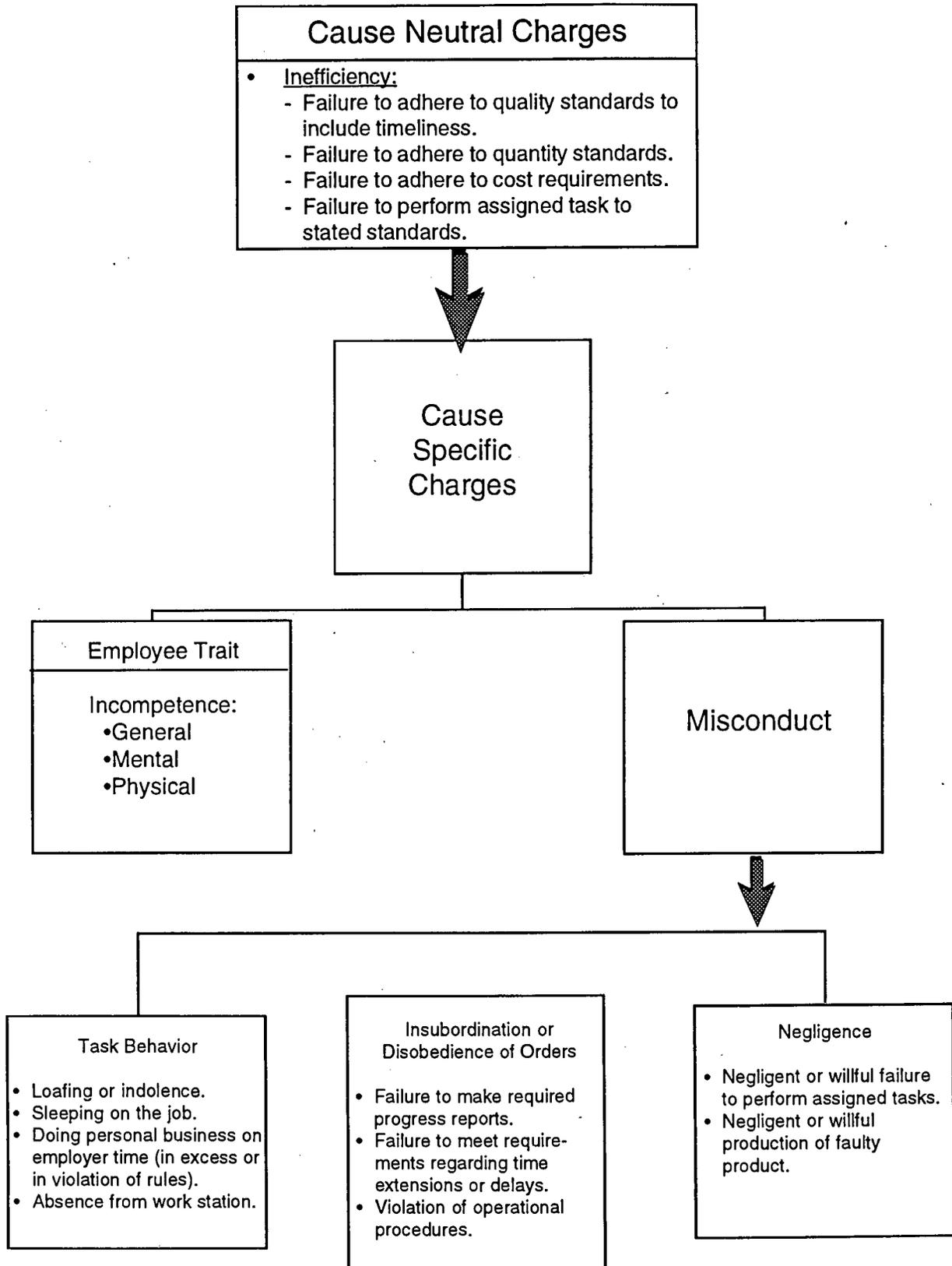
- In highly interactive team settings, which are typical of the County, the level of performance of individuals is functionally interrelated. To analogize from sports, an inferior point guard not only affects the performance norm of the team (see above), his performance actively and directly affects the ability of everyone on the team to function. The negative influence multiplies geometrically when this performance issue is joined to issues of both performance and conduct, a topic which will be explored later in this Supplement.

The key implication for the supervisor of the above remarks is that the focus of energy in human resource development must be the functioning of the entire team, but that to serve this functioning there must be a lesser, but nonetheless significant, focus on individual substandard performance. To neglect one in the end is to neglect both.

### 3. The Real World: Linking Performance and Conduct.

If in reality individual performance is linked to team performance, it is hardly a surprise that substandard performance is frequently linked to issues of misconduct. Certain forms of such misconduct are particularly disruptive of team efforts and thus must be the particular focus of the supervisor. This broader set of conduct charges is illustrated in the chart below:

# Charges Related to Employee Performance



Thoughtfully working through the possible charges related to an unacceptable course of employee conduct utilizing the above chart (in conjunction of course with the full system and analysis charts earlier detailed in Section II and VIII) will allow the supervisor to develop an appropriate course of contact.

a. Cause Neutral Charges.

Cause neutral charges of "Inefficiency" and/or "Failure to Perform Assigned Tasks" are indeed on the surface much simpler to process than the cause specific charges cited below. Since the charge itself does not specify the causal link, however, one should not assume that related issues will not arise. Aside from the usual lines of defense, (See Sections 1 and 2) the supervisor should be aware that issues regarding the propriety and/or reasonableness of the task, as well as employee motivation, will inevitably become part of the analysis.

b. Employee Trait: Incompetence.

The charge of incompetence is an allegation that the employee not only didn't perform certain required tasks to a certain standard, but that the failure is based on an underlying incapacity of the individual. Generally such a charge has such grave consequences for the employee (demotion or discharge) that it is a "late stage" charge, i.e., following previous charges of non-performance. Arriving at a conclusion of incompetence can flow from:

- A general conclusion based on performance observations and interventions over a reasonable period; and/or
- A conclusion based on a physician or psychologist's evaluation of a physical/psychiatric condition. (Note: the process for sending an employee for such an examination is strictly limited by contract and law. Furthermore, the resulting evaluation may ripen an obligation under the Americans with Disabilities Act. Because of these complexities, initial consultation with your Employee Services Analyst is highly advised. He or she may well involve others based on the nature of the case.)

Assuming that the process above leads to a conclusion that the employee is incompetent, then the process of contemplated discipline and due process remains the same. Since such charges may not involve any voluntary action on the part of the employee, however, and in fact may be the result of a human tragedy, particular sensitivity must be taken in the tone of such letters. Due process related substance must, however, remain unchanged. (See sample letter regarding psychological incompetence.)

c. Charges of Misconduct.

Charges of misconduct related to poor performance of work are surprisingly frequently overlooked by supervisors focused on the broader overall issue of the employee's failure to perform. This is unfortunate, since willful non-performance is frequently a maker for, and a cause of, team dysfunction. It should be taken very seriously indeed. When combined with behaviors related to disruption of the workplace, such as harsh and constant complaining, such employees are totally incompatible with a Quality Environment. Frequently team-based solutions discussed elsewhere in this manual are most appropriate to creating an atmosphere in which such behavior is minimized. When formal discipline is necessary, however, the cited charges in the above chart may be a helpful reminder of the variety of such conduct. A few points are in order regarding conduct charges:

(1) Task Behavior.

Non-performance frequently results from employees who spend little time performing tasks. In extreme cases they come in late, drift around the workplace, take an extended lunch, disappear into the field, and when at work spend considerable time on personal business. Confrontation and, if necessary, formal charges can successfully deal with such issues. The chief difficulty stems from the defense of discrimination: "Everyone does this, my supervisor just doesn't like me." While changing an entire culture to deal with one problem is inappropriate, if task behavior is a group issue, it needs to be addressed on a broader basis. Difference in degree is a difference in kind, however, and if the individual is truly a stand-out from an occasional off task behavior on the part of others, a distinction in reaction is appropriate.

(2) Insubordination or Disobedience of Orders.

One supervisory technique for gaining control of the performance behavior of out of control employees is to simply utilize the sometimes useful technique of direct orders or directives to set these performance requirements into the additional dimension of conduct. (The dangers and limitations of such an approach and preferable alternates at an early stage have been discussed in Supplement B.) When finally brought up short by a series of confirming orders, an insubordinate employee may prefer a mutually satisfactory resignation to compliance with a clearly more restrictive workplace.

(3) Negligence.

Negligence involves the breach of the duty to take reasonable care to ensure that work is performed to standards. Breaching this duty is misconduct. It does not follow automatically that errors, or in fact a disastrous consequence, are automatically culpable misconduct. The nexus between employee conduct and consequences must always be demonstrated. **Nothing is as destructive of group morale as the "offering up" of line employees based on an error. Nothing is as constructive of group morale as a supervisor, who while holding employees responsible for real negligence, takes responsibility for system issues themselves: "I am accountable for this system issue."** In many cases, however, there may be a presumption of responsibility. For example, if a jail door is walked through in an escape by an inmate and checking the door is a central duty of a Corrections Officer, it may be presumed that there was negligence, absent plausible rebuttal, buttressed by substantial evidence.

An important additional point to make with respect to issues around negligence and error is that in a participative environment in which you wish experimentation, you must expect failure and try to learn from it. If employees believe that good faith errors and failed experiments will be greeted with blame, they will either not take risks or they will suppress/relabel failures. Neither of these results is acceptable in an organization seeking continuous improvement in services and related work processes.

# Commentary Regarding Sample Letters Supplement C

## Commentary

1. Procedural. The attached letters presuppose that:
  - **All procedural requirements for the particular form of discipline must be followed** in accordance with Executive Order 225. For example, for the discharge letter you must assure that a letter of Contemplated Discipline has been issued in accordance with the Executive Order and that a Contemplated Discipline interview has occurred.
  - **The Local 88 contract applies** rather than another Collective Bargaining Agreement or the requirements for an Exempt Classified Employee. (See Executive Order 225 for procedure and general sample letter.)
2. Substance. Note in all of these letters the efforts of the writers to utilize the drafting suggestions contained in Section XI of this Manual, specifically:
  - Outline Format, keying charges and specifications.
  - Explanation, linking the actions taken with evidence presented by employee.
  - Future expectations and process, which makes clear the substance of what is expected in the future and the process of review.
3. Seek criticism. Sample letters are an effort to assist you in crafting letters which adhere to procedural requirements and give a general sense of a reasoned connection between evidence, specifications, charges, and discipline imposed. Before issuing any such letter it is wise to have a fellow supervisor or manager cast a critical eye on the letter and its reasoning.

Sample Letter  
Performance and Performance-related Misconduct

October 4, 1995

Jim Rockerty  
Room 148  
Carlson Building

Dear Mr. Rockerty:

This is a letter of reprimand for substandard performance and disobedience of directives related to performance requirements.

The specifications of the charges are as follows:

1. Substandard Performance

At our counseling session on August 28, we discussed your file error rate. As you know, accurate client document access is critical to successful customer service. We have a standard of three filing errors per thousand files per month and are working with the team toward a stricter file standard for critical documents. You acknowledged that this was a known standard and a reasonable one. The month chosen for review was August. The file error docket reveals seven errors noted per thousand for your file room, which violates the standard.

2. Disobedience of Directive

At the above meeting I also reviewed with you the filing backlog issue which at times involved as many as a hundred or more files in your in-box. I acknowledged that while my view was that there was some negligence on your part regarding this problem that it was possible that the fault was not yours in certain instances. In any event, it was too long after the fact for me to evaluate the matter. To ensure accountability, and assistance for you as appropriate, I directed you to notify me on any date that the file backload was in excess of ten (10) files at the end of the work day. On five separate occasions during the review month (September 1, 14, 15, 24, and 27) I checked the file box and found from 20 to 30 files. On no occasion did you contact me as required.

The above pattern of behavior is completely unacceptable. The expectations stated at our counseling sessions are continuing in nature. You will be subject to a further review on

November 5. If you have not met performance standards and fully complied with the above cited directives, you will be subject to more severe disciplinary action.

Within ten (10) days you may respond in writing, and your response will be placed in your performance file.

You are also advised that you may elect to grieve your reprimand in accordance with the terms of the Local 88 Agreement.

Sincerely,

Henry Hardmark  
Records Manager

c: Personnel File  
Local 88 Union Representative  
Labor Relations Manager

# Sample Letter General Incompetence

October 9, 1999

Charles Edhardt  
Room 533E  
Kitchitak Building

Dear Mr. Edhardt:

Effective October 11, 1999 you are hereby suspended without pay for fifteen (15) days and dismissed from employment effective October 26, 1999. The charge which is the basis for your dismissal is incompetence.

The specific foundations for the charge of incompetence are:

1. Writing and Analytic Skills

A key element of your job is the ability to write coherent prose which demonstrates an ability to link facts with conclusions in accord with FRP principles. The ten (10) samples of writing taken from your case files are attached. I have reviewed each carefully. They reveal:

- a. A continuation of not only ungrammatical, but also incoherent, sentences and phrases. I have underscored examples in each document.
- b. Of equal important to "a" above is the lack of application of FRP professional principles. The results are personal opinion analyzed to reach yet other opinions without a professional basis. In each document I have starred (\*) only a sample of such failure to apply standard principles.

2. Interpersonal Skills

A FRP Coordinator's job requires advanced interpersonal skills, specifically to include the development of the capacity to conduct assessment of client needs and to develop a trust relationship in a multi-cultural and cross generational environment. To make more objective the assessment of these interactions, the team has developed an interview assessment tool. During the review period, the same pattern of abrasive interactions we noted in prior conferences continued. Attached are ten review sheets from the sample period with starred examples.

In reaching the above conclusions, we listened carefully to your explanations in your pre-termination interview on October 5. Responsive to your remarks:

- You acknowledged the difficulties with your writing, but indicated you were trying. You evidenced little insight into the identified analytic errors but stated, "You are just wanting to substitute your judgement for mine." This is not the case; it is simply a requirement that judgement be based on analysis.
- You acknowledged your continuing problems with abrasive communication. We have had repeated prior discussions regarding your failure to effectively communicate, followed by a pattern of frustrated attacks on clients. I do not think you are "naturally abrasive" as some have stated, but your deeply ingrained communication style difficulties have not altered.

The above decision to terminate was reached with great reluctance and only after the following efforts to assist you by both skill building and by progressive discipline. Discipline was aimed at communicating the seriousness of this matter and the need for you to make substantial improvement:

1. Training

- Writing Skills Workshop (3 days) November 1998
- File Report Analysis - FRP Principles (5 days) February 1999

2. Progressive Discipline

- Letter of Counseling October 1998
- Letter of Reprimand January 1999
- One-day Suspension May 1999
- One-week Suspension August 1999

During the fifteen (15) days you are under suspension, you may resubmit facts or argumentation which you submitted to me in response to my letter of contemplated dismissal of October 1 in writing or in person to Sharon Hertz, FRP Department Director.

You are also advised you may grieve your dismissal in accordance with Articles 17 and 18 of the Local 88 Agreement.

Yours truly,

Helmut Schwarzbaum  
FRP Client Coordinator

c: Personnel File  
Local 88 Union Representative  
Labor Relations Manager

Sample Letter  
General Incompetence Related  
to a Physical/Psychological Condition  
(as well as other matters)

November 4, 1999

Charles Edwards  
113 Pottomah Ave.  
Portland, OR

Dear Charles:

It is with regret that I must notify you that effective November 7, 1999 you are hereby suspended without pay for fifteen (15) days and dismissed from employment from Multnomah County effective November 22, 1999. The specific reasons for your suspension and dismissal are:

- A. Incompetence-Inability to perform the work of an Office Assistant 2.
- B. Non-performance of job duties.
- C. Excessive absenteeism.
- D. Job abandonment by failure to comply with Leave Granting Requirement.

The details of each of these matters were put forward in the Letter of Contemplated Dismissal dated October 23. The specifications of these charges are:

- A. **Incompetence-Inability to perform the work of an Office Assistant 2.** On October 1 you were examined by Dr. Ed Headlong to assess your medical condition as it relates to work. Dr. Headlong provided relevant job-related conclusions to me as per your release. His conclusion was that due to your psychological condition, which is not likely to change, you are unable to perform your job duties.
- B. **Non-performance of job duties.** For fiscal year 1998-99 our records reveal you completed only 16 of the 88 case studies assigned in accord with normal protocol. (Attachments to prior letter provide details.)

- C. **Excessive absenteeism.** You have been absent from your work place from April 1, 1998 through November 4, 1999. Your own personal physician indicated you would be gone for "two to seven months" longer. The time already spent away from work exceeds all FMLA and contractual requirements for leave.
- D. **Job abandonment by failure to comply with Leave Granting Requirement.** You were notified on July 18, 1998 that your family medical leave had expired. You were placed on a leave without pay through September 10, 1998 with specific notice of the leave extension requirements of the contract. These requirements were not met as per the "automatic resignation" trigger of Article 10.1. of the Local 88 Agreement.

In making the decision to terminate, I took into account the content of your letter of October 27 which stated in total, "Stop harassing me." You failed to attend your pre-termination interview or to send a Union Representative in your stead.

During the fifteen (15) days you are under suspension, you may resubmit facts or argumentation which you submitted to me in response to my letter of contemplated dismissal of October 23 in writing or in person to Fulto Barotz, FRP Department Director.

You are also advised you may grieve your dismissal in accordance with Articles 17 and 18 of the Local 88 Agreement.

Yours truly,

Carla Kittering  
Operations Manager

c: Personnel File  
Local 88 Union Representative  
Labor Relations Manager

## Supplement D

### **Absence From Work: Excessive Absenteeism and Misconduct Related to Absence**

Employee absence from work is an important issue related to County productivity. The reason is quite simple, if an employee isn't here he/she can't provide service to the public. Just as importantly, absence, particularly short term, unpredicted absence, significantly influences team and organizational functioning. Supervisors sometimes react to this need in an unsystematic way resulting in frustration and cynicism. While these frustrations are understandable, it is important to realize:

- What is possible within the current legal and contractual constraints, and
- What is outside the supervisor's circle of control or influence.

Hopefully a systematic review of the problem will help.

#### 1. Develop the Data.

- Don't rely on your own perceptions of who is absent and why, since this is often only a partial, and sometimes biased, sample.
- Do rely on the data utilized by the timekeeper for payroll purposes.
- Aside from usage totals for each employee, record patterns of short-term use of sick leave, particularly in connection with weekends or paid time off.
- Compare your data with that gathered by supervisors in similar work units to develop some understanding of whether the causes are particular or general in nature.

#### 2. Look to Prevention.

Without simply repeating the general factors which should be considered in preventing all substandard performance, a few special thoughts are in order:

- Job Satisfaction.

There is a strong consistent correlation relationship between job dissatisfaction and voluntary absenteeism. This is an illustration of the principle frequently cited by students of organizational behavior: "Things surrounded by unpleasantness are seldom surrounded by people." While this is a correlation

and not a universal cause, if the pattern is widespread, it is worthy of examining key causal elements in job satisfaction:

- Supervisory conditions.
- Job content.
- Co-worker relationships.
- Working conditions.

- Organizational Norms and Expectations.

Employees normally do what is either formally or informally expected of them. These communications are communicated in several ways:

- Supervisory Modeling. The behavior both in actuality and perception of the supervisor relative to timeliness and attendance speaks volumes relative to stated ideals.
- Communication of Expectations. Attendance rules and requirements should be communicated to all new employees and periodically reviewed with employees, preferably in a team setting in which the importance of the impact of rules or team functioning can be discussed. Care, however, should be taken to not make this an effort to embarrass individual employees.
- Consistently Enforce Rules. Enforce the contractual requirements for notification and do not allow sick leave for illegitimate purposes, such as personal business.
- Commend Performance. Issue letters of commendation to employees who have exceptionally low sick leave use. For employees who have a holiday conversion program, encourage its use in a commendation context.

3. Know the Law and Contract.

Legal and contractual issues around the use of leave may in individual cases be somewhat complex, but a series of key points apply to most cases. The outline below applies to Local 88 employees, with some variations between agreements:

- Absence for sick leave in excess of three days must be verified by a physician's certificate at the request of the County.
- Sick leave may be used for all and only contractually cited reasons.
- High sick leave users as contractually defined may be held to a higher standard of proof for usages.

- The Family Medical Leave Act requires the County to allow sick leave for certain serious purposes up to twelve (12) weeks per year. The status of employees relative to this criterion should be tracked. (Call your Employee Services Analyst for assistance.)
- In accordance with Article 9, Section 8.b. "Sick leave charges in excess of earned sick leave credits may be charged to earned and available annual leave, personal holidays, or leave without pay at the employee's option. **Leaves without pay shall be subject to the approval of management.**" (Emphasis added.)
- In accordance with Article 10, Section 1, Paragraph 1:

"Leave of Absence.

Consistent with the needs of the County, leaves of absence without pay for a period up to six (6) months will be granted by an employee's exempt supervisor for any reasonable purpose. Denial of such leave shall not be for arbitrary or capricious reasons. Extensions of leaves of absences without pay may be granted solely at the discretion of the exempt supervisor."

**Note:** In many instances short term leaves of absences would not be "consistent with the needs of the County." After six months, leaves are purely discretionary.

- Certain temporary disability leaves in excess of thirty days allow the County to arrange for a physician's statement "setting forth the disability, current conditions, and anticipated length of continued absence." Based on this, certain actions regarding tenure and employment must be taken by the County. (See Article 11, Section 15.)

4. Plan a Course of Action for Selected Employees.

A. Confrontation.

- Using non-discriminatory criteria, prioritize a portion a high sick leave users to confront in personal interviews, e.g., eliminate employees from such interviews who have been hospitalized.
- Using confrontation and problem solving skills already covered in your supervisory training, attempt to elicit a commitment from each employee concerning future use of leave. Remember: The use may have been perfectly legitimate!
- Utilize stronger excuse requirements for the selected "high sick leave users," as specified in the Local 88 Contract.

- Schedule several follow-up interviews to monitor progress.
- Commend employees who improve their attendance.
- As appropriate, remind the employee of EAP resources.

B. The Disciplinary Alternative.

Disciplinary actions related to absence fall into two basic categories:

- No Misconduct: Excessive Absenteeism.

This business of making a living forces us all to be present for work at a frequency and predictability necessary to get the job done. Unless absences are protected by law or contract as specified in Section A, above, there comes a time when further absences are no longer acceptable. Experience has shown that the popularity of the employee and the nature of the disease can influence supervisory judgement with respect to this standard. In the end, however, such subjective criteria are not acceptable in making this critical employment decision. Recall that non-discrimination between rationally equivalent cases is one key element of Just Cause. The charge of excessive absenteeism is not an accusation of misconduct, but a declaration of reasonable organizational requirement. A few key pointers:

- Make a listing of other cases of lengthy, or frequent intermittent absences and what action was taken.
- Be very specific about the disruptive impact of the absence on the organization.
- To the degree that you have not already done so, explore alternatives with the employee. For example, there may be an option for an extended leave of absence followed by a return to work with an expectation of adherence to accrued leave. In the case of a terminal illness, an arranged resignation may be appropriate. In this context employee consultation with Employee Benefits regarding LTD, PERS disability retirement, and medical coverage is critical.
- In the case of chronic, intermittent absenteeism, the supervisor should be reminded of the requirement for progressive discipline, despite the fact that there may be no alleged issue of misconduct.

- Misconduct:

Absences are sometimes associated with misconduct:

- Abuse of sick leave. Use of sick leave for purposes other than the proper use, e.g., playing golf.

- Absence without leave. This is leave taken without the necessary permission. Sometimes, but not usually, retroactively "declared" to be sick leave.
- Violation of leave related rules. For example, an employee who does not call in on time as per contract and rule.
- Tardiness and abuse of breaks and lunch hour. While occasional lateness is to be expected, patterns of poor discipline regarding arrival, leaving and off times can be draining on task time and disruptive of organizational functioning.

C. Letters of Discipline.

Because of the large variety and circumstances involved in absence-related discipline, no single type of letter will fit all cases. Attached is a sample letter which deals with several common charges: tardiness, excessive absenteeism, absence without leave, abuse of sick leave, and violation of leave-related rules.

# Commentary Regarding Sample Letters Supplement D

## Commentary

1. Procedural. The attached letter presupposes that:
  - **All procedural requirements for the particular form of discipline must be followed** in accordance with Executive Order 225. For example, for the suspension letter you must assure that a letter of Contemplated Discipline has been issued in accordance with the Executive Order and that a Contemplated Discipline interview has occurred.
  - **The Local 88 contract applies** rather than another Collective Bargaining Agreement or the requirements for an Exempt Classified Employee. (See Executive Order 225 for procedure and general sample letter.)
2. Substance. Note in all of these letters the efforts of the writers to utilize the drafting suggestions contained in Section XI of this Manual, specifically:
  - Outline Format, keying charges and specifications.
  - Explanation, linking the actions taken with evidence presented by employee.
  - Future expectations and process, which makes clear the substance of what is expected in the future and the process of review.
3. Seek criticism. Sample letters are an effort to assist you in crafting letters which adhere to procedural requirements and give a general sense of a reasoned connection between evidence, specifications, charges, and discipline imposed. Before issuing any such letter it is wise to have a fellow supervisor or manager cast a critical eye on the letter and its reasoning.

## Sample Letter Variety of Absence-Related Charges

October 13, 1999

Charles Gone  
114 Any Place  
Portland, OR

Dear Charles:

This letter is to notify you that you are hereby suspended without pay for five (5) working days effective Monday, October 15. The charges that are the basis of your suspension are:

- A. Excessive absenteeism
- B. Tardiness
- C. Absence without leave
- D. Abuse of sick leave
- E. Violation of sick-related rules

The specifications of the above cited rules are:

- A. **Excessive absenteeism.** During the 60 day review period, you were absent on eight (8) separate days; since you had no accrued and available leave for any but two (2) of these days, you were in a leave without pay status for six (6) days. Your absence were far in excess of the standard set in your prior letter of reprimand.
- B. **Tardiness.** During the review period, you have been tardy nine (9) times in excess of seven (7) minutes.
- C. **Absence without leave.** On September 16 and then again on October 6 you were absent without leave. At no time during this period did you notify your supervisor of your reason for absence.
- D. **Abuse of sick leave.** On October 8, 1983 you were observed at Joe's Bar by Erma Shocked, your lead worker, despite the fact that you had called in sick that day.
- E. **Violation of sick-related rules.** On four of the sick days cited in "A," you failed to call in on time in accordance with contractual requirements.

Efforts which have been made to assist you to deal with the above issues were attached to the Letter of Contemplated Discipline, including my two attempts to get you to consider EAP assistance. Candidly, we are now at the end of the line. You are now placed on a second sixty (60) day review period, subject to the same conditions as the prior cycle. If you fail to meet the standards at the end of the cycle, you will be subject to termination. Naturally, I reserve the right to terminate you or take other action prior to that date based on my judgment of intervening conduct.

During the five (5) days you are under suspension, you may resubmit facts or argumentation which you submitted to me in response to my letter of contemplated discipline of October 5 in writing or in person to Fulto Barotz, FRP Department Director.

You are also advised you may grieve your dismissal in accordance with Articles 17 and 18 of the Local 88 Agreement.

Yours truly,

Kermit Ungerford  
Intake Supervisor

c: Personnel File  
Local 88 Union Representative  
Labor Relations Manager

# Countywide Rules Supplement E

The countywide Personnel Rules having to do with employee conduct are distributed at the time of hire. It is critical that the rules be reviewed with employees periodically as part of the program for "Prevention of Problems." (See Section IV.)

## **RULE 3 EMPLOYEE RESPONSIBILITIES**

### 3.01      PURPOSE

The orderly and efficient operation of the county government requires that employees accept certain responsibilities. Work rules covering personal standards of conduct as well as standard operating procedures are necessary to protect the health and safety of all employees, to maintain uninterrupted service, and to protect the county's property.

### 3.02      WORK RULES

The following work rules shall apply to all county employees. These rules are not intended to be all inclusive and the county shall, according to the provisions of applicable bargaining agreements, establish additional rules to ensure the effective operation of county government.

- 1) Employees shall be at their designated work area on time and ready to work. Employees shall remain at their work area, at work, until the scheduled quitting time unless permission to leave is granted by the supervisor.
- 2) Where operations are continuous, employees shall not leave their position until replaced by the next shift employee or until relieved by the supervisor.
- 3) Employees shall follow all safety regulations to include the wearing of safety articles and the use of protective equipment. Employees shall immediately report safety hazards, accidents or injury to their supervisor.
- 4) Employees shall be responsible for and not misuse county property, records or other materials in their care, custody and control.
- 5) Employees shall deal with the public in a courteous and professional manner.
- 6) Employees shall immediately report to the supervisor any inability to work and the reason therefor.
- 7) Employees shall notify their supervisor whenever there is a change in their personal data affecting their personnel or payroll records.

- 8) Employees shall not restrict or interrupt work or interfere with the work of others.
- 9) Employees shall report for and remain at work only in a fit physical condition which will enable them to perform their regular duties.
- 10) Employees shall not neglect their duties and responsibilities or refuse to perform assigned work unless to perform such work will constitute a safety hazard.
- 11) Employees shall not engage in conduct that reflects discredit on the county while on duty or on county premises.
- 12) Employees shall not engage in unapproved soliciting or political activity while on duty or on county premises. (See Rule 4)
- 13) Employees shall not use their position for personal gain, to solicit or conduct personal business, or to coerce others. (See Rule 5)
- 14) Employees shall not possess unauthorized firearms, weapons, drugs or intoxicating beverages while on duty or on county premises.
- 15) All reports, records or claims completed by employees shall be true and accurate, to the best of their knowledge.
- 16) Employees shall not remove county property or the property of other employees without express approval of their supervisor or the owner of such property.
- 17) Employees shall not violate any of the laws, statutes, or ordinances of federal, state or local government while on duty or on county premises.

## **RULE 4 POLITICAL ACTIVITY**

### **4.01 PROHIBITED CONDUCT**

Employees cannot be required to give money or services to aid any political committee or any political campaign.

Employees cannot solicit money or services to aid any political committee or political campaign while on the job during working hours. This is not intended to restrict the right of county employees to express their personal political views.

Employees may not be disciplined or rewarded in any manner for either giving or withholding money or services for any political committee or campaign.

### **4.02 LEGAL CONDUCT**

Employees may engage in political activity during other than working hours or while not on the job.

### **4.03 POSTING OF NOTICE**

The following notice to public employees will be posted in each work unit to inform employees of the restrictions on their political activity.

#### **ATTENTION ALL PUBLIC EMPLOYEES**

The restrictions imposed by the law of the State of Oregon on your political activities are that "No public employee shall solicit any money, influence, service or other thing of value or otherwise aid or promote any political committee or the nomination or election of any person to public office while on the job during working hours. However, nothing in this section is intended to restrict the right of a public employee to express his personal political views."

It is therefore the policy of the state and of your public employer that you may engage in political activity except to the extent prohibited by state law when on the job during working hours.

### **4.04 FEDERAL LAW**

County employees who perform duties in connection with an activity financed in whole or in part by federal loans or grants are subject to the federal laws, rules and regulations governing political activity.

## **RULE 5 CODE OF ETHICS**

### **5.01 POLICY**

Employees shall conform to the code of ethics described in ORS 244.020 and 244.040.

### **5.02 PROHIBITED CONDUCT**

**5.02.1** No employee shall use the employee's employment in any way to obtain financial gain for the employee's household or family as defined in Rule 7 or any business with which the employee or a member of the employee's household or family is associated.

**5.02.2** No employee shall use information received because of the employee's employment for private gain if that information is confidential or normally available to the general public only by special request or has not otherwise been dispersed by the County.

**5.02.3** No employee shall solicit or receive a promise of future employment with the understanding that the promise will influence the employee's official action.

**5.02.4** No employee shall solicit or receive any gift in anticipation of official action to be taken by the employee in the course of employment. For the purposes of this and the following section, "Gift" shall have the meaning set forth in ORS 244.020(9).

**5.02.5** No employee shall solicit or receive during a calendar year gifts with an aggregate value of over \$100 from a source that has legislative or administrative interest in the employee's office. Any gift in cash is presumed to be a donation to the County and shall be deposited with the County Treasurer.

**5.02.6** No employee shall take any action on behalf of the County, the effect of which would be to the employee's private financial gain or loss, without first notifying the employee's appointing authority in writing of the potential conflict of interest.

**5.02.7** Effective January 1, 1993, Multnomah County officials and employees who are in a position to influence contract decisions affecting nonprofit organizations shall not serve on decision-making boards of, or be employed by, contractors who could benefit from such involvement.

**5.02.8** No employee shall solicit private business from other employees for personal gain while on County time. No supervisor or lead worker shall solicit private or charitable business from subordinates at any time, with the exception of a charitable effort organized Countywide or County agency-wide.

## **RULE 6 OUTSIDE EMPLOYMENT**

### 6.01      POLICY

No employee shall accept outside employment that is incompatible or in conflict with his/her position in the county service.

### 6.02      RULES

No employee shall accept outside employment that meets any of the following criteria:

- 1) Involves the use of county time, facilities, equipment and supplies, or the prestige or influence of the employee's county position.
- 2) Involves the performance of an act which may later be subject to control, inspection, review or audit by the employee's section.
- 3) Involves receipt of money or other consideration for performance of duties which the employee is required to perform in the regular course of his/her job.
- 4) Involves competing with the county in providing a service or product.

Employees are responsible for assuring that their outside employment does not conflict with these rules.

A hiring manager may require employees under his/her direction to report their outside employment.

## **RULE 7 NEPOTISM**

Nepotism is the exercise of preferential treatment based upon familial relationship rather than merit.

For the purposes of this rule, family consists of the employee's spouse, children, stepchildren, parents, grandparents, grandchildren, brothers, sisters, father-in-law, mother-in-law, sisters-in-law, and brothers-in-law.

Appointments and promotions to positions in the county service shall be based on merit as determined by a comparison of job-related qualifications. Discrimination based on nepotism for or against applicants or employees is prohibited except as provided by these rules.

Two members of a family shall not be employed at the same time, if such employment will result in an employee directly supervising a member of his/her family. If violations occur due to marriage, steps shall be taken as soon as practical to correct the situation through transfer or other means.

## **RULE 25 PROHIBITED CONDUCT**

### **25.01      PROHIBITED MERIT SYSTEM CONDUCT**

No person shall:

- 1) Alone or in cooperation with one or more persons, defeat, deceive or obstruct any person in respect to that person's rights under Multnomah County Code 3.10.
- 2) Falsely mark, grade, estimate or report the examination or proper standing of any applicant for a position in the classified service or aid in so doing, or make any false representation concerning the same, or concerning the person examined.
- 3) Furnish to any person any special or secret information for the purpose of either improving or injuring the prospects or chances of any person who is an applicant for a position in the classified service.
- 4) Impersonate any other person, or permit or aid in any manner any other person to impersonate him/her, in connection with any application for a position in the classified service.

### **25.02      PENALTIES**

Upon conviction for violation of the above Rule, a person shall be punished by a fine of not more than \$1,000 or by imprisonment in the county jail for not more than one year or both.

## **RULE 21 EQUAL EMPLOYMENT OPPORTUNITY**

Discrimination in any personnel action on the basis of race, color, sex, age, religion, national origin, political affiliation, marital status, sexual orientation, or physical or mental handicap is prohibited, except when it constitutes a bona fide occupational qualification.

All employment and promotion decisions in county service shall be made in accordance with the principles of equal opportunity by utilizing job-related requirements.

No question in any application, in any request for recommendation or in any test shall elicit information concerning the religious or political opinions or affiliations of any person, nor shall any inquiry be made concerning these opinions or affiliations.