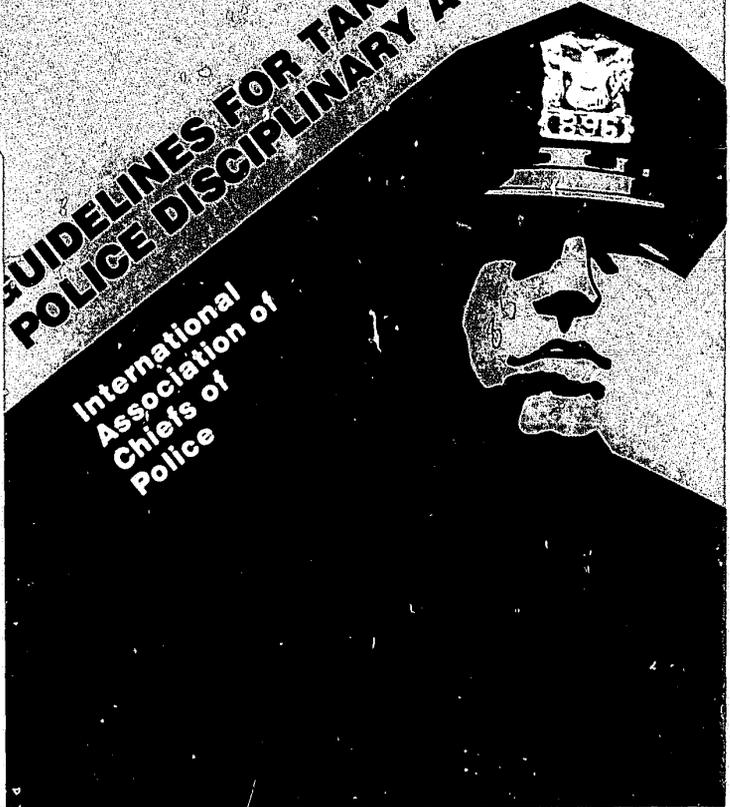


Supervisors' Handbook

**GUIDELINES FOR TAKING
POLICE DISCIPLINARY ACTION**

**International
Association
Chiefs of
Police**



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Supervisors' Handbook

GUIDELINES FOR TAKING POLICE DISCIPLINARY ACTION



International Association of
Chiefs of Police

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WHAT IS DISCIPLINE?

Discipline is the process by which the employer insures that each employee's conduct conforms to standards set by the employer. In police departments, these standards are generally set forth in written rules called rules of conduct.

When an employee violates a written rule, the employer has two options to insure that the employee's future conduct conforms to departmental standards. First, the employer can take negative action, which consists of punishment of the employee for his or her violation of rules. Negative discipline can include an oral or written reprimand, suspension, demotion or discharge. The other alternative is positive action, in which the supervisor attempts to deal with the employee's misconduct through encouragement and persuasion. Forms of positive discipline include counseling, training and professional assistance. The application of positive and negative discipline in specific situations will be explored in greater detail below.

A good supervisor always weighs the circumstances and decides whether to apply positive or negative discipline. The tests are whether employee behavior can be changed by positive discipline and whether the severity of the offense is such that negative discipline is necessary.

THE SUPERVISOR'S ROLE IN THE DISCIPLINARY PROCESS

The police supervisor is the key to effective discipline in the organization. It is management's responsibility to delineate the supervisor's scope of authority

in taking disciplinary action. Likewise, it is each supervisor's responsibility to be aware of that authority and its limitations. The supervisor performs four basic functions in maintaining discipline among his or her subordinates.

The supervisor must insure that employees do not develop work habits that will result in violations of management expectations generally and written rules of conduct specifically. In fulfilling this responsibility, the supervisor is expected to fully understand departmental policy, procedures and rules of conduct. Furthermore, the supervisor must be able to explain unclear expectations to subordinates.

The supervisor must determine whether or not alleged violations of work rules have in fact been committed by employees. Such allegations come to the supervisor's attention in various ways. They are the result of direct observation or they may be reported by citizens or fellow employees. Discovery of such violations places the supervisor in a sensitive position because it may become the supervisor's responsibility to investigate and either take direct disciplinary action or recommend action. This often causes the supervisor considerable discomfort (especially new supervisors) because of his or her comradeship with other police employees. Nonetheless, the supervisor must remember that with authority comes responsibility for seeing that work is performed in accordance with management expectations.

The degree to which a supervisor must investigate a violation will depend on the immediate circumstances of the offense and departmental policy regarding division of investigative responsibility. Departmental policy and procedures may, for example, require immediate notification to Internal Affairs of serious employee misconduct. However, all investigations of alleged misconduct whether investigated by Internal Affairs or the supervisor should proceed along established guidelines assuring that the alleged offending employee not be denied any legal rights. Also, any labor contract provisions relating to misconduct investigation must be followed. Thus, to investigate effectively, the agency must establish a standard operating process, and the supervisor must be aware of the investigatory techniques to be utilized.

Once the supervisor has determined that an employee has in fact committed a violation of work rules, it is his or her duty to assess the appropriate disciplinary action that fits the violation.

As with investigating alleged employee violations of work rules, the supervisor must be aware of the limits of his or her authority. It is, therefore, incumbent upon management to establish clear supervisory directives specifying the supervisor's authority to discipline. Obviously, if the supervisor's authority is limited to counseling or issuing oral and written reprimands, the supervisor does not have the power to order a suspension. Equally important, a wise supervisor

does not threaten disciplinary action beyond that which he or she is authorized to take.

In carrying out these four disciplinary functions, the supervisor must apply four significant principles:

1. *The supervisor's actions must be legal.* The supervisor can take no action which contravenes federal, state or local law, or court decisions that have interpreted those laws. For example, a supervisor could not order an employee to resign from membership in the police union or other labor organizations and take disciplinary action for the employee's failure to do so, since an employee's right to join labor organizations is protected by the First Amendment freedom of assembly and the Fourteenth Amendment Due Process Clause.

2. *The supervisor's actions must be reasonable.* The supervisor's actions in the disciplinary process must be those that any reasonable and prudent supervisor would take under similar circumstances. For example, a supervisor's recommendation that an officer receive five days off for failure to have polished shoes would undoubtedly be considered excessive and unreasonable. It would also be unreasonable for a supervisor who is investigating minor employee misconduct to order an employee to come to the police station on a vacation day. Reasonableness often amounts to use of common sense in taking action. But what is common sense to one person may not be to another. Therefore, a department must establish procedures for dealing with employee discipline. The supervisor's responsibility is to carry out these procedures.

3. *The supervisor's actions must be consistent.* Inconsistent application of discipline is one of the greatest complaints from officers. The supervisor must treat all employees in the same manner, and all supervisors within the organization must act consistently as a group. A supervisor cannot allow personal bias toward an individual officer to influence the manner in which he or she disposes of a rule violation. Also, all supervisors in the organization must as a group consistently enforce rules of conduct and recommend disciplinary action in a manner that is perceived as being consistent by employees.

4. *The supervisor's actions must be timely.* When a violation of conduct rules occurs, the supervisor must take timely action. Acting on an offense a week, two weeks or months after the occurrence may result in a strained superior-subordinate relationship.

The Causes and Symptoms of Employee Misconduct

In order to deal effectively with employee discipline problems, the supervisor must be attuned to work conditions that cause misconduct and the symp-

toms of potential employee misconduct. There are several work conditions that often result in employee discipline problems. Among these conditions are:

- Boredom
- Discontent
- Idleness
- Lack of interest in the job
- Lack of work and assignments resulting from inadequate supervision
- Misunderstanding of policies and their need and purpose
- Lack of uniform enforcement of regulations
- Resentment
- Poor communications
- Emotional strain¹

When a supervisor becomes aware of these types of employment conditions, it is incumbent upon the supervisor to take steps to correct them. A failure to remedy any of these conditions will create an unhealthy atmosphere conducive to employee misconduct.

The supervisor must also be able to identify specific symptoms of employee dissatisfaction manifested by the work conditions discussed above. These symptoms indicate a potential employee discipline problem. Among these symptoms are:

- Sudden change of behavior
- Preoccupation
- Irritability
- Increased accidents
- More absences
- Increased fatigue
- Too much drinking²

When the supervisor observes these symptoms, he or she must determine their cause and take immediate steps to correct the problem. A failure to take prompt and positive action will likely result in an act of misconduct by the employee.

Encouraging Good Employee Work Habits

An essential ingredient of effective discipline is insuring that the work

¹Lester R. Bittel, *What Every Supervisor Should Know*, 3rd ed. (McGraw-Hill: New York, 1974).

²Bittel.

environment of employees encourages good work habits and discourages employee misconduct. Supervisors who adhere to this management principle are practicing preventive discipline, a practice which will reduce substantially the extent of employee misconduct.

A supervisor who wishes to prevent employee wrongdoing must have a basic understanding of the needs and motivations of employees. The supervisor who practices human relations will be successful in preventing most forms of employee misconduct. Following are several principles of human relations that, if applied by the supervisor, will accomplish this goal:

- Understand and practice the principles, rules and regulations that promote good conduct.
- Know employees as individuals; be consistent and treat them fairly and impartially.
- Develop a sense of belonging in the group.
- Get information to employees promptly and accurately. Help to eliminate rumors. Tell employees what is expected of them in their jobs.
- Use authority sparingly and without displaying it.
- Delegate authority as far down the line as possible.
- Seldom make an issue out of minor infractions, nor make personal issues out of discipline.
- Display confidence in employees, rather than suspicion.
- Train employees well.
- Give attention to the mental and physical welfare of the group.
- Try to avoid errors, but show willingness to admit mistakes.
- Develop loyalty in employees.
- Know that idleness leads to dissatisfaction, so keep employees busy.³

Identifying Employee Misconduct

Even the most effective and well-intentioned supervisor will face the problem of employee misconduct. The first issue that the supervisor will have to face is whether or not the employee in question has in fact violated a rule of conduct. In order to determine whether or not a violation has taken place, the supervisor must apply the facts he or she has acquired during the investigation (see "Inves-

³Bittel, pp. 3-4.

tigating Employee Misconduct" below) to the rule that has allegedly been violated. If the facts fall within the proscriptions of the rule, the supervisor is compelled to make a finding of employee misconduct and take appropriate disciplinary action (see "Taking Disciplinary Action" below).

There are several rules of conduct in most agencies' rules that create a problem of interpretation for supervisors. Following is a discussion of those rules, and how police supervisors should interpret them.

Unbecoming Conduct. A rule prohibiting "conduct unbecoming an officer" is a general, "catch-all" regulation which is often applied when the employee's misconduct does not fit any other specific rule. In each instance, before charging an officer with unbecoming conduct, the supervisor should examine all other rules to determine whether a specific rule violation is applicable. If a particular rule applies, it should be used instead of unbecoming conduct.

In order to have a violation of conduct unbecoming an officer, the acts must meet either of the following two criteria:

1. The conduct impairs the operation of the police agency, or
2. The conduct causes the public to lose confidence in the police agency.

These two standards are very broad and can encompass a variety of actions not otherwise prohibited by written rules. In interpreting what constitutes "conduct unbecoming an officer," the courts have held that the following conduct is a violation of the rule:

- Vacationing with a known criminal⁴
- Possession of marijuana⁵
- Tampering with personnel records⁶
- Misuse of police radio to criticize a superior⁷
- Ticket "fixing."⁸

⁴*DeGrazio v. Civil Service Commission*, 202 N.E.2d 522 (Ill. 1969).

⁵*Barr v. San Diego*, 6 Cal. Rptr. 510 (Ct. App. 1969).

⁶*Bennett v. Price*, 446 P.2d 419 (Colo. 1968).

⁷*Kammerer v. Board of Fire & Police Commissioners*, 256 N.E.2d 12 (Ill. 1970).

⁸*Olivo v. Kirwan*, 322 N.Y.S.2d 844 (App. Div. 1971); *Orlandi v. State Personnel Board*, 69 Cal. Rptr. 177 (Ct. App. 1968).

The courts have also found several instances where the officer's conduct does not fall within the conduct unbecoming an officer provision:

1. Embarrassing the department by neglecting "discretion" and vigorously enforcing municipal ordinances.⁹
2. Being a nonparticipating party to a plot to embarrass the chief of police.¹⁰
3. Disrespectful, but private, language to the police chief while under emotional stress.¹¹

Off-duty Conduct. Not all off-duty conduct is subject to regulation by the employer. The courts have established the same criteria for regulating an employee's off-duty conduct as for conduct unbecoming an officer:

1. The conduct must impair the operation of the agency, or
2. The conduct must cause the public to lose confidence in the agency.

Some types of off-duty conduct are specifically prohibited by rules of conduct such as violating local, state or federal laws, personal associations, or engaging in conflict-of-interest moonlighting. However, there are many off-duty misconduct situations that may not be specifically covered by written rules. When faced with this situation, the supervisor should apply the two criteria discussed above and, where the facts warrant, charge the employee with conduct unbecoming an officer or a similar catch-all rule.

Immoral Conduct. Immoral conduct, like "unbecoming conduct" is a general regulation which is often used when the employee's misconduct does not fit any other specific rule. It is difficult to define precisely what is immoral conduct. Usually the misconduct involves some type of illicit relations or moral turpitude such as adultery or committing an indecent act with a minor. To sustain a charge of immoral conduct, the department will have to show that:

1. The conduct impairs the operation of the agency, or
2. The conduct causes the public to lose confidence in the police agency.

Insubordination. An employee will be guilty of insubordination when he or she disobeys an order given by a supervisor. There are two crucial require-

⁹*State v. Miami Beach*, 97 So.2d 349 (Fla Ct. App. 1957).

¹⁰*Yielding v. Stevens*, 92 So.2d 895 (Ala. 1957).

¹¹*Shannon v. Civil Service Commission*, 287 A.2d 858 (Pa. 1972).

ments that the supervisor must satisfy, however, before the employee will be in violation of an insubordination rule. First, the order given must be lawful. For example, an order that an officer break into a house without a search warrant to look for drugs would be an unlawful order and would not support an insubordination charge. Also, the order given must be reasonable. It would be unreasonable, for example, if a supervisor were to order an officer to jump into a burning car to save a person trapped inside.

Unsatisfactory Performance. Proving unsatisfactory performance (sometimes referred to as "inefficiency" or "incompetence") in a civil service system is an extremely difficult task and requires extensive documentation. Most of the occasions for use of the rule will arise from an officer's failure to perform as required. Failure to perform, or inaction, is usually more difficult to prove than a specific act of misconduct. It will therefore be imperative for the supervisor to document past versus present performance levels of the offending employee and correlate these performances with those of other employees. One court has upheld charges of inefficiency where the employer was able to demonstrate that other officers made more arrests under similar circumstances and that the officer in question performed at a higher level when supervised than when unsupervised.¹²

A pattern of poor evaluations or rule violations will also constitute unsatisfactory performance. If, however, specific acts amounting to neglect of duty are present, the officer should be charged with that offense.

Neglect of Duty. An officer is in violation of a neglect of duty rule (sometimes referred to as "dereliction of duty") when he or she fails to perform an act required of him or her by law in his or her capacity as a law enforcement officer. If the department has another rule specifically applicable to the officer's conduct (for example, sleeping on duty), that rule should be used. Some types of conduct that have been deemed neglect of duty by the courts include:

- Drunkenness and failure to respond to a radio call¹³
- Sleeping on duty¹⁴
- Leaving a post three times in two months to go to a bar¹⁵
- Overlooking continuing and flagrant vice conditions (house of prostitution, bookmaking)¹⁶

¹² *Bodenschatz v. State Personnel Board*, 93 Cal. Rptr. 471 (Ct. App. 1971).

¹³ *City of Evansville v. Nelson*, 199 N.E.2d 703 (Ind. 1964).

¹⁴ *Haywood v. Municipal Court*, 271 N.E.2d 591 (Mass. 1971).

¹⁵ *Krause v. Valentine*, 48 N.Y.S.2d 901 (App. Div. 1944).

¹⁶ *Lenchner v. City of Miami Beach*, 156 So.2d 767 (Fla. Ct. App. 1963); *Stafford v. Firemen's & Policemen's Civil Service Commission*, 355 S.W.2d 555 (Tex. Civ. App. 1962).

- Willfully allowing or negligently permitting a prisoner to escape¹⁷

Payment of Debts. When an employee fails to meet his or her financial obligations, he or she may be in violation of a departmental rule requiring the payment of just debts. There are three legal restraints on the supervisor's enforcement of this rule. First, the Consumer Protection Act of 1972 states that an employer cannot discharge an employee for a single garnishment of the employees' wages. Therefore, the supervisor will be able to proceed against an employee for violation of a financial delinquency rule only when there are two or more outstanding debts accumulated against the employee. Second, an officer cannot be disciplined for seeking voluntary bankruptcy, since it would frustrate the purposes of the federal bankruptcy laws. Third, the courts will only support action against an employee who willfully refuses to meet his or her financial obligations. This type of employee could be categorized as a "financial deadbeat."

Residence. Police officers may be required to live within the jurisdiction served by their agency or within a specified number of miles or minutes of a duty station. One problem that will frequently arise with a residency requirement is the employee who establishes a "residence" within the jurisdiction, such as a post office box or an infrequently used apartment, and continues to maintain a residence outside of the jurisdiction in order to circumvent the residency requirement. Supervisors faced with this situation should look to the employee's domicile—his or her true and permanent home to which, whenever he or she is absent, he or she has the intention of returning. Except in unusual instances, the domicile will be the place where his or her spouse and family live. Therefore, the employee whose domicile is outside of the jurisdiction would be in violation of the residency requirement.

Exercise of First Amendment Rights. The First Amendment of the United States Constitution, applicable to the states through the Fourteenth Amendment Due Process Clause, guarantees the right of citizens to assemble (i.e., join and associate), speak freely and petition the government for redress of grievances. The courts have held that public employees, including police officers, are citizens within the context of the First Amendment, and that public employers can restrict the rights provided therein only if there is a rational basis for such an infringement.

Supervisors must therefore be aware of employee conduct that constitutes an exercise of constitutional rights and of the extent to which these rights can be limited. When the supervisor improperly interferes with an employee's First Amendment rights, any disciplinary action will be voided by the courts, and

¹⁷ *Zeboris v. Kirwan*, 325 N.Y.S.2d 112 (App. Div. 1971).

such interference can also subject the police agency and supervisor to a federal civil rights suit.

Labor activities. An employee cannot be disciplined or discriminated against for joining a labor union. A labor union is defined as an organization which has as its primary purpose the improvement of employee wages, hours, and terms and conditions of employment. An "employee association" is not substantively different from a union unless it is a purely social group and does not seek to represent members' interests with an employer.

Picketing in a public place, an activity generally associated with labor organizations, is a protected form of speech, so long as the picket does not impair the operation of the agency. For example, a picket in front of City Hall would be permissible so long as citizens were allowed access to and from the building. If access is blocked, however, the employees would lose their First Amendment protection, and the activity could subject them to disciplinary action.

One form of labor activity unquestionably prohibited is the strike. The term "strike" as used here includes any form of concerted employee work stoppage designed to have an impact on the employer's setting of wages, hours or terms and conditions of employment. The strike is usually prohibited by both statutory and common law and departmental rules. Before taking disciplinary action against an employee for engaging in a strike, however, the supervisor should consult with command personnel to insure that the action is appropriate under the circumstances. For example, if the striking employees have negotiated an amnesty agreement with the employer, no disciplinary action may be taken when the employees return to duty.

Personal associations. Generally, a police officer has the right to associate with persons and groups. This right can be limited only when the association impairs the operation of the agency or causes the public to lose confidence in the agency. An impairment will result where the association in question results in a loss of efficiency. For example, courts have held that knowingly associating with a person who had a prior criminal record and who was the object of a narcotics investigation is proper grounds for discipline. However, association in a reputable nudist colony would probably not subject the employee to disciplinary measures.

Supervisors should realize that persons who have had notoriously bad characters or reputations may have been rehabilitated. Also, some personal relationships are unavoidable, such as when an officer's spouse or child are included within the prohibited associations. A supervisor confronted with a situation involving a possible undesirable association should consult with the command staff before taking any action.

Criticism. An employee who criticizes the police department, a policy of the department, or another employee is exercising the First Amendment right of free speech, which is generally protected. However, there are four situations in which the employee's speech results in a loss of First Amendment protection, and the employer can take disciplinary action against him or her. These four situations include speech that is

- Defamatory
- Obscene
- Unlawful or
- Impairs the operation of the agency by interfering with efficiency or causes the public to lose confidence in the agency.

Generally, free speech issues arise under #4, above. In determining whether or not an employee's criticism has in fact impaired the operation of the agency, the courts will look to whether there is malice or lack of good faith on the part of the employee in making the critical remarks. The following rulings illustrate the courts' views on the public criticism issue:

- A letter by a fireman to the newspaper complaining about general economic conditions and poor morale was protected speech, and the employee could not be disciplined.¹⁸
- A statement made by a police union president in a good faith response to a question from the news media that the Commissioner's policies would cause the bottom to fall out of the city and that the Commissioner was incompetent was protected, and the employee could not be disciplined.¹⁹
- A police sergeant's vitriolic and derogatory statements concerning the police superintendent and other public officials transcended the bounds of responsible public criticism in that they impaired the operation of the police department.²⁰

Political activity. Political activity by employees that is partisan in nature (i.e., related to political parties) can be prohibited. Nonpartisan activity gener-

¹⁸ *Belshaw v. City of Berkeley*, 54 Cal. Rptr. 727 (Ct. App. 1966).

¹⁹ *Brukiewa v. Police Commissioner*, 263 A.2d 210 (Md. 1970).

²⁰ *Magri v. Giarrusso*, 379 F. Supp. 353 (E.D. La. 1974).

ally cannot be prohibited, unless the activity causes the employee to be less efficient or creates a conflict of interest. The courts have determined that the following types of activities are partisan and can therefore be prohibited:²¹

- Using official capacity, authority, or influence for the purpose of interfering with or affecting the result of an election;
- Serving as an officer of a political party, a member of a committee of a partisan political club, or being a candidate for any of these positions;
- Organizing or reorganizing a political party organization or political club;
- Directly or indirectly soliciting, receiving, collecting, handling, disbursing, or accounting for assessments, contributions, or other funds for a partisan political purpose;
- Organizing, selling tickets to, promoting, or actively participating in a fund-raising activity of a partisan candidate, political party, or political club;
- Taking an active part in managing the political campaign of a partisan candidate for public office or political party office;
- Becoming a partisan candidate for, or campaigning for, an elective public office;
- Soliciting votes in support of or in opposition to a partisan candidate for public office or political party office;
- Acting as recorder, watcher, challenger, or similar officer at the polls on behalf of a political party or partisan candidate;
- Driving voters to the polls on behalf of a political party or partisan candidate;
- Endorsing or opposing a partisan candidate for public office or political party office in a political advertisement, a broadcast, campaign literature, or similar material;
- Serving as a delegate, alternate or proxy to a political party convention;
- Addressing a convention, caucus, rally, or similar gathering of a political party in support of or in opposition to a partisan candidate for public office or political party office;
- Initiating or circulating a partisan nominating petition.

²¹U.S. Civil Service Commission v. National Ass'n of Letter Carriers, 413 U.S. 548 (1973); Broadrick v. Oklahoma, 413 U.S. 601 (1973).

The following types of activities have been deemed nonpartisan, and therefore permissible for employees to engage in.²² Officers can:

- Register and vote in any election;
- Express their opinions as individuals privately and publicly on political subjects and candidates;
- Display a political picture, sticker, badge, or button;
- Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization;
- Be members of a political party or other political organization and participate in its activities to the extent consistent with law;
- Attend a political convention, rally, fund-raising function, or other political gathering;
- Sign a political petition as an individual;
- Make financial contributions to political organizations;
- Take an active part, as an independent candidate, or in support of an independent candidate, in a partisan election;
- Take an active part, as a candidate or in support of a candidate, in a nonpartisan election;
- Be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance or any other question or issue of a similar character;
- Serve as an election judge or clerk, or in a similar position to perform nonpartisan duties as prescribed by state or local law; and
- Otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not materially compromise their efficiency, or integrity of their agency.

Employment Outside of Department (Moonlighting). Officers' employment outside the department can be completely prohibited or limited. Supervisors may have difficulty determining exactly what constitutes outside employment. For example, an officer may own a farm, or his or her family may operate a store. Also there may be a fine line between a hobby and a second job, such as

²²Magri, *supra*; National Ass'n of Letter Carriers, *supra*.

when an officer builds cabinets to sell or trade. Officers will be in violation of a rule on off-duty employment if:

- They fail to comply with the rules restricting the type or amount of outside employment permitted; or
- The outside employment interferes with the officers' employment with the department.

Outside employment interferes with the officer's employment with the department if it:

- Renders the officer unavailable during an emergency;
- Physically or mentally exhausts the officer to the point that his or her performance is affected;
- Requires that special consideration be given to scheduling the officer's regular duty hours; or
- Impairs the operation of the agency or causes the public to lose confidence in the agency.

Courtesy. More citizen complaints result from police discourtesy than from almost any other cause. Supervisors should insure that officers realize that discourtesy may include:

- Overt rudeness
- Annoyance
- Abusive or insulting language
- Racial or ethnic slurs
- Overbearing attitude
- Sexual or social references
- Disrespect
- Lack of proper attention or concern

Investigating Employee Misconduct

Once the supervisor has some evidence of employee misconduct, it is incumbent upon him or her to conduct an investigation to determine the truth

or falsity of the allegation. In some police departments, the supervisor's role in employee investigations is limited by the presence of an internal investigation unit specifically assigned to deal with some or all employee conduct violations.

When conducting an investigation, the supervisor should employ the same investigative techniques that would normally be employed in any type of investigation—talking to witnesses, interviewing the employee suspected of the violation, examining relevant documents (i.e., case reports, dispatching tapes), and comparing physical characteristic evidence.

A key aspect of an investigation is the interview between the supervisor and the employee. If not handled properly by the supervisor, the interview can cause long-standing resentment on the part of the employee. It is therefore advisable that the supervisor adhere to the following guidelines when interviewing an employee regarding alleged misconduct.

The employee should be interviewed at a reasonable hour, preferably while still on duty so that he or she does not have to return to the police station after duty hours. The interview should also take place during a time when the employee is not ordinarily sleeping. Only where there is a critical situation dictating an immediate need for information should an employee be interviewed during off-duty hours. For example, if an allegation has been made by a citizen that an officer has severely beaten him or her, the immediate need for all the facts would dictate calling in the employee while off duty.

The interview should normally take place at the police station. Conducting an interview at the police station places both the supervisor and employee at ease since they are in a common setting. There will be occasions where a police station interview might not be appropriate, such as, for example, if the supervisor wants to discuss a crime scene where the officer is suspected of committing a violation of the rules of conduct. As a general rule, interviews should not take place at the employee's residence, because of the possibility of embarrassing the employee in front of his or her family.

Before conducting the interview, the supervisor should inform the employee of the nature of the allegation against him or her. It is unfair to question an employee without informing him or her of the circumstances surrounding the alleged incident.

Interviews should be for reasonable periods of time. When, due to the exigencies of the situation, the interview is going to extend for a long time, the employee should be given periodic respites, including time for personal necessities, meals and telephone calls.

When interviewing the officer, the supervisor should at all times remain polite and calm. No abusive or threatening language should be used.

When the incident in question is serious, such as a potential criminal charge arising out of the employee's misconduct, the supervisor should consider allowing the employee to have an attorney present if requested by the employee. In the absence of a statute or contract provision providing otherwise, police officers do not have the right to an attorney when the purpose of the interview is solely to determine the employee's fitness for continued employment (even if the alleged violation is criminal in nature). However, allowing the employee to have counsel present will not detract from the investigation so long as the employee's counsel understands that his or her role is to observe and not to interfere with the interview. If counsel persists in interfering with questions by the supervisor, he or she should be told to leave the room.

If the interview is a preliminary, informal discussion between the supervisor and the employee, there is probably no need for the interview to be recorded. However, whenever the supervisor contemplates using the statements of the employee for the purpose of proving the truth or falsity of the allegation, it would be desirable for the interview to be recorded, either by mechanical device or stenographer. A recording of the interview insures that there is no question as to what was said by the employee and supervisor.

Whenever the employee is being questioned regarding conduct that is, or could be, criminal in nature, he or she should be advised of his or her criminal (i.e., *Miranda*) rights prior to the interview. The rights should only be given when the employee is "in-custody" within the meaning of the *Miranda* decision, and only when the supervisor contemplates that a criminal prosecution will follow the administrative investigation. Any effort to obtain statements of the employee for future criminal prosecution should be preceded by the supervisor's obtaining a waiver of *Miranda* rights by the employee in the same manner that is used in any other criminal investigation.

The supervisor will sometimes be faced with a recalcitrant employee who willfully refuses to cooperate in determining the truth or falsity of the alleged misconduct. In this instance, the supervisor should be aware of the powers available to elicit information from the employee. *In the absence of a statute or a provision in a collective bargaining agreement*, the supervisor is empowered to apply the following investigative techniques to pressure a reluctant employee to talk:

1. *Order the employee to answer questions asked by the supervisor.* Police officers do not have the right to refuse to answer questions that are specifically, directly and narrowly related to official duties. Questions will be regarded as being "specifically, directly and narrowly related to official duties" whenever they focus on one or more employees who are suspected of violating one or

more rules of conduct. If the employee refuses to answer questions, he or she should be ordered to do so and advised that his or her failure to answer can result in disciplinary action against him or her, including discharge. A continued failure by the employee to answer questions should compel the supervisor to charge the employee with insubordination.

If the evidence gathered prior to the interview indicates a criminal violation by the employee, the employee should be advised of his or her constitutional rights, including the right to counsel, if criminal prosecution is contemplated. If these rights are not given, any incriminating statements made by the employee will not be admissible in the criminal proceeding (but will be admissible in any administrative proceeding arising out of the alleged misconduct). If there is any question in the supervisor's mind as to whether there will be a need for advising the officer of *Miranda* rights prior to questioning, the supervisor should consult with his or her superiors and/or the prosecutor.

If criminal prosecution is not contemplated, the officer under investigation should be given the following warning if he or she refuses to talk about the alleged misconduct:

I wish to advise you that you are being questioned as part of an official investigation of the Police Department. You will be asked questions specifically directed and narrowly related to the performance of your official duties or fitness for office. You are entitled to all the rights and privileges guaranteed by the laws and the constitution of this state and the Constitution of the United States, including the right not to be compelled to incriminate yourself. I further wish to advise you that if you refuse to testify or to answer questions relating to the performance of your official duties or fitness for duty, you will be subject to departmental charges which could result in your dismissal from the Police Department. If you do answer, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceeding. However, these statements may be used against you in relation to subsequent departmental charges.

2. *Order the officer to take a polygraph.* The polygraph can be a valuable instrument to determine whether the employee's statements indicate truth-telling or deception. The polygraph should be used judiciously by supervisors. The best situation in which to employ the polygraph is when uncorroborated evidence exists indicating misconduct on the part of the employee and the employee denies the allegation of misconduct. *In the absence of a statute or*

contract provision providing otherwise, the officer can be ordered to take a polygraph test and disciplined for refusal to do so. An officer who refuses to take a polygraph examination should be charged with insubordination or, if there is a specific rule for such refusal, the specific rule should be utilized.

3. *Order the officer to submit to a physical characteristic evidence test.*

There will be occasions where the supervisor will need to make comparisons between an employee's physical characteristics and similar evidence found in connection with the alleged misconduct violation. This type of evidence might include fingerprints, blood, hair, urine or even the employee's body for identification purposes. Typical rule violations that would give rise to the use of this type of evidence include use of alcohol, or brutality cases involving a victim and witnesses. *In the absence of law or contract provision providing otherwise*, the employee suspected of a rule violation may be ordered by the supervisor to submit to a physical characteristic evidence test. His or her refusal to do so can result in disciplinary action against him or her for insubordination. If there is a specific rule for such refusal, the specific rule should be utilized.

Another investigative technique that the supervisor might have to use is a search for physical evidence relevant to a misconduct violation. A search of this type would be of the employee's house, car or locker. A home or private car search in contravention of established constitutional principles that apply to criminal cases should be avoided. The supervisor can, however, order the employee to open his or her departmental locker for a search.

One sensitive investigative technique is the use of electronic surveillance (i.e., wiretapping or eavesdropping) for the purpose of gathering evidence in an employee investigation. Since this evidence-gathering technique must be applied in a manner that satisfies constitutional and statutory principles, it should be used with great discretion and only after consulting with both the chief of police and the prosecutor.

Taking Disciplinary Action

Once the supervisor's investigation indicates that the employee has in fact engaged in misconduct, a determination must be made as to what form of disciplinary action is most appropriate for the violation. In determining whether to engage in positive or negative disciplinary measures, the supervisor must first assess the total factual situation and decide what is most reasonable under the circumstances. Each employee's situation is different, and all relevant factors

must be examined by the supervisor before deciding what action is appropriate. Factors the supervisor should take into consideration include:

- The employee's past work and disciplinary history, including the nature and recency of other offenses;
- The nature and extent of the employee's contributions to the agency (awards, commendations, special projects);
- The opportunity for constructive rehabilitation;
- The nature of the position to which the employee is assigned (the more responsible the position, the more rigorous the standard of performance or conduct);
- The type and consequences of the offense;
- The possibility of misunderstanding, misinterpretation, enticement or provocation;
- The existence of contributory inefficiency or misconduct on the part of others;
- The degree to which the employee could control timing, location or events;
- The types and severity of corrective action available.²³

If the supervisor determines that positive discipline is, under the circumstances, the best means of dealing with the employee's misconduct, he or she has several options available.

Counseling. This technique involves a calm, rational discussion of the employee's problem. The purpose of the counseling is twofold:

- To give the supervisor an opportunity to explain why he or she is dissatisfied with the employee's conduct;
- To permit the employee to give his or her version of the facts and offer information in mitigation of the conduct.

During the counseling session, both the supervisor and employee should mutually discuss the manner in which an improvement in the employee's performance can be achieved.

²³ Air Force "Discipline and Adverse Action for Civilian Personnel," AF Regulation 40-750, p. 6.

Training. Sometimes the employee's misconduct will be the type that can be easily corrected through training. For example, an employee's improper use of firearms may be corrected by sending him or her to the training academy for further firearms instruction. Other types of misconduct for which training may be appropriate include improper driving, inadequate care of equipment or poor attitude toward citizens.

Professional Assistance. Some employees with physical or psychological problems will benefit most from professional help. This type of help could include a session with a physician, psychiatrist, psychologist, clergyman, or counseling organization. Employee problems that would be especially adaptable to this form of positive discipline include neurosis, psychosis, alcoholism, excessive weight, or family problems.

If, after examining the facts, the supervisor determines that corrective action alone is not warranted, the supervisor has the option of punitive (i.e., negative) action. There are several types of negative action that may be available to the supervisor: oral or written reprimands, suspension, demotion, or discharge.

As a general rule, the type of disciplinary action selected should run in an increasingly severe progression, with the mildest action being taken first, followed by the next action, etc. However, the rule of progressive discipline cannot always be followed because of unique facts in any given case. For example, if the employee's first disciplinary offense is brutality against a citizen, an oral or written reprimand, or short suspension would not seem appropriate.

When making a decision as to which type of disciplinary sanction best fits the employee's situation, the supervisor must take into consideration several factors:

1. *The basic penalty which would ordinarily be applied in the absence of any other factors.* The supervisor should examine the character, seriousness and consequences of the offense, the rehabilitative potential of the employee, the degree of willfulness involved in the employee's act, and the degree of responsibility in the employee's job.

2. *Factors which would mitigate the penalty, and result in a less severe punishment than ordinarily contemplated.* The supervisor should examine the incident of actual misconduct, looking for a misunderstanding on the employee's part, provocation by or guilt of others, or other mitigating circumstances. Factors concerned with the employee's job performance should also be considered, including his or her length of service, quality of work, personal reputation, record of cooperation, and job achievements.

3. *Facts which would operate to increase the basic penalty.* There might be some surrounding circumstances which would tend to favor a greater penalty

than would ordinarily be assessed, including the character, recency and penalties of past offenses, and the number of other offenses committed during the act of misconduct.²⁴

CONCLUSION

Every supervisor has a responsibility for knowing and utilizing the procedures established by the department to deal with employee behavior which is contrary to expectations. Most police organizations have established procedures to deal with employee misconduct. If the supervisor fails to follow these procedures, he or she is not conforming to expected behavior patterns and should be subjected to some type of corrective action.

The primary responsibility for enforcing departmental policies rests with supervisors. Sergeants and lieutenants are in closest contact with the rank and file and have immediate supervisory authority over them. These supervisors must clearly understand their responsibility for enforcing adherence to departmental policies, and for taking action in the face of violations.

²⁴ Air Force, pp. 9-10.

END

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