

# **FROM A UNION PERSPECTIVE**

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## **UNION ADVOCATES POUND ON THE LAW, THE FACTS OR THE TABLE**

Early in my career, I received this wise advice: If the law is on your side, pound on the law. If the law is not on your side, pound on the facts. If neither the law nor the facts are on your side, pound on the table. This article will discuss an approach to cases where the law is not especially helpful, and we must pound on the facts. Occasionally, a union advocate will be asked to represent someone who simply violated the rules. The question is not whether there should be discipline, but how much discipline is appropriate. A skilled advocate can carefully gather the facts necessary to protect an employee from wrongfully severe punishment. The approach in these cases is to demonstrate you represent a good employee who had a bad day. I recommend the following approach:

First, the following information if available directly from the employee:

1. Most employees have a wealth of favorable documents in their Official Personnel File such as favorable performance appraisals, cash awards and letters of commendation. I find that if the employee reviews the Official Personnel File without the assistance of an advocate that the employee overlooks favorable documents. Copy the favorable documents.
2. Ask the employee about activities in the community such as volunteer work, church activity, formal and or informal work with children. You may want letters of support from community members.
3. Ask the employee if there are issues outside of work that may have affected their judgment such as financial difficulties of a single parent, marital problems, a death in the family or a difficult relationship with a teenage children. On a case-by-case basis, determine if disclosure of the private issues is appropriate and useful.

Second, government agencies must offer to provide the documents reviewed when considering personnel actions. You should request those documents.

Third, the union, but not individual employees, has a right to request information from an agency in accordance with Title 5 U.S.C. Section 7114(b)(4). This is not a complicated process. The union representative should provide a brief letter to the agency indicating the union represents an employee concerning proposed discipline and requests the information discussed below. Ask the agency to provide the information in ten days. If the information is not promptly provided, the union may file an Unfair Labor Practice

(ULP) charge. The FLRA is very helpful in resolving ULP disputes on information requests because the law is quite clear and favorable for unions.

1. Request copies of any proposed or decided disciplinary actions, adverse actions, reprimands, memoranda or letters of counseling, records of admonitions or other correspondence concerning other similarly situated employees in the same organizational unit. Exactly which employees are similarly situated is an issue greatly debated by union and agency advocates. I suggest you research this issue at [www.flra.gov](http://www.flra.gov) and [www.mspb.gov](http://www.mspb.gov). Your goal is to obtain information in order to demonstrate that other similarly situated employees received a lesser penalty for a similar offense.
2. Request the agency Table of Penalties (if any) as well as the agency regulations, guidance, issuances, policies or other written guidance on the issue in the case. For example, if sick leave is an issue, the agency must provide all of the regulations, etc. on sick leave.
3. If the employee does not have their leave records, request a copy of their leave records.

The above information may allow you to present a much different view of the employee than the agency representative who will focus on the wrongful conduct. In many cases, you will be able to demonstrate you represent a long-term employee with a history of favorable performance appraisals, cash awards, letters of commendation and good attendance. The employee is actively involved in noble work in the community. The employee had stress from their homelife that contributed to the problem at work. This problem is now under control through counseling. Other employees who committed similar offenses received substantially less severe discipline or none at all.

The above suggestions are just a start. In each case, you may find favorable personal information by pursuing other inquiries. With this approach the deciding official, arbitrator or administrative judge will learn about a whole employee and not just about a single wrongful incident.

Good luck.

Your comments on this article are welcome at [JbdcLaw@aol.com](mailto:JbdcLaw@aol.com).