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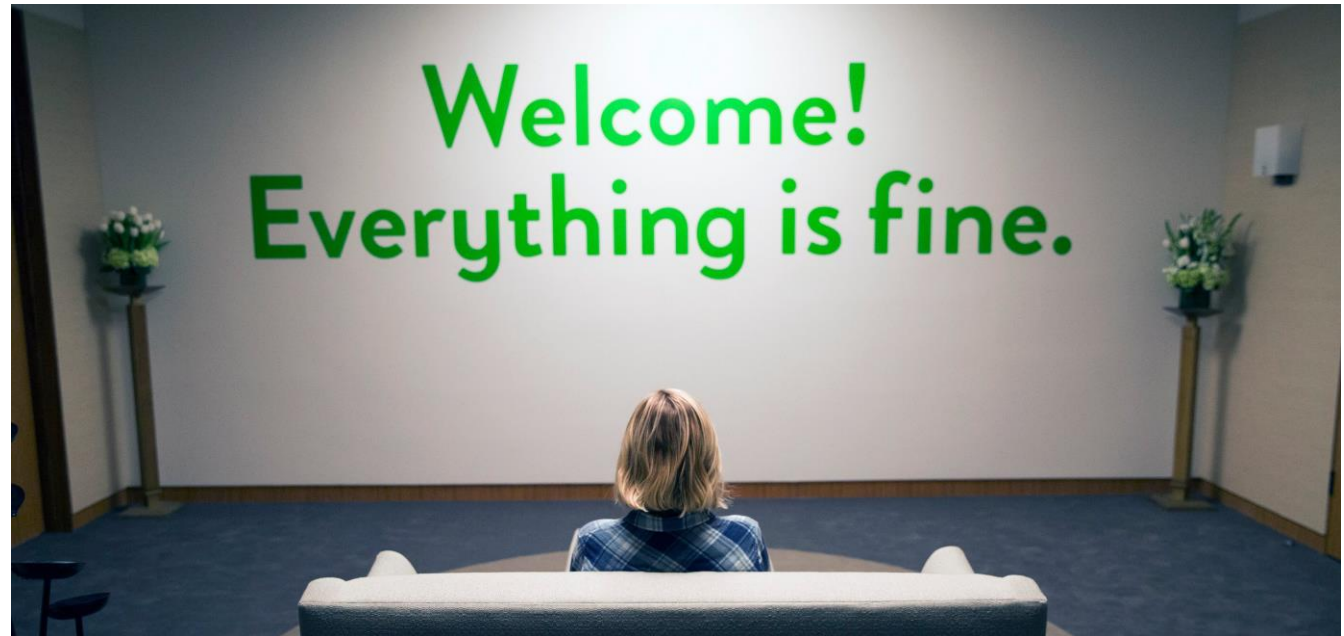
Welcome to Advanced Site Based Representation

MSEA'S SUMMER LEADERSHIP CONFERENCE



Getting To Know You

1. Your name, your position, and local
2. What experience do you have representing members or issues?
3. What goal do you have as a leader for this upcoming year?





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Ground Rules and Classroom Expectations

Using Self-Awareness and Self-Knowledge

Step Forward/Step Back

Listening for Understanding

Being Gracious

Staying Engaged

Being Open and Suspend Judgment

Expecting Non-Resolution and Non-Closure

The Parking Lot



ELMO





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The contract is the document that governs the workplace.

- Negotiated by both sides
- Binding and enforceable.

What are some of the topics that are covered in the contract?



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Knowing You Contract Activity



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Timelines!

Timelines are very important. Missing a deadline will usually end a case immediately.



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End of Day 1

- Questions?
- For tomorrow
- Have fun!



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Day 2

WELCOME BACK!

AS YOU COME IN THIS MORNING, TAKE A MOMENT TO ADD TO
THE CHART PAPER:

**WHAT 3 THINGS DO YOU BELIEVE ARE IMPORTANT IN YOUR
ROLE AS A REPRESENTATIVE OF THE UNION?**



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Interacting with Members

- 1) Overview of Role as Representative
- 2) Interviewing Members
- 3) Dealing with Challenging Members



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What is a Representative?

Leader

Communicator

Organizer

Advocate

What is Representation?

**Speaking on
behalf of
someone
else's interest**

**Standing up to
those in
power**

**Speaking for
the
organization,
not as an
individual**

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As a Union Representative in your Building, you are the **backbone of your union**

It is your job to develop relationships and trust with your colleagues

The BEST way to do this is through **Transparency** and **Competence**



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Transparency

- NEVER meet with building administration in secret
- Start a weekly/monthly newsletter with relevant union and building updates
- Give clear updates on your activities at Rep Assembly/Council meetings
- Speak with members regularly one-on-one
- What else?



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Competence

- Know the basics of your contract to answer questions
- Know where to go to get answers
- Follow through on your word, both with members and with administration
- Lead by example though setting regular meetings and challenging administration when necessary
- What else?

Toady

- Buddy-buddy with principal
- Gossips about members
- Talks about how members need to be "reasonable"
- Makes excuses for management

Firebrand

- Always skeptical of administration
- Complains but won't lead change
- Often loudest voice in room
- Polarizing

Leader

- Trusted by management and members
- Focuses on solutions, not personalities
- Moves others to take action – not a solo actor
- Consensus builder



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Confidentiality

- As a Union Representative, you occupy space as BOTH a colleague and a formal position in the Union
- Navigating this space can be tricky
- **Golden Rule:** Assume what members disclose to you is confidential unless told otherwise
- Likewise: **NEVER** agree to confidentiality with management



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Best Practices for Confidentiality

- Use **personal emails** whenever possible
- When discussing problems in a wider group, do not use names unless given permission
- Use **anonymous surveys** when gathering input from members
- Do not single out individuals when bringing concerns to management

When do I Represent?

Types of Representational Meetings

- Level 1 or Informal Grievance Hearing
- 'Fact-Finding' meeting during disciplinary investigation
- Problem Solving Meeting

**What other
spaces do we
"represent" our
members?**



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In all of these meetings you want to interview members because:

- Want to get the facts from multiple perspectives
- Identify how widespread a problem is
- Prepare for confrontations with management
- Clear notes if case escalates to a UniServ
- Why else?

Grievance/Problem Interview

What you want to find out:

- Nature of complaint (contract violation, non-contract problem, personal gripe?)
- When did problem start?
- What attempts have been made to solve problem?
- How many members does this impact?
- Does member understand the contract language?
- What solution does the member want? Are they open to alternatives?
- Is management aware? What is their response?

Meeting with Management Interview

What you want to find out:

- Is the meeting disciplinary?
- What are the specific allegations?
- What is the member's recollection of events?
- Are any other union members involved?
- What were the interactions between member and management prior on this issue?
- Get a timeline of events if possible

Interviewing Dos and Don'ts

DO

- Ask open-ended questions
- Dig into details
- Review contract with member
- Emphasize your formal role
- Reassure member against retaliation
- Confirm understanding of events

Don't

- Make assumptions
- Interrupt member
- Use jargon
- Disclose confidential information
- Highlight personal conflicts
- Make promises you can't keep

Interviewing Activity





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Day 3

Welcome back!



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Solidarity Activity Conversation

What did we learn?

What went well?

What was a challenge?



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Day 3 AM: The Law and Challenging Employees

- 1)Challenging Members
- 2)Your Rights as a Representative
- 3)Representation Round Up
- 4)Weingarten Rights



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Challenging Members

As a Union Representative, you are the **first line of defense** and first point of contact for members when they need help.

Members will come to you in a variety of stressful emotional states: angry, scared, confused, overwhelmed, etc.

It is your job to meet members where they are and do your best to assist them. This takes **diplomatic skill and practice**.

Members often react in one of three ways:

**Timid/scared
or hesitant**

**Angry and
Upset**

**Stubborn "know it
all"**

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Timid Members

Identify why they are scared:

- Fear of retaliation?
- Guilt over 'making waves'?
- Confusion on what their options are?
- Lack of knowledge of the grievance process?



Why else would our members be scared to take action?

Timid Members



Best practices when interacting:

- Focus on the "bureaucratic" nature of your role as BR (i.e., "I'm just here to talk with you about what happened")
- Assert confidence through clear knowledge of rights and contract
- Emphasize that any decision to act is theirs, but you're here to support them
- Clarify member's rights against retaliation and 'inoculate' on what discipline process looks like

Angry Members

Identify why they are angry:

- Personal beef with admin?
- Unjustified accusations?
- Defense mechanism?
- Lack of control?
- History with union?

Why else would our members be angry?



Angry Members



Best practices when interacting:

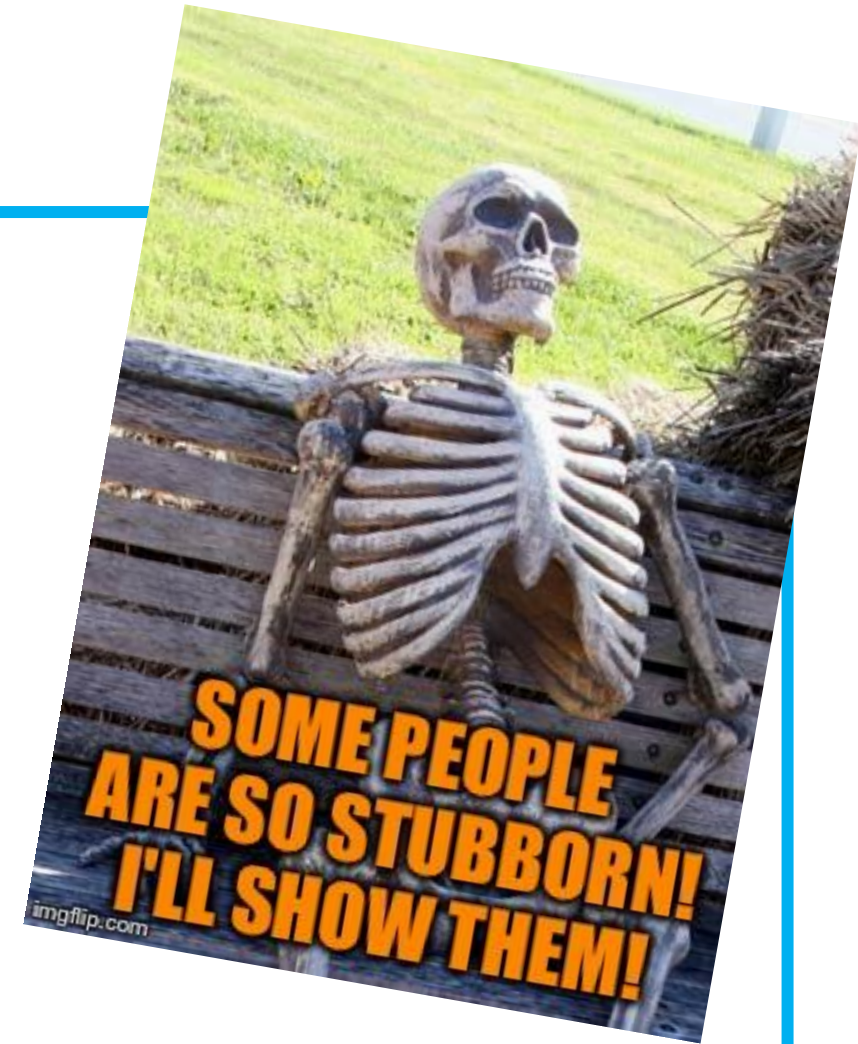
- Maintain calm and steady emotions – do NOT escalate
- Lay out options objectively
- Express sympathy, but be direct in your assessment
- Focus on the shared goal and outcome (solving the problem)
- Don't allow yourself to be brow-beaten or accept abuse

Stubborn Members

Identify why they are so resistant:

- Past history with union?
- Personal agenda?
- Beef with admin?
- Refuse to acknowledge any fault?

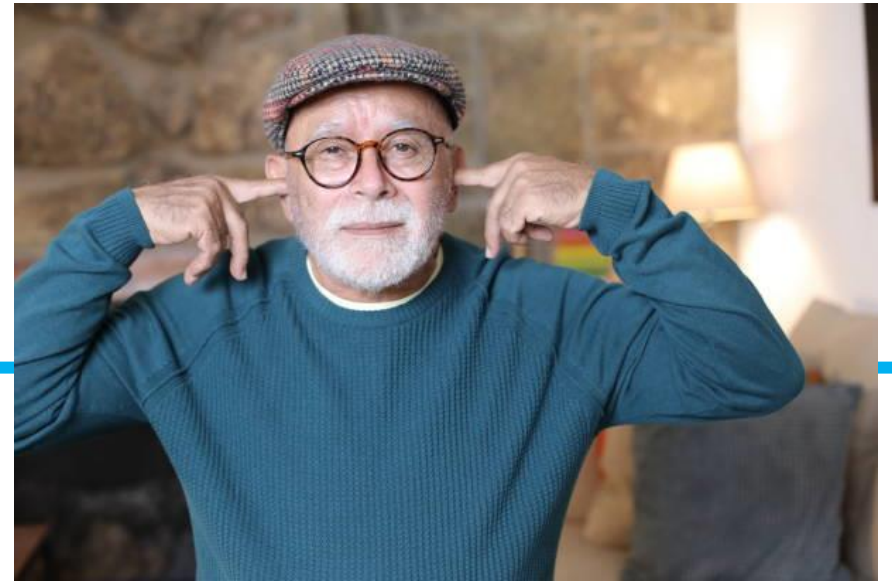
Why else would our members be stubborn?



Stubborn Members

Best practices when interacting:

- Remind them of your role as BR to support and help
- Directly lay out consequences for action/inactions
- Set clear expectations of what they can expect from you and union
- Do not make promises you cannot keep
- Consider sending a follow up message detailing what you've agreed to





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Break – see you in 15 minutes!

We're back at 10:47



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Challenging Members Activity

YOUR RIGHTS AS A REP

YOU ARE PROTECTED FROM RETALIATION

CODE OF MARYLAND REGULATIONS (COMAR)

- 6-402: Public school **employees may form, join, and participate in the activities of employee organizations** of their own choice for the purpose of being represented on all matters that related to salaries, wages, hours, and other working conditions
- 6-409 A public school employer and employee organization **may not interfere with, intimidate, restrain, coerce, or discriminate against any public school employee because of the exercise of their rights** under 6-402, etc.

**WHERE ELSE CAN
WE LOOK FOR
PROTECTION?**

YOUR RIGHTS AS A REP

When you speak to your administration on a union issue as a Rep, you are not in a subordinate position.

You are equals.



THINGS THAT ARE (LIKELY) NOT RETALIATION

**Grade level or
subject
change**

**Didn't get
promotion or
position you
applied for**

COMAR 6-201:

**The county
superintendent shall
assign [staff] to their
positions in schools;
transfer them as the
needs of the schools
require**

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CASE STUDY

Basic Facts of Case

- After school Union Faculty Advisory Council (FAC) with principal
- Principal states Union member was part of a committee
- Union member stands up, pounds fist on table, yells that it isn't true
- Principal apologizes but later "verbally counseled" the member for his "insubordination"
- In May, principal initiated a request to transfer the union member because of the "strained relationship" and that he "constantly files grievances claiming they are on behalf of the FAC" and he has impacted the "collegial atmosphere among colleagues". Employee was transferred, union grieved.
- The case went to an arbitrator.

Is this
retaliation?



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Case Study: Arbitrator's Decision

" I do not agree with the Board that the Grievant's conduct on [date] was uncivil and therefore actionable, particularly where, as here, the Grievant was engaged in clear-cut protected union activity and was doing nothing more than engaging in "robust debate" about a misstatement made... The real reason Principal initiated the transfer action was to get rid of the Grievant so as to convert the labor-relations environment from contentious to collegial, her preferred way to conduct labor-management at her school".



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TYPES OF REPRESENTATION MEETINGS

Discipline

Problem Solving

Contract Violation

IMPORTANT: YOU SHOULD
NOT FILE A GRIEVANCE; YOU
ARE TRYING TO RESOLVE AT
THE LOWEST LEVEL POSSIBLE
WHICH IS AT THE WORK SITE.

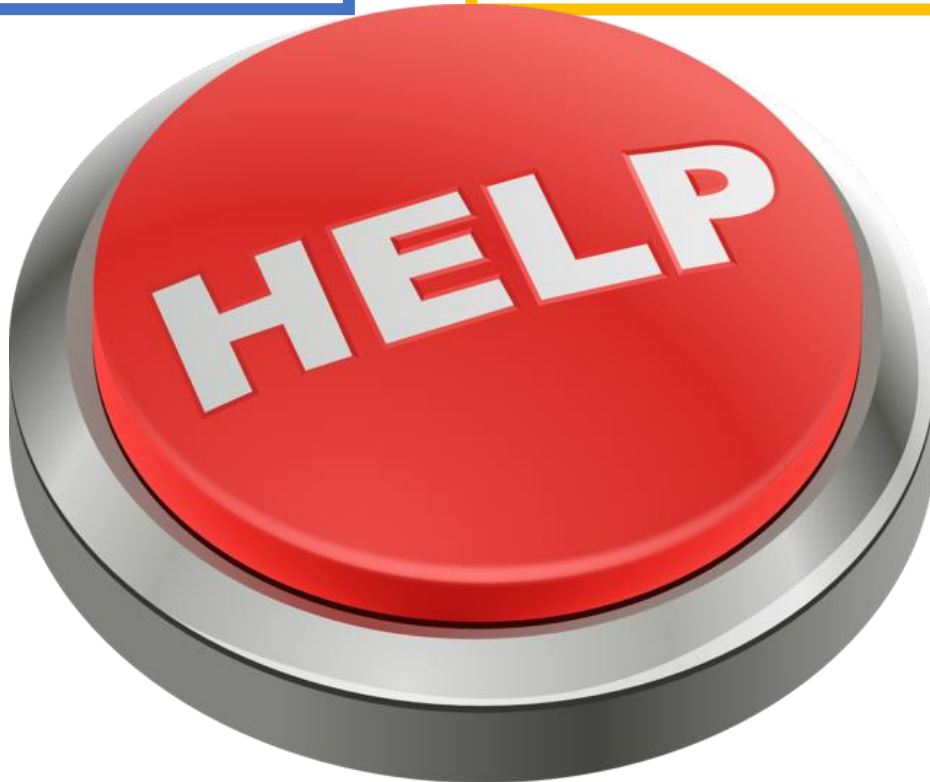
KEEP YOUR UNISERV DIRECTOR INFORMED OF WHAT'S OCCURING.

When to Turn it Over to the UD

CPS Investigation
IMMEDIATELY!

Evaluation Issue

Discipline that
could result in
termination



Interacting with Members - Summary

- 1) As an Association Representative, you are the frontline of your Union and will be called upon to represent your colleagues with management
- 2) These meetings will often take the form of a low-level grievance, discipline meeting, or problem-solving
- 3) In all these scenarios, you want to interview the member and any relevant witnesses to get as much information as possible
- 4) Our jobs are stressful, and anything involving their union can lead to strong emotional reactions from our members
- 5) Part of your job is meeting members where they are and helping them work through those emotional states to solve the problem
- 6) In all of this, you need to maintain a posture of fairness and impartiality as a legal representative of your union



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Weingarten Rights

"If this discussion could lead to my being disciplined or terminated, I request that my union representative be present at the meeting."



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Weingarten Rights

Established in the private sector by the Supreme Ct. in *NLRB vs. Weingarten*.

State employees have won similar rights through state law, state labor board decisions, or union contracts.

Union contracts typically use the same language as the *Weingarten* decision; union interpret their contracts to provide the strongest rights guaranteed to the private sector under *Weingarten*.



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When do Weingarten Rights Apply?

- Supervisor makes attendance mandatory.
- Meeting is (or becomes) part of an investigation.
- Employee reasonably believes discipline could result.
- Employee requests representation.



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When do Weingarten Rights Not Apply?

- Employee has asked for the meeting.
- Meeting is for routine supervisory purposes.
- Supervisor has assured employee that discussion is not part of a disciplinary investigation.
- Meeting is disciplinary, but employee did not request union representation.



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Reasonable belief depends on circumstances:

- Has supervisor issued prior warnings?
- Have others been disciplined for similar conduct?
- Has the employee been under scrutiny?



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Weingarten Rights

- Unsure whether it's a disciplinary meeting? Then ask!
- Regardless of whether the meeting is found to be disciplinary, you cannot be disciplined for asking for a union rep.



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Rep's role during investigatory meetings

- Consult with the employee before the meeting.
- Review pertinent documents.
- Ask clarifying questions.
- Encourage employee to be calm.
- Caucus during meeting if necessary.
- Take good notes.



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Weingarten Discussion Prompts



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Day 3 PM: Building Actions & other topics



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Duty of Fair Representation:

"[The] union has the duty to represent all employees - whether members of the union or not - fairly, in good faith, and without discrimination. This duty applies to virtually every action that a union may take in dealing with an employer as your representative, including collective bargaining, handling grievances, and operating exclusive hiring halls." (NLRB)

As a Building Representative – this means YOU!



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Duty of Fair Representation:

As a legal representative of your Union, you need to exercise good judgment to help prevent a DFR claim.

- **Always, always, always** document representative interactions with members
- Build **trust** with your members and create reputation for **impartiality**
- Treat members in similar situations similarly
- This does **NOT** mean you have to file a grievance every time a member wants one, but it does mean you need to be able to show good and fair reasons for refusing to do so
- When in doubt – **CALL YOUR UD!**



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Seven Tests of Just Cause

- **Used by hearing officers and arbitrators to ensure fundamental fairness**
- **Most decision-makers will apply the tests holistically—taking the "big picture" rather than focusing on technical deficiencies**



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Test One—Reasonable Rule or Work Order

- Is the rule or order reasonably related to the orderly, efficient, and safe operation of the business? Is the rule or instruction straightforward and stated in language that is easy to understand? Has it been applied consistently?
- Consider "reasonableness" not just from the administration's viewpoint, but from the employee's viewpoint, too.



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Test Two—Notice

- Did the employee receive adequate notice of the work rule or performance standard and the possible consequences of failure to comply?
- Is it up-to-date and relevant to operational needs?
- How was the method for informing the employee appropriate for the seriousness of the rule?
- Was it discussed in staff meetings or prior oral or written communications?
- What evidence shows the employee was aware of it and understands it?



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Test Three—Sufficient Investigation

- What caused the belief that a violation occurred?
- Did the investigator ask the employee for a written statement or other written confirmation of the employee's version of the alleged infraction?
- Were others with knowledge of or involvement in the issue interviewed and were their answers recorded and confirmed?
- Is there equipment that the supervisor or experts should have examined?



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Test Four—Fair Investigation

- Was the investigation fair and objective?
- Did the investigator have a preconceived belief that an infraction occurred?
- Was the investigator too close to the matter to be objective, or influenced by factors irrelevant to the alleged infraction?



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Test Five—Proof

- What evidence supports the conclusion?
- Did the investigator discard allegations that he or she could not validate?
- What solid—not flimsy or slight—evidence formed the basis for taking disciplinary action?



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Test Six—Equal Treatment

- Has the employer dealt with employees equally and without discrimination?
- Was the rule applied consistently with similarly situated employees?
- What is the employer's record for disciplinary action for this type of infraction?



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Test Seven—Appropriate Discipline

- Is the discipline reasonably related to the magnitude of the problem that the alleged violation caused?
- For instance, did it create danger or a severe workflow disruption?
- Is it reasonably associated with the employee's length of service and overall performance?
- Is the violation part of a pattern?
- Is it based on a minor infraction, which does not merit harsh discipline unless it is a repeat occurrence?



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Appeals, Grievances, and Arbitrations

Which process applies and under what circumstances?

CBA, or COMAR §4-205, §6-202

COMAR = Code of Maryland Regulations

Can select either the CBA grievance process or an administrative appeal, not both!

Note: MSEA does not represent non-members in administrative appeals.



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The Administrative Appeal Process under §4-205 Appeals is available to certificated and non-certificated employees. The CBA's grievance process is available to certificated employees and in some counties to non-certificated employees. Challengeable actions:

- **Discipline** (i.e. Warnings, Reprimands; all discipline for non-certificated staff, NOT Suspensions or Dismissal/Termination for certificated staff.)
- **Evaluation** (Only whether the proper process was followed, not the final assessment of performance)
- **Being put on a Performance Improvement Plan** *only if it arises from discipline*



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- [§4-205](#) – Individual elects administrative appeal process
- Local superintendent may hold a hearing (it is not required) and issues a decision.
- Superintendent's decision may be appealed by individual to county board. Hearing may be held (it is rarely required) and county board issues a decision.
- Since hearing is unlikely, submit affidavits and arguments in writing.
- County board's decision may be appealed by individual to State Board. State Board's review is limited in scope and does not require a hearing. State Board issues a decision.

If the employee chooses the CBA:

- Grievance process moves forward per CBA. May be resolved at any step.
- If issue is not satisfactorily resolved at lower steps of grievance process, the local may decide to file for arbitration.
- If filed for arbitration, a hearing is held, and the arbitrator issues a decision. This is the last step unless otherwise indicated in the CBA.



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Challenging a Suspension or Termination (certificated staff)

§6-202 Appeals are available to certificated employees

Request hearing before local BOE within 10 days of decision; BOE or hearing examiner holds hearing and issues decision; may appeal to state BOE within 30 days. State BOE holds hearing and issues decision.

OR

Request hearing before an arbitrator within 10 days of decision; Hearing is held before an arbitrator and arbitrator issues decision. Arbitrator determines whether the county board had "sufficient cause" to suspend or terminate. A request may be made for judicial review by a circuit court. Circuit court review is limited to legality (**no substantive review**) and issues a decision.



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§6-202 of the Maryland Education Article- Suspensions and Terminations of Certificated Employees (Excerpts)

- (a)(1)** On the recommendation of the county superintendent, a county board may suspend or dismiss a teacher, principal, supervisor, assistant superintendent, or other professional assistant for:
- (i)** Immorality;
 - (ii)** Misconduct in office, including knowingly failing to report suspected child abuse in violation of § 5-704 of the Family Law Article;
 - (iii)** Insubordination;
 - (iv)** Incompetency; or
 - (v)** Willful neglect of duty.



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You have investigated a member issue, is it a grievance?

Is it a violation of the contract? Yes!

Is it a violation of law, employer policy, past practice? Probably yes!

None of the above? Probably no!

Past practice 101:

- 1: A clear and consistent course of conduct.** This is “normal activity”, not something vague or a random lapse in the normal way of doing business.
- 2. Activity must occur over a reasonable duration.** This is subjective, but once or twice a year is not enough, consistently over a measurable period of time.
- 3. Full knowledge.** Both parties must know this occurring. It doesn't have to be officially acknowledged, but it cannot be being done in secret.
- 4. Contract is silent or ambiguous.** When the contract is silent, the practice becomes an implied part of the contract, when it is ambiguous, it shows the intent of the parties.



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If it's not a grievance?

- If you do not believe a member's issue is a grievance, talk with your governance team or UD, get a second opinion.**
- Be honest with the member, explain to them directly your conclusion.**
- Give them an opportunity to explain what portion of the contract (or law, etc) is violated.**
- Even if you don't think a grievance is advisable, talk with other building reps to see if similar issues are happening in other worksites.**
- For some issues, you can attempt to work out the issue informally with admin.**



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Building Actions

We mentioned grievances vs. gripes, but what if there was a secret third thing.

What are some of the benefits of a collective worksite action?



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What makes a good issue for collective worksite action?

1. Be widely felt
Does it affect many members
2. Be deeply felt
Do people have strong feelings about it
3. Be easy to understand
4. Be non-divisive
Not an issue that pits members against members
5. Have a clear, easily understood solution
6. Be winnable
Members should believe they can win, in a reasonable amount of time.
7. Build leadership and ownership
Are there roles for members to play?
8. Give members a sense of their power.
9. Result in real improvement in members' lives
Members are taking a chance, is it worth it?
10. Alter the power dynamic in the workplace.



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What are some issues at your worksite that would make good workplace action issues?



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What makes a good workplace action?

1. It is appropriate for the problem
2. It has a clear “target”
3. It will move the “target” to action
4. Workers are willing to do it
- Stress test
5. It is practical
6. It is fun
7. It is creative
8. Does it create buzz, will people pay attention?
9. If it requires resources, are they available?
10. What are the next steps or escalations?



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What are some “actions” that meet the criteria?

Pick one of the workplace issues.

- Define the problem
- State the solution
- Identify the target
- Select ONE collective action



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WHOVA EVALUATION

Please take some time to fill out the evaluation for this course. Your feedback is important to us and we will use it to improve the course for next year's participants.



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Solidarity is Everything

Any final questions?

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