Collective Bargaining: Examining the Discipline Process in Iowa

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Executive Summary

Progressive Discipline as a component of Collective Bargaining in the public sector is a relatively recent addition. State sovereignty laws did not allow the applications of collective bargaining in the states until each state independently chose to implement laws in their jurisdiction. Such laws can vary considerably depending on the state and local municipality. These laws can and do undergo changes based on political and economic reasons being subject to state legislative acts. In some states progressive discipline is not a component of collective bargaining or pre-exist a collective bargain compact.

Iowa's public service collective bargaining laws are currently being rearranged under new legislation passed in 2017. This is following a trend of changes in Mid-western state bargaining laws including Ohio and Wisconsin.

Understanding the enormous complexities of Iowa's collective bargaining laws and progressive discipline steps and the nuances experienced by those navigating the process is helpful in exposing to the public both why continuous negotiated terms are difficult for both sides in the bargaining process.

In this document, we explore the history of Iowa's collective bargaining laws and selected examples of local public service discipline practices. We provide anecdotal and professional interviews on experiences working within the process.

History of Collective Bargaining in America

Collective Bargaining as a principle had its beginnings with the passing of the National Labor Relations Act of 1935 (Tell-Retz, 1993, p. 3), initially the Act only applied to the

private sector usually industrial related jobs. This was later expanded to include federal jobs starting with Executive Order 10988 issued by President John F. Kennedy in 1962 (Sinicropi, 1969, p. 41) and later in 1978 under the Civil Service Reform Act (Tell-Retz, 1993, p. 3). Still, states were exempt as sovereign entities and not required to observe private or federal agreements unless they elected to do so.

None of the industrial relations acts passed starting in 1935 such as the Wagner Act of 1935; the Taft-Hartley Act of 1947; or the Landrum-Griffin Act of 1959 had any implications for Sovereign states (Sinicropi, 1969, p. 45). Over time, this created complications for states in commerce doing business with organizations within other sovereign states across borders and put pressure on states through the 1960's and 70's to consider standardized regulatory practices including labor. As of 2014, there were 34 total states that mandated a version of collective bargaining; in 11 states it was permissible; and among 5 southern states it was prohibited (Issue Review: State Collective Bargaining in Iowa, 2014, p. 1)

Collective Bargaining as it relates to employee discipline in the USA effectively began in the private sector during the turbulent times of the growth of Unions in the 1930's and 40's. Unions would organize strikes and walkouts when members were fired. During World War II, the US government attempted to ban strikes resulting from employee terminations and in attempt to quell disputes, trained industrial arbitrators were sent out to settle Union-management conflicts; from there, the concept of arbitration began to grow in application (Progressive Discipline in a Unionized Workforce, 2016).

History of Iowa State Public Sector

In Iowa, state public service labor laws began in 1974 with the passage of the Iowa's

Public Employment Relations Act (PERA). PERA was first enacted by the Iowa legislature and signed into law by Governor Robert Ray on April 23, 1974 becoming effective July 1, 1974 as Iowa Code Chapter 20; however, the Act did not allow effective bargaining to begin until July 1, 1975; however, actual bargaining organizing by the Unions started August 18, 1976. As of November 13, 2014 there were 21 bargaining units under seven Unions representing 27,600 state workers (Issue Review: State Collective Bargaining in Iowa, 2014). These state public sector bargaining units fell under seven unions:

- United Electrical, Radio & Machine Workers - Iowa United Professionals Local 893 (UE-IUP)
- American Federation of State, County, and Municipal Employees-Iowa Council 61 (AFSCME)
- State Police Officers' Council (SPOC)
- Public Professional and Managerial Employees (PPME)
- Service Employees International Union
- United Electrical, Radio & Machine Workers of America Local 896
- UNI-United Faculty AAUP/IHEA

A proposition each of the private, federal and later state Acts have in common is a principle that collective bargaining serves the interest of the public and employees; and further recognizes the rights of workers in a free society to "form, sit, and assist labor organizations" and sit as equals with employers in discussing terms that mutually benefit each in the working environment (Tell-Retz, 1993, p. 3). Unique to the development of Iowa's state public sector bargaining from the private sector has been the lack of rights to

organize strikes and a limited number of mandatory subjects open to bargaining.

In respect to employee grievances during the 1970's, in 1971 Iowa implemented (Merit Supervisory Exempt and Confidential Staff in Relation to Other University Staff, 2016), a state form of the federal civil service system called the Iowa State Merit System which provided the creation of a Merit Employment Commission that held the final say in grievances and disputes, but didn't preclude the role of collective bargaining. In a review of the Merit System by Sinicropi, et.al, the Merit System provided a form of civil protections to state public workers such as competitive examinations for appointments and promotions, Iowa Code 19A.1; development of pay and job classifications by the Iowa Merit Employment Commission, Iowa Code 19A.9 (1&2); and a uniform plan for the Iowa Merit Employment Commission to deal with employee disputes and grievances, Iowa Code 19A.9 (17); and a right to appeal discharge and suspension, Iowa Code 19A.14. Employees under bargaining agreements could appeal discharge and grievances to the Commission and be represented by their labor organizations and pursue their appeal via their individual collective bargaining agreement (Sinicropi, 1969, pp. 49-51).

The collective bargaining aspect was later defined under PERA in 1974 when Iowa established the Public Relations Board (PERB) under Iowa Code Chapter 20. The role of PERB, a Governor appointed board, was to provide oversight for all regulations and conditions under Iowa Code Chapter 20; and assume the role of dispute fact finder and to provide arbitration to settle disputes. Under arbitration, the Union and state can disagree with the ruling and continue negotiations or agree to a binding ruling (Iowa's Privileged Class: State Government Employees, 2016).

Under Iowa Code 20 or the PERA Act, of the mandatory subjects inclusive to collective bargaining, one very important aspect was missing - the employer's right to discipline and discharge. This is considered among the permissive subjects defined as "other subjects mutually agreed upon" (Tell-Retz, 1993, pp. 4-5). A permissive subject is one that may be proposed by either bargaining party, but the other party doesn't have to agree to discuss the subject. This situation severely limits changes to employee discipline in collective bargaining and leaves it subject to status quo practices without significant political alignment or policy intervention.

Mandatory Bargaining Categories

BENEFITS	STAFFING	WORK HOURS
Wages	Evaluations	Shifts
Insurance	Workforce Reductions	Shift Differential
Paid Leave	Seniority	Overtime
Holidays	Transfer Procedures	
Supplemental Pay (Health and Safety)	Job Classification	
Dues Deductions		

Table 1: Mandatory Bargaining Categories

Under PERA, not all state public employees were allowed to organize or be covered under collective bargaining agreements (Issue Review: State Collective Bargaining in Iowa, 2014, pp. 2-3), these employees include:

- Supervisory employees
- Temporary employees – those under 4 months, intermittent, or seasonal
- Confidential employees – at will, close working conditions with those that negotiate

on behalf of the public employer

- Personnel of the Iowa National Guard
- Employees of the Credit Union or Banking Division of the Departmental Commerce
- Elected Officials or board appointees
- Students employed less than 20 hours a week

States implement employee labor rights under their own jurisdiction as law creating sovereign governing units; and can limit, amend, or revoke bargaining rights. This is significant according to Hernandez claiming that many states have started the process of limiting collective bargaining or repealing as a means to balance their respective budgets (Hernandez, 2016). Examples of recent collective bargaining eliminations and cuts are the states of Ohio and Wisconsin, which became highly publicized as among the most radical changes made (Slater, 2011). Under the changes that occurred in Wisconsin, the collective bargaining categories of mandatory and permissive subjects were effectively reduced to only one – base wages (Olsen, 2011).

There has been since 2011, a growing trend among states in reviewing collective bargaining for the purpose of revision to meet the interests of the state. This trend is emerging in Iowa. Due to the November, 2016 elections the Iowa legislature has shifted to a trifecta leadership including the Senate, the House, and the Governor's office representing one political party control. As seen in the Des Moines Register (Noble, 2017), among the various aspects of collective bargaining to be targeted relevant to this report include Arbitration and the Grievance process. The position taken on the Grievance process as to why such interventions are needed include streamlining a process that is overly cumbersome and time consuming. The difficulty of employee discipline is cited as a concern whereas other fields of the process would be less difficult. Arbitration is cited as contributing to rising salary and benefits in school districts that result in rising property taxes.

By investigating and better understanding the history and processes involved in Iowa's public sector bargaining will assist in building an appreciation for collective bargaining's complexities.

History of Selective Local Public Employment Practices

The International Association of Fire Fighters (IAFF)

The International Association of Fire Fighters (IAFF) is one of the oldest public employee unions formed in the United States. In the early 1900's, firefighters operated horse drawn steam fire engines and most were subjected to nearly continuous duty. They were required to live in the firehouse 24 hours a day, 7 days a week, with only an occasional day off. Pay, benefits, and promotions were often tied to political patronage, and many times experienced firefighters were fired so local politicians could hire their loyal cronies.

In Des Moines the first paid professional fire department was established in February of 1883. There were two fire stations that protected the city, one on the east side of the Des Moines River, and one on the west. Seventeen firefighters were on the department, and they were allowed one night off every 7th day of continuous work. The working schedule did improve somewhat in 1900 when the members of the department were granted 24 hours off every 7th day. In 1913 the City Council passed an ordinance providing that after July 1, 1913, all personnel employed as firefighters in the City of Des Moines would be entitled to 24 hours off every 4th day. Albeit slow, improvements were gradually made in the working schedule prior to the formation of the IAFF. (Des Moines Fire Department, 1990)

In 1903 firefighters in Pittsburgh formed an independent affiliate with the newly formed American Federation of Labor (AFL). They sought higher wages, increased safety, and better working and living conditions. Shortly after this, Des Moines also formed an independent affiliate with the AFL. The Des Moines Firemen's Association Number 14546 was established

to represent the collective best interests of its members. In 1917 Tacoma, Washington, firefighters organized and won a two platoon schedule where half the department worked a ten hour day shift and the other half worked a fourteen hour night shift. The shifts switched every thirty days. This was considered a major victory and illustrated the potential strength of firefighters united behind a common cause. In Des Moines, the two platoon system was established on May 1, 1919, and each shift, or platoon, alternated on duty every 24 hours.

AFL President Samuel Gompers invited 24 local affiliates to Washington DC, and on February 28, 1918, the International Association of Firefighters was formed for the sole benefit of rank and file firefighters in the United States and Canada. Since its inception, the IAFF has forged a legacy of political accomplishments, improvements in safety, and benefits for firefighters and their families. Locals were assigned numbers based on the order of their initial affiliation with the AFL. As a charter member of the IAFF, the Des Moines Association of Professional Firefighters proudly carries the designation of Local 4, and its goals have remained largely unchanged since its inception: decent pay for skilled, difficult, and dangerous work; protection for the firefighter's family; a financially secure pension system designed to limit working years on the job; and acquisition of modern, state-of-the-art protective clothing and equipment to make a very dangerous job as safe as possible (Des Moines Fire Department, 1990). At the end of its first year, the IAFF had 149 member locals which were concerned mainly with the issues of fair wages, benefits, and improved working hours.

Initially organization was anything but easy, and anti-union forces, both business and political, were a harsh reality. Some locals were banned entirely, and union members suffered persecution from coworkers, demotion, and even discharge from their jobs. Despite the difficult

challenges, those fire departments that did organize locals with the IAFF experienced higher morale and increased operational efficiency.

Following the end of WWI on November 11, 1918, new inventions and new ideas developed during the war helped firefighters work more safely. Mechanical engines and pneumatic tires allowed faster response times and decreased the loss of life and property; however, even with the organization of unions and technological advances after the war, firefighters still worked over 80 hours per week.

During the Great Depression from 1929 through 1939, being a firefighter was a coveted and very dependable job. The IAFF displayed its spirit of community service as firefighters delivered food and clothing to those in need all across the United States. Innovations such as two-way radios and improved breathing equipment increased the level of safety for firefighters while inside burning buildings. The IAFF continued to make political gains, including defined benefit plans which were won by many of its locals. In 1931 the first defined benefit plan was established in Chicago, Illinois. Defined benefit plans required cities to make guaranteed contributions in addition to the contributions made by employees. At its 1934 convention, the IAFF was praised by the National Fire Protection Association, the United States Department of Agriculture, and others for playing a critical role in fire reduction, education, and research. FDR's New Deal brought genuine protections for firefighters. Civil service laws shortened work hours and raised pay. Labor laws protected workers and their right to organize. Yet firefighters still had no collective bargaining power to negotiate contracts, and it would take over 30 years to fight and win that battle.

During WWII, civilian fire service in the United Kingdom was provided by the Canadian Fire Fighters Corps. Eventually members of the IAFF in the United States joined their Canadian brothers in England to extinguish the numerous fires caused by Germany's brutal bombing raids that blasted cities throughout the UK. Following the Japanese attack on Pearl Harbor in December of 1941, many IAFF members served their country overseas. Those firefighters remaining at home joined their locals in organizing drives to send goods over to soldiers fighting the war. Other locals scrapped pieces of fire apparatus for metal used in wartime manufacturing. Approximately 43% of men employed in the fire service were eligible for the draft (York County Williamsburg Professional Fire Fighters, 2017). The IAFF encouraged firefighters to work paid overtime to cover for their experienced counterparts who had gone into the service. When the United States was victorious in May 1945, those who had served in the military found fire service jobs waiting for them when they returned from war. The IAFF also did everything possible to ensure that disabled veterans could find work in the fire service, as well.

By 1948, the International Association of Fire Fighters had grown to 1000 locals strong, and as the organization grew in numbers, so did its service to firefighters and their communities. The IAFF adopted the Muscular Dystrophy Association (MDA) as its designated charity in the United States and Canada in 1958 and has since donated one half billion dollars to fund research and the fight against muscular diseases. Under current General President Harold Schaitberger, the IAFF has risen to the top and become the single largest sponsor of the MDA.

Firefighting is a very dangerous occupation, and in 1958 the John P. Redmond Foundation was formed to encourage and carry forth research and education regarding the occupational hazards and diseases associated with firefighting. Studies funded through the

Foundation have led to medical evidence correlating heart and lung diseases and occupational cancer with the profession. A medical library has been established to assist locals in presenting disability and pension cases. Research funded by the Redmond Foundation was used to lobby numerous state legislatures, including the Iowa legislature, which passed a cancer presumption law in Chapter 411. Under the law, heart disease, any disease of the lungs, or cancer/infectious disease "shall be presumed to have been contracted while on active duty as a result of that duty (State of Iowa, 2017)."

The IAFF and its member locals won shorter duty hours in many areas of the United States and Canada. The fire service has always been shaped by social and political changes, and the lessons learned on the battlefield during WWII and the Vietnam War began decreasing mortality rates for civilians suffering traumatic injuries at home on American soil. Communities began to receive the same rapid response for medical emergencies as they did for fire suppression.

In the political arena, states began passing collective bargaining legislation so that locals affiliated with the IAFF could negotiate with employers for wages, benefits, working conditions, and other terms of employment.

1959 – Wisconsin

1967 – Washington, New York

1968 – Pennsylvania

1969 – Michigan

1973 – Massachusetts

1974 – Iowa

The IAFF won a major victory for firefighters throughout the United States when Congress passed the Fire Research and Safety Act of 1968. Signed by President Lyndon Johnson, the program was designed to provide more effective protections for firefighters against the occupational hazards of the profession, such as death and injury. In addition to research, the act focused on fire safety problems and contained provisions for establishing fire safety education and training programs, making improvements in methods and techniques for fire prevention and control, and reducing fire deaths, injuries, and property damage.

Over the years, the International Association of Fire Fighters had been growing in both strength and numbers, and by 1972 there were over 1300 Locals with a total of 158,755 members. The IAFF continued to step up its political activity realizing the ability of government to change the lives of its members. FIREPAC, the IAFF's federal political action committee, was formed in 1976 to promote the legislative and political interests of all professional firefighters and paramedics. FIREPAC is one of the most active and powerful lobbying organizations in Washington, DC. Another major victory was won at the federal level when President Gerald Ford signed into law the Public Safety Officers' Benefits Act of 1976. This legislation was designed to provide assistance to the families of firefighters killed in the line of duty. In 1977, McClennan Scholarships were established to help pay for the cost of higher education for children of firefighters killed in the line of duty. The International Association of Fire Fighters had become, and remains today, a powerful advocate for firefighters on the political front.

From 1978 through the end of the 20th century, the International Association of Fire Fighters continued to fight for and protect the benefits earned or negotiated by its members. Since its inception, the IAFF has been focused on the right of firefighters throughout North America to live, work, and retire with the dignity they deserve.

In 1979 the IAFF lobbied for legislation that was passed establishing 457 deferred compensation plans for firefighters and other public sector employees. Participation in such plans, which is voluntary, provides supplemental income to firefighters in retirement. These 457 plans are similar to 401K plans in the private sector. Governmental employers are also permitted to make matching contributions as a percentage of salary.

The IAFF held its first annual Legislative Conference in 1980. The research and guidance of the IAFF led national associations and both federal and state agencies to write and enforce standards that enhance firefighter safety, including improvements in turnout gear. By the 1980's most states had already passed heart and lung presumptive laws, and in 1982 California became the first state in the US to pass a cancer presumption law.

Prior to 1985, there was no federal requirement that firefighters must receive overtime pay for extended work hours. The US Supreme Court ruled in 1985 that the federal Fair Labor Standards Act (FLSA) did apply to state and local government employees. The IAFF supported amendments to the FLSA that eventually allowed firefighters to be paid overtime for extended hours on duty. During this time, laws were also passed to protect firefighters from exposure to hazardous materials that might be encountered when responding to incidents. Firefighters had the "right to know" what hazardous materials were stored in various locations that could harm

them or the citizens they protect.

The National Fire Protection Association is a global nonprofit organization whose mission is "eliminating death, injury, property and economic loss due to fire, electrical and related hazards (National Fire Protection Association, 2016)." The NFPA is essentially a codes and standards organization that provides information and knowledge designed to minimize the risk and effects of fire. The IAFF pushed for NFPA 1500 *Standard on Fire Department Occupational Safety and Health Program* which provides minimum requirements for comprehensive occupational safety and health programs in departments or organizations the employ firefighters.

A new century began a new era of advancements in safety for firefighters, as 21st century knowledge and technology could be utilized to support union priorities. This expertise was used to argue for presumptive disease laws and regulations to protect firefighters and paramedics across the US and Canada. If local governments tried to compromise firefighter safety in the name of budgetary constraints, which was not uncommon during the Great Recession of the late 2000's, the IAFF had both research-based data and industry standards to back up arguments for adequate staffing. The IAFF partnered with the National Institute of Standards and Technology (NIST) to collect empirical data supporting the importance of crew size on initial fire attack. The IAFF also provided leadership training to its members and established an annual Human Relations Conference where ideas could be exchanged to ensure that the profession of firefighting is more accessible to all members of our communities.

Currently the IAFF has over 300,000 members in 3200 affiliates across the United States

and Canada representing greater than 85% of full-time firefighters and paramedics in North America. The principles for which the IAFF stands have not changed over the course of the past century, and this powerful union will continue to fight for legislation that supports firefighters and their families, firefighter health and wellness, and safety.

International Union of Police Associations (IUPA)

Large scale unionization of police officers in the United States did not begin until 1954 when the National Conference of Police Associations (NCPA) was founded. The birth of the NCPA came in response to the rapidly changing political and professional environment affecting the law enforcement profession and its rank and file. The demands of the profession were evolving quickly, especially in the area of collective bargaining. Police officers were beginning to achieve collective bargaining for pay and benefits, and it soon became apparent they needed the support and services that could be provided by the AFL-CIO.

A number of local police associations attempted to affiliate with the AFL-CIO, but they were rejected because each did not represent a national cross section of law enforcement officers. In order for a union to be granted affiliation, it must be able to demonstrate that it represents and includes members from all geographic regions of the nation. As a result, the NCPA amended its bylaws in 1966, and welcomed a number of local Canadian police associations to its membership. This allowed the NCPA to meet the geographical requirements for affiliation with the AFL-CIO (Cap, n.d.). At that time, the organization also changed its name to the International Conference of Police Associations (ICPA). The leadership of the ICPA was focused on securing affiliation with the AFL-CIO and would fight for six years to

make that goal a reality.

From 1972-1976, while simultaneously pursuing AFL-CIO affiliation, the ICPA was the main driving force behind securing a federal death benefit for law enforcement officers. The ICPA leadership worked tirelessly to build the coalitions and necessary support to make that happen. In 1976 they succeeded with passage of the Public Safety Officer's Benefit Act, and for the first time, all law enforcement officers' families became entitled to a death benefit if the officer was killed in the line of duty. Winning that battle was a tremendous accomplishment, and the federal death benefit stands to this day.

As time passed, the ICPA had opportunities to demonstrate its growing strength and influence. On one occasion the ICPA local in Memphis, Tennessee, went out on strike. Even though the ICPA was not yet affiliated with the AFL-ICO, other public employee unions supported the strike and were ready to honor the picket lines (Cap, n.d.). The strike in Memphis was quickly settled, and the AFL-CIO leadership recognized the strength and national presence of its growing membership. The AFL-CIO clearly indicated to the ICPA that, if requested, affiliation would almost certainly be granted.

In July, 1978, the ICPA held its annual convention in Toronto, Canada. Delegates from all over North America were in attendance, and Toronto turned out to be the site of a fierce battle between pro- and anti-affiliation forces. A constitutional convention would have to be held in order for affiliation with the AFL-CIO to occur. On a controversial 62 to 61 vote, the delegates finally voted to hold a constitutional convention in September of that year and thus pave the way for affiliation (Cap, n.d.). Prior to the constitutional convention, the ICPA officially notified

AFL-CIO President George Meany that they would be seeking affiliation, and shortly thereafter the application was accepted.

Opponents of affiliation within the ICPA continued to voice their unwillingness to become an affiliate of the AFL-CIO. Because this had become such a polarizing issue, several members of the pro-affiliation group, including the President, Secretary/Treasurer, and 22 Vice Presidents, resigned and voted to create the International Union of Police Associations (IUPA) (Cap, n.d.). The President and Secretary/Treasurer were both elected to those same positions in the IUPA, and an office was opened in Washington, DC. Two months later, the AFL-CIO Executive Board voted to accept the IUPA as an affiliated union of the AFL-CIO and granted the Charter on February 20, 1979. For the first time in this nation's history, rank and file police officers had their own independent voice that spoke specifically for them and *only* them to enhance the lives and working conditions of law enforcement officers and their families nationwide.

In 1988, recognizing its potential for growth, the IUPA expanded its services and opened a second office on the west coast. The union hired a special legal counsel to deal with the increasing number of issues on both the collective bargaining and political horizons. A research director was hired to perform annual analyses of wages and benefits across the nation. Data obtained from these analyses could then be used as a tool by various locals in the collective bargaining process. The IUPA was growing and becoming a more powerful force in the political arena, and the need for full-time executive officers became evident. As a result, the union elected a full-time President, Secretary/Treasurer, and Vice President/Legislative Liaison, all with offices in Washington, DC. Membership numbers expanded rapidly, from 16,890 members

in 1990 to over 80,000 in 1997. The focus of the IUPA was then, as it is now, to improve the lives of law enforcement professionals and their families by advocating for better working conditions, wages, and benefits and assisting with drafting legislation that benefits the lives of its members.

The IUPA has since created a full service legal program specifically designed to represent its members in matters such as grievances and disciplinary hearings, contract administration, collective bargaining, and any other legal matters directly related to their course of duty. To further protect its membership, the IUPA also partnered with a strong legal partner to cover both civil and criminal incidents that occur in the course of duty. The Legal Defense Fund (LDF) immediately provides an attorney on-site to provide assistance in matters involving acts or omissions within the scope of a police officer's duties. The IUPA considers this to be an invaluable benefit for its members, especially considering the current social and political environments and increasing demands placed on the law enforcement community.

Since its inception, the IUPA has become a very influential advocate for law enforcement in the political arena. The IUPA uses its political clout to assist in drafting legislation that benefits the entire law enforcement community. Some examples of its legislative initiatives include educational survivor benefits, the Police Officers' Bill of Rights, and FLSA legislation, just to name a few.

One of the most important legislative initiatives embraced by the IUPA was the passage of a series of amendments to the Fair Labor Standards Act of 1938 (FLSA). Those amendments, which became effective on April 15, 1986 (United States Department of Labor Wage and Hour

Division, 2017), made the FLSA applicable to law enforcement, firefighters, and other state and local government employees. The law required "that all covered nonexempt employees be paid overtime pay at no less than time and one-half their regular rates of pay for all hours worked in excess of" the normal work period (United States Department of Labor Wage and Hour Division, 2017). The new amendments also made provisions for compensatory time off under prescribed circumstances, but compensatory time must be given "at a rate of not less than one and one-half hours for each overtime hour worked, in lieu of cash overtime compensation (United States Department of Labor Wage and Hour Division, 2017)." No longer would law enforcement officers be required to work long hours without compensation, nor would local unions have to bargain for overtime to be paid at time and a half. The IUPA flexed its political muscle and played an important role in the passage of these amendments, while at the same time demonstrating its ability to influence in political circles.

Another of the important functions of the IUPA can be found in the Research Department. The Research Director designs wage and benefit surveys to provide locals with the data and information necessary to successfully negotiate contracts. Members of the research department work directly with local presidents to design surveys and/or provide information to meet the specific needs of their organization. The Research Department has gathered information on a wide variety of topics affecting police officers in their local communities. Any information is available on request from member locals.

Much like the International Association of Fire Fighters, the International Union of Police Associations works tirelessly to improve the lives and working conditions of its membership, whether it be through research, legal assistance, wage and benefit initiatives, or as a

powerful advocate on Capitol Hill.

City of Des Moines Fire Department

The City of Des Moines has entered into a contractual agreement with The Des Moines Association of Professional Fire Fighter Local No. 4 through the 30th of June, 2019.

Article four of this agreement states the management rights. Except as specifically modified by this Agreement, the employer shall have, in addition to all powers, duties and rights established by constitutional provision, statute, ordinance, charter or special act, the exclusive power, duty and the right to:

- Direct the work of its employees.
- Hire, promote, demote, transfer, assign and retain employees in positions within the agency.
- Suspend or discharge employees for proper cause.
- Maintain the efficiency of governmental operations.
- Relieve the employees from duty because of lack of work or other legitimate reasons.
- Determine and implement methods, means, assignments and personnel by which City operations are to be conducted.
- Take such actions as may be necessary to carry out the mission of the City government.
- Initiate, prepare, certify and administer its budget.
- Exercise all powers and duties granted to the City by law.

Currently the Fire Department has only one defined rule and regulation that directly applies to progressive discipline. Rule 13 of the DMFD's rules and regulations states: "Members shall report for duty on time, and no company or division shall be off duty until and unless properly relieved. Absence of a member at roll call shall constitute absence without leave (AWOL). Members will be disciplined in accordance with the Department's AWOL policy:

- First AWOL – Oral reprimand by the shift commander, record of such reprimand to be placed in personnel file.
- Second AWOL – Written reprimand by the shift commander, copy of such reprimand to be placed in personnel file.
- Third AWOL – Automatic twenty-four (24) hour suspension from duty without pay,

record of such suspension to be placed in personnel file.

- Fourth AWOL – Automatic dismissal from the Fire Department.

For the purpose of administering discipline regarding Rule 14, when a member goes twenty-four (24) months without an AWOL, the most recent infraction will not be considered as a part of the record. Similarly, if no violation takes place in the succeeding twenty-four (24) months, the next most recent infraction will be not be considered as a part of the record. If no violation occurs in sixty (60) months, the employee's record will be considered absent of AWOL violations regarding a subsequent violation. However, all record of AWOL violations will remain a part of employee's personnel file. While Rule 14 articulates administration of AWOL violations as independent of other conduct, nothing in the Rules should be misconstrued as limiting the Fire Chief's authority to review conduct and/or administer discipline upon a thorough investigation of the events and/or an employee's history."

The Des Moines Association of Professional Firefighters, Local 4 have a grievance process to follow in order to appeal the discipline administered. The process is as follows:
A "Grievance" is a dispute as to the application or interpretation of any part or clause of this Agreement. A "Grievant" is the employee or the Union filing the grievance.

Section A. Procedures: The parties agree to act in good faith to resolve any grievance presented by an employee or the Union. Such grievance must be presented at the first (1st) step of the procedure within ten (10) calendar days of the incident giving rise to the complaint.

- Step I. The employee or Union having a specific grievance shall present the written grievance to his/her assigned Assistant Chief or his/her designee who shall respond in writing within ten (10) calendar days.
- Step II. If the matter has not been resolved, the employee or the Union shall then, within seven (7) calendar days of receipt of Step I answer, present the written grievance to the Fire Chief, who shall respond within seven (7) calendar days.
- Step III. If the matter has not been resolved, the employee or the Union shall then, within

seven (7) calendar days, present the written grievance to the City Manager who shall respond within ten (10) calendar days.

- Step IV. If not resolved, the grievance may be submitted to arbitration within ten (10) calendar days after the decision in Step III, or if no decision has been timely made, said grievance may be submitted to arbitration by submitting written notice to the City Manager. Such notice shall specify the sections of the rules and regulations and/or the agreement alleged to have been violated. The parties shall meet within ten (10) days to attempt to agree on an arbitrator.

If they are unable to agree, they will jointly request that the Iowa Public Employment Relations Board submit to the parties a list of arbitrators and, by alternately striking names, an arbitrator will be selected, whose decision shall be final and binding upon the parties.

Polk County Sheriff's Office

Should a deputy of the Polk County Sheriff's department be in violation of the department's policies or rules and regulations, they too will have the right to grieve any discipline applied to them from the department. The department deputies are covered by contract negotiated through the Teamster's Union. Article X of the contract states: A grievance is defined as an Employee's claim against the Employer, arising out of an alleged violation in the application of specific provisions of this Agreement (see Appendix II).

In cases of discipline with the Polk County Sheriff's Department, the department holds an investigatory interview with the subject who might be disciplined. After the investigation, if it is determined the subject will be disciplined, all supervisors in the employee's chain of command submit their recommendations for discipline. For example, if a deputy is to be disciplined, their Sergeant, their Lieutenant, their captain, and their section chief will submit suggestions on discipline to the sheriff. The final decision rests solely upon the sheriff.

The same disciplinary function occurs within the Des Moines Police Department. All persons in the subject's chain of command weigh in on or suggest the level of discipline to the

Chief of the Department. The chief may accept any of the suggestions, however the final decision on discipline rests solely on the Chief.

Current Progressive Discipline Practices in Iowa State Public Sector

State Public Service: Supervisor's Perspective

Progressive Discipline: Progressive discipline is the action taken by management to correct or change an employee's behavior. The severity of the discipline increases with the repetition or seriousness of the inappropriate behavior. The specific type of discipline imposed (see Section 11.30) should generally be the least form that will result in the required correction or change. An employee's record of previous offenses may never be used to discover whether the employee was guilty of the immediate rule infraction. The only appropriate use of the employee's record is to help determine the severity of discipline once an employee has been found guilty of the current offense. Some acts of misconduct are so egregious that, following a fair and impartial investigation, the appropriate corrective action is a higher level of discipline (DAS, 2016).

Just Cause: Just cause includes the conditions that must exist for discipline to be considered valid and supportable. Just cause for discipline is required for all employees by all collective bargaining agreements and the Department of Administrative Services – Human Resources Enterprise (DAS-HRE) rules. The following elements typically must be shown before just cause for the disciplinary action will be found to exist:

1. NOTICE: Did the employer give to the employee forewarning or foreknowledge of the possible or probable consequences of the employee's conduct? Was this notice given in writing?

2. REASONABLE RULE OR ORDER: Was the employer's rule reasonably related to (a) the orderly, efficient, and safe operation of the employer's business, and (b) the performance that the employer should properly expect of the employee? 3. INVESTIGATION: Did the employer, before administering the discipline to an employee, make an effort to discover whether the employee did in fact violate or disobey a rule of management?

4. FAIR INVESTIGATION: Was the employer's investigation conducted fairly and objectively?

5. PROOF: At the investigation, did the investigator obtain substantial evidence or proof that the employee was guilty as charged?

6. EQUAL TREATMENT: Has the employer applied its rules and penalties evenhandedly and without discrimination to all employees?

7. PENALTY: Was the degree of discipline administered by the employer in a particular case reasonably related to (a) the seriousness of the employee's proven offense,and (b) the record of the employee in his or her service with the employer?

When using progressive discipline, you should also have documentation to support all action taken towards an employee. Example: dates, times, notes & interviews and/or investigations.

What is an Investigation? An investigation is the action of investigating something or someone; formal or systematic examination or research. In an investigation you and another supervisor or manager should be present. The investigation should also be recorded.

> Note: First thing the supervisor or manager should do when conducting an investigation is notify the employee that it is an investigation and read them their Wyngarden Rights. If the employee asks for Union Representation you must grant them that right.

What is an interview? A meeting of people face to face, especially for consultation. When conducting an interview the supervisor or manager should notify the employee that this is an interview. No Wyngarden rights are to be read.

> Note: During the interview process if the employee being interviewed says something that incriminates them you must stop the interview. You will need to get another supervisor or manager to proceed in the process with a recording device and you must notify the employee that they are now under an investigation. (see investigation section)

Step 1-Coach and Council. Coach and Council is usually first step in which an employee has violated a work rule or policy. You need to notify your DAS officer or Employee Relations Department before any action is taken. They will advise you what you as a supervisor or manager need to do next. The DAS Officer or Employee Relations Team will then advise you that you need to collect the facts through either interviews or investigations of the employee and any other people involved. Make sure you take detailed notes of what is said by all parties involved.

Once the interviews and or investigation have been completed all your information needs to be submitted to your DAS Officer or Employee Relations Team to be reviewed. They will advise you on the best course of actions from there.

If DAS Officer or Employee Relations Team advise the supervisor or manager to coach and counsel the employee or employees in violation then you will need to step up a meeting with employee in violation. The Supervisor or Manager should write down the rules or policies violated and come up with clear directives to correct the behavior. The supervisor or manager should send a follow up email to the employee with what was discussed in the meeting and list out the directives for the employee with a read receipt on the email.

Note: At the beginning of any investigation make sure you read the Wyngarden rights to the person being investigated.

Step 2- One-day suspension without Pay. One day suspension is used when an employee has violated a work rule or policy and you have coach and counseled them prior to the infraction and gave the employee work directives. After the violation is made make sure documentation is made and contact your DAS Officer or Employee Relations Team.

The supervisor or manager's next step is an investigation. The investigation should have two supervisors present and should be recorded. The employee under investigation should be read their Wyngarden Rights and granted Union representation if requested. After the investigation is completed the supervisor of the employee should contact the employee relations team or DAS Officer to help guide you through the next steps. If the employee has violated policies or work rules they will most likely tell you to give them a one day suspension without pay. The next step is call the employee into a meeting with you. No union representation is to be present. This needs to be a letter (to see example see appendix 1) stating the policies and/or work rules violated. They will need to sign a copy and you must give them a copy. The signed copy will be given to your Employee Relations Team or DAS Officer. The letter will also be sent to the Union.

Step 3- Three-day suspension without Pay. The three-day suspension without pay follows the same steps as the one day suspension. Three-day suspension is used when an employee has violated a work rule or policy and you have coach and counseled and gave the employee a one day suspension prior to the related infraction and gave the employee work directives. After the violation is made make sure documentation is made and contact your DAS Officer or Employee Relations Team.

The supervisor or manager's next step is an investigation. The investigation should have 2 supervisors present and should be recorded. The employee under investigation should be read their Wyngarden Rights and granted Union representation if requested. After the investigation is completed the supervisor of the employee should contact the employee relations team or DAS Officer to help guide you through the next steps. If the employee has violated policies or work rules they will most likely tell you to give them a one day suspension without pay.

The next step is call the employee into a meeting with you. No union representation is to be present. This needs to be a letter (to see example see appendix 1) stating the policies and/or work rules violated. They will need to sign a copy and you must give them a copy. The signed copy will be given to your Employee Relations Team or DAS Officer. The letter will also be sent to the Union.

Step 4- Five-day suspension without Pay. The five-day suspension without pay follows the same steps as the one day suspension. The five-day suspension is used when an employee has violated a work rule or policy and you have coach and counseled and gave the employee a one and three-day suspension prior to the related infraction and gave the employee work directives. After the violation is made make sure documentation is made and contact your DAS Officer or Employee Relations Team.

The supervisor or manager's next step is an investigation. The investigation should have 2 supervisors present and should be recorded. The employee under investigation should be read their Wyngarden Rights and granted Union representation if requested. After the investigation is completed the supervisor of the employee should contact the employee relations team or DAS Officer to help guide you through the next steps. If the employee has violated policies or work rules they will most likely tell you to give them a one day suspension without pay.

The next step is call the employee into a meeting with you. No union representation is to be present. This needs to be a letter (to see example see appendix 1) stating the policies and/or work rules violated. They will need to sign a copy and you must give them a copy. The signed copy will be given to your Employee Relations Team or DAS Officer. The letter will also be sent to the Union.

Step 5- 10-day suspension without pay and Final Notice. The ten-day suspension without pay and final notice follows the same steps as the one day suspension. The ten-day suspension is used when an employee has violated a work rule or policy and you have coach and counseled and gave the employee a one, three and five day suspension prior to the related infraction and gave the employee work directives. After the violation is made make sure documentation is made and contact your DAS Officer or Employee Relations Team.

The supervisor or manager's next step is an investigation. The investigation should have 2 supervisors present and should be recorded. The employee under investigation should be read their Weingarten Rights and granted Union representation if requested. After the investigation is completed the supervisor of the employee should contact the employee relations team or DAS Officer to help guide you through the next steps. If the employee has violated policies or work rules they will most likely tell you to give them a one day suspension without pay.

The next step is call the employee into a meeting with you. No union representation is to be present. This needs to be a letter (see Appendix VI) stating the policies and/or work rules violated. The letter will also state that is your final notice the next step is termination. They will need to sign a copy and you must give them a copy. The signed copy will be given to your Employee Relations Team or DAS Officer. The letter will also be sent to the Union.

Grievance: Definition and Requirements. A contract grievance is a complaint written by a contract-covered employee that alleges a violation in either the application or interpretation of provisions of the collective bargaining agreement that covers the employee's job class (DAS, Chapter 11 M&S Manual 3 Section 11.45, 2016).

The grievance shall contain:

- Name, work unit, and bargaining unit of the aggrieved employee and the name of their union representative.
- The specific section(s) of the collective bargaining agreement allegedly violated.
- Specific event(s) when the collective bargaining agreement was allegedly violated (date, nature of incident).
- The remedy sought.
- Date the grievance was filed.

The grievance must be presented on the form mutually agreed upon and furnished by the union and signed by the employee or steward. A complaint that does not allege a violation of either the application or interpretation of the collective bargaining agreement that covers the grievant job class must be filed as a non-contract grievance (see Section 11.50). Depending on the nature of the grievance, the grievance may start at different steps.

Grievance Steps: **AFSCME** (DAS, SECTION 11.43 GRIEVANCE PROCESSING STEPS: EXECUTIVE BRANCH (EXCLUDES REGENTS AND CBC), 2016)

Written Reprimands and other Discipline Except Suspension and Discharge

2. Das-Labor Relations
3. GRIP
4. Arbitration

Suspension and Discharge

1. Bypass step 1
2. Das-Labor Relations
3. GRIP
4. Arbitration

Non-Disciplinary Issue

1. Appointing Authority or designee
2. Das-Labor Relations
3. Bypass step 3
4. Arbitration

Denial of union leave due to substantial hardship

1. Bypass step 1
2. Bypass step 2

3. Bypass step 3
4. Arbitration

Change to permanent work schedule

1. Bypass step 1
2. Das-Labor Relations
3. GRIP
4. Arbitration

Denial of vacation

1. Bypass step 1
2. Das-Labor Relations
3. GRIP
4. Arbitration

Modification to existing attendance policy or newly created attendance policy

1. Bypass step 1
2. Das-Labor Relations
3. GRIP
4. Arbitration

Steps in the AFSCME Grievance Process (DAS, Chapter 11 M&S Manual 3 Section 11.45, 2016)

Step 1: The appropriate designee will meet with the steward (with or without the employee) to discuss and attempt to resolve the grievance within fourteen (14) days of receipt of the grievance. The management designees' written decision must be sent to the employee, the steward, and the next higher-level management authority within the specified time limits. A copy of the grievance and the management representative's response must also be sent to the personnel officer.

Step 2: If dissatisfied with the management decision at Step 1, the grievance may be appealed to DAS-HRE within fourteen (14) calendar of receipt of the answer at Step 1. Within forty-five (45) calendar days, the DAS-HRE designee and the designated Union representative will meet and attempt to resolve the grievance. Within thirty (30) calendar days of the meeting, a written answer will be issued to the Union and the grievant.

Step 3: Grievance Resolution Improvement Process (GRIP): Discipline grievances not settled at a previous step are eligible to be heard at GRIP. To be considered, the grievance must be placed on the GRIP docket within thirty (30) calendar days of the Step 2 answer. The issue as stated at Step 2 will be the sole and entire subject matter at GRIP, unless the parties agree to modify the scope of the hearing. Step 4: Grievances not settled under the prior applicable step(s) may be appealed by the Union to arbitration. Grievances involving disciplinary suspensions and discharge may be filed directly to Step 3 of the grievance process.

Step 4: Grievances which have not been settled by the aforementioned procedure may be appealed to arbitration by the union through DAS-HRE within the twenty-one days of the Step 3 answer for SPOC; or within fifteen (15) days of the Step 3 answer for UE/IUP grievances.

Time Limits: There are specific time frames that must be followed when filing grievances. If a grievance is not timely filed, a notation must be made on the grievance form. Grievances must be filed within fourteen (14) calendar days of the date the grievant became aware of, or should have become aware of the cause of the grievance for persons covered by AFSCME or UE/IUP. SPOC covered employees must file grievances within twenty-one (21) days of the date the grievant became aware of, or should have become aware of the cause of the grievance. Under no circumstances will a grievance be considered timely after six (6) months from the date of occurrence.

The AFSCME collective bargaining agreement provides that, in the event the grievance is untimely filed, the grievance may be processed through Step 2 of the grievance process in order to allow the parties to attempt to resolve the issue. Always refer to the specific collective bargaining agreement to verify the time limits required at each step of the grievance process.

Grievances not filed within required time limits will be considered as settled on the basis of the last employer answer. If a grievance is not answered by the employer within the required time limits, the Union may proceed to the next step of the grievance process. The parties may mutually agree in writing at any step to extend the time limits.

Grievance Resolution Improvement Process (GRIP)

The GRIP Panel and Docket: The Grievance Resolution Improvement Process (GRIP) is a process where unresolved disciplinary grievances are scheduled to be heard and answered by a GRIP panel. GRIP includes all state agencies, and Community Based Corrections and the Board of Regents institutions. GRIP is limited to disciplinary grievances filed under the AFSCME collective bargaining agreement. No more than twenty (20) cases will be scheduled to be heard at GRIP per month. Cedar Rapids GRIP meetings are scheduled for the second Thursday and Friday of each month. Des Moines GRIP meetings are scheduled for the last Thursday and Friday of each month (Iowa Deaprtment of Administrative Services, 2016).

The GRIP panel consists of two (2) members selected by DAS-HRE and two (2) members selected by AFSCME. A representative from DAS-HRE is the management co-chair. For Community Based Corrections (CBC) grievances, one management panel member will be a management representative for a District other than the district in which the grievance was filed. For Board of Regents (BOR) grievances, one management panel member will be from the BOR office staff.

Each side will alternatively fill the position of panel chair for the monthly meetings. The chair is designated as the main spokesperson for GRIP during that session. The chair is responsible for conducting the GRIP hearing, reviewing the basic rules of procedure with the presenters and observers, and reading the final decision of the panel. The co-chair is responsible for assisting the chair with the GRIP panel.

The union creates a docket of all disciplinary grievances unresolved at Step 2 of the grievance process. To be heard at GRIP, the AFSCME Iowa Council 61 President (the docket keeper) must place the grievance on the GRIP docket within 30 calendar days from receipt of the second step answer. The docket is updated monthly and submitted to the Chief Operating Officer (COO) of DAS-HRE.

The docket keeper set the schedule for each GRIP meeting. The DAS-HRE COO notifies departments of the scheduled grievances. No additional cases will be added to the schedule, unless mutually agreed to by the union and management co-chairs.

If the parties settle a case on the docket before the GRIP hearing date, each party shall inform the applicable co-chair of the settlement prior to the hearing date.

If either the management or union presenter fails to appear at the scheduled time and has not obtained an authorized postponement, the case will be placed at the end of that day's GRIP docket. Postponement of a case will be permitted only once for each party and by mutual agreement. All postponements must be approved by the DAS-HRE COO or co-chair, and the Union President or designee. Management presenters should immediately contact the DAS-HRE COO or co-chair if there is a reason to postpone.

If either presenter fails to appear at the scheduled time and has not obtained an authorized postponement, the case will be placed at the end of that day's docket. The case will be called after all other cases have been heard. If one party fails to appear when the case is called at the end of the day, the panel will render a decision in favor of the appearing party.

GRIP Panel Decisions. The panel has the authority to render one of the following final and binding decisions on grievances brought to the panel:

- Denied-management's action is upheld Revised 6/11 Chapter 11 M&S Manual 2 Section 11.55
- Sustained-the relief sought by the union is upheld
- Resolved-the panel reaches a settlement, typically non-precedent setting
- Deadlocked-the panel cannot resolve the grievance

GRIP Presentations. Management presents first. Each party has twenty (20) minutes for its case-in-chief (thirty (30) minutes for terminations). Each party has five (5) minutes for rebuttal (ten (10) minutes for terminations). One presenter for each party must be designated as the primary presenter. A co-presenter may assist in the presentation of the case-in-chief, but not in the rebuttal. During the GRIP meeting, panel members and the presenters and co-presenters are allowed to sit in the immediate area where the case is being presented. Observers are not allowed to participate in the presentation, the discussion or the questioning. The issue as stated in the Step 2 shall constitute the sole and entire subject matter to be heard by the GRIP panel, unless the parties mutually agree to modify the scope of the grievance. Any additional information not presented at Step 2 should be provided to the other party at least seven (7) days prior to the GRIP meeting. If the parties mutually agree to allow for evidence or witness statements not presented at Step 2 or seven (7) days prior to the GRIP meeting, that material may be submitted up to 48 hours before the GRIP meeting. The information must be of such significance to potentially alter a reasonable decision on the grievance. If an argument can be made that the statements or evidence were available seven (7) days prior to the meeting, then late evidence or statements will not be allowed.

If either party contends information was not presented prior to GRIP, a decision will be made as to whether the additional information will be allowed. If the additional information is not allowed; the panel will not consider it in determining the outcome of the grievance.

Should the ultimate outcome result in termination of the employee, there remains an additional right call the Loudermill Hearing (Albright, Referrence Cited 2017). The purpose of the Loudermill is to provide the terminated employee a last hearing to report their view or new information to consider prior to the termination becoming final.

State Public Service: Personal Experiences and Examples

State Peace Officer's Council: Under the State Peace Officer's Council (SPOC) Agreement there is no specific progressive discipline policy (Appendix IV). There are several departments that formulate SPOC: The Iowa Department of Public Safety includes Iowa State Patrol, Division of Criminal Investigation, Division of Narcotics Enforcement, and State Fire Marshall Division, and the Department of Natural Resources includes the Law Enforcement Bureau and the State Parks Bureau. Each department has their own policies on how discipline issues are handled (DAS, State of Iowa Department of Administrative Services, 2007).

The agreement between SPOC and the State of Iowa regarding disciplinary action is referenced in Section 10 of the agreement. They also acknowledge that the employing agency must recognize the Officers Bill of Rights (Iowa Code Section 80F.1). Nothing in the agreement is intended to be in conflict with that statute and the parties recognize that the statute takes precedence.

Overall, the discipline process works well within SPOC. This is especially true when dealing with minor policy infractions. Because each department within SPOC has such varying job duties, it is also very difficult to compare them as a whole. State Troopers in the Iowa State Patrol are more visible to the public and they are the largest of all departments within SPOC. Because of their size and visibility they deal with the largest number of complaints.

The Iowa Department of Natural Resources Law Enforcement and State Parks Bureaus does not deal with many disciplinary actions. For this reason the current policy works well for both

management and officers. The flexibility of the policy allows management to fit discipline to meet the violation. It also allows management to hand out discipline fairly because sometimes the violation just warrants a conversation (verbal counseling) between the officer and the supervisor.

The Department of Public Safety has a Professional Standards Bureau (PSB) that investigates complaints and forwards their findings to the Commissioner's Office and command staff for final review. It is up to management to determine the level of discipline if a complaint is found to be sustained. This process seems to work very well for the department as it provides for a neutral investigation.

The officers that were interviewed all felt that for the most part the discipline policy works well within their department. Some were a little more hesitant about how discipline actions are handled if it is of a more severe nature. This appears to be largely due to the inflexibility of management to make accommodations for officers dealing with extreme circumstances if it is a repetitive violation or issue. There are also concerns due to inconsistencies from one manager to the next.

Verbal counseling within the State Patrol has been problematic for some officers. The Department of Administrative Services has ruled that verbal counseling is not a form of discipline. However, verbal counseling is documented and used during annual evaluations. The union feels that it is used as a form of discipline.

From a management perspective this is not an issue unless there are multiple occurrences within an evaluation period. An evaluation is made up of numerous areas; and even if more

than one verbal counseling is given, it would not necessarily impact the officer negatively.

The online complaint process was not favorable to either management or officers because it allows for too many frivolous complaints and/or false allegations. It allows the complainant to remain anonymous; but the officer still gets investigated. If an issue is severe enough to warrant a formal complaint, then the individual should be required to make that complaint in person.

Too many policies can prove to be problematic for both management and officers. There are many areas in which both management and officers break policies because they don't even know they exist. Policies are continually reviewed and updated as needed within departments. There does need to be a point where not everything needs to be written as a policy.

The Professional Standards Bureau within the Department of Public Safety has an excellent tracking system for complaints, use of force, pursuit incidents, and vehicle accidents. They also maintain an Early Warning System to identify problematic behavior in order to provide intervention to correct problematic behaviors prior to disciplinary action. These tools are an excellent resource for both management and officers.

Both management and officers need to continually look at ways to improve performance and discipline procedures based on past practices. Review of past practices can lead to advanced techniques that would benefit both parties. Trends are an important part of improving overall performance and efficiency within working environments. The state needs to continue to look for ways in which they can encourage practices that cause an overall reduction

Example of Working through the Discipline Process: American Federation of State,

County and Municipal Employees (AFSCME) Union

Supervisor's Perspective: In January of 2015, management met with the employee at her request where she complained that her coworkers were jealous of her because she had a Master's Degree and was very good at her job. Management presented to the employee statistical data showing that her productivity and accuracy compared to that of her coworkers was significantly short of acceptable levels which may be reason for a lack of camaraderie as they pick up the slack for errors or work not completed by her. Management offered to assist and provide any additional training or mentoring she wished to help close the gap and make measurable improvement.

Incident(s) #1: On May 7, 2015 an investigatory interview was conducted with the employee regarding allegations that the employee failed to follow supervisory instructions in her work during the period of April 14, 2015 through May 5, 2015. These allegations included refusing to follow supervisory directions, refusing to help customers or answer the phone which are explicitly outlined in her PDQ (Position Description Questionnaire). It was also alleged that the employee made inappropriate comments in front of coworkers and customers.

Management issued a one day suspension for refusing to follow work directives. Additionally, the one day suspension letter included a directive on how to conduct herself at work in the future.

Step 2: Management presented a copy of the Grievant's PDQ. Multiple witness testimonies from coworkers and customers, and that the Grievant, had signed receipt and acknowledgement of the Secretary of State's Office Employee Handbook which outlines,

"Employees must treat others in a civil and courteous manner. Violations of the language policy are subject to disciplinary action." Management also provided a signed copy of completion of a customer service training session conducted by Merit Management Resources, Inc. which management paid for.

AFSCME contended on behalf of the Grievant that no directives or customer service training were given to follow and the suspension was not just.

Step 2 Response: DAS Labor Relations ruled in favor of management citing that all "seven tests of just cause" were met in rendering the one day suspension.

Incident(s) #2: On June 2, 2015 an investigatory interview was conducted regarding allegations that the employee failed to follow several supervisory directives. The Grievant was given a written directive on April 3, 2015, outlining procedures that must be followed when requesting unscheduled sick leave. The employee failed to produce a doctor's note for multiple absences. On May 6, 2015, the employee was directed twice by her supervisor and the Chief of Staff to join them in the conference room to privately discuss her worker's compensation status and her 'light duty work assignment' as directed by her doctor. Both management and the employee (refused) must sign acknowledgement of the light duty assignment in order for the employee to be at work. She refused all directives and called the Des Moines Police citing her life was in danger. On May 15, 2015 she refused to assist customers. On May 22, 2015 she again refused to do her job outlined in her PDQ.

Management issued a 3 day suspension for refusing to follow work directives. Additionally, the three day suspension letter included a directive on how to conduct herself at work in the

future.

Step 2: Management submitted witness testimony on the Grievant's refusal to assist customers on multiple occasions and her refusal to follow supervisory directives. Additionally, management presented written directives issued to the Grievant outlining that continued refusal to follow supervisory instructions would lead to further discipline.

AFSCME contended the 3 day suspension was "punitive" in nature and not a corrective action. The Union suggested that the witnesses have a personality conflict with the Grievant and were not credible. Further, the Union maintained that the Grievant's coworkers should have assisted her in customer service.

Step 2 Response: DAS Labor Relations ruled in favor of management citing that all "seven tests of just cause" were met in rendering the 3 day suspension.

Incident(s) #3: On August 31, 2015, an investigatory investigation was conducted regarding the employee's alleged failure to follow work directives. On February 4, 2015, the employee was given a written directive for corporate processing accuracy and productivity. Following coaching and counseling that the employee's productivity was 4 times slower and accuracy was 10 times worse than her coworkers with the same job classification, she was directed to show measurable improvement. For 12 straight weeks (June 1 – August 21, 2015) the employee failed to meet that directive. Management issued a 5 day suspension and a reminder that the February 4th directive was still in effect.

Step 2: Management provided data, graphs and other information on their corporate

processing software that tracks productivity and how it was created 3 Administrations ago and implemented 2 Administrations ago. The program management submitted keeps track of the actual time taken by an employee to complete a processing task compared to the standard expected time to do so. Management submitted that 3 months was ample time to show measurable improvement.

AFSCME believed this should have been handled at a training level and that the evidence did not demonstrate a lack of productivity. The Union also submitted that the Grievant had evidence (although never presented) that the software was created specifically to get her fired. Further, the Union submitted that this was the fault of management for failure to properly train the Grievant.

Step 2 Response: DAS Labor Relations ruled in favor of management citing that all "seven tests of just cause" were met in rendering the 5 day suspension.

Incident(s) #4: Between the dates of September 23 – 30, 2015, the employee was investigated for allegedly failing to adhere to the February 4, 2015 work directive on corporate processing. Before rendering a course of action following the findings of the employee failing to improve her productivity, management decided to give the employee an additional opportunity to turn things around by showing measurable improvement the week of October 5, 2015. The employee failed to even come close to the expectations laid out in the February 4th directive nor showed signs of improvement. On October 19, 2015, management terminated the employee.

Step 2: Management submitted data showing no measurable improvement in the Grievant's productivity and that she was still in fact was only completing 25% of the tasks as her coworkers

in the same job description. Management presented the letters of previous corrective courses of action and work directives as attempts to show effort to train and rehabilitate the Grievant with no success. Termination was the next step in progressive discipline for smaller agencies and management believes they are justified in that action especially given that an additionally opportunity was given to the Grievant to avoid termination.

AFSCME challenged the accuracy of the productivity tracking software as claimed that management had a vendetta against the Grievant. Further, the Union questioned why management did not issue a ten day suspension as the next step in progressive discipline instead of rushing to terminate.

Step 2 Response: DAS Labor Relations ruled in favor of management citing that all "seven tests of just cause" were met in rendering the 5 day suspension.

Grievance Resolution Improvement Process (GRIP). All grievances were deadlocked at GRIP with both judges representing management ruling in favor of management and both judges representing AFSCME ruling in favor of the Grievant.

Only the one day suspension is being taken further to arbitration at this point and that is schedule for the first week of May 2017. If AFSCME is successful in arbitration, they reserve the right to take the remaining grievances to arbitration as well.

If you think this progressive discipline process playing itself out takes too long as this example has been described for you. Wait, there's more!

In an effort to drag out the process as much as possible so as to avoid reaching that final

strike against an employee within a 16-month time frame, several tactics were employed that were not mentioned:

1. The employee filed an anonymous OSHA (Occupational Safety & Health Administration) complaint against the office. The irony is that the violation was caused by the former SOS Michael Mauro who is now the Iowa Labor Commissioner where state OSHA complaints are filed. Management already had a work order submitted to DAS to fix this issue when the complaint was filed.

2. The employee accused another female coworker of sexual harassment for 'asking her to process a document'. It was investigated and taken very seriously and the employee walked it all back.

3. The employee filed a worker's compensation claim citing a fall on capitol grounds before work. Three hours after the fact, it was first mentioned and she insisted she was in so much pain that she needed to go to the doctor for it. Before leaving the office she mentioned to coworkers that she sat out a worker's comp claim in another state for 3 years while being paid. Her doctor kept her home for weeks and then issued a light duty work assignment where she would return to work for 3 hours a day for a week, then 4 hours a day for a week and so on till she was ready to assume a regular work schedule. At which time she was cleared with MMI (Maximum Medical Improvement) given there were no discernable injuries other than her word that she was in pain, she protested the decision by her doctor to make her return to work.

4. The employee filed a complaint with the Iowa Civil Rights Commission alleging harassment (for making her work, racial discrimination (1 of 3 minorities of 11 staff that work

for me), religious discrimination (didn't let her take Good Friday off unless she used vacation time) and being denied accommodation for her alleged disability (allegedly fell on capitol grounds and thus can't use a keyboard or telephone or sit or stand or talk to customers). By filing a complaint with the ICRC any discipline by management can be considered retaliation which is a both a state and federal crime.

5. AFSCME filed a grievance in return claiming that management failed to provide requested information under Article 12 of the Collective Bargaining Agreement. At Step 2 it was ruled that the Union is not entitled to management's investigatory work while at the Weingarten interview phase or during the investigatory process. This grievance was not eligible to be taken to GRIP.

6. On the morning of the incident where the employee called the Des Moines Police, management sent the employee home on 'approved leave without pay' following her refusal to accept the conditions laid out by her worker's compensation doctor. AFSCME filed a grievance questioning management's decision to do which was ultimately sustained by DAS Labor Relations.

7. The employee amended her ICRC complaint with sexual harassment against members of management collectively for being against female employees despite 87% female office staffing.

8. The employee filed another OSHA complaint against management for her termination claiming it was retaliation for her filing the previous OSHA complaint. There was only one previous complaint filed and it was "anonymous".

All attempts to derail the progressive discipline process have failed so far. The Iowa Civil Rights Commission complaints were both dismissed for lack of credibility and contradicting testimony by the Grievant. The OSHA complaint alleging retaliation was also dismissed for having no merit. They did however succeed in prolonging the process at considerable cost to the Iowa taxpayers.

It is now June 2017 and this process started in early 2015. The process can be extremely time consuming and extending over a long timeframe without resolution. From the perspective of management, it seems reasonable to desire to shorten the disciplinary process which can take years to resolve under the Collective Bargaining Agreement system.

Conclusion

The complexities and challenges of collective bargaining on public employee discipline as illustrated in this report are many and subject to change. On February 17, 2017, Governor Terry Branstad signed into law a revision of the collective bargaining agreement in Iowa Code Chapter 20. Iowa has now joined a growing trend among Midwestern states diminishing the scope of influence collective bargaining has in state public service.

At the time of the completion of this paper, the full implications of the changes are not yet know. It is known that the State Police Officer's Council (SPOC) , the Des Moines Association of Professional Fire Fighers Local 4, and any other public safety unions defined as such are exempt from the new law and remain unchanged from the basic procedures listed in this

report. Public safety employees are not exempt from the provisions that eliminate collection of union dues through payroll deduction. Public safety unions are now required to recertify each time collective bargaining negotiations begin, and civil service changes give a fire chief, for example, more discretion in employee discipline.

On Wednesday, May 10, 2017, the Iowa Department of Administrative Services held one of several supervisory training events on the proposed changes the new law will have on public agencies and their employees. Some foresight on the changes to be implemented on July 1, 2017 was shared. Implications on progressive discipline among the changes shared will be numerous. Among those changes is a reduction of the various discipline steps previously defined among the individual Union negotiated agreements to a more uniform process defined under Iowa Administrative law, Chapters 60 & 61.

As of July 1, 2017, Chapter 60 & 61 Administrative Rules will apply which recognizes only two categories of public employees: Merit-covered (Chapter 8 A, Subsection IV) and non-Merit covered employees. The policy will recognize discipline steps such as suspensions, reduction in pay, same grade demotions, and discharge. Merit- covered employees will have the right to challenge management disciplinary decisions as a grievance through a process called Substantial Compliance Grievance – did the state do what is required under the rules of Iowa Code Chapter 8A, Subchapter IV or DAS Administrative Rules? Non-Merit employees, consisting of supervisors and special exempt employee classes will essentially serve "at-will" having no appeal or grievance process within state government. Such issues would have to be settled by the District Court.

New Grievance steps

- **Step 1 – grievant sends notice to the appointing authority or agency of hire (supervisory level)**
    - Must be done within 14 days of knowledge of a grievance issue
    - It is recommended a grievant meeting occur between the employee and supervisor to resolve issues if possible; at this stage if resolved, the supervisor submits a letter to grievant within 7. If resolved, no further formal steps required.
- **Step 2 – grievant may appeal within 7 days to higher management within the appointing authority**
    - The agency Director or designee has 7 days to rule on the grievance from the date of receipt of the grievance. Copy of decision provided the grievant.
- **Step 3 – grievant has 7 days of receiving appointment authority decision to appeal to the Department of Administrative Services (DAS)**
    - Grievant may appeal to DAS to bypass steps 1 & 2 if disciplinary action or notice has been initiated at time of grievance
    - DAS review will consist of the DAS Director, Department of Management Director, and representation from the Office of the Attorney General.
    - Upon receipt of the DAS decision, the grievant has 30 days to appeal the decision to PERB (Public Employee Relations Board)
- **Step 4 – Appeal to the Public Employee Relations Board (PERB)**
    - PERB consists of two levels; case processing and voluntary mediation, or

administrative hearing with an administrative judge. Once a decision is rendered and no further action taken within 20 days of the ruling, the decision is final as far as the State of Iowa is concerned. The grievant then may appeal to the District Courts for further remedy

- PERB will use Just Cause standards in Merit employee grievances considering the totality of circumstances. More legalistic and formal than the former arbitration standards under the collective bargaining agreement.

While the collective bargaining process is changing in Iowa, the rights of employees under progressive discipline defined under the Iowa Merit System (Iowa Code Chapter 19), which pre-existed collective bargaining laws under Chapter 20, still apply. In addition, federal laws related to the Fair Labor Standards Act (FLSA) continue to govern covered employee‘s rights to overtime pay, shift differential, etc.

The impact of the changes in Iowa is not yet known. It is thought in some camps that the changes clean up the inconsistencies brought on by the advancement of collective bargaining; providing more consistency. Others see it as diminishing the influence of collective bargaining. The take-away is that ongoing negotiations and struggles between the needs of governance and public sector employee rights are both complex and dynamic; facing constant pressures for change. This issue is highly difficult to resolve to the satisfaction of all parties involved and subject to being revisited again and again unless a reasonable compromise can be found and accepted.

Lessons Learned

Some of the CPM coursework our group found particularly applicable to the subject matter chosen included the study of project management, conflict management, negotiation strategies, and change management. Project management becomes critical when dealing with six adults, all with very different jobs and a variety of differing professional and personal schedules. We were fortunate enough to have a couple of members of the group who kept the whole process on track. The key to a large, ongoing project like this is to start early and remain reasonably on schedule in order to prevent panic near the completion deadline. Assignments were established early on so that each member had plenty of time to research and then complete their section of the final report.

Negotiation strategies and conflict management are intimately connected to labor – management relations in the public sector. Arguments for and against the collective bargaining changes are passionate on both sides, and the issue is extremely polarizing. The changes made are a swing from one end of the political spectrum to the other. Perhaps one day, solutions more acceptable to both sides will be found somewhere in the middle. Change management will clearly be important as public sector employees in Iowa work their way through a new system without collective bargaining, as the overall impact of the changes over time is largely unknown.

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Appendix I

International Association of Fire Fighters Grievance Procedures

Section B. Grievance Procedure:

Immediate Supervisor

An Employee, with or without the Union Steward, shall discuss an alleged grievance orally, with his/her immediate supervisor, as designated by the department head within five (5) workdays following its occurrence, or within five (5) workdays the from the date that the Employee first became aware of the cause of the alleged grievance or should have become aware of it with the exercise of reasonable diligence, in an effort to resolve the problem in an informal manner. But, in no case may such an alleged grievance be filed thirty (30) days after its actual occurrence. The immediate supervisor shall respond to the grievance within five (5) workdays.

Division Chief or Designee

If the answer is not satisfactory, the matter shall be presented in writing, stating specific provisions of the Agreement allegedly violated, by the Union Steward or Business Agent, to the Division Chief or designee within five (5) workdays after the response. The Division Chief or designee shall respond to the Union Steward or Business Agent in writing, within five (5) workdays.

Sheriff or Designee and Board of Supervisors or Designee

If the grievance still remains unadjusted, it shall be presented by the Chief Steward and/or Business Agent, to the designee of the Board of Supervisors, in writing, stating specific provisions of the Agreement allegedly violated within five (5) workdays after the response of the Division Chief or Designee. The designee of the Board of Supervisors shall respond in writing, to the Chief Steward and/or Business Agent, within ten (10) workdays after the meeting with the Chief Steward and/or Business Agent and the Sheriff or designee, but in no case shall the Employer's response be in excess of fifteen (15) workdays from receipt of the third step grievance. Grievances occurring from a transfer/promotion shall be filed at Third Step.

Section C. Arbitration:

Any grievance not settled to the satisfaction of the Employee in Step Three of the grievance procedure may be appealed to arbitration, provided that notice is given in writing to the other party, and is with approval of the Employee organization and the Employee. This appeal must be made thirty (30) workdays after the date the designee of the Board of Supervisors answers in the Third Step grievance procedure.

The issue as stated in the Third Step grievance shall constitute the sole and entire subject matter to be heard by the arbitrator, unless the parties mutually agree to modify the scope of the

hearing.

Appendix II

Polk County Sheriff's Office Grievance Procedures

I. POLICY:

It is the policy of the Polk County Sheriff's Office to establish employee work rules necessary to ensure efficient and effective functioning, as well as the protection and fair treatment of all employees and persons coming in contact with this organization. Further, it is our policy that these rules will be clearly communicated to all employees and be consistently and fairly enforced. Employees disciplined for violating the rules will have due process and the opportunity to appeal such disciplinary actions in accordance with the provisions of our employee complaint process, applicable union contract or Civil Service rules, regulations, and the Officer Bill of Rights.

II. REFERENCE:

Officer Bill of Rights

III. PROCEDURE:

1. Sheriff:

The Sheriff is responsible for approving all employee work rules as well as changes to existing rules. In addition, the Sheriff or, in his/her absence, his/her designee serves as the final interpreter of the rules and must approve all disciplinary actions, excluding verbal counseling, of any employee for work rule violations.

2. Division commanders:

The division commanders are responsible for ensuring the reasonableness, proper communication, consistent enforcement and recommending changes to existing rules and regulations when appropriate.

3. Majors, captains, lieutenants and sergeants:

a. Majors, captains, lieutenants and sergeants are responsible for;

(1) Knowing the employee work rules and regulations.

(2) Communicating job performance expectations clearly to

their employees.

(3) Exercising the kind of positive leadership necessary to minimize formal disciplinary actions involving their employees, including training, counseling, and setting a good example.

(4) Enforcing all rules and regulations consistently and fairly for the employees under their supervision.

(5) Informing the division commander of any changes to the existing work rules which might be necessary in order to better accomplish the overall mission and goals of the organization.

b. Division commanders, majors, captains, lieutenants and sergeants have the responsibility to submit a written reprimand through the chain of command for approval after verbal counseling efforts have not elicited desired results.

c. Division commanders, majors, captains, lieutenants and sergeants have the power of effective recommendation to the Sheriff through their division commanders for demotions, suspensions or discharge for work rule violations.

IV. FORMS OF REDIRECTIVE ACTION:

A. Training and counseling are used when the incident is minor in nature and causes minimal disruption to the operation of the Sheriff's Office. These actions are not forms of discipline.

B. The ***letter of counseling*** is not considered discipline and may be used for any infraction of the general orders, procedural errors or any infractions of other directives, both oral and written. When using a letter of counseling, the immediate supervisor informs the employee that he/she has violated a rule of organization or that the employee's job performance is not satisfactory. The letter should include the employee's actions, the reason for the counseling, and the appropriate or corrective action to be taken by the employee to avoid formal disciplinary action. This documentation shall be kept on file with the Office of Professional Standards for one (1) year and then purged.

C. ***Administrative leave:***

During the course of an investigation, the Sheriff or his designee may place the employee being investigated on administrative leave. If the employee is a sworn peace officer he or she may be temporarily relieved of law enforcement powers.

Administrative leave is not to be construed as disciplinary action but is utilized to protect the employee, the Sheriff's Office, and to ensure the integrity of the investigation.

D. ***Polygraph examinations:***

Pursuant to the Code of Iowa, Section 730.4, and 80F.4, polygraph examinations

of an employee cannot be required by an employer.

V. FORMS OF DISCIPLINARY ACTION:

Corrective action as a function of discipline:

Discipline in the context of these orders means that an employee has violated the general orders or conducted himself/herself in a fashion that is below the required standard. Disciplinary actions are measures taken by management to improve performance when voluntary compliance is not likely to produce a desired change in performance or behavior. The Sheriff's Office utilizes progressive discipline when reasonable to do so; however there are some work rule violations that are so serious that they warrant a severe penalty without using progressive discipline.

VI. OFFICE OF PROFESSIONAL STANDARDS:

A. All supervisors will be involved in reporting employee misconduct and unacceptable performance as well as recommending appropriate levels of discipline for the offending employee. The Division Chief has the authority to place an employee on paid administrative leave pending review of any particular incident. At the direction of the Sheriff, the Office of Professional Standards is to receive, investigate, file and report allegations of employee misconduct or serious violations of work rules.

B. The Office of Professional Standards shall conduct its investigation consistent with General Order #3005 and will provide the referring supervisor with its investigatory findings. The findings should include the facts of their investigation, without giving their recommendation.

C. Corrective actions which are permitted by the Sheriff's Office include:

1. ***Written reprimand:***

a. Written reprimands may be used for any infraction of the general orders, procedural errors or any infractions of other directives, both written and oral.

b. The proposed written reprimands will be forwarded through the chain of command with recommendations to the Division Chief. Written reprimands will be supported by a memorandum in which the immediate supervisor informs the employee that he/she has violated a rule of organization or that the employee's job performance is not satisfactory. The memorandum must warn the employee that his/her performance or conduct must be corrected to avoid further discipline and should give instructions for the future.

c. After a Division Commander has approved a proposed reprimand, the employee shall be informed of the proposed reprimand and advised that he/she may meet with the Sheriff before the reprimand is final and provide the Sheriff with whatever further defense or explanation is desired. After being provided such opportunity to be heard (for name clearing purpose or other) the Sheriff may accept the proposed reprimand with or without modifications.

At such point, the reprimand is final (subject to a grievance under the appropriate collective bargaining agreement) and the report and reprimand will be placed in the employee's personnel file. This documentation shall be kept on file with the Office of Professional Standards for two (2) years and then purged.

2. *Suspension:*

a. Suspensions are actions by which the Sheriff temporarily removes an employee from employment without pay for a definite period of time. Suspensions are normally issued for misconduct or failure of job performance that is more serious than that for which a written reprimand is given. Suspensions will generally be issued when a written reprimand(s) has not caused a desired correction in the employee's job performance or behavior.

b. If a Division Commander approves the recommendation of a suspension, the employee will be provided the opportunity to meet with the Sheriff as set forth above for written reprimand.

c. Suspensions carry with them the following consequences:

1. Loss of pay for the time specified;

2. Loss of annual and sick leave accrual during the period involved;

3. No accrual of vacation time, calculation of longevity pay, additional annual leave, and step increases in salary;

4. Employees may not use paid leaves of absences while suspended;

5. An employee relieved or suspended from duty shall have no law enforcement authority, nor shall the employee engage in any duty or off-duty functions; and

6. An employee relieved or suspended from duty shall not be permitted to wear the uniform of the Sheriff's Office, nor permitted to use any equipment or other items owned by the Sheriff's Office.

3. Demotion:

a. A demotion is a reduction in one's rank, e.g. a sergeant is reduced to a being deputy with attendant loss in authority, assignments, pay and benefits. An employee may be demoted as a result of an overt violation of policy or conduct or failure of performance that results in an adverse effect on the Sheriff's Office. A demotion will generally be imposed for conduct or performance which is more serious than that for which might be corrected through written reprimand or suspension. The Sheriff has sole authority to demote employees.

(1) All non-voluntary demotions will be done in accordance with

the procedures for a written reprimand.

(2) A voluntary demotion may be requested by an employee and is subject to approval by the Sheriff and the Civil Service Commission. A voluntary demotion shall not be considered disciplinary action.

b. If a division commander approves the recommendation of a demotion, the employee will be provided the opportunity to meet with the Sheriff as set forth above for written reprimands and suspensions. If the Sheriff agrees with the recommended demotion, after meeting with the employee, the employee will be advised and the discipline imposed, as set forth above, for written reprimands and suspensions.

c. The rules for convening and conduct of the guidance committee are provided later in this order. In all instances, however, the Sheriff will make the final decision affecting discipline subject to Chapter 341A, Iowa Code where applicable. The decision to demote shall not be effective until the passage of the time in which to request guidance and, when such request is made, the effective date of the demotion shall be delayed until the guidance process is completed.

4. Discharge:

A discharge permanently removes an employee from employment with the Sheriff's Office. Only the Sheriff or his designee has authority to discharge employees. A discharge is an action ordinarily taken when other forms of discipline have failed to correct an employee's performance or behavior and imposed for conduct or performance which is more serious than that which might be corrected through written reprimand, suspension or demotion. However, depending on the severity of the infraction, a discharge may be imposed in situations where the employee has no record of discipline and progressive discipline is not a prerequisite. Discharges may be appealed to the Civil Service Commission pursuant to 80F.4, sections 341A.11 and 341A.12 Iowa Code for sworn personnel.

a. An employee who has been discharged will be provided with the following information:

(1) A statement citing reasons for the discharge;

(2) The effective date of the discharge;

(3) A statement of status of fringe and retirement benefits after discharge.

b. If a Division Commander approves the recommendation of a discharge, the employee will be provided the opportunity to meet with the Sheriff as set forth above for written reprimands and suspensions. If the Sheriff agrees with the recommended discharge after meeting with the employee, the employee will be advised and the discipline imposed as set forth above for demotions and suspensions except there will be no guidance afforded to a discharged employee. However, the employee, if sworn, has the right to appeal to the Civil Service Commission as provided in sections 341A.11 and 341A.12, Iowa Code or 80F #19. If, during the

course of any Office of Professional Standards investigation it appears that litigation related to the investigation is possible, the Polk County Attorney's Civil Division shall be notified.

VII. SHERIFF'S GUIDANCE COMMITTEE:

A. The Sheriff's guidance committee is a body recognized by the Sheriff's Office as an advisory group to be convened at the request of the Sheriff. It is to review the Sheriff's decision to suspend or demote and advise the Sheriff as to whether it agrees or disagrees with his/her decision. The Committee may recommend modifications to the disciplinary decision. The recommendation is not binding on the Sheriff who remains the final arbiter of all disciplinary decisions subject only to the applicable collective bargaining process and/or the Civil Service Commission rules and regulations. The Sheriff retains the discretion to submit any disciplinary decision to the Sheriff's guidance committee for recommendation.

B. Composition of the committee:

1. The committee shall consist of three members of the Sheriff's Office.

2. The Sheriff, or designee, shall select two staff members of the committee, one being the chairperson. The chairperson will be a supervisor at least one rank above the accused. The Sheriff shall not appoint anyone below the rank of the employee. The employee will have the right to veto a committee member selected by the Sheriff other than the chairperson. The employee will be allowed only one such veto and the Sheriff will name a replacement for a vetoed committee person.

3. The third committee member shall be selected by the employee from anyone employed within the Sheriff's Office.

4. A committee member may be selected only once in a twelve month period for a Sheriff's guidance committee review.

5. The Sheriff's guidance committee process is not available to captains, majors and division commanders.

C. Procedures of the guidance committee:

1. The chairperson shall decide any questions of procedure or admissibility of evidence.

2. The committee will consider the investigative reports, statements, documents; testimony of witnesses, record of previous disciplinary actions against the accused, previous favorable history and other such evidence as is relevant and germane to the matter for which the employee is being disciplined. The committee will hear the testimony and argument of the employee and may order other employees of the Sheriff's Office to appear and give testimony. Character witness testimony shall be submitted on affidavit subject to possible cross examination.

3. At the conclusion of the presentation of evidence and argument, if any, the

committee will reach a decision to endorse or modify the Sheriff's proposed disciplinary decision. The decision shall be supported by written findings and delivered to the Sheriff or his/her designee within 24 hours of the conclusion of the meeting with the employee. The Office of Professional Standards shall provide the committee with such resources as needed to prepare the written findings and decision.

4. Sheriff review and notification: Upon receipt of the Sheriff's guidance committee's findings and decision, the Sheriff may accept or reject the recommendations in whole or in part. The final decision on disciplinary action rests solely with the Sheriff. When a decision has been made, the Sheriff will notify the employee's division commander who will in turn notify the employee through the chain of command. The discipline to be issued shall be effective immediately upon the notification to the employee unless the Sheriff orders otherwise and subject to any collective bargaining agreement, chapter 80F, Iowa Code or other statute.

VIII. DUTY OF COOPERATION AND TRUTHFULNESS:

All Sheriff's Office employees are responsible for complying with the policies and procedures of the Polk County Sheriff's Office and all laws of the State of Iowa. All employees shall cooperate fully and truthfully with any internal investigations by the Office of Professional Standards. Failure to cooperate, whether by evasion, untruthfulness, or choosing not to answer, may result in disciplinary action up to and including discharge.

Appendix III

Progressive Discipline Process - AFSCME

Progressive Discipline- Progressive discipline is the action taken by management to correct or change an employee's behavior. The severity of the discipline increases with the repetition or seriousness of the inappropriate behavior. The specific type of discipline imposed (see Section 11.30) should generally be the least form that will result in the required correction or change. An employee's record of previous offenses may never be used to discover whether the employee was guilty of the immediate rule infraction. The only appropriate use of the employee's record is to help determine the severity of discipline once an employee has been found guilty of the current offense. Some acts of misconduct are so egregious that, following a fair and impartial investigation, the appropriate corrective action is a higher level of discipline.

Just Cause: Just cause includes the conditions that must exist for discipline to be considered valid and supportable. Just cause for discipline is required for all employees by all collective bargaining agreements and the Department of Administrative Services – Human Resources Enterprise (DAS-HRE) rules. The following elements typically must be shown before just cause for the disciplinary action will be found to exist:

1. NOTICE: Did the employer give to the employee forewarning or foreknowledge of the possible or probable consequences of the employee's conduct? Was this notice given in writing?

2. REASONABLE RULE OR ORDER: Was the employer's rule reasonably related to (a) the orderly, efficient, and safe operation of
the employer's business, and (b) the performance that the employer should properly expect of the employee?

3. INVESTIGATION: Did the employer, before administering the discipline to an employee, make an effort to discover whether the employee did in fact violate or disobey a rule of management?

4. FAIR INVESTIGATION: Was the employer's investigation conducted fairly and objectively?

5. PROOF: At the investigation, did the investigator obtain substantial evidence or proof that the employee was guilty as charged?

6. EQUAL TREATMENT: Has the employer applied its rules and penalties evenhandedly and without discrimination to all employees?

7. PENALTY: Was the degree of discipline administered by the employer in a particular case reasonably related to: (a) the seriousness of the employee's proven offense; and (b) the record of the employee in his or her service with the employer?

When using progressive discipline you should also have documentation to support all action taken towards an employee. Example: dates, times & interviews and/or investigations.

Appendix IV

State Peace Officer's Council (SPOC) 2017-2017 Agreement

SECTION 10 Discipline and Discharge

The parties recognize the authority of the Employer to suspend, discharge, or take other appropriate disciplinary action against employees for just cause. When an employee is disciplined, the Employer will state in writing the violation and the manner in which the violation occurred. An employee who alleges that such action was not based on just cause may appeal a suspension or discharge, taken by the Employer beginning with Step 3 of the grievance procedure. Written reprimands shall begin with Step 1 of the grievance procedure.

There shall be no suspension of an employee which results in a loss of pay or benefits until an initial investigation has been conducted. No employee shall incur a loss of pay until such disciplinary action is approved by either the Patrol Area Commander, Division of Criminal Investigation Assistant Director, Fire Marshal, Director of Division of Narcotics Enforcement of the Department of Public Safety, or Chief of Bureau of Law Enforcement, Chief of Field Operations, Department of Natural Resources, or in their absence a supervisor of equal or higher position within the Agency. The Employer reserves the right to suspend an employee with pay pending the outcome of the initial investigation. Any disciplinary action or measure imposed upon an employee may be processed as a grievance through the grievance procedure. An Employer shall not discipline an employee without just cause, recognizing and considering progressive discipline where applicable.

The Council shall receive written notice of any disciplinary action imposed upon an employee within five (5) working days of the time such action is taken. The Council shall designate one (1) address for the life of the Agreement to which such notice shall be sent.

The Employer recognizes the Officers Bill of Rights (Iowa Code Section 80F.1). Nothing contained herein is intended to be in conflict with that statute and the parties recognize that the statute takes precedence. The parties agree that an officer shall be notified in writing when a formal investigation is commenced. The nature and origin of the charge will be provided in said notice. Should the investigation include an interview of the officer being investigated, then the officer and the Council shall receive a written summary of the investigation prior to the interview.

Workplace conflict is an integral and unavoidable situation in public sector employment. This is especially true when you have employees that deal with public matters that are positive, negative or controversial. These challenges require a need for a system of checks and balances that will address issues relating to policy and discipline matters.

Appendix V

Personal Communications and Interviews

Department of Administrative Services – Attorney Jeffrey Edgars, December 2, 2016; 3-4pm

Interviewed Jeffrey Edgar, Attorney and Program Coordinator, Human Resources, Iowa Department of Administrative Services; Questions asked focused on the common mistakes both management and covered employee collective bargaining representatives make during the progressive discipline process.

Attorney Edgar has served state government in arbitration and appeals for four years and responded that typically the failures on the management side are mostly due to lack of documentation on past employee infractions leading up to the discipline action. He mentioned a significant problem exists when the annual employee evaluations show satisfactory performance historically and sudden discipline efforts are initiated with a complaint of ongoing problems. Documentation of all infractions even minor and accurate performance review ratings are essential for successful discipline by management. The burden of "Just Cause" for discipline action lies on management to prove.

> *"Employment law: Just Cause is misconduct of an employee, or some other event relevant to the employee, which justifies the immediate termination of the employment contract"* (Duhaime, 2017).

The most common mistakes from the Union representatives involve failure to vet or determine evidence from the employee's claim in denial of guilt or infraction. Often Union representatives take the word of the employee in defense and when management produces proof of their position, the Union is blindsided for lack of due diligence in the investigation process.

From his experience over the four years, management errors and Union due diligence in investigating complaints are improving. He credits this to an increase in trainings provided by the state to management and better vetting efforts by Union representatives. Decisions during arbitration are sometimes unpredictable and when the evidence appears favorable to one side,

the decision can be the opposite; this can be credited to keywords or a single factor the arbitrators places in higher value than other factors leading to a decision.

Telephone interview - Jeff Swearngin, Deputy Chief, Iowa DNR Law Enforcement Bureau February 2017

Prior to entering into management, Swearngin was a union representative for the Iowa Fish and Game Conservation Officers Association and SPOC.

The Law Enforcement Bureau does not have its own specific discipline policy. The DNR as a whole has a discipline policy that is followed by all employees and management. In addition to this policy management also has to follow the Peace Officer's Bill of Rights.

Management takes the following steps when addressing discipline issues. This continuum can change and jump steps depending on the violation.

- Verbal counseling (this is not documented discipline)
- Written directive
- Letter in personnel file (removed at some point depending on circumstances)
- Days off
- Last chance letter
- Termination

The bureau does not have many discipline issues. For this reason the current policy works well for both management and officers. The flexibility of the policy allows management to fit discipline to meet the violation. It also allows management to hand out discipline fairly because sometimes the violation just warrants a conversation (verbal counseling) between the officer and the supervisor. In his opinion there is enough policy and they don't need to be overwhelmed with policies because what is already in place works.

Swearngin would not want to see the policy change into a progressive discipline policy that must be adhered to stringently. In his tenure in management he would much rather talk to the

officer and work things out professionally than use discipline where it is not warranted. When the problem is habitual it is important to utilize progressive discipline policy and documentation.

State Peace Officer's Council (SPOC) - phone interview - Sue Brown - SPOC Executive Director and General Council - 1/17/2017

- P. 15 of contract of **State Peace Officer's Council (SPOC) 2015-2017 Agreement**
- No specific progressive discipline process
- No schedule - very vague - whether verbal, written, days off or termination
- If discipline is grieved it is up to the arbitrator as to what they deem is reasonable
- If violation is serious enough there is no progressive discipline - automatic termination
- Does not like "last chance letter" - how and why it is used by management

State Fire Marshal Division - phone interview - Andy McCall - President, Iowa Fire Marshal Association - 1/24/2017

- Discipline depends on violation
- No set discipline progression in policy
- Typical progression of discipline -
    - Verbal warning
    - Written warning
        - Also unable to attend training or seek promotion for one year from written warning
    - day/days off without pay
    - Termination

- Good policy for smaller infractions
    - If not aware the policy was even violated
    - Good learning experience
- A major infraction typically results in automatic termination (OWI, etc.)
- In favor of Progressive Discipline (PD) for minor issues and/or violations but NOT for major violations
- PD is good because in some circumstances it gives the officer a chance to right the wrong
    - Example - difficult times at home, divorce, etc. (PD by management usually more understanding)
- No verbal counseling like Troopers have
- PD on annual review can be used against the officer
    - Example - “bad attitude” no warning but written on evaluation and held in personnel file
- Marshal’s not as “visible” to public as Troopers so complaints that cause investigations are minimal.
- Example of unfair PD process - excessive discipline
    - Officer had extreme circumstances going on at home (adoption issues)
    - Did receive verbal and written warning but jumped to 5 days off without pay
    - Continued issues with paperwork resulted in 2 days off without pay the day after his mom’s funeral because he didn’t meet a deadline due to the passing of his mother

Iowa Dept. of Public Safety - Iowa State Patrol - phone interview - David Helton - President, Iowa State Trooper's Association - 1/18/2017

- Discipline depends on violation
- No set process - management can do whatever they want depending on the violation
- If violation is serious it would lead to automatic termination (criminal)
- Typical process -
    - Verbal counseling - but not considered discipline
    - Written warning
    - Possible suspension / days off without pay
    - Termination
- Verbal counseling - DAS ruling was this is not discipline so it is not grievable
    - Mainly a tool for management
    - Management uses verbal counseling a lot because it is not considered a form of discipline and they know it cannot be grieved
    - Management varies as to why and how they use Verbal Counseling (VC)
    - It is documented, used against the officer on evaluations and put in officer's personnel file for one year
    - Examples of verbal counseling - excessive speed, issues with a pursuit (too close to a vehicle), car accident (counseling on how to drive)
    - Would like to see SPOC take this to arbitration because it leads to disciplinary action and is used as disciplinary action

- Progressive Discipline – all steps grievable
    - Depends on severity of violation
    - Typically 1 written unless several years apart
    - If more than 1 written letter of reprimand in a short time period (1-2 years) then suspension without pay

- Examples of violations - state's violation and policy section violated
    - Work rule violations
    - Professional standards - code of conduct

- Problems with verbal counseling and progressive discipline
    - Too many work rules
    - Everyone violated them because there are so many no one even knows they are even violating some of them (some so ridiculous even management violated them)
    - Usually very minor violations but they are a work rule and can be used against you
    - Micro managed - held to a higher standard - extremes

- Complaint process that can lead to verbal counseling or progressive discipline -
    - Online complaint process
        - Do not hold public accountable for false accusations

    - Can be anonymous but officer still gets investigated
- Verbal complaints from public
    - False accusations by parents that were not at scene
    - Investigations done but public not held accountable for their actions

Iowa Department of Natural Resources - Law Enforcement Bureau - phone interview - Dallas Davis - Union Representative, Iowa Fish & Game Conservation Officers Association - 1/6/2017

- No formal process
- Lack of consistency
- Rarely used
- Inconsistencies in holding officers accountable for policy violations
- Policy is very general

Iowa Department of Public Safety - phone interview - Major Randy Kunert - Iowa State Patrol Headquarters - 3/10/2017

Major Kunert is an integral part of the discipline process for the Iowa State Patrol. Complaints are processed and investigated through the DPS Professional Standards Bureau before they are forwarded to him for review. Kunert reviews the complaints and assists the command staff and Commissioners office in determining the level of discipline if a complaint is sustained.

When a complaint is received in accordance with Iowa Code 80F (Peace Officer Bill of Rights), the officer is notified that a complaint has been received and an investigation is being conducted. Also, in compliance with SPOC contract the officer has the right to have union representation.

The steps in the discipline investigative process are as follows:

- Notification of officer(s) involved and command staff.
- Investigation of complaint
- review tape (video and/or voice) if applicable
- interview all parties involved
- review TRACS information
- Review any previous discipline issues
- Review similar discipline situations
- Determine outcome of complaint:
- not sustained - not credible and/or nothing there
- sustained - complaint is confirmed
- unconfirmed - something there but not enough information available
- Provide investigative report to command staff
- If confirmed, determine level of discipline.

Levels of discipline:

- Verbal counseling (not considered discipline)
- Letter of reprimand
- Suspension (days off)
- Other (last chance letter (usually tied to some type of suspension), additional training, or termination)

There are many things that are taken into account when determining the level of discipline. The current discipline process allows management to utilize verbal counseling instead of

discipline. This gives the employee an opportunity to make adjustments to his/her behavior in order to grow and learn from the situation. This makes the organization better as a whole.

Verbal counseling documentation is kept in the employee personnel file for one year. The fact that the employee received verbal counseling would only weigh in if there was more than one episode within the evaluation period. Evaluations have 10 different categories therefore verbal counseling would not impact the employee's overall rating.

Discipline is similar to a use of force continuum in that you don't need to necessarily start at level 1 and work your way up. The severity of the violation will dictate the severity of the discipline.

The Professional Standards Bureau (PSB) is an integral part of the complaint investigation and discipline process. The PSB is similar to internal affairs. The PSB works well when a situation requires greater discipline. They act as a neutral party when investigating complaints and are very good at tracking past discipline practices. They try to stay consistent and are able to look at how similar circumstances were handled in the past. Being able to review past practices enables discipline to stay consistent as management and leadership changes.

Breakdown of complaints:

- Of the complaints received, 90% come from the public
- Average of 5 complaints per year receive discipline above verbal counseling
- Internet complaints - dislikes these because it allows too many frivolous complaints and/or false allegations that are not there or out of their control (other departments and agencies)
- Feels public should have to stop by district office in order to file a complaint. If it is that important to the public they would be willing to do it in person.
- Video works well for them - if there is nothing there they may not even need to open a case.

Overall the complaint and discipline process works very well. The Professional Standards Bureau is excellent at reviewing complaints and looking at past issues with similar circumstances. This process creates a good opportunity to be fair to all individuals involved.

There is not a specific discipline policy. Currently all employees acknowledge receipt of agency policies. Policies and records are kept through a system called Power DMS. The following is the acknowledgement they sign:

PART VIII – POLICY COMPLIANCE STATEMENT				
It is the responsibility of DPS employees to comply with agency policies. Any questions about agency policies should be discussed with the employee's supervisor. The employee is aware of the policies of the Department, available in PowerDMS, and has acknowledged all policies as required. The employee also is aware of the State Employee Handbook, which is available online.				
Employee initials:			**Supervisor's initials:**	

Iowa Department of Public Safety - phone interview - Sgt. Genie Clemens - Iowa State Patrol Headquarters - Professional Standards Bureau - 3/10/2017

Sgt. Genie Clemens is one of two Special Agents that investigate complaints as part of the Professional Standards Bureau (PSB). They utilize an electronic tracking system called "IA Pro" that allows them to track discipline practices. The system keeps records of all discipline history by officer. It is a comprehensive system that allows for individual record tracking and comparative research as well as statistical analysis. The system also tracks additional information such as warnings, use of force, etc. for each officer.

The PSB does not make decisions relating to levels of discipline. They are in charge of the investigative component in the discipline process. The process works very well and is fair for both officers and civilian employees.

The IA Pro software provides excellent documentation. Because it tracks different areas in an officer's work performance it can assist in taking care of potential issues before they progress into disciplinary action.

Complaints come into the PSB in several forms; online complaints, phone calls, from field staff. The process is fair and works well. Once all an investigation is complete they submit a SPOC investigative summary, video/TRACS information, and any other documentation or paperwork is submitted to command staff.

The "Loudermill" hearing process is utilized if the investigation leads to termination of the officer.

> A **"Loudermill" hearing** is part of the "due process" requirement that must be provided to a United States government employee prior to removing or impacting the employment property right (e.g. imposing severe discipline).
>
> The purpose of a "Loudermill hearing" is to provide an employee an opportunity to present their side of the story before the employer makes a decision on discipline.
>
> Prior to the hearing, the employee must be given a Loudermill letter–i.e. specific written notice of the charges and an explanation of the employer's evidence so that the employee can provide a meaningful response and an opportunity to correct factual mistakes in the investigation and to address the type of discipline being considered.

Appendix VI

Suspension Letter to Employee (Example)

Date

Name
Address

Name:

This letter will serve as notice of a one (1) day suspension without pay effective day of week, month X, XXXX. You are expected to return to work at your regular scheduled start time on day of week, month X, XXXX. This action is being taken as a result of your violation of the following Iowa Department of Transportation Work Rules.

I. WORK PERFORMANCE
   1. Failure or refusal to follow the written or oral instructions of supervisory authority.
   2. Neglecting job duties, responsibilities, or failure to carry out work assignments.
   3. Sleeping, loafing, or engaging in unauthorized personal activities/business.

These rules were violated on month XX, XXXX, when you were reading the newspaper outside of your afternoon break and neglecting your job duties.

On month XX, XXXX, you received a written reprimand.

Further violation of these work rules or any other work rules may result in more severe disciplinary action, up to and including termination.

You may file a grievance under Article IV of your collective bargaining agreement if you feel this action was not taken for just cause.

Sincerely,

Supervisor Name
Title

I have read this letter and been given a copy.

_____ _____
Name Date of Receipt

cc: Name, Title
AFSCME Iowa Council 61
Employee's personnel file, Office of Employee Services
Employment Relations Officer, Office of Employee Services
Personnel Officer, Department of Administrative Services