



Inconsistent Employee Discipline

[Richard R. Johnson, Ph.D.](#)

November, 2016

Have you ever tried to suspend or terminate an employee for a serious act of misconduct, only to have this discipline reversed by a judge or grievance arbitrator? If so, you are not alone. Current research reveals that 5 out of 10 public employees are successful in having their discipline overturned when challenging their employers at arbitration or in court.

To address this issue, the *Dolan Consulting Group* recently conducted an analysis of more than 500 cases of public employee suspensions and terminations that went on to review by some form of outside arbitrator. These cases came from police departments, fire departments, sheriff departments, transportation departments, public works departments, county highways departments, airports, prisons, and parks & recreation departments. In approximately 50% of the cases, the outside arbitrator reversed or reduced the employer's discipline, reinstating the employee back to work. In our analysis, we examined the justifications these arbitrators gave for their decisions, finding that arbitrators often gave multiple reasons for overturning an employer's discipline. The most common reason the arbitrators cited for overturning a public employee's suspension or termination was inconsistent discipline.

Inconsistent Discipline

Inconsistent discipline occurs when two employees, who have similar past work records, commit similar acts of employee misconduct but receive significantly different sentences. Consider, for example, two individuals who each have no prior disciplinary record. Both of these employees are found to be falsifying their time sheets. One employee receives a 1-day suspension, and the other is terminated from employment. This would be an example of inconsistent discipline. **According to our study, in 55% of the cases in which the grievance arbitrator overturned the employee discipline, the arbitrator pointed to evidence of inconsistent discipline.**

One example was a case involving a firefighter who received a multiple-day suspension for being above his maximum acceptable weight on two consecutive weigh-in occasions. The firefighter filed a grievance appealing his suspension. The arbitrator overturned the firefighter's suspension, and awarded him back pay. This reversal was based on the fact that another firefighter and three

fire department supervisors were also found to be overweight two consecutive times, but these three individuals only received letters of reprimand.

Another example was a case involving three police officers who were found to have been repeatedly repositioning a security camera at the police station, even after the police chief issued a memo indicating that the camera was not to be moved without his expressed permission. During the resulting investigation of the moving of the camera, two of the accused officers admitted to moving the camera to watch a woman sunbathing in a nearby backyard. The third officer, however, invoked his right to have his union steward present, thus causing the interview to be rescheduled. The first two officers waived their right to a pre-disciplinary hearing and said they would accept the discipline the city's public safety commission imposed. The third officer, however, exercised all of his rights to a pre-disciplinary hearing, brought an attorney to the proceeding, challenged the evidence presented by the department, and presented rebuttal evidence.

The public safety commission found all three officers guilty of the *same offense* and all three officers had similar prior disciplinary records. The members of the commission sentenced the first two officers to a letter of reprimand, but the third officer – who had exercised his legal rights – was terminated. After reviewing the facts of the case, and learning that the most severe discipline the commission had ever previously given an officer was a 5-day suspension, a grievance arbitrator overturned the officer's termination, converting it to a suspension. The arbitrator indicated that the case involved inconsistent discipline for identical acts of misconduct committed by employees with similar prior discipline records.

A third example involved a police officer who was arrested for domestic battery against her boyfriend, but later pled guilty to a lesser, non-violent offense. She was terminated from her employment by the city, but both an arbitrator and a civil court ordered that she be re-hired and convert her discipline to a lengthy suspension without pay. The reason for this decision was that in the previous ten years the same police department had dealt with seven other employees who had been arrested for domestic battery and pled guilty to a lesser offense. All of these other seven officers (all of whom were male) were allowed to keep their jobs for essentially committing the same act of misconduct. While the arbitrator and the judges felt that all eight officers should have lost their jobs, they ruled that it was unfair that only one officer (who differed by gender) received that discipline.

These are just three examples of many cases found in our study in which one employee received a very different discipline outcome when compared to another employee for engaging in similar misconduct. While there is very little research on this topic, there *are* a few studies that show inconsistent discipline may be common, at least within law enforcement agencies. The Rampart Report that examined misconduct within the Los Angeles Police Department in the late 1990s found that disciplinary actions handed down for the same acts of misconduct varied widely.¹ Three social science research studies later found the same phenomenon within multiple police departments in the Northeastern and Southwestern United States.²

Causes and Consequences of Inconsistent Discipline

There are many reasons for similar employees receiving different discipline outcomes for essentially the same misconduct. **One study by criminologists Paul Reynolds and Jeremiah Hicks surveyed a sample of law enforcement officers from various departments in the Southwest, finding that most believed discipline within their organization was applied inconsistently. These officers suggested the reason for the inconsistent treatment of officers was primarily inter-organizational politics.** These officers suggested different discipline outcomes sometimes resulted when accused officers had personal relationships with influential people inside or outside of the organization. **Other times, public outcry and media coverage of the misconduct brought harsher than normal penalties. These officers also suggested that female and minority officers are sometimes treated differently than male and white officers, being treated either more harshly or more leniently.**³

A study conducted by criminologist Jon Shane involved over 300 hours of observation of the disciplinary board within the Newark Police Department. This study revealed additional reasons for inconsistent discipline. Knowledge about institutional history was lacking as members of the board did not know what discipline employees received in years past for the same offenses presented today. The board members were sometimes influenced by the first case of the day, dispersing their anger or opinions about the first case onto other cases reviewed on the same day. There were also instances when manpower issues influenced punishment decisions. Board members were reluctant to suspend or terminate officers from units that were already low on manpower.⁴

Regardless of the reasons for inconsistent discipline, **what impact might inconsistent discipline have on employee behavior?** One study, conducted by criminologists Chris Harris and Robert Worden, examined the impact that severity of discipline had on future misconduct by police officers. When comparing police officers disciplined for similar first offenses of misconduct, the more severely the officer was disciplined for their first offense, the more likely that officer was to incur additional misconduct violations over his or her career. If the officer was disciplined less severely, the officer was less likely to engage in future misconduct.⁵

In a study of 1,219 employees from a sample of hospitals, another research team found that employee work performance was highest when employees perceived that their hospital's disciplinary processes and outcomes were fair and consistent. Perceptions of fair discipline were also associated with greater employee commitment to the organization and greater willingness to take on extra work responsibilities.⁶ A third study surveyed 373 state government employees and found that the more the employees perceived discipline in their unit was dispensed fairly and consistently, the higher the employees' morale and the less likely they were to take extended breaks and waste office resources.⁷ **Clearly, fair and consistent discipline produces positive benefits for the efficient operation of the organization.**

Avoiding Inconsistent Discipline

In order for discipline to be dispensed in a fair and consistent manner, employees found to have committed similar acts of misconduct should be given similar discipline. Only legitimate

aggravating or mitigating circumstances – such as the employee’s prior disciplinary record or the severity of the harm caused by the misconduct – should be considered as a basis for increasing or decreasing the usual discipline. Such factors as race, ethnicity, gender, religion, assignment, tenure length, veteran status, disability status, personal connections, or exercising one’s due process rights should never be considered when assigning discipline for employee misconduct.

One way to avoid inconsistent discipline is to adopt a discipline matrix.⁸ Discipline matrices are modeled from criminal court sentencing guidelines. They consist of a grid of cells with types of common misconduct offenses along the left column, and number of prior offenses across the top row. Within each cell of the matrix grid is a narrow range of possible disciplinary actions for that specific act of misconduct, considering the number of prior acts of misconduct the employee has accrued up to that point in time. Inside that narrow range of disciplinary options, aggravating and mitigating circumstances can be used to select the most appropriate discipline for that specific situation.

Little research has yet been conducted regarding the use of discipline matrices, but one study conducted by the Washington State Patrol found that after a simple discipline matrix was instituted in that organization, employee grievances declined, as did citizen complaints about officer misconduct behaviors.⁹ The use of sentencing guidelines by the criminal courts has reduced racial disparities in the length of prison sentences.¹⁰ It also makes intuitive sense that using such a tool would reduce dramatic inconsistencies in discipline for similar acts of misconduct, giving employees a sense of procedural justice in the disciplinary process.

Conclusion

When a public employee contests a suspension or termination through grievance arbitration or a civil suit, the employee tends to succeed approximately 50% of the time. The most common reason arbitrators give for overturning the suspension or termination is inconsistent discipline, where other employees committed similar acts of misconduct but received less severe discipline outcomes. The delivery of inconsistent disciplinary actions is found to occur often in public employment and potentially contributes to lower morale, lower productivity, and further employee misconduct. One way to reduce the likelihood of inconsistent discipline is to implement a discipline matrix tool.

The complete findings of the *Dolan Consulting Group* study mentioned in this report are delivered in our course, *Making Discipline Stick*. In this course we explain and discuss the five greatest predictors that the discipline dispensed by a public organization will be overturned in a grievance arbitration or civil court hearing. This course also provides evidence-based guidance on how to protect against these five major weaknesses when your organization has to discipline an employee.

When inconsistent discipline occurs within an agency, the available research indicates that morale suffers and the legitimacy of leadership decisions are undermined by the widespread belief that leaders are making decisions based, not on the merits, but on political considerations or other factors irrelevant to the agency mission. When these decisions are overturned at arbitration or in court, it further undermines the leadership and can prove extremely costly financially. Addressing misconduct in an even-handed manner is not only

the common sense approach for agency leaders, but it can often minimize liability risks to the agency when facing challenges in arbitration or in court.

References

- ¹ Los Angeles Police Department (2000). *Board of Inquiry into the Rampart Area Corruption Incident: Public Report*. Los Angeles, CA: City of Los Angeles.
- ² Harris, C. J., & Worden, R. E. (2014). The effects of sanctions on police misconduct. *Crime & Delinquency*, 60(8), 1258-1288; Reynolds, P., & Hicks, J. (2015). There is no justice in a police department: a phenomenological study of police experiences. *Police Practice and Research*, 16(6), 469-484; Shane, J. M. (2012). Police employee disciplinary matrix: an emerging concept. *Police Quarterly*, 15(1), 62-91.
- ³ Reynolds & Hicks (2015).
- ⁴ Shane (2012).
- ⁵ Harris & Worden (2014).
- ⁶ Tremblay, M., Cloutier, J., Simard, G., Chenevert, D., & Vandenberghe, C. (2010). The role of HRM practices, procedural justice, organizational support, and trust in organizational commitment and in-role and extra-role performance. *International Journal of Human Resource Management*, 21(3), 405-433.
- ⁷ Tepper, B. J., & Taylor, E. C. (2003). Relationships among supervisors' and subordinates' procedural justice perceptions and organizational citizenship behaviors. *Academy of Management Journal*, 46(1), 97-105.
- ⁸ Shane (2012).
- ⁹ Serpas, R. W., Olson, J. W., & Jones, B. D. (2003). An employee discipline system that makes sense. *Police Chief*, 70(9), x-xx.
- ¹⁰ Kramer, J. H., & Ulmer, J. T. (1996). Sentence disparity and departures from guidelines. *Justice Quarterly*, 13(1), 81-106.