

ALAN M. ARAKAWA
Mayor

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May 22, 2003

Honorable Alan M. Arakawa
Mayor
County of Maui
Office of the Mayor
200 South High Street
Wailuku, Hawai'i 96793

Re: Proposed Union Participation in
Employee Disciplinary Meetings

Dear Mayor Arakawa:

This is in response to your inquiry regarding union participation in employee disciplinary meetings. Our department has reviewed your draft memorandum requiring department heads to transmit a written invitation to the appropriate union to participate in the disciplinary action of an employee at any level. We note that the draft memorandum applies to all disciplinary meetings and does not distinguish between the various forms of discipline from the simplest, oral reprimand, to the severest, termination.

Set forth below are our comments and observations on the new discipline procedure ("procedure") described in your draft memorandum:

ALTERS MANAGEMENT RIGHTS

It has been management's practice to meet with and discipline an employee without union interference or participation. There are two types of situations where the unions have been involved: (1) by invitation from an employee during an investigation (Prior to any discipline, the collective bargaining agreements uniformly allow an employee to invite a union representative to be present

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during an interview by management where the employee could be disciplined as a result of the interview.); and (2) during the pre-termination hearing of an employee who is about to be terminated from employment after an investigation.

The discipline procedure would set a new precedent among the employer groups with regard to the exercise of an established management right. Currently, there is no jurisdiction that invites a union representative to a meeting to participate in the discipline of an employee. Management has always reserved the right without interference by the union. Implementation of the procedure would in all likelihood establish a management practice that would be difficult to undo or modify in the future should the need or occasion arise. Once management makes the issuance of written invitations a required and standard practice, the failure (whether inadvertent or intentional) to issue such an invitation in a timely manner may itself give rise to a basis for a grievance or for the overturning of disciplinary actions taken or decisions made by management.

DILUTES DISCIPLINE PROCESS

The procedure would slow down and dilute the discipline process. For example, if an employee is tardy for work on Monday, and the supervisor wants to reprimand the employee for tardiness, the supervisor would not be able to do so because this procedure requires the supervisor to invite, in writing, the appropriate union representative to the discipline meeting between employee and supervisor. Furthermore, it is not clear when the meeting may be set. For example, does the supervisor wait for a response from the union for a date and time, or does the supervisor set an appointment not knowing the union's schedule? Would it defeat the purpose of the invitation to participate in the discipline meeting if the meeting was not set on a date convenient to the union? This procedure contemplates an answer from the union either setting a date or declining to participate. In certain circumstances, the union may find that it is in the best interests of the union to delay the meeting. Therefore, (answering our own question) the discipline would automatically be delayed until the union responded.

DOES NOT PROMOTE EFFECTIVE DISCIPLINE

Furthermore, this procedure would greatly encumber the effectiveness of discipline. We offer the following scenario:

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An employee threatens a co-worker with physical violence. The supervisor wants to separate the two workers to allow for a cooling off period and discipline the aggressor, instigator, or both, before the situation escalates to a physical altercation.

Under the foregoing scenario and the proposed procedure, a written invitation must be sent to the union before the supervisor intervenes and disciplines the workers. The invitation from the employer to the union to participate would mean that the supervisor would have to watch both workers so that neither confronts the other until the union responds to the invitation. If the union does not respond to the invitation for a number of days, a disciplinary action loses its effectiveness because it is not immediate and the discipline may be considered untimely (if the delay was too long), and the supervisor would be frustrated by the delay as the situation could become uncontrollable.

PRODUCTIVITY AFFECTED

Finally, the delay in discipline would affect the productivity of the working unit inasmuch as the employee waiting for the disciplinary meeting may become preoccupied with the coming event, instead of concentrating on work.

Further, delay causes memories to fade and may glaze over or insulate infractions and the harm caused such that any discipline may appear inappropriate. Delay may also cause the action to fester and grow out of control. Employees may be misled by the delay to believe infractions are not so egregious that remedial steps are necessary. We return to the tardy employee example: Monday, tardy; Tuesday, on-time; Wednesday, tardy; union agrees to meet on Friday for Monday's infraction; Thursday and Friday tardy; Friday meeting, union now responds that it is right to discipline for Monday, but not Wednesday, Thursday or Friday, and the infractions of Monday, Wednesday, Thursday and Friday should all be treated as a single infraction because the employee could not have appreciated that tardiness would result in discipline and was a major concern of the department.

CONCLUSION

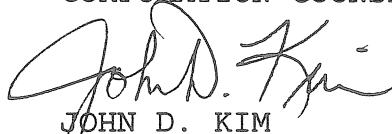
We believe the new discipline procedure proposed in the memorandum is not required under current collective bargaining agreements and is inconsistent with previous positions taken concerning the exercise of management rights.

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The proposed procedure also poses the possibility of significant delay that would diminish the effectiveness and timeliness of discipline and reduce productivity.

Very truly yours,

DEPARTMENT OF THE
CORPORATION COUNSEL



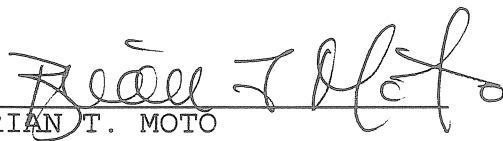
JOHN D. KIM
Deputy Corporation Counsel

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cc: Lynn Krieg, Director, Department of Personnel Services
Jack Kulp, Managing Director, Office of the Managing Director

APPROVED FOR TRANSMITTAL:



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