

CHAPTER 12

DISCIPLINARY AND ADVERSE ACTIONS

Disciplinary and adverse actions situations may present the most challenging and rewarding experiences a steward or an officer can have. The full range of representation skills will be called into play as the matter progresses. In the process the steward or officer will find his/her role changing: first listener and counselor, then investigator, then advocate, and often negotiator or mediator.

In this chapter, we will distinguish and define disciplinary and adverse actions. Next you will learn how to investigate a disciplinary or adverse action charge, build a defense and shape it into an oral or written reply. This will include how to deal with the affected employee and what sources of information are available to you as a representative. Finally you will learn how to take disciplinary and adverse action situations and turn them into an opportunity for building membership in your local chapter.

As a steward or officer, you will have two responsibilities, one to the Union and the other to the employee. Your responsibility to the Union will be to insure the integrity of the contract. Each and every NTEU contract provides that no disciplinary or adverse actions will be taken except for such cause as will promote the efficiency of the service. You are responsible to see to it that any disciplinary or adverse action imposed meets that standard and that those which do not are challenged. Your responsibility to the affected employee is to represent him/her, when requested, in a competent, fair and aggressive manner.

I. DEFINITIONS

Any discussion of disciplinary or adverse actions must begin with the definition of the terms involved with a citation to the appropriate federal statutes and Civil Service regulations.

- A. Disciplinary Action** - These include suspensions of 14 calendar days or less, written reprimands and oral admonishments confirmed in writing.
- B. Adverse Actions** - These include a removal, a suspension for more than 14 days, a reduction in grade, a reduction in pay, or a furlough of 30 days or less. They do not include however, RIFs (reduction-in-force) or downgrades or removal for unacceptable performance.
- C. Relevant Civil Service Statutes and Regulations**

Disciplinary Actions

Title 5 U.S.C. 7501 -
7504

Title 5 C.F.R. 752.201-

Adverse Action

Title 5 U.S.C. 7511-7513

Title 5 C.F.R. 752.401-406

II. PROCEDURAL MATTERS

Civil Service law and all NTEU contracts require a certain procedure to be followed whenever an agency proposes to take either a disciplinary or an adverse action. You should make sure the agency follows that procedure. Failure to do so may be good cause to overturn the action.

The elements covered by the procedure are:

- The Notice Letter The proposal, in advance, to take the action, including the specific reasons for proposing the action.
- The Investigation The opportunity: to review the information the agency relied upon and any other information which you think is relevant; interview the affected employee and other employees; and to collect statements supporting the employee's case.
- The Reply Your employee's opportunity to have his/her side of the story heard. You will have time to prepare and present this reply either orally or in writing or both.
- The Decision The decision, by someone other than the proposing official, sustaining, in whole or in part, or dismissing the specifications given and announcing what action the agency proposes to take.

The elements outlined in the paragraphs immediately above apply only to actions more serious than a letter of reprimand. For a letter of reprimand or other less severe action, advance notice and reply opportunity are not required. For these lesser forms of discipline we need to file a grievance if we believe that the discipline should be challenged. The following portion of this chapter discusses how to handle the more severe forms of discipline.

A. The Notice Letter

1. **Characteristics**

Every notice letter should contain the following characteristics:

- a). Advance Notice. Except in cases where there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, advance notice means no less than 30 days. Agencies can propose to indefinitely suspend an employee if they have "reasonable cause" to believe the employee has committed a

crime for which a sentence of imprisonment could result. Reasonable cause may not be established by an arrest alone but by other factors such as detention by a magistrate, indictment, or evidence uncovered during an investigation. *Martin v. Dept. of Treasury*, 10 MSPB 568 (1982). The 30 day notice requirement can be shortened in these situations. Contact your field representative if you should encounter an indefinite suspension case.

- b). Specificity. The notice letter should be specific enough so that the employee is made aware of the charges against him/her and is able to respond to them. For example, a notice letter that simply states that the employee has been insubordinate or has falsified a document, but which fails to tell the employee what order was not complied with or which document was falsified, lacks specificity and denies him/her an opportunity adequately respond to the charges. The notice letter should also clearly specify what agency regulation or policy was violated by the employee.

2. Steps

When an employee comes to you with a notice letter in hand, there are certain steps which you should always take for an orderly and effective representation of that employee:

- a). Designate NTEU as representative [Attachment No. 1]. This act will identify you as the employee's representative. It will entitle you to official time and to the information needed to handle the employee's case.
- b). Request a reply meeting. An employee may reply either orally or in writing or both. Which method you choose will be discussed later, but **in every instance** you should request the opportunity to reply. The only exception is where your national field representative specifically agrees such action is not appropriate because of the circumstances of the particular case.
- c). Request information [Attachment No. 2] - You should request all information relied upon by the agency in proposing this action and whatever other information you think is necessary and relevant to present your reply.
- d). Involve the employee. As soon as possible, have the employee sit

down and tell you, privately and preferably in writing, what his/her answers to the specifications are and what other information is important. It is impossible to present an adequate reply without the employee's cooperation. Involving the employee right away will made the employee focus his/her attention on the matter, and fix the employee's version of what occurred. **BE A GOOD LISTENER.**

Also, keep this matter in the perspective of the Union's overall goal, that is, giving employees a sense of their own power. Building a strong local requires employees make the transition from a sense of helplessness or being victims to a sense of power to protect and affect positive change in their workplace. Each discipline or adverse action successfully reversed or settled demonstrates how a Union can give employees that power.

B. The Investigation

At this stage you are more of an investigator than an advocate. The time for sorting out facts and shaping your arguments will come later. Quite naturally then, the best reply, oral or written will be no better than the investigation that preceded it. Therefore, you should be aware and make use of the various power sources at your disposal for obtaining information. They are:

1. **the governing contract articles: (disciplinary and adverse actions)**
2. **5 U.S.C. 7114(b) (The Civil Service Reform Act)**
3. **5 U.S.C. 552 (The Freedom of Information Act)**
4. **5 U.S.C. 552(a) (The Privacy Act)**
5. **5 C.F.R.752.404(c) (OPM Regulations)**

Every notice letter should state that the employee is entitled to review the material relied upon by the agency in proposing the action. Your request for information should begin with this. Because the agency may tailor this information to its liking, you must also consider what other additional information is needed to respond. As a union representative, you are also entitled to whatever information is necessary and relevant in representing a bargaining unit employee. In requesting information, consider not simply what will prove or disprove the specifications alleged, but what will lead you to such evidence and what will prove or disprove any mitigating circumstances. The scope of your request then, will vary from case to case, but a list of items to be considered

includes:

1. agency table of discipline.
2. other notice and decision letters issued by the agency involving conduct similar to that with which your employee is charged.
3. statements given to management by other employees or third parties concerning the specifications charged.
4. any investigative report of the charges received by the agency. Look to see if pages are missing from the report. The missing pages may contain information helpful to the employee.
5. the employee's prior disciplinary record, if any.
6. all materials maintained by the employee's supervisor in the employee's performance/conduct file.
7. any agency manual sections or official memoranda governing the conduct or matters charged in the notice letter.
8. the employee's time and attendance, travel and daily activity records (if any) for the date(s) in issue in the notice letter.

C. Making Your Reply

A reply permits the employee to respond to the charges made. It is the employee's opportunity to tell his/her side of the story before the agency determines what action to take. A reply is not a hearing. You may present statements, exhibits, documents or affidavits but there is no cross-examination permitted and you should permit none of your employee. Feel free to deflect any unwanted questions of your employee with a simple response of either "We understand cross-examination is not permitted here." or "We will be happy to take your questions down and respond to them in writing when this reply has been certified."

Replies may be done orally or in writing, or both. Whichever form you choose, be sure it is you, the representative, who is making the reply. This is the reason members pay their dues. Furthermore, you are trained in this matter. They are not. They may be too emotional to adequately respond to the charges and may make statements that are not to their advantage.

There are advantages to each type of reply, oral or written. Consider:

1. Benefits of Oral Reply

- a). Increased persuasiveness in face-to-face meetings.
- b). Informality of the proceedings.
- c). The ability to pursue a point you see is impressing the hearing official.
- d). The ability to respond to questions or points raised by the hearing official.
- e). The ability to present an employee who attracts sympathy.
- f). Less time will be needed to give a reply orally than to write it out longhand.

2. Benefits of Written Reply

- a). By mutual agreement can be used to supplement an earlier oral reply with additional facts or evidence.
- b). Ability to focus your attention on the issues involved rather than a temperamental employee who does not attract sympathy.
- c). Conserving of scarce union funds which would otherwise have to be spent to pay for the representative's travel

SOME BASIC DO'S AND DON'TS OF ANY ORAL/WRITTEN REPLY

Do:

Request a reply.

Make the employee work with you in the preparation of any reply.

Design with the employee a plan of action governing each person's role during the reply meeting.

Make the reply yourself. Allow the employee to speak only under controlled conditions (discuss this with the employee in advance). Come to your reply session well prepared and organized. Your case should be outlined on paper.

Take charge of the reply meeting. Control where it is going and what is said. Emphasize important issues. Deflect unwanted questions.

Remember, if the employee intends to rely on any EEO defense, it must be raised during the reply to preserve it as a defense in any subsequent appeal.

Ask clarifying questions. Record the questions and responses in writing.

Remember, if the employee intends to rely on any EEO defense, it must be raised during the reply to preserve it as a defense in any subsequent appeal.

Request, read and certify for correctness, any transcript or notes of an oral reply. Remember, you are trying to persuade.

Don't:

Admit guilt unless you speak with your attorney/field representative first.

Make an extemporaneous or "off the cuff" reply.

Make statements you believe to be false.

Make the employee give the reply.

Permit management to ask the employee unwanted or embarrassing questions.

Lose your temper or let the employee lose his/her temper.

Get sidetracked from the major points you have selected when devising of your reply.

Give the reply without the employee in attendance.

D. The Decision

Some time after your reply the agency will issue a decision. Watch for the following matters.

1. In adverse actions the decision should be made by someone other than the proposing official. Decisions related to disciplinary actions can be made by the same official who proposed the action.

2. The decision should be in writing. 5 U.S.C. 7513(b).
3. The decision should be based on findings which are limited to the specifications in the notice letter. 5 U.S.C. 7513(b). Management raising additional specifications that were not contained in the Decision Letter could result in the decision being overturned.
4. The penalty imposed, if any, can not be greater than that proposed in the notice letter
5. The employee's appeal rights and time limits for appeal should be described in the decision letter.

As soon as you receive a copy of the decision you should **immediately** notify your attorney/field representative. NTEU will take cases of sufficient merit to arbitration or the Merit Systems Protection Board, but that determination is made at the national level, not the chapter level. For this reason **never** promise that NTEU will arbitrate any particular discipline or adverse action. Since there is a limited time period in which to invoke arbitration or file an appeal, it is crucial that you notify the attorney/field representative in sufficient time to enable him/her to make a decision on a further appeal before that time limit expires. Failure by the union to observe the time limits on invoking arbitration or filing an appeal may expose the Union to a lawsuit for failing to represent the employee fairly.

III. SUBSTANTIVE MATTERS

A. Organizing Your Response to the Charges

The most effective defenses are always based on a prior development of the following six questions:

1. **Did The Employee Do What The Specifications Charged Him/Her With?**

The burden of proof in disciplinary and adverse actions is always on the agency, not your employee. The agency must prove the charges. If you have requested the information relied upon by the agency and it does not prove the employee did what he/she is charged with, state this in your reply first, forcefully and finally.

Warning - If the employee is charged with a criminal violation you should not get into a discussion with the employee regarding the substance of the criminal

charges. This could occur if you are dealing with an indefinite suspension. You can be compelled by the courts to disclose information in a criminal trial that was told to you by the employee. You do not have any privilege in this situation. If the employee receives a Miranda warning or if the investigator discusses the possibility of criminal charges you should advise the employee to remain silent and immediately consult your field representative. The employee should be told to contact a criminal attorney for advice. You can read the chapter of this manual on investigatory interviews for additional information.

2. **Why Did The Employee Do It?**

Even if your employee did what is charged, there are several defenses which may defeat the agency's attempt at discipline or mitigate the penalty imposed. e.g. good faith ignorance, impossibility, contrary or conflicting directives, past practice which management was aware of and did not object to, illness, handicapping condition, provocation.

3. **Have Other Employees Done The Same Or Similar Acts? If So What Was the Result?**

It is a well established principle that like offenses should result in like penalties. If your employee's penalty was harsher, it may be mitigated or overturned. It could also evidence:

- a). Reprisal for previous grievance activity.
- b). Reprisal for other union related activity.
- c). Age, race, sex, religious or national origin discrimination.
- d). Retaliation for previous EEO activities including the filing of an EEO complaint.

If such factors were present, they would constitute prohibited personnel practices. 5 U.S.C. 2302(b)(1).

4. **How Long Has Management Been Aware Of The Acts?**

If management delays a substantial amount of time between when it becomes aware of the charged acts, and the proposal to impose discipline, the matter may be overturned or the discipline may be mitigated.

- a). Delay in discipline dilutes any corrective value to the discipline. It also undermines an agency's claim that the offense is as serious as claimed. A substantial delay can also effect the employees ability to respond to the charges due to missing witnesses and faulty memories. There is no specific time period that can be identified as too long of a delay. The facts of each case need to be considered. If there has been a significant delay between the events and the agency bringing charges, or a delay between the investigation and bringing charges, you should argue that the delay has harmed the employee either because you can not adequately respond to the charges or disciplining the employee is punitive rather than an attempt to correct the employee's behavior.

Be aware however, that in order to get an adverse action reversed solely on the grounds of a delay, you will probably have to show that the delay produced harmful error. e.g. facts or evidence which would have disproved management's case or proved your defense were lost or destroyed; or witnesses necessary to corroborate your defense are no longer available.

5. **Does The Act Bear Upon The Mission Of The Agency?**

- a). **Nexus** The term nexus is most important in disciplinary and adverse actions. In each case, there must be a logical, foreseeable, adverse effect or connection between the offense charged and the mission of the agency. This is what we call nexus. For example, no or insufficient nexus was found in the following instances:

- An employee was disciplined for refusing to perform an act not required by his employer. Korowin v. Dept. of Justice, 9 MSPB 297 (1982).
- An employee was disciplined for having an association with an individual with a criminal record, even where the association was slight. Peterson v. IRS, MSPB Decision No. SLO7528010095 (Dec. 1981).
- An employee was disciplined for private sexual preference. Doe and U.S. Customs Service, (A-291).
- Two employees were disciplined for "mooning" private citizens in a parking lot. NTEU Chapter 27 and IRS Cincinnati District, (A-259).

- Where an agency claimed that the mere absence of an employee because of conviction and incarceration impaired the efficiency of the service. Bradley v. USPS, 32 MSPR 255 (1987).
- An employee was disciplined for smoking a small amount of marijuana in the privacy of his own home. Merritt v. Department of Justice, 6 MSPB 493 (1981).

In certain circumstances, where the employee's conduct is egregious however, nexus may be presumed. Hayes v. Dept of the Navy, 727 F.2d 1535 (Fed. Cir.1984)(sexual assault by an employee with unrestricted access to residences).

b). Was A Prohibited Personnel Practice Committed?

It is a prohibited personnel practice to discriminate against any employee on the basis of conduct which does not adversely affect the performance of the employee or other employees. Whenever you determine there is no nexus between the conduct charged and the efficiency of the service, you should always state in your reply that the agency is committing a 5 U.S.C. 2302(b)(10) prohibited personnel practice.

5 U.S.C. 2302(b) lists 11 prohibited personnel practices. You should become familiar with them. Not only does the law provide severe penalties for individuals responsible for prohibited personnel practices (e.g., up to and including removal and disbarment from federal employment), it may also restrain an agency from imposing discipline where it otherwise might be inclined to proceed.

6. Does The Penalty Fit The Offense?

Even if the employee is guilty of committing the offense for which he/she is charged, an agency must demonstrate that the penalty selected is appropriate. Both the Merit Systems Protection Board and arbitrators are empowered to lessen the penalty imposed where it is found that the penalty is excessive or unreasonable. In assessing the reasonableness of the penalty, the Merit Systems Protection Board set out in the case of Douglas v. Veterans Administration, 5 MSPB 313 (1981) the following factors for consideration.

- a). The nature and seriousness of the offense and its relation to the employee's duties, position and responsibilities, including whether the offense was intentional or technical or inadvertent or was committed maliciously or for gain, or was frequently repeated.
- b). The employee's job level and type of employment, including supervisory fiduciary role, contacts with the public and prominence of the position.
- c). The employee's past disciplinary record.
Discipline should be progressive and corrective rather than punitive.
- d). The employee's past work record including length of service, performance on the job, ability to get along with fellow workers and dependability.
- e). The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisor's confidence in the employee's ability to perform assigned duties.
- f). Consistency of the penalty with those imposed upon other employees for the same or similar offenses.
- g). Consistency of the penalty with any applicable agency table of penalties.
- h). The notoriety of the offense or its impact on the reputation of the agency.
- i). The clarity with which the employee was on notice of any rules that were violated in committing the offense or have been warned about the conduct in question.
- j). The potential for the employee's rehabilitation.
- k). Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment or bad faith, malicious malice or provocation on the part of others involved in the matter.
- D). The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

B. Types of Charges and Defenses

A note of caution. What follows is not meant to be an exhaustive presentation of all defenses to any type of discipline. It will give you however, the basic defenses to various charges. Discuss your defenses with your chief steward, chapter president or attorney/field representative for additional development.

Insubordination: There must be an order (not necessarily in writing) from someone with authority to direct the employee which the employee refuses to obey.

- Defenses:
1. No order/directive was given to the employee. (Stewart) IRS Atl. Service Ctr. (A-0224).
 2. Facts may make it impossible for the employee to comply, e.g. weather, traffic or other environmental conditions. Davies v. Dept. of Agriculture, 5 MSPB 291 (1981).
 3. Vague or faulty directions. (Barcus) IRS, Indianapolis Distr., (A-377).
 4. Conflicting orders/assignments. Mitchum v. TVA, 756 F.2d 82 (Fed. Cir. 1985); (Sammut) IRS, Louisville Distr., (A-269).

Disrupting the Workplace/Fighting: There must be an altercation or conduct which interrupts the work of employees.

- Defenses:
1. No evidence the employee's conduct delayed or interrupted his/her or another employee's work. Mere objection to another's attitude does not constitute disruption. (Haskell) IRS, Nat'l Office, (A-889).
 2. The employee's actions were strictly in self defense. Williams v. USPS, 5 MSPB 88 (1981).

Falsification: There must be a false statement, knowingly made with the intent to deceive. Naekel v. Dept. of Transportation, 782 F.2d 975 (Fed. Cir. 1986).

- Defenses:
1. Mistake, ignorance or inadvertence. Yoder v. Dept. of the Air Force, 6 MSPB 634 (1981).
 2. Someone other than the employee wrote the statement or

altered the document in issue. Facciponti v. USPS, 15 MSPR 183 (1983).

AWOL: There must be an unauthorized absence and no good reason to extend authorized leave. Boscoe v. Dept. of Agriculture, 54 MSPR 315 (1992).

- Defenses:
1. Leave was approved. Watson v. USPS, 13 MSPR 56 (1982).
 2. The agency acted arbitrarily or unreasonably in denying authorized leave. Riley v. Dept. of the Army, 53 MSPR 683 (1992); In re Van Sciver, 1 MSPB 94 (1979); Bavier v. Dept. of Tranp., 5 MSPB 73 (1981).

Abuse/Misuse of Govt. Vehicle: A willful violation of 31 U.S.C.1349(b) occurs if the employee voluntarily uses an official government vehicle knowing that the use was for other than official purposes. This violation carries a minimum of a 30 day suspension.

- Defenses:
1. There is no element of willfulness, e.g. a sudden emergency. (Thatcher) IRS San Francisco Distr. (A-339). (Chien) Customs Service, (A-875).
 2. The stop was en route to or from the duty point. D'Elia v. Dept. of Treas., 14 MSPR 54 (1981).

Indefinite Suspensions: Unlike other charges above, indefinite suspensions are not imposed for misconduct itself, but to allow for investigation into alleged criminal conduct. Consequently, in preparing a reply to a proposed indefinite suspension you address not the truth or falsity of the underlying conduct, but whether there is reasonable cause to pursue an investigation.

Indeed, if criminal charges are pending, anything you say in a reply that addresses the substance of the investigation may prejudice the employee's position in the criminal proceeding. For this reason, always contact your attorney/field representative in indefinite suspension situations.

- Defenses:
1. There is no investigation ongoing, whether by the agency itself, or the criminal justice system.
 2. An arrest alone, without arraignment or indictment, is not sufficient reason to pursue an investigation, and therefore

impose an indefinite suspension. Martin v. Dept. of Treas., 10 MSPB 568 (1982).

3. Indefinite suspensions without pay may be an unreasonable penalty. Agencies should select their response, e.g. reassignment, paid leave, suspensions, based on the particular circumstances of the case and not automatically select unpaid suspensions. Martin v. Dept. of Treas., 10 MSPB 568 (1982).

C. Discrimination Defenses

You may assert in defending an employee against a disciplinary or adverse action that the discipline was assessed in a discriminatory fashion. For instance, if during your investigation you find that women are disciplined to a far greater degree for AWOL violations and/or receive harsher penalties, you may have a case for discrimination based on sex. If Hispanic or African American employees are disciplined for alleged violations while other races are not disciplined or disciplined to a lesser degree, you may have a case for race discrimination. Likewise, if management fails to accommodate a handicapped employee and this results in a disciplinary or adverse action, you may have a case for handicap discrimination. There has been a great deal of litigation in the area of drug and/or alcohol abuse. Check with your field representative about the current state of the law in the area of discrimination and consult the chapter in this manual regarding Handling Discrimination Complaints.

IV. WHERE TO APPEAL

Once the agency determines to impose discipline, there are several paths that can be taken to appeal the matter. Different legal and practical considerations are involved. Therefore, you or your employee should not choose one until this has been discussed with the NTEU attorney/field representative.

A. Disciplinary Actions

These may be appealed only through the grievance arbitration procedures, unless prohibited discrimination was involved, in which case an EEO complaint or if discrimination based on union activity is alleged, an unfair labor practice charge could be filed. Most disciplinary actions should be grieved. If you wish to take the EEO or ULP route, consult with your field representative first as electing these forums limits the issues you can raise. Consult your contract to determine the time limits for grieving a matter and the step at which the grievance must be filed.

B. Adverse Actions

These may be appealed to either the grievance arbitration process, the Merit Systems Protection Board or, if prohibited discrimination is involved, to the Equal Employment Opportunity Commission.

Once an employee selects to go to either grievance arbitration, formal EEO complaint process or to the Merit Systems Protection Board, that choice cannot be altered. The employee is deemed to have made an election of forums. It is therefore very important that you carefully consider which avenue of appeal you decide to pursue.

V. MEMBERSHIP BUILDING

When effectively handled, every adverse or disciplinary action situation can nevertheless be turned into an opportunity to strengthen existing membership ties and build new ones.

It is a good practice to make certain that the employee understands that any representation is always based on the merits of the case. A meritorious case is one where the facts, as stated, describe a contract violation, where there is sufficient evidence to support our arguments and, where necessary, credible witnesses have been identified. In these cases we have a reasonable likelihood of success on the merits of the case.

Every steward has heard the argument that the Union must represent members and non-members alike. But that is not true in all circumstances, and it is important that both you and the non-member clearly understand when the union has the duty to represent all bargaining unit employees without regard to union membership. The duty to represent arises from our status as the exclusive representative of the employees. Where the union controls the rights of employees---at the bargaining table and in the grievance/arbitration process created by the contract---it must represent members and non-members alike. In those situations, employees have no choice but to work with and through the Union to vindicate their rights. Only the Union can negotiate with management or invoke arbitration. The union must not discriminate based on membership.

In any other proceeding created outside the contract (i.e. by statute or regulation), where the employee has a statutory right to challenge management on his/her own, and without Union consent or assistance, the Union does not have a duty or represent the employee, regardless of the merits of the employee's case. Therefore, although we may represent members who have meritorious cases before the MSPB and in other statutory arenas (e.g., EEO, Privacy Act, other court actions), we have no such policy for non-members. In adverse action situations we

do not have to represent non-members at any stage of the process prior to arbitration since they have a right to choose a representative and can appeal their case to the MSPB or EEOC. Nevertheless, **never** tell any employee the Union will not represent them **until** you have consulted with your chief steward, chapter president and field representative. If you have any question whether we have a duty to represent a non-member, consult with your field representative.

In every instance you should ask, whether a recipient of a disciplinary or adverse action letter is a union member. If the employee answers no, ask him/her to join.

Beyond this, consider also:

- A. Publishing in your chapter newsletter or posting on the Union bulletin board victories related to rescinding any action or mitigating a penalty, or favorable settlements of a case. It is always a good idea to get the employees consent before publishing the facts of a case.
- B. Publishing in your chapter newsletter or posting on the Union bulletin board favorable arbitration awards or MSPB decisions. Making sure employee know their rights is part of our responsibility as Union representatives.
- C. Having your affected employee give a testimonial at chapter meetings and during recruiting drives.

When an employee approaches us for assistance with an adverse or disciplinary action, there is much at stake. The employee could be facing removal with all of the ramifications that go with work place capital punishment. The employee may be facing a suspension with a loss of salary which could have a tremendous impact on the employee's financial life. Even with lesser forms of discipline the employee's reputation is at stake. It is important for us to listen carefully to the employee and provide whatever assistance we can. If the employee is a nonmember, and we decide that we will not represent them, we should still make sure they know the reasons why we are not representing them and explain their options. We can give employees back some power in a situation in which they often feel helpless. Because this is such a serious matter, you should consult with your chief steward or chapter president before undertaking representation of an employee.

Attachment 1

NTEU Chapter

(Agency)

Re: (your affected employee)

Dear _____:

I hereby designate NTEU as my representative in the matter of the [disciplinary/adverse action] which has been proposed in the letter dated _____ and received by me on _____. I request an [oral/written] reply. Please contact my representative, Mr./Ms. _____, NTEU Chapter [Steward/President] for a mutually convenient date.

Sincerely,

(your employee's signature)

Attachment 2

NTEU Chapter

(Agency)

Re: (affected employee's name)

Dear _____:

Pursuant to our right stated in the notice letter to Mr./Ms. _____ dated _____ and our right under 5 U.S.C. 7114(b), please furnish for inspection and copy all materials relied upon in proposing the (discipline/adverse action) and the following information:

[List additional information requested here]

[For each of the items you list provide a statement of the particularized need for the information]

If my request, in whole or in part, is denied, please inform me of the name and the position or title of the official making the decision to deny each item, and the statutory or regulatory basis on which the denial of each element is based.

Sincerely,

(Union representative signature)