

Values-Based Discipline

Gregg Guetschow

Ignoring a directive from his department head, a supervisor hires an additional staff member.

A police officer is charged with a felony for an off-duty assault.

A secretary uses confidential information to assist a family member.

An employee is arrested for selling drugs from city property.

A subordinate accuses a department head of sexual harassment.

Despite local government managers' best efforts in the recruitment, training, and supervision of employees, incidents like these do occur. Resolution of cases involving serious misconduct requires knowledge of the proper application of sometimes-conflicting court decisions covering immunity, due process, property and liberty interests, defamation, and other issues. Further complicating matters is the increasing likelihood that disciplinary proceedings that end in termination will be challenged in court.

There is an understandable tendency to approach serious discipline cases with an eye toward minimizing legal challenges. Avoiding litigation is an inadequate measure of success, however, when applied to the whole human resources picture. It is at least as important to establish and use practices that foster a productive work environment. Resolving a discipline case while advancing the long-term interests of the organization demands a broader perspective than is typically

applied in examining one discipline case alone. As manager of the city of Owosso, Michigan, I believe that a more constructive approach involves ensuring that the organization's labor relations practices harmonize with its values.

It is beyond the scope of this article to examine in depth the various laws and court cases with an impact on disciplinary investigations in my locality. But it will help us to consider the framework that Owosso has established within which to apply the city's values beyond service delivery into that most challenging area, employee relations.

Organizational Culture And Values

Discovering an organization's values does not call for the skills of a cultural anthropologist. But it is important to set aside any preconceptions about what those values *should* be. Those of us who have been involved in local government for a few years might be excused for believing that efficiency should motivate almost all of our actions; I suspect that in many organizations the values that foster pride in accomplishing meaningful outcomes take precedence over those oriented toward saving taxpayers' money.

The discovery of an organization's values requires an understanding of its history, work processes, leadership styles, and staff interactions. Interestingly, the investigation of incidents in which outcomes differ from expectations can offer subtle clues to matters of great importance in this regard. Because problems highlight conflicts between perceived and actual values, they can serve to provide a clearer understanding of an organization's culture.

An examination of Owosso's culture has led to our identifying four primary values that traditionally have guided service delivery but that are equally relevant to the practice of employee relations. These four values are:

1. Dependability: reliably meeting expected levels of service quality and

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adhering to established standards of conduct.

2. Fairness: impartial treatment of citizens and employees.
3. Professionalism: applying all relevant knowledge and skills to the provision of service or to the administration of labor relations.
4. Efficiency: the most effective use of limited financial, physical, and human resources.

The application of these four values, in this order of importance, directs our procedures for addressing violations of city policies and work rules by our employees. The most serious infractions are likely to involve the use of all of the following measures.

Confidentiality

One of the unfortunate consequences of working in the public sector is the loss of privacy. News media, complainants, citizens attending council meetings, and employees can all be expected to show curiosity over disciplinary cases involving public officials. As city manager, I expect to sacrifice a degree of privacy about employment matters that affect me personally. I do not agree that the same expectation applies to all public employees.

It is particularly important to avoid public statements that could prejudice an investigation or defame an employee.

After all, we are aware that an employee might well continue in our employ. I can recall several "open-and-shut" cases involving serious misconduct that collapsed during the investigation phase. Self-serving comments made in response to the pressures of addressing a challenging situation in a public arena are inconsistent with the values that promote employee morale and teamwork.

Fairness to the employee demands applying the highest level of confidentiality to all aspects of the disciplinary case. As a result, few people apart from those directly involved in an investigation will know about the actions being taken. While we might answer questions from the media about the duty status of an employee subject to an investigation, we never report the results of the investigation. If discipline results from a citizen complaint against an employee, we inform the citizen that appropriate action has been taken but not what that action was.

Suspension with Pay

While not all rule infractions result in a suspension with pay, those that are judged to be most serious and that could potentially result in termination of employment generally do arrive at this point. A suspension with pay removes an employee from a work environment where his or her continued presence could disrupt the workplace and impede the timely completion of an investigation. A suspension also permits the employer to take a more thoughtful approach to the investigation because the pressure to complete it and to discipline the working employee or minimize back pay has been relieved.

To pay an employee not to work can easily be misperceived by the council, public, and other employees. And there is no question that a suspension can be costly. One especially complicated investigation that I conducted took several months to complete, and the employee involved was suspended with pay for that entire time. Such an action might be inconsistent with efficient use of public resources, particularly as unpaid sus-

pensions are acceptable in some instances. Fairness, however, still requires suspension with pay until the investigation has been completed and discipline administered. Organizational values that favor fair treatment of employees over saving taxpayers' money must govern a procedure that, in its early stages, has not yet established guilt.

Investigation

The investigation phase of a discipline case highlights the first three of Owosso's principal values. Complainants and other employees must be assured that all allegations of rule violations will be investigated and that the investigation will be handled fairly in an attempt to discern the truth. Professionalism requires that all assumptions about guilt or innocence, even in light of past experience with the same employee, be set aside in favor of impartiality. Further, the investigation must be done as quickly and as rigorously as possible.

A professional investigation involves a decision about who is the most appropriate individual to conduct it. One of the first considerations is whether some or all of the task should be handled internally. Because of actual or perceived bias, the absence of the skills needed to complete a thorough investigation, or the lack of time to devote to completing it quickly, fair and professional treatment of the employee might require the use of outside investigators.

Even if an investigation is conducted internally, a decision must be made about who is most qualified to conduct it. Lower-level supervisors or department heads probably can handle minor rule infractions, but more serious matters require persons higher in the organization. In one of our cases, the employee relations director and I spent a month on an investigation that required interviewing every full- and part-time employee in a department. In another case, I was the only individual qualified to conduct an investigation that proceeded over several months. To devote such time makes the

completion of other work tasks difficult. Organizational efficiency, however, comes behind other values when conducting this phase of the disciplinary process.

Hearing

The Supreme Court's decision in *Cleveland Board of Education v. Loudermill* granted employees subject to suspension or termination for misconduct the right to a hearing on pending charges. The rigor that such a procedure requires is an important step in obtaining all information relevant to an investigation before dealing out discipline. Thus, Owosso has begun using the hearing in some cases not expected to result in a suspension or termination of employment.

When properly used, the elements of the hearing process—a written statement of pending charges, a reference to the rules violated, a description of possible discipline, the opportunity to present evidence—serve to advance the cause of a fair and professional investigation. If our purpose in conducting an investigation was to avoid legal challenges, this step in the process could become a rather perfunctory one. Our experience in Owosso, however, has demonstrated that concentrating on fairness and professionalism at this step has proven invaluable.

Information that we have received during our hearings has resulted in dropping some or all charges in certain cases, or in instituting discipline that was much milder than originally anticipated. While these outcomes have served the purpose of avoiding litigation, they also have helped to give a more favorable impression of the overall discipline process. An attorney representing an employee in one such hearing later commented to a colleague on the fairness of the city in handling disciplinary investigations.

Discipline

Once a hearing has been conducted, a decision is made as to what discipline, if any, is warranted. While most cases for which we have used these procedures

have appeared at first blush to warrant termination, only one employee has in fact been fired. In other cases, discipline has ranged from no action at all to suspension without pay for 30 days.

To value dependability is to assure that inappropriate conduct will generally result in discipline. Fairness requires that the punishment fit the crime and that, whenever possible, the discipline be an appropriate means of restoring the employee to work. In most cases in which we have focused on these values, discipline has gone unchallenged. In one instance, the spouse of an employee who received a lengthy unpaid suspension thanked me for my handling of the case.

Fairness and professionalism also require that we resist the temptation to use excessive discipline in an effort to satisfy complainants or the public or to set an example. In one recent case involving possible criminal activities by an employee, a law enforcement official from another jurisdiction requested information about our disciplinary proceedings and encouraged our termination of the employee. While cooperating with the investigation so as to achieve a felony conviction might have served the aim of resolving the employment issues we faced, it was contrary to everything we believed important about the way in which we handle personnel issues. We insisted on a subpoena for our disciplinary investigation file (it was never produced), and we resisted all attempts at influencing our decision. The employee was found innocent of the most serious charges against him and remains on our staff.

Grievance Arbitration

While we might wish that using a values-based disciplinary approach would yield perfect harmony in labor relations, the reality is that conflicts between individual and organizational values and legitimate differences of opinion still give rise to disputes. It is at the final step of the disciplinary process that we see a marriage of fairness and efficiency.

Not having a dispute resolution pro-

cess available in cases of employment termination increasingly means having to defend an action in court. To address such an eventuality, we in Owosso have adopted arbitration as the sole and exclusive remedy for employment disputes that might lead to termination for non-represented employees—mirroring the rights accorded to union members.

While arbitration is not without significant costs, it still is less expensive than relying on the courts. The setting for arbitration is less adversarial and can proceed faster toward a conclusion. Moreover, the use of a professional in the decision-making role lends a greater measure of fairness toward both parties in the dispute. All of these factors contribute to our seeing arbitration as a better fit with our values than the courts.

Value for Citizens

Using these procedures in the manner described can demand a lot of management time and resources. For Owosso, though, these approaches are consistent with an organizational culture that sustains, and is sustained by, a well-qualified and highly motivated workforce. Most important, the practice of these beliefs produces value for citizens, in the form of high-quality public services.

Clearly, all organizations will not adopt as their values the four principles that we have articulated. Nor should they. The values of an organization must reflect the unique culture of that organization. Otherwise, statements of values will be seen as little more than window dressing, and their application will fail to produce the desired results.

But if current values do not contribute to a work environment that respects employees, and if they fail to produce work quality of which employees are proud, then a locality might consider turning its efforts toward changing the culture of its organization. The disciplinary process could be a good place to start. **DM**

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