

The Loudermill Right: One of an Employee's Most Important Rights

More than 20 years ago, the United States Supreme Court issued a hugely important ruling to public sector employees. It stated that non-probationary public employees, who are facing discipline, are entitled to certain due process rights.

This case became known as the "Loudermill Right" and provides constitutional protection, even if an employees' contract does not mention this representational right. Loudermill mandates that public employees are entitled to an oral or written notice of charges or allegations made against them and that an explanation be given outlining the employer's evidence.

Besides the notification of those issues, it is primarily an opportunity for the employee (member) to meet with the employer's representative (or appointing authority) to offer its version of the circumstances prior to the employer making a final decision. At this time, the employer may consider on what level, if any, disciplinary action will be taken. Employees are given a choice of in-person presentation or the option to write a statement.

The formal letter advising the employee that discipline is being considered, and offering the opportunity for the employee to discuss or present his or her version and mitigating evidence, may be the first time the employee is even aware that certain allegations have arisen or that an investigation has been concluded.

The letter usually states that the employee may contact his union representative. The governing contract language may also state that the union representative will receive a copy of the letter. Stewards should counsel any employee who approaches them with a question about such a letter to immediately contact the union representative.

Within the Loudermill decision, are elements that reinforce how important it is for employees to have notice, disclosure and the opportunity to defend themselves against charges in which the employer may decide to use severe disciplinary sanctions, including the loss of employment. The Loudermill Right is based on these five components:

1. Property Right — Non-probationary public servants are considered to have a property right to their employment and can only be terminated for cause, a standard also applying to other levels of discipline, but not to reprimands.



2. Due Process — If one's employment is a property right, the employee must have proper notice and an opportunity for a hearing, before he or she is deprived of any significant property right.

3. Employee's Case — There are limits to the employee presentation during a Loudermill hearing. The meeting usually involves a manager from the human resources department

and one at the highest program administrator level. The employee does not have an opportunity to cross-examine other people involved, or who may have given a witness statement in the investigation. Prior to the hearing, the employee needs to prepare their case presentation with the union staff. This will include decisions about the role each will play. The statements and information are important to emphasize as mitigating information.

4. Before Final Decision — Following the common understanding of due process, the hearing, or written explanation from the member must occur prior to the final decision on discipline (termination, suspension or demotion). Even if the original letter cites termination as the contemplated decision, the hearing is a unique and extremely important opportunity to present all rationale for the employer to dismiss, an erroneously-based investigation and therefore, its contemplated discipline. Or, at the least, the employee may provide such explanation that will cause the original sanction to be reduced.

5. Hearing Check Against Mistakes — The Loudermill "hearing" sounds like more of a formal process than it usually is. The courts use this hearing to fulfill due process rights. The goal of the meeting is to verify truth of the allegations, and whether or not the anticipated level of discipline can be substantiated and then justified.

Remember, the member needs to contact his or her union representative if he or she receives a disciplinary letter, and work closely with union staff to craft both explanation and defense. More information about this can be found in the Local 17 Steward Resource Guide. — *By Kathy Cunningham, Local 17 Union Representative*