



OREGON STATE POLICE

Professional Standards

Presented by: (Jeff Hershman, Captain)

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What is expected

- Our practices are legal
- We adhere to constitutional standards
- We have policies that reflect these legal practices
- We hold ourselves accountable to the above



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What's the Goal

- Provide effective guidance to our officers so their actions are within policy and law
- Identify, correct and prevent conduct that falls outside of policy or law



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Discipline Process

- Generally starts with an allegation or complaint which is contrary to:
 - Criminal law
 - Department policy, rules, or procedures



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Allegations

- Allegations/complaints arise externally from the public or partner agencies or,
- Internally from Department members. They also arise internally from review of high risk events such as pursuits or use of force.



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External Complaints

- Accepted from all sources including anonymously.
- On average 63% of all complaints are received from external sources (citizens/partner agencies).



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Internal Matters

- Internal allegations arise from employees bringing forward concerns.
- They also arise from internal reviews by supervisors of high risk events such as pursuits and use of force incidents.



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Internal Matters

- On average the Department's internal matters comprise of 37% of all personnel investigations.
- Internal and external complaints trigger a personnel investigative process.



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Allegations trigger a process

- Process conducted in consideration of:
 - Criminal law
 - Collective Bargaining Agreement (Just Cause)



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Personnel Investigation Process

- Allegations trigger a process:
 - Intake of the information
 - Tracking of the complaint
 - Assessing complaint appropriately (criminal vs. policy)
 - Investigating thoroughly
 - Disposition of the complaint
 - Notifying the complainant that process completed



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Personnel Investigation Process

- Complainants are interviewed
- Witnesses are interviewed
- Sources of information are reviewed
(police reports/video/MDT records)
- Evidence is gathered



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Personnel Investigation Process

- Subject employee has procedural rights afforded from the constitution and the collective bargaining agreement.
 - Interviews involving criminal allegations are done in consideration of the 5th Amendment right to remain silent
 - Interviews involving alleged policy violations are conducted after employee is provided with collective bargaining rights



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Personnel Investigation Process

- Employee is afforded the opportunity to consult with a union representative.
- Department CBA provisions are observed including providing the employee with the investigative file prior to an interview



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Personnel Investigation Process

- Finding of Fact is prepared regarding the allegations.
- Allegations are sustained or not sustained
- Preponderance of the evidence (51%)



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Personnel Investigation Process

- OSP has a separate decision maker (command level) review the personnel investigation.
- Discipline decision maker is independent of the investigation and finder of fact.



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Discipline Decision

- Must be made in consideration of legal rights of employee
- Just Cause
- Range of discipline (consistency)



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Levels of Corrective Action

- Informal Steps
 - Counseling/Letter of Instruction
- Formal
 - Verbal Reprimand
 - Written Reprimand
 - Economic Sanction
 - Termination



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Termination Phase

- Pre-dismissal meeting
 - Due process step to allow consideration of mitigating information and/or alternative facts

Termination Decision



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Arbitration Phase

- Union decides whether to file a grievance to initiate the arbitration process
- Union and Department select an arbitrator from a random list of qualified arbitrators generated by the Employment Relations Board (ERB).

Union and Department go through a strike through process to mutually select an arbitrator from the list provided by ERB.



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Arbitration Process

- Arbitration hearing is conducted.
- The arbitration hearing is an evidentiary process that includes sworn testimony and written documentary evidence.
- Legal briefing concludes the hearing and the arbitrator evaluates the evidence in consideration of the Just Cause Standard.



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Just Cause – Legal Standard

1. Was the employee forewarned of the possible disciplinary consequences?
2. Is the rule or policy reasonably related to orderly, efficient or safe operations?
3. Was the matter investigated before taking corrective action?
4. Was the investigation fair and objective?



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Just Cause – Legal Standard

4. Is there sufficient evidence that would lead a prudent person to conclude employee committed the act(s) as alleged?
5. Has the employer applied its rules, orders and penalties even-handedly and without discrimination?
6. Was the corrective action reasonable in light of the seriousness of the conduct and employee's past record?



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Impacts of Arbitration Process

- Uncertain outcomes challenge employer to settle matters to ensure employee accountability
- Overturned decisions can undermine management efforts to correct or change behavior in particular cases and Department wide.
- Burden of proving Just Cause is on the employer as opposed to proving discipline was appropriate in light of public policy



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OSP and Arbitration 2017-2020

- Five arbitrations regarding disciplinary decisions:
 - Three arbitrations resulted in management's discipline decision being upheld
 - One resulted in the discipline decision being overturned and no discipline was allowed by the arbitrator.
 - One waiting for arbitrator decision



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