3.15 CIVIL SERVICE BOARD

Meetings and Quorum

The Civil Service Board (Board), consists of three commissioners under City Charter section 4-104. The Board selects one of its members as presiding officer. The Board shall meet at such times and places as are specified.

Two members of the Board shall constitute a quorum and the votes of any two members concurring shall be sufficient to make a decision.

The City shall provide to the Board sufficient staff and legal assistance, meeting space, supplies and equipment to conduct its business, in accordance with City budget procedures.

Administrative Duties

1. It shall be the duty of the Board to hold such hearings as it finds necessary in order to perform the duties and responsibilities vested in it by City Charter.
2. Where the Director of Human Resources denies an appeal because of lack of jurisdiction, the Board may hold such meetings as are necessary to determine whether the Board has jurisdiction over the appeal prior to scheduling a formal or expedited hearing. If the Board denies the appeal on this basis it shall notify all affected parties in writing of its decision and that the decision is subject to court review as set forth below in this Administrative Rule.
3. Where the Board, on its own motion or the motion of one of the parties to the appeal, determines the appeal involves legal issues that should be resolved prior to a formal or expedited hearing, the Board may schedule a hearing for the sole purpose of resolving those legal issues. Hearings held for this purpose are non-adversarial and the provisions below concerning burden of proof and burden of going forward shall not apply.
4. It shall also be the duty of the Board to submit reports as requested by City Council regarding the activities of the Board as they pertain to the application of merit principles in City personnel administration.

Filing of an Appeal

Appeals must be filed in accordance with this Administrative Rule. Appeals shall not be considered filed until received by the Board Secretary.

Appeals from Suspensions, Demotions and Discharges

Subject to these rules on Hearings and Appeals, the Board shall review the suspension, demotion or discharge of a permanent employee, where the employee alleges that the discipline was for a political or religious reason, was not for cause or was not made in good faith for the purpose of improving the public service. Unless otherwise provided by a collective bargaining agreement, any permanent employee in the classified service who is suspended, demoted or discharged, shall have the right to appeal the action to the Board.

1. The employee so disciplined must file a written appeal with the Board within ten (10) days from the effective date of the disciplinary action. The appeal must contain a detailed statement specifying:

   (a) The action being appealed.

   (b) The reasons why the employee believes the action was for a religious or political reason, was not in good faith for the purpose of improving the public service or was not taken for cause.

2. The Secretary to the Board shall serve the appointing authority concerned and the Director of the Bureau of Human Resources with a copy of the written appeal.

3. Where a collective bargaining agreement provides a right of appeal to the Board concerning the discipline, and as an alternative, the right to file a grievance under the labor agreement's grievance clauses, an employee who grieves the discipline shall be deemed by that action to have elected to utilize the labor agreement's grievance alternative, and no appeal to the Board after that election shall be allowed.

Appeals from Classification Actions

Subject to these rules on Hearings and Appeals, the Board shall review appeals of classification actions taken by the Director affecting an employee in the classified service, where such action was alleged to be without rational basis or contrary to law or rule promulgated by the Director for classification or taken for a political reason.

Unless otherwise provided by a collective bargaining agreement, any employee adversely affected by a change in classification or whose request for a change in classification was denied, and any appointing authority who disagrees with a classification decision by the Director, may have the final decision of the Director reviewed by the Board.

1. To obtain Board review, the employee affected, or in the event of an appeal by the employing bureau, the appointing authority involved must file a written appeal with the Board. The appeal must contain a detailed statement specifying:

   (a) That the employee or appointing authority had filed with the Director a written request for reconsideration of the Director's classification action within ten (10) working days after the effective date of the classification action

   (b) The date of the Director's written decision denying the employee's or appointing authority's request for reconsideration;

   (c) The reasons why the employee or appointing authority believes the action was without a rational basis, or contrary to a provision of rules promulgated by the Director for classifications, or law or was for a political reason.

(d) The corrective action being requested.

2. The written appeal to the Board must be filed within seven (7) calendar days from the Director's written decision to deny the request for reconsideration.

Appeals from Examinations

Subject to these rules on Hearings and Appeals, the Board shall review appeals of candidates for appointment or promotion to a position in the classified service, where the candidate alleges that the Director's decision was contrary to rules promulgated by the Director for examinations, or that the decision was contrary to law or for a political reason. The Board shall not have jurisdiction over any examination appeal where the sole basis of the appeal questions the appointing authority's right to exercise the "rule of five" contained in Chapter 4 of the City Charter in selecting a candidate for appointment or promotion.

1. If the candidate is not satisfied with the decision of the Director Of Human Resources, that candidate may appeal to the Civil Service Board. The appeal must be in writing and must contain a detailed statement specifying:

   (a) That the candidate had filed with the Director a written appeal of examination results within ten (10) working days after notice of the results;

   (b) The date of the Director's written decision after such appeal;

   (c) The reasons why the candidate believes that the decision by the Director was contrary to rules promulgated for examinations, or that the decision was contrary to law or for a political reason;

   (d) The corrective action being requested.

2. The written appeal to the Board must be filed no later than fifteen (15) calendar days after the Director's decision is mailed.

Notice of Hearings

Time and Place of Hearings. The time and place of hearing will be set by the Board or the Board's designated Hearings Officer and notice thereof served by the Board upon the employee affected, the employee's representative, if any, the Director of the Bureau of Human Resources and the Director of the Bureau involved.

Postponements. Any party who desires a postponement shall promptly, upon receipt of notice of the hearing, make written request of the Board or the Board's designated Hearings Officer for such postponement stating the reason therefore in detail. For reasonable cause shown, the Board or Hearings Officer may grant such postponement and may, at any time, order a postponement upon its own motion. In the absence of extraordinary circumstances the Board or Hearings Officer will not allow more than one postponement.

Type of Hearing

Upon receiving an appeal, the Secretary to the Board shall inform the appellant of the choice between an expedited hearing and a formal hearing. The appellant shall have 14 calendar days in which to exercise their choice by communicating that choice in writing to the Secretary to the Board. Failure to elect the type of hearing in the allotted time will result in the scheduling of an expedited hearing.

Expedited Hearing

1. Appellants will be notified of the hearing date as soon as possible following the appellant's notice of a request for an expedited hearing to the Secretary of the Board. Expedited hearings will receive priority for scheduling over formal hearings. There will be at least fourteen (14) days notice prior to any hearing date.

2. Expedited hearings shall be informal in nature.

3. No party may be represented by legal counsel at an expedited hearing.

4. Each party shall be allowed up to 90 minutes to present its case, including presentation of witnesses, response to the other party's arguments and questioning the other party's witness. The Board, at its sole discretion, may extend the time limits for either party.

5. Documents to be considered by the Board must be provided by the parties to the Board Secretary 14 calendar days prior to the date the Board is scheduled to hear the appeal. Documents not received by the Board 14 calendar days prior to the scheduled hearing date will not be considered. The Board, in its sole discretion, may waive this requirement at the hearing upon good cause being shown.

6. Expedited hearings will normally be open to the public. In disciplinary cases, the Board shall excuse all persons from the hearing room except its staff, the parties and their representatives, if a determination has been made by the employee affected to have the case heard in executive session pursuant to ORS 192.660 (1) (b) of the Public Meetings law.

7. At the conclusion of the hearing, and deliberations as necessary, the Board shall normally render a "bench" decision which will be recorded in the minutes of the Board meeting. The Board shall either grant or deny the appeal. See section below on post-hearing remedies.

Formal Hearing

1. Formal hearings shall be scheduled for initial calendaring as a second priority after expedited hearings. There will be at least sixty (60) days notice prior to any hearing date.

2. Either party may be represented at the hearing by legal counsel.

3. Documents to be considered by the Board must be provided by the parties to the Board Secretary and the other parties 30 calendar days prior to the date the Board is scheduled to hear the appeal. Documents not received by the Board

30 calendar days prior to the scheduled hearing date will not be considered. The Board, in its sole discretion, may waive this requirement at the hearing upon good cause being shown.

4. Each party must provide the Board and the other parties with a proposed list of witnesses including the general topic of the issues that will be addressed 14 calendar days prior to the hearing date.

5. General Hearings Procedure:

   (a) The Board will open the hearing with a brief introduction of the parties and issues.

   (b) In disciplinary cases, the Board shall excuse all persons from the hearing room except its staff, the parties and their representatives, if a determination has been made by the employee affected to have the case heard in executive session pursuant to ORS 192.660(1)(b) of the Public Meetings Law.

   (c) The parties or their representatives may make opening statements.

   (d) The parties or their representatives may present evidence in support of their respective positions. Opposing parties will be allowed to cross-examine witnesses.

   (e) Parties may make closing statements. However, in disciplinary cases, a party may request to file a post-hearing memorandum and such request shall not be arbitrarily denied. The Board may set limits on the size, length and scope of post-hearing memoranda to be filed, as the Board deems reasonable and appropriate for the case.

6. Oaths and Subpoenas. The Board may compel the attendance of witnesses and the production of documents through issuance of subpoenas, either upon its own motion or upon application of a party in writing and good cause being shown. The application must set forth the name of the witnesses and the general relevance and reasonable scope of the evidence sought. The Board's designated presiding officer shall administer the oaths to every witness.

7. Conference During and Prior to Hearings. During or prior to any proceeding, the Board may, at its discretion, call the parties together for a conference or may recess the hearing for such conferences to resolve undisputed or procedural matters. The results of such conference shall be summarized on the record.

8. Stipulations of Facts and Issues. To expedite the proceedings, the parties are required to confer before the hearing for the purpose of stipulating to agreed upon facts and issues involved in the controversy. Such stipulations shall be binding upon the parties and may be used as evidence in the case.

9. Proposed Findings of Fact and Conclusions of Law. Following the conclusion of the hearing the Board may at its discretion require the prevailing party to serve proposed findings of fact and conclusions of law upon the Board and to all other parties within 14 calendar days. The opposing party will have 14 calendar days after service to respond in writing to the proposed findings of fact and conclusions of law to the Board and the prevailing party. See section below on post hearing remedies.

10. Continuances. On the motion of a party, or on the Board's own motion, if it appears that further testimony or argument should be received, the Board may in its discretion continue the hearing. The date of such continued hearing may be fixed at the time of hearing or by later written notice to the parties.

Use of Hearings Officers

The Board shall be empowered to refer an appeal to a Hearings Officer who will conduct the appeal process in accordance with this Rule. The Director of the Bureau of Human Resources shall upon request provide the Board with a list of Hearings Officers who shall be qualified individuals known to be committed to the principles of a merit-based system of employment. For inclusion on the list, persons must be specialists in the field of employee relations, or members of the Oregon State Bar Association or the American Arbitration Association.

Any amount or method of compensation of the Hearings Officer shall be prescribed by the Director, subject to Council approval and funding.

Except where expressly otherwise provided in these rules, all provisions of these rules pertaining to the duties and authority of the Board in the conduct of appeals hearings shall be fully applicable to the Hearings Officer.

Burden of Proof in Appeal Hearings

In a hearing on an appeal from a suspension, demotion or discharge, the appointing authority or designee shall have the burden of proof and the burden of going forward with the evidence. In appeals concerning classification actions and exams, the party filing the appeal shall have the burden of proof and the burden of going forward with the evidence. The party who has the burden of proof shall present its case first.

Standard of CSB Review in Expedited and Formal Hearings

Disciplinary Cases. In such hearings, the Board will apply the "reasonable employer" standard to determine first whether the employee's conduct warranted discipline, and second, if so, whether the discipline imposed for the offense was objectively reasonable.

Classification Action Appeals. In appeals from classification decisions, the Board will review the Director's decision to determine whether the decision, as alleged by the appellant, was without a rational basis or contrary to law or rules promulgated for classifications or taken for political reason.

Examination Appeals. In appeals concerning the examination process, the Board will review the Director's decision to determine whether the decision, as alleged by

the appellant, was contrary to rules promulgated for examinations, or was contrary to law or for a political reason.

The Standards of Review are set out in Appendix A to these rules.

Conduct of Witnesses, Parties and the Public During Hearings

All parties, their representatives, witnesses and spectators shall conduct themselves in a respectful manner. Demonstrations of any kind will not be permitted. Failure to comply with this rule or with the Board's effort to maintain order and proper decorum are grounds for removal from the hearing. Refusal of a witness to answer any question ruled to be proper shall, in the discretion of the Board, be grounds for striking all testimony previously given by the witness.

Post Hearing Procedures

Board Decisions. Decisions of the Board shall in all cases be based solely on the record made at the hearing and on applicable law and other legal authorities, relevant to the dispute. When the Board has not appointed a Hearings Officer, Board decisions, except in expedited cases, shall be issued as follows:

(a) At the conclusion of hearings in appeals from suspensions, demotions and discharges, the Board shall state the time in which a written decision will be issued. The written decision shall include Findings of Fact, Conclusions of Law and the Board's Final Order. The Board can issue a preliminary decision by voice vote.

(b) Decisions on appeals concerning examination and classification appeals may be made by a voice vote of the Board at the conclusion of the hearing, provided that in the event the Board sustains the appeal in whole or in part and provides a specified remedy, the Board shall issue a written decision within fifteen (15) working days following the hearing.

(c) In all appeals of classification decisions by the Director of Human Resources, the Board shall issue a written decision within fifteen (15) working days following the hearing.

Recommended Order of the Hearings Officer. In matters referred to a Hearings Officer, a Recommended Order shall be served on the parties and filed with the Board within the time periods specified in the section above on post hearing procedures. Where applicable, the Recommended Order shall include Rulings on Motions and Evidentiary Matters, Findings of Fact and Conclusions of Law.

Board Decisions on Recommended Orders. Board review of Recommended Orders is limited to the hearing record and applicable law. The Board may adopt a Recommended Order by voice vote. If the Board rejects or requires modification of the Recommended Order, the Board shall base its final decision upon a review of the hearing record and shall issue a written decision within 15 days of its determination to reject or modify the hearings officer's received order.

Effect of Board Decisions. Board decisions are final and binding on the parties, subject to the appeal process outlined below.

Appeal of Board Decisions. The final decision of the Board shall be subject to review by the circuit court in the manner provided by statute for review of quasi-judicial decisions of lower tribunals.

Post Hearing Remedies

Classification Action Appeals. If in an appeal from a classification decision by the Director, the Board concludes that the allegations in the appeal are correct, the Board shall set aside the classification decision and remand the decision back to the Director of the Bureau of Human Resources for further review. The Board's order of remand shall specify and explain the reasons for the Board's action.

Examination Appeals. If in an appeal concerning the examination process, the Board finds the allegations in the appeal are correct, the Board shall order such action as it deems necessary to fulfill the purposes and principles of the Administrative Rules on examinations and of Chapter 4 of the City Charter.

Appeals from Suspensions, Demotions and Discharges. If the Board finds that the discipline was warranted, the Board shall confirm the action taken. If the Board finds that some discipline was warranted, but that the discipline imposed was too severe, the Board may reduce or otherwise modify the discipline to a level it deems appropriate for the offense and reinstate the employee with or without back pay upon such terms and conditions that the Board may establish. If the Board finds that no discipline was warranted, the Board shall reinstate the employee with back pay and with those fringe benefits which were lost as a result of the discipline. Deductions for unemployment compensation and other interim income received shall be ordered as determined by the Board.

Record of Proceedings

The record of each appeals hearings shall include but not be limited to:

1. A statement identifying the dispute;
2. All written materials offered to the Board, unless withdrawn by the offering party with the approval of the Board or Hearings Officer;
3. The Hearings Officer's Recommended Order if applicable;
4. The Board's final written decision or when allowed by the rules, oral statements of the Board's decision;
5. The recording of the hearing, which shall be either a verbatim written record or mechanical recording.

Administrative Rule History

Adopted by Council March 6, 2002, Ordinance No. 176302
Effective April 5, 2002

APPENDIX A

I. The Standard of Review

The following is a discussion of the "standard of review" which will apply to Civil Service Board (Board). Included is a review of the State Personnel Law which the Charter language in question is based upon, and of the Employment Relations Board decisions which the Board will be able to rely upon in performing its appellate function.

1. Classification Action Appeals

Section 4-106 of the revised Charter provides in relevant part:

"Section 4-106. Duties of the Board. The duties of the Board shall be:

(1) Review any classification action taken by the Director affecting an employee in the classified service, where the employee alleges such action to be without a rational basis or contrary to law or rule or taken for political reason. The Board shall set aside such action if it finds these allegations to be correct and remand the decision to the Personnel Director for further review." (emphasis added)

The language above quoted which defines the Board's authority, was based upon and is, in essence, the same language found in ORS 240.086 which governs the power of the Employment Relations Board (ERB) in reviewing classification appeals by employees of the State of Oregon. In relevant part, ORS 240.086 provides:

"The duties of the [ERB] shall be to:

(1) Review any personnel action affecting an employee who is not in a certified or recognized appropriate collective bargaining unit, that is alleged to be arbitrary, or contrary to law or rule, or taken for political reason, and set aside such action if it finds these allegations to be correct." (emphasis added).

The Employment Relations Board decision which applies and discusses the operative language in ORS 240.086, which is quoted and underscored above, is in the case of Gladys Patterson v. Department of Fish and Wildlife, ERB Case No. 1431 (December 1983). About its authority, ERB says the following:

"This is the first position allocation [reclassification] appeal from a classified state employee to come before this Board since extensive amendments to state personnel law by the 1979 Legislative Assembly***. Unchanged by the amendments, however, were the grounds on which this Board may review personnel actions, namely that such actions be 'alleged to be arbitrary or contrary to law or rule or taken for political reason***.' ORS 240.086(a). Appellant here appeals to us on the ground that Respondent's action in refusing her request for reclassification to accounting Clerk 2 was arbitrary.***

It is not for this Board to decide whether Respondent's decision in allocating Appellant's position was the correct one (i.e. whether we would have selected a different classification), but rather whether there is a rational basis to support the decision which respondent has made. This is the test of 'arbitrariness' which we have followed pursuant to Paul v. Personnel Division***. The court there said:

'The word "arbitrary" is not a catchall provision. It may not be used as the vehicle for a policy decision. Rather, it applies to action which is taken without cause, unsupported by substantial evidence, or non-rational. Its typical application is in cases where there is no evidentiary basis for the challenged personnel action.'

There is here a rational, evidentiary basis for respondent's decision that Appellant's position should be classified as that of Accounting Clerk 1***." (pages 7-8) (emphasis added)

Along the same vein, in a more recent reclassification appeal, Barbara Rice v. Corrections Division, ERB Case No. 1475, (1985) the ERB said the following about its appellate role:

"Accordingly, this Board consistently has held that an agency classification decision will be upheld unless there is no evidentiary basis to support it. Gladys Patterson v. Department of Fish and Wildlife, Case No. 1431 (1983); Ruth Haucke v. Employment Division, Case No. 1075 (1981). In other words, the agency will prevail unless the evidence is so slim as to require a directed verdict for the appellant were the matter being tried before a jury." (page 8)

In addition to hearing appeals concerning classification matters, it is also ERB's duty to hear appeals by non-union State employees in discipline cases. The ERB applies the "no reasonable employer" standard, but only in the disciplinary cases. Brown v. Oregon College of Education, 52 OR App. 251 (1981). Disciplinary appeals are discussed in further detail below. The important point here is that there is a major difference between the "no reasonable employer standard" applicable in disciplinary appeals, and the "without a rational basis" or "on an arbitrary basis" test applied by the ERB (and to be applied by the Civil Service Board) for classification appeals.

The primary distinction between the two tests is the extent to which the Board or the ERB may substitute its judgment for that of management where there is evidence to support management's position. As the ERB explained in Gladys Patterson v. Department of Fish and Wildlife, supra, a classification decision by the employer must be "upheld unless there is no evidentiary basis to support it." In other words, if there is some evidence to support it, the decision must stand. As also further explained above, the standard for classifications appeals may not be used by the ERB or the Board as the vehicle for a policy decision. Classification policy is for the employer. Gladys Patterson v. Fish & Wildlife, supra.
As previously mentioned, a further explication of the "no reasonable employer" standard appears in Part II of this report below.

2. Examination Appeals

City Charter Section 4-106 provides that the duties of the Board shall be:

"(3) Review appeals by candidates for appointment or promotion to positions in the classified service, where the applicant for appointment or employee/ candidate for promotion alleges that the Director failed to follow rules promulgated by the Director under this Chapter for selecting candidates for appointment or promotion to classify positions. If the Board finds the allegation to be correct, the Board shall order such action as it deems necessary to fulfill the purposes and principles of this Chapter." (emphasis added)

Section 4-503 on Examination Appeals also provides:

"1. Any person aggrieved by the Director's decision in the examination process for appointment or promotion to a position in the classified service must be given, at the candidate's written request, a reasonable opportunity to be heard thereon by the Director.

2. Any candidate for appointment or promotion, aggrieved by the Director's decision on the appeal referred to in Subsection 1 above, is entitled to have that decision reviewed by the Board if the employee submits a written request to the Board for such review not later than fifteen (15) days after the Director's decision. The request must allege that the decision by the Director was contrary to rules promulgated for examinations, or that the decision was contrary to law or for a political reason."

(emphasis added)

The standard for examination appeals contains only "half" of the standard to be applied for classification appeals. Specifically, the sole issue for the Board will be whether the Director's decision was "contrary to rules promulgated for examinations, or...was contrary to law or for a political reason." Thus, if the Director did not violate any rules promulgated for examinations, or some law (example, ORS 659.030 prohibiting race discrimination) and if the decision was not for a "political reason" (the "political patronage" rule), the Director's decision must stand.

The "standard of review" for examination appeals is purposefully abbreviated because the pre-employment selection process of examinations is primarily, if not solely, an administrative function. In its expertise the Board has observed that the great majority of examination appeals are an expression by a candidate who did not do well on the test of unspecified frustration or understandable dissatisfaction with the outcome. Few candidates identify any specific Board rule or policy violation. Further, it is a rare occasion that the Board has found it necessary to re-do the entire examination. The "standard of review" appearing in Chapter 3-050 of these Rules was written in light of this experience. Accordingly, in the event the Board finds a rule violation, it will have the latitude to fashion a remedy which fits the situation. Only the rare serious rule violation has deprived one or more candidates of a fair and equal opportunity for employment or has brought into question the integrity of the entire process. Even where a procedural error was found, it has rarely been necessary for the Board to invalidate the entire test and require all candidates to re-apply. Again, the rule will allow the Board to fashion the appropriate remedy for the particular rule violation, if any is found.

3. Disciplinary Action Appeals

Since the case of Sherris v. City of Portland, supra, the Civil Service Board has endeavored to determine whether the discipline imposed was "for cause." The Board is edified by the approach of the Employment Relations Board in reviewing disciplinary appeals in the State's "merit system." The ERB applies the "no reasonable employer" standard. In Oregon School Employees Association v. Klamath County School District, 9 PECBR 8832 (August, 1986), the ERB said the following about the "no reasonable employer" standard.

> "***In judging discipline cases under the State Personnel Relations Law, this Board applies a 'no reasonable employer' standard, as explicated by the Court in Brown v. Oregon College of Education, 53 Or App. 251 (1981). We also have applied that standard in cases under the Public Employee Collective Bargaining Act (PECBA) to modify discipline and to reverse a discharge. We believe that the reasonable employer's standard comprehends the generally-accepted elements used by arbitrators or others in making just cause determinations. Consequently, when confronted with (1)(g) complaints concerning 'for cause' discipline questions, this Board will use the reasonable employer standard to determine: first, whether the employee's conduct warranted discipline, and second, if so, whether the discipline imposed for the offense was objectively reasonable." Brown, supra, 52 Or App. at 260. (page 8850) (emphasis added)

Quoting from the Brown case, the ERB gave the following overview of the "no reasonable employer" standard:

> "There is no explicit and comprehensive recipe that describes the traits of the reasonable employer. The ingredients must be discerned, and sometimes inferred, from a variety of sources. The Oregon Legislature, courts and this Board have enunciated some of the traits possessed by the reasonable employer; for example, it:
>
> "Does not take action based on political, religious or racial reasons, or because of sex, marital status, or age;
>
> "Disciplines in good faith and for cause;
>
> "Does not impose sanctions disproportionate to the offense or discipline for inconsequential offenses;
>
> "Considers the employee's length of service and prior service record, warns employees about what

conduct is improper and generally is consistent in applying disciplinary sanctions;

"Takes disciplinary action in a timely manner;

"Gives an employee who is being dismissed notification of the charges against him and of the kinds of sanctions being considered, and at least an informal opportunity to refute the charges to someone authorized to make or effectively recommend the final decision;

"Bears the burden of proving all elements necessary to justify the discipline exacted; and

"Adopts and enforces reasonable regulations governing the work and conduct of its employees and imposes appropriate forms of discipline where it has good cause.

"My own experience in the field of employment relations and a review of some literature in the field lead me to conclude that the reasonable employer also incorporates other traits. For example, it:

"Makes a fair and objective investigation before administering discipline, except in extraordinary circumstances; obtains substantial evidence before imposing sanctions; uses progressive discipline, except where the offense charged is gross or the employee's behavior probably will not be improved through such measures; and does not, through its own actions, exacerbate disciplinary problems." Brown at 8-9; footnotes omitted. (pages 8851 and 8852)

As ERB's decision above quoted indicates, the principles of "progressive discipline" have relevance in the "no reasonable employer" standard. On this score, a significant case is Oregon School Employee's Association, Chapter 89 v. Rainer School District 13, ERB Case No. UP-85-85 (appeal to Court of Appeals pending), wherein the ERB said the following about "progressive discipline":

"Complainant argues that Gamble's termination was not justified because the District failed to use progressive discipline. The Contract does not specify what progressive discipline steps, if any, are required. This Board has previously held that the 'reasonable employer' used progressive discipline 'except where the offense charged is gross or the employee's behavior probably will not be improved through such measures.' But the concept of progressive or corrective discipline as a component of just cause, does not require an employer to follow some lock-step progression of disciplinary measure before it may legitimately discharge an employee. Where a contract is silent concerning any requirement for specific disciplinary steps, the progressive discipline component of just cause may be satisfied by corrective measures that put the employee on notice that further misconduct may result in the discipline ultimately imposed and that give the employee a reasonable opportunity to modify his behavior. Gamble was warned in writing that his chronic tardiness could lead to dismissal ('gravest consequences'). The changes in his hours of work and the time clock requirement, although not normally regarded as disciplinary measures, were imposed by the supervisor in an attempt to correct the tardiness problem. We find that the warnings given to Gamble and the opportunity provided him to correct his behavior were sufficient to comply with the contractual just cause requirement." (pages 25-26).

CONCLUSION

Whereas the appellate jurisdiction and authority of the Board will be limited in classification and examination matters, the Board's authority in disciplinary cases will remain substantial. Since the "no reasonable employer" standard embodies the principles of "just cause," there is a body of ERB decisions, and decisions by arbitrators nation-wide, court decisions concerning employee discipline and arbitral treatises on employee discipline such as Elkouri and Elkouri's How Arbitration Works, 4th edition, which are appropriate for the Civil Service Board to refer to when reviewing discipline cases.