Case #1

The grievant has worked for 12 years for the city's public works department. His division primarily makes traffic signs for the city.

In June, the police discovered a number of signs on property owned by the grievant. The grievant admitted that he had made the signs from pre-cut metal blanks and lettering that was owned by the city. The city discharged the grievant for violating City Ordinance #962-92, which reads:

> *Theft or removal from City locations, without proper authorization, of any City property or property of any employee...may result in discipline up to and including discharge.*

In July, the public works department holds a mandatory meeting for all employees. Management announces that they will offer a 2-week amnesty period whereby any employee could return City property without discipline.

The union, then, grieves the discharge. At the hearing, the union produces 7 senior employees who testify that workers regularly manufacture personal signs in their free time and use City equipment and materials. In fact, when the amnesty period was in effect, a truckload of city materials was returned. This supports the past practice argument that personal sign making was a common practice. The grievant was singled out and unfairly punished for an accepted past practice.

The city argues that the grievant violated an ordinance and that the city was unaware that employees were routinely misusing and stealing city materials.

Do you uphold the discharge?

Past Practice

Arbitrator 1: YES – lack of enforcement. Should put supervisor on stand that said he knew about it & let it go.

Arbitrator 2: NO – City should have known

Arbitrator 3 – YES – no acceptance by the city

Arbitrator 4 – NO – Past practice doesn't play a part. Disparate treatment is a problem. Gave amnesty to others but not the grievant.

Case # 2

This city operates several reservoirs for itself and surrounding villages. One of the pumping stations needed to be renovated, and the renovation involved the dismantling of a high voltage switch yard.

Contract Interpretation

Arbitrator 1 – NO – union has to

To keep the station running, the city brought in generators. To keep these generators working, the city needed maintenance personnel to be present around the clock.

Two of the electrical maintenance technicians brought this grievance. Their normal work times were 8 a.m. to 4 p.m. For 21 days, while the station was being renovated, the city assigned these technicians to hours different than 8 to 4. The City covered the Monday through Friday maintenance schedule by creating a 3-shift day, as opposed to a one-shift day.

The city defended its decision based on this contract provision:

> ***Management Rights***. *Management retains the right to make non-standard work hours or shift changes.*

The union filed a grievance, on behalf of the 2 technicians, based on this provision:

> *The Employer shall not vary or rearrange work schedules to avoid the payment of overtime. The Police Department may vary or rearrange work schedules of unit employees to accommodate court appearances and shall not be considered varying or rearranging schedules to avoid the payment of overtime.*

The union also cites this provision, which applies to the technicians:

> *Employees in this class work a conventional (8 a.m. to 4 p.m., Monday through Friday) work week subject to 24-hour call back for emergencies.*

At the hearing, two mangers with the city testify that they altered the shift schedule for "operational needs" and "management efficiency." If the 21 days had been covered with normal shift schedules, the city would have paid 1000 hours of overtime during the 3-week period.

The union produced two witnesses who recalled specific projects requiring 24-hour coverage and that the coverage was provided through overtime instead of schedule

prove violation. Management rights. Did it prove the employer avoided overtime?

Arbitrator 2 – YES – need more information. Did they do it to avoid overtime?

Arbitrator 3 - YES

Arbitrator 4 - YES

Arbitrator 4 – YES – specific language modifies managements rights which is general.

changes.

Do you award the overtime for the two electrical technicians?

Case #3

This employee, an office worker for a state agency, was taking Hempola, a diet supplement and herbal remedy. He was taking it as way to lower his cholesterol and reduce muscle strain while weight lifting. Hempola is composed of hemp seed oil and is sold over the counter from a local health food store. Hemp is the fibrous body of the marijuana plant.

During a random drug-test, the grievant's specimen tested positive for THC, the active ingredient in marijuana.

The grievant was dumbfounded, until his union steward told him to look at the label. The Hempola bottle label included this warning: "Contains no detectable THC, however, use of this product may result in failing some drug screening."

The employee was discharged, pursuant to the negotiated drug policy. The policy provides for discharge without exception.

The employer counter-argues that, earlier in the year, the union had published the following warning in its newsletter:

> *Make sure you know what is in those supplements that you are taking and how they will affect a drug screen, your job my depend on it!*

Hence, the grievant was warned three times: by the policy itself (which reads, you are responsible…), by the label on the bottle, and by the union's own advice.

Do you uphold the discharge?

Drug Testing

Arbitrator 1 – NO – he didn't read.
What is the reality of the rule?

Arbitrator 2 - YES

Arbitrator 3 – YES – If excused
then every employee would show
with this bottle.

Arbitrator 4 - YES– policy is clear.
Grievant should know.

Arbitrator 5 -YES– warned 3 times.
Should uphold contract.

Case #4

The grievant has good, 9-year work record as a production employee in a steel plant.

The factory Personnel Policy states:

> *Employees shall conduct themselves in a civil and upright manner; profanity and remarks of a racist or sexual nature are not to be used.*

On May 10, the grievant was involved in a discussion with a personnel manager about staffing. The conversation became heated and the grievant told the manager to "f--- off". The next day, the manager issued a written warning. The shop steward immediately appealed and the labor relations department agreed to settle the case. According to the terms of the settlement, the written warning would be reduced to a 45-day probationary period. During this 45-days, the grievant was required to "not act in a disrespectful manner toward co-workers or management." If he did, he would receive an automatic 3-day suspension.

One week later, a co-worker complained to the personnel manager that the grievant made the following statement: "Some people are lazy, just f---ing lazy and should be laid off." The context for the comment was a discussion about layoffs. In addition to the co-worker, a witness also heard the statement. That witness testified that the comment was made in a loud voice, but not directed at anyone.

Pursuant to the settlement agreement, management issued a 3-day suspension; the union filed a grievance, arguing that the off-hand remark did not violate the settlement agreement. There was already a high stress level in the plant, and the grievant's comment was not directed at any individual.

The company argues that the grievant may be a good worker but less that a week later; he still makes verbally harassing comments or ones of a hostile nature. The discipline is for just cause.

Do you uphold the 3-day suspension?

Insubordination

Arbitrator 1 – NO – changed rule. First no profanity then it was "to worker or management. Should be a protected activity.

Arbitrator 2 - YES

Arbitrator 3 – NO – Must disrespect Co-worker directly. This was cursing in general.

Arbitrator 4 – YES – changed rules but it was by agreement. It is protected but it showed disrespect by calling people lazy– wasn't directed to anyone person but to the whole & violated the agreement.

Case # 5 The grievant is a driver for a uniform supple service. The drivers travel a route and pick up dirty uniforms from customers and drop off laundered ones. Many of the customers provide the company with keys so that the drivers can simply enter the business and leave the uniforms even when the business may not be open. Drivers also occasionally solicit new customers, make collections, and carry cash. The grievant has been a driver for the company for 16 years with a good record, when he is charged with shoplifting at the department store. He tells his supervisor that he needs a day off for a court date. The supervisor testifies that the grievant claimed it was a court date for his son, but the grievant denies saying this. The case is listed in the local paper (under the police log) and the supervisor reads it. The company is not mentioned, but management argues that they cannot have an employee convicted of theft working for them. They do not want to take the chance that the grievant would steal from customers or the company. Furthermore, if the conviction was printed in the newspapers, it would cause customers to lose faith in the company. The union argues that there is no nexus, and the discharge is without just cause. *Do you uphold the discharge?*	Discipline and Discharge Arbitrator 1 – YES – can't have thief working in the business Arbitrator 2 – NO – he wasn't convicted yet. Arbitrator 3 – NO – nexus remote. Even if conviction – no complaint from customers. Arbitrator 4 – YES – if convicted. NO – if just charged.
Case # 6 The grievant is an associate librarian. Her supervisor is the Library Director who summoned her to a disciplinary meeting. According to the memo that announced the meeting, the stated purpose of the meeting was to discuss the grievant's unprofessional behavior at work. The Library Director informed the grievant in the memo that she was entitled to have a union representative at the meeting. The union rep attended. Following the meeting, the employee's supervisor sent the	Weingarten Rights Arbitrator 1 – NO – Federal sector - performance plans. Should throw out all evidence. All performance

grievant a letter outlining her expectations and providing an action plan and a timeline for making corrections. Included in the timeline were periodic follow-up meetings to discuss the grievant's progress. When the grievant attended the first two follow-up meetings, she demanded union representation. The Library Director denied the request because the meetings were not intended to elicit new information but improve the grievant's understanding of the action plan. At the third meeting, the grievant refused to attend without a union rep. The Library Director reiterated the same explanation as offered in the first two follow-up meetings, and rescheduled the meeting. The grievant refused to attend the rescheduled meeting, and the Director issued a 1-day suspension for insubordination. At the hearing, the union argued that the grievant felt that the follow-up meetings might result in discipline. The library counter-argued that no one could reasonably believe that the meetings were investigatory. The sole purpose of the meetings was to monitor progress. *Do you uphold the 1-day suspension?*	is discussed at all meetings and all meetings are Weingarten. Arbitrator 2 – YES - performance plan – only at the end would discipline be discussed. Arbitrator 3 – NO– Is it reasonable? If her progress has not been up to par then it could be discipline. Arbitrator 4 – NO – obey now - grieve later – but she suspected discipline so Weingarten should apply