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Laura J. Cooper

University of Minnesota Law School, lcooper@umn.edu

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Discipline and Discharge of Public-Sector Employees: An Empirical Study of Arbitration Awards

Laura J. Cooper*

Commentators frequently assert that government employees enjoy a level of protection from discharge far greater than private-sector employees, and, indeed, that government employers are actually unable to fire public employees who perform poorly or engage in misconduct. For example, author Mortimer B. Zuckerman maintained in a 2010 *U.S. News & World Report* article that there were “two Americas” with a division that “affronts a sense of fairness” between the protections afforded public-sector workers and those available to workers in the private sector.¹ He stated, “it is almost impossible to fire government workers except after a long process and only for the most grievous offenses.”² A 2010 editorial in the *Star Tribune* newspaper concurred and went further to blame the phenomenon directly on arbitration for “mak[ing] it difficult to terminate public employees.”³ The newspaper’s editorial continued, “[a]rbitration is at the heart of growing concerns about public employees’ accountability. Many workers are allowed to appeal disciplinary actions through this controversial

*J. Stewart & Mario Thomas McClendon Professor in Law and Alternative Dispute Resolution, University of Minnesota Law School. Professor Cooper is also a labor arbitrator and member of the National Academy of Arbitrators. The data and analysis of arbitration awards discussed in this article are derived from a book-length manuscript prepared with co-authors Mario F. Bognanno, Professor Emeritus, University of Minnesota, Carlson School of Management; and Stephen F. Befort, Gray, Plant, Mooty, Mooty, & Bennett Professor of Law, University of Minnesota Law School. The preliminary findings of the study and a description of its methodology were previously published. Laura J. Cooper, Mario F. Bognanno & Stephen F. Befort, *How and Why Labor Arbitrators Decide Discipline and Discharge Cases: An Empirical Examination*, in *ARBITRATION 2007: WORKPLACE JUSTICE FOR A CHANGING ENVIRONMENT, PROCEEDINGS OF THE SIXTIETH ANNUAL MEETING, NATIONAL ACADEMY OF ARBITRATORS, BUREAU OF NATIONAL AFFAIRS 420* (2008), <http://naarb.org/proceedings/index.asp>. The project was funded by a grant from the Research and Education Foundation of the National Academy of Arbitrators.

1. Mortimer B. Zuckerman, *Public Sector Profligacy*, *U.S. NEWS & WORLD REP.*, Oct. 1, 2010, at 88.

2. *Id.* at 87.

3. Editorial, *A Slap on the Wrist for St. Paul Workers: Reduced Suspensions Raise Broader Accountability Questions*, *STAR TRIB.*, Sept. 14, 2010, <http://www.startribune.com/opinion/editorials/102909709.html>.

process, which frequently upholds firings only in extreme cases or after a lengthy record of unsuccessful efforts to improve performance.”⁴

Are these assertions true? Do government workers enjoy job protections far beyond those of private-sector workers? Is it near impossible to discharge a public-sector worker for poor performance? Do labor arbitrators uphold the discharge of public-sector workers only in extreme cases? My co-authors and I have recently completed analysis of the largest and most representative collection of discipline and discharge decisions of labor arbitrators ever studied. From this database we can test empirically these common assertions about public-sector employee discipline and discharge and identify other characteristics of public-sector employee discipline arbitration.

I. The Database

Our database was constructed from comprehensive coding of 2,055 published and unpublished arbitration awards in employee discipline and discharge cases rendered between 1982 and 2005. Eighty-one arbitrators issued awards included in the database. This body of awards was collected by the Minnesota Bureau of Mediation Services (BMS) under a regulation which requires that all those on the agency’s roster of arbitrators submit to it all arbitration awards regarding Minnesota work sites, regardless of the source of appointment, unless a private-sector party refuses to permit release of the award.⁵ We coded every discipline and discharge award collected by the agency for that time period. Our methodology for coding and analysis is more fully described in an earlier publication.⁶

As the Minnesota public-sector workforce is heavily unionized, this database provides an especially rich source of information regarding arbitration of the discipline and discharge of government workers. In 2005, the final year of arbitration awards analyzed for our study, 56% of public-sector employees in Minnesota were represented by a union, compared to 9.9% of their private-sector counterparts.⁷

4. *Id.*

5. Minnesota Rules, Chapter 5530.08, subpart 9, requires arbitrators to file their public- and private-sector awards with the Commissioner of the Bureau of Mediation Services. Specifically, the rule states: “Unless one or both private sector parties have specifically requested that an award not be provided to the commissioner, arbitrators shall submit copies of all awards involving Minnesota work sites to the commissioner, regardless of the source of appointment or selection. Awards filed with the commissioner are public documents.” *Id.*

6. Laura J. Cooper, Mario F. Bognanno & Stephen F. Befort, *How and Why Labor Arbitrators Decide Discipline and Discharge Cases: An Empirical Examination*, in ARBITRATION 2007: WORKPLACE JUSTICE FOR A CHANGING ENVIRONMENT, PROCEEDINGS OF THE SIXTIETH ANNUAL MEETING, NATIONAL ACADEMY OF ARBITRATORS, BUREAU OF NATIONAL AFFAIRS 420 (2008), <http://naarb.org/proceedings/index.asp>.

7. Barry Hirsch & David A. Macpherson, *Union Membership and Coverage Database from the CPS*, <http://www.unionstats.com> (under “Union Membership, Coverage,

Our database includes proportionately more public-sector than private-sector arbitrations. Of the 2,055 awards, 1,218, or 59.27%, concerned public-sector workers, and 837, or 40.73%, concerned private-sector workers.⁸ Moreover, the proportion of public-sector awards rose over the timespan of the study: public-sector awards represented 50.34% of awards from 1982 to 1989, 61.10% from 1990 to 1997, and 65.36% from 1998 to 2005.

II. Comparing Public- and Private-Sector Outcomes

Previous studies based exclusively on less representative published awards have sought to test whether outcomes in discipline and discharge cases varied depending on whether the worker was employed in the public or private sector. Several such studies found that the sector variable produced insignificant differences in outcomes,⁹ while one study, by Debra Mesch, found that public-sector unions won a larger percentage of their cases than did the private-sector unions.¹⁰ Our database permitted us to re-examine the results of these researchers as well as to test the assertion of critics that it is more difficult to discipline or discharge a worker in the public sector than in the private sector. We were also able to differentiate results in discipline cases from those in discharge cases.

The top panel of Table 1 shows that, with regard to non-discharge disciplinary cases, arbitration outcomes were essentially the same regardless of sector, with employers winning about 43% of discipline cases in both sectors. However, in discharge cases, shown in the bottom panel, outcomes in the public and private sectors were significantly

Density and Employment by State and Sector," follow "2005" hyperlink). Only eight states had a higher percentage of unionized public-sector workers in 2005 (California, Connecticut, Hawaii, Massachusetts, Michigan, New Jersey, New York, and Rhode Island). *Id.*

8. The fact that our database includes a larger number of public-sector awards in a state in which the numbers of unionized private- and public-sector employees is approximately equal suggests that our database may overrepresent public-sector awards. This could occur because of the opportunity of private-sector parties to refuse inclusion of their awards in the files of the Bureau of Mediation Services. *See supra* note 5. There are also arbitrators hearing private-sector awards who need not submit them to the BMS because they are not on its roster. On the other hand, the greater number of public-sector awards may be the result of the greater likelihood of public-sector unions to arbitrate non-discharge cases, as shown in Table 1. *See infra* Table 1. Note also that our coding of public-sector awards did not differentiate between the various levels of public-sector employment, thus awards classified in our database as public sector include local, state, and federal employees.

9. Nels E. Nelson & A.N.M. Meshquat Uddin, *The Impact of Delay on Arbitrators' Decisions in Discharge Cases*, LAB. STUD. J. 3, 15 (Summer 1998); Perry A. Zirkel & Philip H. Breslin, *Correlates of Grievance Arbitration Awards*, 24 J. COLLECTIVE NEGOTIATIONS 45, 50 (1995).

10. Debra J. Mesch, *Grievance Arbitration in the Public Sector: A Conceptual Framework and Empirical Analysis of Public and Private Sector Arbitration Cases*, 15 REV. PUB. PERSONNEL ADMIN. 22, 30 (1995).

Table 1: Arbitration Outcomes by Type of Discipline Imposed and Sector*

(N-size, row %, and column % are the top, middle, and bottom values, respectively)

Sector	Management Win	Union Win	Split Decision	Row Totals
Discipline				
Public	223	136	154	513
	43.47 ^a	26.51	30.02 ^c	100.00
	82.29 ¹	81.93 ¹	82.80 ¹	82.34 ¹
Private	48	30	32	110
	43.64 ^a	27.27	29.09	100.00
	17.71	18.07	17.20	17.66
Column Totals	271	166	186	623
	43.50^a	26.65	29.86^c	100.00
	100.00	100.00	100.00	100.00

Chi-square (2) = 0.0465, p = 0.977

Discharge				
Public	396	116	193	705
	56.17 ^{1a}	16.45 ^{1b}	27.38 ^c	100.00
	52.73 ^a	42.18 ¹	47.54	49.23
Private	355	159	213	727
	48.83 ^a	21.87 ^b	29.30 ^c	100.00
	47.27 ^a	57.82	52.46	50.77
Column Totals	751	275	406	1,432
	52.44^a	19.20^b	28.35^c	100.00
	100.00	100.00	100.00	100.00

Chi-square (2) = 9.6115, p = 0.008

*The numeric index 1 indicates that the percentages in row 1 and row 2 are statistically different at the .05 level or lower. The alphabetic indexes a, b, and c indicate that the percentages in column 1 and column 2, column 2 and column 3, and column 3 and column 1, respectively, are statistically different at the .05 level or lower.

different. Both public- and private-sector employers won a significantly larger percent of discharge cases than did their unions. In discharge cases, public-sector employers prevailed in full in 56.17% of cases, while private-sector employers prevailed in 48.83% of their cases. Our data thus refute the assertion by critics of public-sector unions that public-sector managers have particular difficulty prevailing in arbitration cases, or that they are less successful than their counterparts in the private sector.

Table 1 clusters all discharge outcomes that are neither full management wins nor full union wins as "split decisions." We can provide further detail on how those split decisions compare in the public and

Table 2: Reinstatement Outcomes by Sector*

(N-size, row %, and column % are the top, middle, and bottom values, respectively)

Reinstatement Outcomes	Public Sector	Private Sector	Row Totals
Uphold the Discharge	396	355	751
	52.73 ¹	47.27 ¹	100.00
	56.17 ^{1a}	48.83 ¹	52.44 ¹
Reinstate—Full Backpay	119	164	283
	42.05 ^a	57.95	100.00
	16.88 ^{2a}	22.56 ²	19.76 ²
Reinstate—Partial Backpay	75	74	149
	50.34	49.66	100.00
	10.64 ³	10.18 ³	10.41 ³
Reinstate—No Backpay	109	131	240
	45.42	54.58	100.00
	15.46 ⁴	18.02 ⁴	16.76 ⁴
Entitlement to Future Vacancy	6	3	9
	66.67	33.33	100.00
	0.85 ⁵	0.41 ⁵	0.63 ⁵
Column Totals	705	727	1,432
	49.23	50.77	100.00
	100.00	100.00	100.00

Chi-square (4) = 12.0821, p = .017

*The numeric indexes 1, 2, 3, 4, and 5 indicate that the percentages in row 1 and row 2, row 2 and row 3, row 3 and row 4, row 4 and row 5, and row 5 and row 1, respectively, are statistically different at the .05 level or lower. The alphabetic index a indicates that the percentages in column 1 and column 2 are statistically different at the .05 level or lower.

private sectors. In Table 2, we see that reinstated public-sector employees are significantly less likely to receive full backpay (16.88%) than reinstated private-sector employees (22.56%).

Our analysis also revealed that reinstated public-sector employees experience longer periods without pay than reinstated private-sector employees. Government employees reinstated without backpay lost pay for a mean of 195.96 work days (9.8 months), while reinstated private-sector grievants lost pay for 154.50 days (7.7 months)—a statistically significant difference. A significant differential also occurred in cases in which a discharge was reduced to a suspension. Public-sector grievants had a mean period of suspension without pay of 60.45 days, while the average suspension period for reinstated private-sector grievants was 50.55 days.

Returning to Table 1, we can also observe how much more frequently public-sector unions arbitrate non-discharge disciplinary decisions than do private-sector unions. More than 82% of the arbitrated cases arising from reprimands and suspensions arose in the public sec-

Table 3: Suspension Outcomes by Sector*

(N-size, row %, and column % are the top, middle, and bottom values, respectively)

Suspension Outcomes	Public Sector	Private Sector	Row Totals
Suspension Upheld in Full	185 81.50 ^a 44.47 ¹	42 18.50 42.00 ¹	227 100.00 43.99 ¹
Suspension Reduced in Length	81 82.65 ^a 19.47	17 17.35 17.00 ²	98 100.00 18.99 ²
Suspension Overturned in Full	97 78.86 ^a 23.32 ³	26 21.14 26.00	123 100.00 23.84 ³
Suspension Reduced to a Warning or Reprimand	53 77.94 ^a 12.74 ⁴	15 22.06 15.00 ⁴	68 100.00 13.18 ⁴
Column Totals	416 80.62^a 100.00	100 19.38 100.00	516 100.00 100.00

Chi-square (3) = 0.9269, p = 0.819

*The numeric indexes 1, 2, 3, and 4 indicate that the percentages in row 1 and row 2, row 2 and row 3, row 3 and row 4, and row 4 and row 1, respectively, are statistically different at the .05 level or lower. The alphabetic index a indicates that the percentages in column 1 and column 2 are statistically different at the .05 level or lower.

tor, while the frequency of discharge cases in the two sectors was essentially equal.¹¹ We can only speculate about why arbitration of non-discharge decisions would occur more frequently in the public sector. One possibility is that public-sector union locals may be, on average, larger than private-sector unions and thus more able to assume the financial costs of arbitrating cases of relatively minor discipline. It may also be the case that reprimands and suspensions are more worthy of challenge in the public sector because there such disciplinary action may affect an employee's eligibility for increases under a contract provision affording step increases in wage rates for employees without disciplinary sanctions.

While we see significant differences between the public and private sectors in the frequency with which non-discharge disciplinary actions are brought to arbitration, we see in Table 3 that there were no significant differences between the two sectors in the outcome of arbitrated suspension cases. We also see in Table 3 that, in both the

11. While 80.62% of suspension cases in the database came from the public sector, 90.65% of the reprimand cases came from the public sector. It underscores the rarity of the phenomenon to note that of 2,055 cases decided over a period of approximately twenty-four years, there were only ten private-sector reprimand cases arbitrated.

public and private sectors, arbitrators are more likely to uphold or overturn a suspension completely, rather than to issue a split award in which the suspension is either reduced in length or reduced to a warning or reprimand.

III. Employee Offenses in Public- and Private-Sector Arbitrations

Critics of public-sector unions and of the procedures for discipline of public-sector workers also claim that the grievance arbitration system makes it virtually impossible to discharge government employees for poor performance and that arbitrators will only uphold public-sector employee terminations in cases in which the employee has engaged in serious misconduct. We coded forty-three different offenses for which employees were disciplined or discharged. Our database permits us to examine the types of alleged conduct for which employees are disciplined, employers' likelihood of success in cases based on various alleged employee offenses, and the extent to which the distribution of employee offenses and success rates of employers for different offenses varies between the public and private sectors.

Table 4 shows that two categories of offenses, unsatisfactory performance and insubordination, each represented more than 10% of all offenses arbitrated in both the public and private sectors. In both categories, the percentage of those cases was higher in the public sector.

The fact that unsatisfactory performance is the most frequently arbitrated offense in the public sector makes evident that public-sector employers are not reluctant to discipline or discharge government employees for poor performance. Table 4 also lists the three offense categories that yielded the most pronounced disparities between the public

Table 4: Comparison of Offenses Arbitrated in the Public and Private Sectors (Discipline and Discharge)*

Alleged Offense	Public Sector		Private Sector	
	N	% Public Sector Cases (N=1,218)	N	% Private Sector Cases (N=837)
Unsatisfactory performance	227	18.64 ^a	101	12.07
Insubordination (contemporaneous)	191	15.68	112	13.38
Absenteeism	94	7.72 ^a	163	19.47
Sexual harassment	87	7.14 ^a	21	2.51
Off-duty misconduct	74	6.08 ^a	13	1.55

*The alphabetic index a indicates that the percentages in column 2 and column 4 are statistically different at the .05 level or lower.

and private sectors with regard to the offenses arbitrated: absenteeism; sexual harassment; and off-duty misconduct. Absenteeism was more commonly arbitrated in the private sector, while sexual harassment and off-duty misconduct arbitrations more frequently appeared in the public sector. The greater potential for media exposure may make public-sector employers more likely to discipline employees for off-duty misconduct (such as drug use or other criminal offenses) and sexual harassment. Employers may be less likely to settle these cases for fear of a public backlash if they are perceived as failing appropriately to discipline employees thought guilty of these offenses. Public-sector employers may be more likely to discipline employees for off-duty misconduct because the nature of public-sector positions, such as teacher and law enforcement officer, may more likely provide a nexus with the off-duty misconduct so as to warrant discipline.

The following are the ten most common offenses found at issue in public-sector discipline and discharge arbitrations, listed in order of their frequency: unsatisfactory performance (18.64%); insubordination (15.68%); failure to follow policy (excluding offenses listed separately and reasonably contemporaneous insubordination) (9.69%); absenteeism (7.72%); verbal or physical abuse of students, patients, or inmates (7.22%); sexual harassment (7.14%); negligence (6.49%); off-duty misconduct (6.08%); lying (not on company records) (4.68%); and falsifying company records (4.60%).

Table 5, in the Appendix, compares the extent to which case outcomes for particular offenses vary depending upon whether the discipline or discharge case arose in the public or private sector. For the most part, it does not appear that there are meaningful differences in case outcomes for particular offenses between the public and private sectors, putting aside those offense categories in which one sector or the other, or both, had fewer than five cases.

There were nine offense categories in which there were twenty-five or more cases in both the public and the private sector. Comparing employer win rates for those nine offenses yields four offenses in which public-sector employers had the higher win rate (absenteeism, falsifying company records, negligence, and failure to follow policy); three offense categories for which private-sector employers had the higher win rate (insubordination, lying, and theft from the employer); and two categories in which the employer win rates were not significantly different between the two sectors (alcohol offenses and unsatisfactory performance). In only one of these nine offense categories, negligence, was the difference in employer win rates greater than four percentage points: Public-sector employers won 45.57% of negligence cases while private-sector employers won only 38.64% of negligence cases.

We can also identify differences in public- and private-sector outcomes for various offenses that were statistically significant. In three offense categories public- and private-sector outcomes were different at the .05 level of significance for all potential outcomes. For absenteeism, arbitrators in public-sector cases were more likely both to uphold in full and to reduce the employer's disciplinary sanction than in private-sector cases. However, the arbitrators in private-sector absenteeism cases were more likely fully to reject the employer's disciplinary sanction and find no just cause for any discipline. For off-duty misconduct, a much more common offense in public-sector arbitrations, arbitrators were significantly more likely to uphold discipline imposed by public-sector than by private-sector employers. The final offense category with significant differences for all three outcomes is sexual harassment. Here, arbitrators were significantly less likely fully to sustain discipline by a public-sector employer than by a private-sector employer. Public-sector employers may be less willing than private employers to settle weaker sexual harassment cases prior to arbitration in order to avoid public criticism for letting alleged harassers off too lightly. Notice also that split decisions in sexual harassment cases occurred much more often in the public sector than in the private sector.

IV. Teacher Termination Cases

Current public policy disputes about the relationship between educational quality and teacher tenure laws make it relevant to explore how outcomes in teacher discharge cases compare to outcomes in other discharge cases in the public sector. In our database of 705 discharge cases in the public sector, forty-four cases came before arbitrators, not under collective bargaining agreements, but pursuant to Minnesota statutes affording job security to teachers. These statutes permit the termination of a tenured teacher for cause, with a showing of more serious misconduct generally necessary to terminate a teacher's contract prior to the conclusion of the school year.¹²

Comparing the overall win rate for employers in teacher termination cases in Table 6 (56.82%), with the overall win rate in all public-sector discharge cases in Table 1 (56.17%), we see that employers' win rates in teacher tenure cases were essentially identical to their success in other public-sector discharge cases. Table 6 further indicates that employer win rates in end-of-year and mid-year termination cases were not significantly different from one another. Note, however, that full employee wins were more prevalent in end-of-year terminations, and reinstatement with reduced discipline was more prevalent in cases of immediate discharge of a teacher. Arbitrators apparently

12. MINN. STAT. § 122A.40, subd. 9 (2010); *id.* § 122A.40, subd. 13; *id.* § 122A.41, subd. 6(a).

Table 6: Outcomes in Teacher Termination Cases*

(N-size, row %, and column % are the top, middle, and bottom values, respectively)

Outcomes	End-of-Year Terminations	Immediate Terminations	Row Totals
Uphold the Discharge	18 72.00 ^a 60.00 ¹	7 28.00 50.00 ¹	25 100.00 56.82 ¹
Reinstate—Full Backpay	8 88.89 ^{2a} 26.67	1 11.11 ² 7.14	9 100.00 20.45 ³
Reinstate—Partial Backpay	4 44.44 13.33 ³	5 55.56 35.71	9 100.00 20.45 ³
Reinstate—No Backpay	0 0.00 0.00	1 100.00 7.14	1 100.00 2.27
Entitlement to Future Vacancy	0 0.00 0.00 ⁵	0 0.00 0.00 ⁵	0 0.00 0.00 ⁵
Column Totals	30 68.18^a 100.00	14 31.82 100.00	44 100.00 100.00

Chi-square (3) = 6.4273, p = 0.093

*The numeric indexes 1, 2, 3, 4, and 5 indicate that the percentages in row 1 and row 2, row 2 and row 3, row 3 and row 4, row 4 and row 5, and row 5 and row 1, respectively, are statistically different at the .05 level or lower. The alphabetic index a indicates that the percentages in column 1 and column 2 are statistically different at the .05 level or lower.

found that the more egregious types of misconduct alleged in immediate discharge cases almost invariably warranted at least some level of disciplinary sanction. The near-absence of arbitrators reinstating teachers without any backpay is explained by statutory provisions that maintain teachers' salaries pending the hearing decision in smaller cities¹³ and leave denial of pre-decision pay to the discretion of the school board in the largest cities.¹⁴

Although there were too few teacher termination cases to permit a meaningful analysis of outcomes by offense categories, the three most common offenses alleged in teacher termination cases were offenses classified under the broad umbrella of "violence" (45.5%), offenses classified generally as "insubordination" (34.1%), and unsatis-

13. *Id.* § 122A.40, subd. 13.14. *Id.* § 122A.41, subd. 12.

factory performance issues (25.0%).¹⁵ Interestingly, general performance issues were at issue in five of twelve end-of-year terminations and six of thirty-two immediate termination cases. Thus, although unsatisfactory performance was not the largest category of reasons for teacher termination, as it was for public-sector terminations generally, performance was a frequently disputed issue in teacher termination cases.

V. Summary

The analysis of the largest and most representative collection of arbitrators' awards in discipline and discharge cases permits reaching some at least preliminary conclusions about how the arbitration process affects the job security of unionized government employees. *Non-discharge disciplinary sanctions including suspensions and reprimands* are far more likely to reach arbitration in the public sector than in the private sector. While case outcomes in non-discharge cases are similar in the public and private sectors, public-sector employers are more successful than private-sector employers in having their discharge decisions upheld in full by arbitrators. When arbitrators issue decisions reinstating an employee, public-sector employees are significantly less likely than private-sector employees to receive full backpay. Employees in the public sector reinstated with partial or no backpay lose more weeks of pay than reinstated private-sector employees. The most common reason for discipline or discharge among public-sector employees in arbitration is unsatisfactory performance, followed by insubordination. Significantly more employees in the public sector are disciplined or discharged for sexual harassment or off-duty misconduct than in the private sector. Private-sector and public-sector case outcomes can be compared with regard to forty-three different reasons for employee discipline or discharge. Outcomes in teacher tenure cases in which job protections were derived from statutes rather than from collective bargaining agreements were comparable to outcomes in other public-sector employee termination cases. Teachers in such cases were more likely to have been terminated for serious misconduct than for unsatisfactory performance, although unsatisfactory performance was a common basis for teacher terminations.

15. This analysis is not based on the forty-three discrete offense categories reported in Table 5, but rather on nine larger groupings of those forty-three categories. Here, "violence" included Verbal or Physical Abuse of Customers, or Other Members of the Public; Verbal or Physical Abuse of Students, Patients, or Inmates; Abusive Language to Supervisor; Assault and Fighting Among Employees; Profane or Abusive Language; Racial/Religious Slur; Sexual Harassment; Threat or Assault of Supervisor; and Threat to Co-Worker. "Insubordination" included Insubordination; Refusal to Cross Picket Line; Refusal to Accept Job Assignment; Refusal to Accept Overtime; and Failure to Follow Policy.

Appendix

**Table 5: Alleged Discipline and Discharge Employee Offenses
by Outcome and Sector***

(N-size and row % are top and bottom values, respectively)

Alleged Offense	Sector	Just Cause for Discipline Imposed	Just Cause for Lesser Discipline	No Just Cause for Any Discipline	Row Totals
Absenteeism	Public	49 52.13 ^{1a}	29 30.85 ¹	16 17.02 ^{1c}	94
	Private	81 49.69 ^a	46 28.22	36 22.09 ^c	163
Verbal/physical abuse of customers/members of public	Public	27 62.79 ^{1a}	10 23.26	6 13.95 ^c	43
	Private	4 30.77	4 30.77	5 38.46	13
Verbal/physical abuse of students/patients/inmates	Public	39 44.32 ¹	29 32.95 ¹	20 13.95 ^c	88
	Private	5 23.81	8 38.10	8 38.10	21
Abusive language to supervisor	Public	15 57.69 ^a	6 23.08	5 19.23 ^c	26
	Private	9 45.00	9 45.00 ^b	2 10.00 ^c	20
Assault/fighting among employees	Public	3 25.00 ¹	5 41.67	4 33.33	12
	Private	15 55.56	7 25.93	5 18.52 ^c	27
Computer misuse (other than obscenity/immoral conduct/pornography)	Public	5 52.50	3 37.50	0 0.00 ^c	8
	Private	1 33.33	2 66.67	0 0.00	3
Property damage	Public	10 58.82	4 23.53 ¹	3 17.65 ^c	17
	Private	9 34.62	10 38.46	7 26.92	26
Disloyalty to employer (competition with employer or conflict of interest)	Public	8 57.14	3 21.43	3 21.43	14
	Private	3 60.00	1 20.00	1 20.00	2

Alleged Offense	Sector	Just Cause for Discipline Imposed	Just Cause for Lesser Discipline	No Just Cause for Any Discipline	Row Totals
Distribution of drugs	Public	2 100.00	0 0.00	0 0.00	2
	Private	0 0.00	0 0.00	0 0.00	0
Falsifying company records (including time and production records)	Public	31 55.36 ^a	17 30.36	8 14.29 ^c	56
	Private	23 51.11 ^a	9 20.00	13 28.89	45
Falsifying employment application	Public	7 87.50 ^a	1 12.50	0 0.00 ^c	8
	Private	7 87.50 ^a	0 0.00	1 12.50 ^c	8
Gambling	Public	1 100.00	0 0.00	0 0.00	1
	Private	0 0.00	0 0.00	0 0.00	0
Horseplay	Public	0 0.00 ¹	2 100.00	0 0.00	2
	Private	5 55.56	3 33.33	1 11.11	9
Insubordination (contemporaneous)	Public	82 42.93	71 37.17 ^b	38 19.90 ^c	191
	Private	51 45.54	41 36.61 ^b	20 17.86 ^c	112
Leaving post (including leaving work as a result of a dispute)	Public	7 33.33	10 47.62	4 19.05	21
	Private	8 42.11	6 31.58	5 26.32	19
Leaving work early	Public	4 44.44 ¹	2 22.22	3 33.33	9
	Private	9 52.94	4 23.53	4 23.53	17
Lying (not on company records or employment application)	Public	26 45.61	19 33.33	12 21.05 ^c	57
	Private	18 47.37	11 28.95	9 23.68	38
Misconduct during strike	Public	0 0.00	0 0.00	0 0.00	0
	Private	0 0.00	0 0.00	1 100.00	1

Alleged Offense	Sector	Just Cause for Discipline Imposed	Just Cause for Lesser Discipline	No Just Cause for Any Discipline	Row Totals
Moonlighting (excluding competition with employer)	Public	3 60.00	1 20.00	1 20.00	5
	Private	0 0.00	0 0.00	2 100.00	2
Negligence	Public	36 45.57	32 40.51 ^b	11 13.92 ^c	79
	Private	17 38.64	16 36.36	11 25.00	44
Obscene or immoral conduct or pornography with a computer	Public	5 45.45	6 54.55 ^b	0 0.00 ^c	11
	Private	0 0.00	1 100.00	0 0.00	1
Obscene or immoral conduct or pornography without a computer	Public	3 25.00	5 41.67	4 33.33	12
	Private	4 80.00	1 20.00	0 0.00 ^c	5
Off-duty misconduct	Public	38 51.35 ^{1a}	16 21.62 ¹	20 27.03 ^{1c}	74
	Private	6 46.15	3 23.08	4 30.77 ^c	13
Possession or use of alcohol	Public	14 56.00	8 32.00	3 12.00 ^c	25
	Private	14 56.00 ^a	5 20.00	6 24.00	25
Possession or use of drugs, positive drug test result, or refusal to take a drug test	Public	20 71.43 ^a	6 21.43	2 7.14 ^c	28
	Private	12 63.16 ^a	3 15.79	4 21.05 ^c	19
Profane or abusive language (towards co-workers not including supervisor)	Public	22 52.38 ^a	11 26.19	9 21.43 ^c	42
	Private	7 30.43	12 52.17 ^b	4 17.39	23
Prohibited strike	Public	0 0.00	0 0.00	0 0.00	0
	Private	1 100.00	0 0.00	0 0.00	1
Racial/religious slur	Public	9 75.00 ^{1a}	2 16.67	1 8.33 ^c	12
	Private	0 0.00	0 0.00	0 0.00	0

Alleged Offense	Sector	Just Cause for Discipline Imposed	Just Cause for Lesser Discipline	No Just Cause for Any Discipline	Row Totals
Refusal to cross picket line (usually that of other union)	Public	0 0.00	0 0.00	0 0.00	0
	Private	0 0.00	0 0.00	0 0.00	0
Refusal to accept job assignment	Public	2 66.67	1 33.33	0 0.00 ¹	3
	Private	2 66.67	2 33.33	4 0.00	8
Refusal to accept overtime	Public	1 100.00	0 0.00	0 0.00 ¹	1
	Private	1 16.67	2 33.33	3 50.00	6
Sexual harassment	Public	35 40.23 ¹	31 35.63 ¹	21 24.14 ¹	87
	Private	10 47.62	10 47.62 ^b	1 4.76 ^c	21
Sleeping on job/loafing	Public	12 60.00	7 35.00 ^b	1 5.00 ^c	20
	Private	11 52.38	8 38.10	2 9.52 ^c	21
Slowdown	Public	1 50.00	1 50.00	1 0.00	2
	Private	0 0.00	0 0.00	1 100.00	1
Tardiness	Public	12 54.55	6 27.27	4 18.18 ^c	22
	Private	14 63.64	7 31.82 ^b	1 4.55 ^c	22
Theft from co-worker or customer	Public	7 58.33	2 16.67	3 25.00	12
	Private	7 58.33	5 33.33	3 25.00	15
Theft from employer	Public	26 50.98 ^a	9 17.65	16 31.37	51
	Private	26 54.17 ^a	12 25.00	10 20.83 ^c	48
Threat or assault of supervisor	Public	7 50.00	6 42.86	1 7.14 ^c	14
	Private	9 69.23	4 30.77 ^b	0 0.00 ^c	13

Alleged Offense	Sector	Just Cause for Discipline Imposed	Just Cause for Lesser Discipline	No Just Cause for Any Discipline	Row Totals
Threat to co-worker	Public	8 53.33 ¹	6 40.00	1 6.67 ^c	15
	Private	13 61.90 ^a	4 19.05	4 19.05 ^c	21
Union activities	Public	0 0.00	2 66.67	1 33.33	3
	Private	0 0.00	0 0.00	2 100.00	2
Unsatisfactory performance	Public	140 61.67 ^{1a}	52 22.91 ¹	35 15.42 ^c	227
	Private	62 61.39 ^a	21 20.79	18 17.82 ^c	101
Other	Public	3 25.00	4 33.33	5 41.67	12
	Private	3 42.86	1 14.29	3 42.86	7
Failure to follow other policy**	Public	52 44.07 ¹	40 33.90	26 22.03 ^c	118
	Private	19 40.43	17 36.17	11 23.40	47
Column Totals***	Public	772 50.66	465 30.51	287 18.83	1,524
	Private	486 48.94	295 29.71	212 21.35	993

*The numeric index 1 indicates that the percentages in row 1 and row 2 within each offense category are statistically different at the .05 level or lower. The alphabetic indexes a, b, and c indicate that the percentages in column 1 and column 2, column 2 and column 3, and column 3 and column 1, respectively, are statistically different at the .05 level or lower.

**This category included employee failure to follow a policy other than one identified by another specific category and excluded reasonably contemporaneous insubordination.

***Some cases involved more than one offense. The totals shown in the bottom row are the overall totals for each possible outcome, disregarding the multiplicity of motivating offenses.