

THE UNION'S POSITION

The Union argues that the definition of good cause in Article 6 is more limited than most boilerplate definitions.

The Union further argues that the first reason for discipline infringed on Grievant's Constitutional right to free expression.

The Union also argues that the District did not have just (or good) cause to discipline Grievant "because a single outburst of profanity does not justify the labor law equivalent of the death penalty."

The Union argues that Grievant's right to due process was violated because the District did not adequately investigate the reasons behind Grievant's outburst and did not provide him with an explanation of the evidence supporting the charges against him, or an opportunity to present his side of the story.

The Union asserts that this case is an example of why such procedural safeguards are necessary. Had the District investigated the charges appropriately, it very likely would not have discharged Russo. If it had investigated the charges regarding his display of political signs, it would have found that Dodd's conduct was protected political speech. It would have found that placing political signs on his car caused no substantial interference with the efficiency of the District's operations.

The Union argues that if the District properly had investigated the charge that Russo was insubordinate on August 4, it would have discovered a number of mitigating factors that reveal the true nature of that incident. First, Russo became upset because he was being accused of wrongdoing when he did not believe he was in the wrong. At the meeting, he was accused of insubordination for the political signs. Second, he was accused of wearing headphones while operating machinery in the gym. Russo understood that he was not to wear headphones while students or office staff was present, because he would not be able to hear them. On the day in question, only three other custodians were in the building and they were all with Russo in the gym and within plain sight. In other words, Russo again thought he was following the instructions he had been given.

The Union maintains that a proper investigation, including hearing Russo's side of the story, would have revealed that Russo also had forgotten to take medication that day for his Post Traumatic Stress Syndrome. This would explain why he became unreasonably angry at the meeting.

The Union argues that if the District had performed a proper investigation, it would have learned that rather than being insubordinate with regard to his political signs, Russo was engaged in protected political speech.

It also would have learned that there was some basis for his getting upset at the meeting on August 4. While Russo does not defend his conduct at that meeting, understanding the complete context puts his outburst in a different light.

The Union argues that if the District had conducted a proper investigation, it would not have dismissed Grievant, but rather would have applied some other form of progressive discipline.

Finally, the Union argues that since Grievant was not allowed a hearing and the District did not investigate the matter, that Grievant's due process rights were violated under Article 6. Therefore, the Union contends that Russo's grievance should be upheld.