

**POLICE OFFICER DISCIPLINE AND ARBITRATION:
THE ISSUE OF CONDUCT UNBECOMING***

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ABSTRACT

This study used a sample of seventy-nine public sector arbitration cases to categorize various work infractions committed by police officers. Of particular interest was the nature and frequency of conduct described as unbecoming behavior. Results show that conduct unbecoming incidents comprise a very large number of police force discipline cases. Because the term "conduct unbecoming" is somewhat ambiguous, these infractions encompass a wide variety of unprofessional behavior. While police departments and the public hold police officers to a high professional standard, a significant finding is that arbitrators apply conventional arbitral criteria when adjudicating either conduct unbecoming or the more traditional work behavior infractions.

Police officers are a distinctive group in public employment. The importance of their work, the hazards of their employment, and the military type of organization under which they work set them apart from other public employees [1]. Additionally, the general public regards police officers as a special breed since their services and conduct affect all citizens. Therefore, it is not surprising that police officers are expected to maintain a high standard of conduct during the performance of their duties. Their conduct may be expected to be especially high to serve as an example to those they are sworn to serve.

Unfortunately, like public employees in other occupations, police officers commit work infractions that lead to disciplinary action. These offenses can include

*The author is solely responsible for the article's contents.

low job performance, attendance problems, various policy/rules violations, or actions labeled as conduct unbecoming a police officer. As specifically noted in public sector literature, the latter forms of misconduct can occur either on- or off-duty [2]. Since police officers are held to stringent performance standards, work infractions labeled as “conduct unbecoming” are particularly grievous to police departments, often leading to prompt and severe disciplinary action. Since disciplinary matters are one of the most frequently grieved areas of arbitration, the study of conduct unbecoming behavior through arbitration proceedings becomes an important field for research [3]. In this regard, this study falls under the scope of arbitration research involving other categories of public sector occupations (e.g., teachers).

Surprisingly, there has been little study of grievance/arbitration and police department personnel. The broad purpose of this study, therefore, was to examine arbitration and the misconduct of police officers. More specifically, the research sought to 1) identify the more common types of work offenses for which police officers can be disciplined and their frequency, 2) to codify the various incidents generally described as behavior unbecoming a police officer, and 3) to determine the criteria or standards by which arbitrators resolve unprofessional conduct cases. For example, given that the general public and police agencies hold police officers to a strict standard of professional conduct, can this also be said of arbitrators as they finalize disciplinary cases? While recent arbitration studies have examined public sector discipline and arbitral decision-making in general [4], little of this knowledge has been applied strictly to police departments. Furthermore, there is little in the literature that specifically describes or lists various types of unbecoming behavior. The study seeks to expand the understanding of police officer discipline and arbitration, but it also serves to better formulate the collective bargaining process prior to arbitration.

LITERATURE REVIEW

Two streams of public sector literature defined the present study. The first attempted to identify what constitutes conduct unbecoming behavior of public employees, specifically police officers. The second stream explored the literature regarding arbitral criteria for overturning managerial action in public employee discipline cases.

Research Stream #1

Beyond broad descriptive generalizations, there is little in the literature which pinpoints with clarity the exact nature of conduct unbecoming behavior for any occupation of public employees. In 1996, Aufrecht reviewed several practitioner models on discipline with the intent of integrating them into a holistic model for determining corrective action for public employees [5]. Each of the models

analyzed—Office of Personnel Management (OPM), The American Bar Association (ABA), and the Douglas Factors model articulated in the Merit Systems Protection Board (MSPB)—listed different employee offenses subject to disciplinary action. However, each model failed to identify conduct unbecoming behavior as a specific form of employee work offense. Rather, the models made reference to unbecoming behavior through generalized statements affecting the agency's mission. For example, in the OPM model, conduct unbecoming can be implied from "abusive or offensive language, gesture, discourtesy, or other conduct." In the ABA model, "failure to maintain personal integrity or personal trust" could encompass unbecoming behavior. Even in the holistic disciplinary model proposed by Aufrecht, conduct unbecoming behavior can only be surmised through the violation of a "professional ethical standard" [5, p. 186]. Unfortunately, the absence of a clear definition or a specific list of unprofessional behaviors, portends that a large number of employee offenses could be labeled as conduct unbecoming behavior.

In a study analyzing one aspect of conduct unbecoming public employees—off-duty misbehavior—Marmo considered the question of whether school administrators have the right to discipline their employees for inappropriate off-duty behavior [3, pp. 327-345]. While Marmo did not provide a taxonomy of off-duty unbecoming behavior, it is possible to identify various unbecoming offenses through the cases he reviewed. For example, the possession or sale of drugs, disparaging or inflammatory remarks made against management or the agency, various criminal activities, or bizarre conduct were all cited in different arbitrations as examples of specific unbecoming conduct of school employees. Interestingly, Marmo proposed that when arbitrators consider cases involving inappropriate off-duty behavior, they should adjudicate the case against three criteria. The arbitrator is to:

1. determine whether the off-duty behavior has a detrimental effect on the organization;
2. determine whether management's attempt to impose disciplinary action for off-duty behavior constitutes an unwarranted intrusion into the personal lives of these employees; and,
3. balance the negative impact to the organization, if present, against the infringement of the employee's personal rights [3, p. 329].

Marmo, therefore, provided some objective guidelines by which conduct unbecoming discipline can be judged. Also, because of the high-profile work performed by educational personnel, Marmo found many arbitrators applied a high conduct standard when determining the propriety of school employee off-duty behavior. This he gleaned from subjective comments made by arbitrators in their arbitration awards. However, in a concluding note, the author stated that different arbitrators require very different standards of proof regarding the possible adverse impact of off-duty behavior and these differences are "not related to

differing sets of facts, as much as to differing approaches of arbitrators” [3, p. 342].

In a study of sixty-four arbitration cases involving all police department employees, LaVan and Carley found arbitrators frequently wrote that police employees have an added responsibility to their constituents beyond that born by other public service workers [6]. Arbitrators in these cases made it explicit that the unique characteristics of police work altered their decision from what it would have been for nonpolice employees. Unfortunately, this research analyzed all types of employee disciplinary offenses, not specifically those involving conduct unbecoming behaviors of police officers.

Research Stream #2

The research on police department discipline, and arbitration in particular, is also scant. In the one study by LaVan and Carley cited above, the authors found police department arbitration largely involved disciplinary matters (66% of all arbitration cases) and that in 75 percent of all discipline cases just cause was the primary standard for adjudicating the case [6, p. 250]. The finding of a just cause standard for resolving misconduct matters is consistent with the findings from other studies [7]. However, the American Arbitration Association (AAA) reported that issues dealing with employee discipline and discharge constitute only about 30 percent of all public sector rights arbitration [8], a figure significantly below the LaVan and Carley study. Interestingly, their research did find that police arbitration is atypical, since almost 50 percent of all offenses were committed while the officer was off-duty. This percentage would be large in the private sector and for nonpolice employees in the public sector [6]. In the LaVan and Carley study, three-fourths of all discipline cases were resolved in favor of the grievant, a high percentage win rate for employees. In research by Dilts and Deutsch, statistical analysis indicated that employees should prevail 58 percent of the time in similar cases [9].

Unfortunately, no research was found that identified established and accepted arbitral standards for deciding specifically conduct unbecoming discipline cases. There is, however, a body of private and public sector literature describing in general why arbitrators overturn management in discipline and discharge cases. Findings from these studies identify lack of supporting evidence, mitigating circumstances, lack of due process or procedural injustice, excessive punishment, and the grievant’s prior work record as the primary determinants in reversal cases [10].

METHODOLOGY

The sample for this study consisted of seventy-nine police officer discipline cases published between December 15, 1981 and May 14, 1997 in *Labor*

Arbitration in Government, a publication of the American Arbitration Association. Though this sample may or may not be representative of all public sector arbitration, previous research has used a similar methodology for data analysis. Textual analysis of the cases was drawn from the condensed version of the full award, which contained as a minimum: 1) explanation of the incident, 2) the initial employee punishment by management, 3) the arbitration award, and 4) the arbitrator's rationale for deciding the case.

STUDY FINDINGS

Research Purpose #1: Classification of Police Officer Work Offenses

Table 1 categorizes the various reasons, and their frequency, for management's disciplinary actions against police officers. An interesting finding is that conduct unbecoming infractions constitute a significant proportion of all disciplinary action, almost 55 percent of all cases. Based on the large number of conduct unbecoming arbitrations, it seems evident that police officers are indeed held to a higher professional conduct standard when compared to private sector employees or other less high-profile public employees.

There is, however, an additional explanation for this finding. Because of the paramilitary type organization under which police officers work, the culture of the environment may demand from these employees more acceptance of authority and/or rigidity in their work performance than in less-structured environments. Therefore, the more common work violations found in the private sector (i.e., employee altercations, violation of organizational policies or rules, failure to meet job standards, and absenteeism/tardiness problems) may simply appear less frequently in police departments because of some higher conscious avoidance of these work problems.

Table 1. Police Officer Disciplinary Offenses Resolved Through Arbitration ($N = 79$)

Type of Offense	Number of Cases
Conduct Unbecoming Behavior (see Table 3)	43
Insubordination	10
Neglect of Duty	8
Violation of Department Policy/Rules	7
Failure to Meet Job Standards	5
Sleeping on the Job	3
Attendance	2
Sexual Harassment	1

Of the thirty-six cases *not* classified as conduct unbecoming infractions, four categories of work misconduct—insubordination (10 cases), neglect of duty (8 cases), violation of department policy/rules (7 cases), and failure to meet job standards (5 cases)—account for 83 percent of all incidents (see Table 1). These work infractions are no different from those found among other occupational classifications in either the public or private sector. The one exception is attendance violations, which account for a high percentage of disciplinary action in the private sector but apparently very little, at least in this study, with police officers.

In twenty-four of the thirty-six traditional work-infraction cases adjudicated through arbitration, the discipline imposed by management was either reversed entirely or modified by the arbitrator. This 67 percent reversal rate is similar to the results found in the LaVan and Carley study. Table 2 lists the reasons arbitrators gave for reversing the disciplinary actions of managers. Three reasons—penalty excessive (8 cases), lack of evidence of wrongdoing (6 cases), and procedural error or lack of due process (4 cases)—accounted for 75 percent of all reversal cases.

Research Purpose #2: Classification of Conduct Unbecoming Behavior

Table 3 shows the type and number of conduct unbecoming behaviors found in forty-three arbitration cases. Given the wide latitude in defining conduct unbecoming behavior, it is not surprising that a broad variety of misbehaviors comprise this classification. However, of the eleven distinct categories identified, seven categories accounted for almost 84 percent of all conduct unbecoming infractions. To accurately illustrate the inappropriate behavior in each of the seven prominent unbecoming behavior categories, the following actual arbitrations are provided.

Off-Duty Misconduct

A police communications dispatcher was terminated when she violated the department's drug ordinance by using a controlled substance while off-duty. The

Table 2. Arbitrator Reasons for Reversing Management's Disciplinary Penalty: Cases Other than Conduct Unbecoming Behavior ($N = 24$)

Reason for Reversal	Number of Cases
Penalty Excessive	8
Lack of Evidence of Wrongdoing	6
Procedural Error/Lack of Due Process	4
Management at Fault	2
Absence of Rule or Rule Vague	2
Mitigating Circumstance (defective equipment)	1

Table 3. Classification and Number of Conduct
Unbecoming Behavior (N = 43)

Classification	Number
Off-duty misconduct	
Drugs	5
Drinking	2
Shoplifting	1
Drag racing	1
Total	9
Excessive or unnecessary use of force	6
Racially motivated improper personal conduct	6
Improper or abusive language	5
Unlawful use of firearms	4
Unauthorized use of official position	3
Lack of professional responsibility	3
Discourteous treatment	2
Acceptance of bribes	2
Lapse of good judgment	2
Making reckless or irresponsible charges	1

grievant's conduct was unbecoming behavior since she "subverted good orders, efficiency, discipline, and she brought 'discredit' to the department."

In a case involving drag racing, a twenty-day disciplinary suspension imposed on a police officer was reduced to three days. The city argued the grievant's act of speeding was unbecoming behavior since the officer was engaged in "a reckless and thoughtless venture of speeding on a public highway without regard to public safety." Interestingly, in this case the arbitrator remarked on the ambiguity of conduct unbecoming behavior by stating that disciplinary codes cannot possibly enumerate or predict every potential unprofessional situation in which police officers find themselves. The original penalty was reduced when management failed to prove that the two cars in question were actually drag racing rather than merely traveling at a high rate of speed.

Excessive or Unnecessary Use of Force

Laws regarding arrest procedures have become so detailed that, along with the exercise of discretion by police in field situations, making unlawful arrests becomes a common occurrence [11]. Nevertheless, unnecessary use of force in arrest situations will likely invoke a conduct unbecoming charge and appropriate discipline. For example, the discharge of a police officer was for just cause where he unnecessarily battered a handcuffed suspect left in his custody. A majority of police jurisdictions hold that police officers have a duty to keep prisoners safe and

free from unwarranted harm. The officer failed to uphold this charge and therefore engaged in “unprofessional conduct detrimental to the position of a police officer.”

In another case, a police officer was held to a high professional standard and given a five-day suspension for striking a prisoner. The penalty was imposed even after the officer had been verbally assaulted by the suspect.

Racially Motivated Improper Personal Conduct

Discharge for unprofessional conduct was upheld where the grievant placed a cross fashioned from a broom onto a piece of cake and presented it to a fellow black officer. The union asserted the officer’s actions were in poor taste and only intended as a joke; therefore, discharge was excessively harsh and unwarranted. The police department argued that termination was the only responsible action given the “severity of the unprofessional racially motivated conduct of the grievant.”

In an interesting case involving a racially insensitive electronic-mail message, the suspension and transfer of a K-9 police officer was reduced to a written reprimand where management’s actions were characterized as “over-action” and a result of the “tenor of the times.” In justifying its position, the city argued that the comment (e.g., the grievant made a joking comment about the black officer as a raccoon) “was racially insulting, was clearly conduct unbecoming a police officer, and the remark was more than a stupid comment.” The arbitrator concluded that the grievant meant no racial animus or harassment when the joke was made.

Improper or Abusive Language

In a domestic violence incident, two police officers entered a situation where they were subjected to extreme verbal abuse. During the arrest, the officers engaged in vulgar language with the suspects and subsequently each officer received a one-day suspension for “unprofessional conduct of a police officer.” At arbitration, the penalties were set aside as being excessive. In reducing the discipline the arbitrator noted that the remarks made by the officers should not be taken out of the context in which they were delivered. The arbitrator remarked, “Had the officers not used foul language, their conduct would have been exemplary and would have demonstrated their adherence to a ‘professional standard of conduct’.” In another case, a five-day disciplinary suspension was upheld where a police officer used the term “nigger” during a struggle with a robbery suspect. At arbitration, the chief of police testified, “Nothing that happens in the police department has a more damaging and severe impact on the department than the use of racial slurs in dealing with the public.” The officer’s remarks “are not only unprofessional and reflect on his behavior but on the entire department as well.”

Unlawful Use of Firearms

Discharge for unbecoming and offensive behavior was upheld where a police officer used his personal revolver to threaten a tow-truck driver. The grievant never denied the charge, and there were no mitigating circumstances to explain his conduct or to reduce the discipline penalty.

In a case receiving wide publicity within one community, a police sergeant was demoted and eventually discharged after he shot two dogs that had strayed into his backyard. At arbitration the sergeant was reinstated but without back pay. When fashioning his award, the arbitrator wrote, "Even though the incident brought discredit to the department and sparked both controversy and notoriety within the City, the penalty given the grievant was punitive and did not comport with the proper use of progressive discipline."

Unauthorized Use of Official Position

Fourteen years of good service did not mitigate the 129-day suspension given a police officer when he improperly authorized a private investigator to electronically eavesdrop and record confidential private communications. The police department argued that the grievant's actions were in violation of both the state's penal code and the department's policy manual and clearly constituted "conduct of an unprofessional nature."

Lack of Professional Responsibility

In a discharge case upheld in arbitration, a police officer was disciplined when he mishandled a money order that belonged to a criminal suspect. When the suspect's attorney complained that the money order was missing after the prisoner was booked, the grievant explained he had subsequently found the money order and had it routed to the police station with instructions for proper handling. Unfortunately, the money order was never recovered. The city's position was that the grievant's explanation for recovering the money order was unbelievable and that his actions constituted "conduct unbecoming an officer and overall demonstrated a significant lack of professional responsibility."

**Research Purpose #3:
Arbitral Criteria and Conduct Unbecoming Behavior**

The cases described above, combined with the large percentage of conduct unbecoming cases going to arbitration, demonstrate the high standard of professionalism by which police officers must comport themselves. Therefore, a final question the research attempted to answer was, "Do arbitrators apply some higher standard or different criteria by which they adjudicate unprofessional conduct problems?"

Interestingly, of the forty-three conduct unbecoming cases analyzed here, there was little in the context of the arbitral awards indicating that the arbitrator

followed a different set of criteria to substantiate his/her awards. Nor did arbitrators fashion a unique set of individualized personal standards to decide these cases. Rather, in cases where management's disciplinary action was either upheld or overturned in arbitration, traditional arbitral criteria were used to evaluate each individual case. For example, Table 4 lists the reasons given by arbitrators when they reversed management's disciplinary actions in unprofessional conduct cases. A comparison of Tables 2 and 4 shows that the four main reasons for reversing management's disciplinary penalty are almost identical *regardless* of the nature of the work infraction. Additionally, in the nineteen conduct unbecoming cases *upheld* through arbitration, the arbitral opinion recognized that management had "just cause," a traditional arbitral criteria, to impose the penalty given. Unfortunately, as in other just cause arbitration awards [12], these cases do not reveal the degree of burden of proof by which management must substantiate the guilt of the grievant's work infraction. That is, in conduct unbecoming cases must management prove its case to a greater or lesser degree due to the high professional standard placed upon police officer conduct?

CONCLUSIONS

Study results illustrate that police officers are disciplined for a wide variety of work infractions. While these infractions encompass universal work violations, a large percentage (55% in this study) of all police discipline involves behavior specifically defined as conduct unprofessional to the position of a police officer. Conduct unbecoming cases do not appear with any regularity in private sector arbitration and to a much lesser extent with other occupations in the public sector.

Because the term "conduct unbecoming" is so general, a wide variety of unprofessional behaviors are given this label. It is perhaps because of the vagueness of the concept that police departments have not attempted to enumerate a specific list of conduct unbecoming behaviors subject to disciplinary action. Additionally, because conduct unbecoming behavior can be broadly defined, it becomes operationally extremely difficult to ascertain with certainty whether

Table 4. Arbitrator Reasons for Reversing Disciplinary Penalty:
Conduct Unbecoming Behavior ($N = 24$)

Reasons for Reversal	Number of Cases
Penalty excessive	7
Lack of evidence of wrongdoing	6
Procedural errors/lack of due process	5
Absence of rule or policy governing incident	4
Grievant admitted fault and apologized	1
Grievant deserved second chance	1

minor infractions of these behaviors have a negative impact on the police agency. Thus, some conduct unbecoming cases are potential reversal cases through arbitration proceedings.

The findings of this study seemingly contradict the notion that arbitrators adjudicate conduct unbecoming infractions differently from traditional workplace behavioral problems. Specifically, when management's disciplinary actions were reversed over various conduct unbecoming issues, widely known and accepted arbitral criteria were used to resolve the problem. Upon reflection, perhaps this finding is not surprising since reversal decisions typically result from a failure by management to establish just cause in disciplinary matters regardless of the work infraction under review. Additionally, management's ability to impose discipline for conduct unbecoming behavior must be balanced against the grievant's work record and any mitigating factors surrounding the case. Thus, if police departments are to be upheld in conduct unbecoming arbitrations, the disciplinary penalty must account for those criteria traditionally used by arbitrators to finalize cases.

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