

ADVICE TO FOLLOW FOR MEMBERS AND REPRESENTATIVES**Introduction**

The advice provided in this policy is applicable not only to members who are the object of an administrative investigation, and to their representatives, but also to members and their representatives who might be called upon as witnesses in these investigations.

1. **When a member is convened by the employer at an administrative investigation or a fact-finding meeting:**
 - a) **always** demand that the notification be made in writing and for what purpose; as for the contents of this notification, refer to Section 3 of this policy;
 - b) **immediately** contact your local union;
 - c) if there is no local union or union representative, here are the alternatives available:
 - contact the CEIU Regional Union Office
 - contact a district union representative, or a national vice president;
or
 - hire a lawyer of your choice; please note, however, that this choice involves legal costs which are the responsibility of the **PERSON** who chooses this option;
 - d) **never** follow up on a notification from the employer and **never** speak to management or the committee members **before having received the vital advice**, either from the union, or the lawyer chosen;
 - e) **never** give in or accept to be threatened by anyone. You have the legal and absolute right to protect yourself; **never** meet with the committee or management without your representative.
 - f) never give in to intimidation and never sign a statement without first receiving the vital advice.

2. Basis for the Administrative Investigations

It seems that the government institution has a disciplinary authority with respect to its employees and that, with regard to the application of justified disciplinary action, the body has power of investigation under Sections 7 and 11 of the Financial Administration Act.

3. The letter of notification - its contents:

3.1 Notification of the person with respect to whom the administrative investigation is held: this document must specify:

- (a) the right of the person under investigation to be represented by his/her union, by a lawyer or another person of his/her choice, as an indispensable condition for the holding of the interview;
- (b) a clear and precise description of the terms of reference, as well as its source. (Obtain a copy of the terms of reference). In order to avoid "fishing sessions", the terms of reference must be specific and clear and indicate the period which they cover.
- (c) the list of the members of the investigation committee, their names, titles and roles;
- (d) as the case may be, it must indicate that disciplinary action may be taken following the testimony received during this interview;
- (e) the right to obtain the transcript of the testimony or the minutes of this interview;
- (f) a clear and precise description of the alleged misconduct and the specific role for which the person convened is blamed, in order to prevent the committee from trying to "go fishing";
- (g) attach to this letter a copy of Chapter 7 of the Staff Relations Guide;
- (h) attach to this letter of notification the list, and the testimony of the witnesses already interviewed, as well as the guarantee of receiving them should other witnesses be interviewed later;
- (i) attach to this letter of notification the complete list of questions the committee intends to ask the person interviewed.

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- (j) The date, place and time of the interview. Demand that the employer allow the time felt required to properly prepare for the meeting.

3.2 Notification of a Member as Witness in an Administrative Investigation or fact-finding meeting

- (a) proceed along the same steps as those indicated in section 1 of this policy;
- (b) the letter of notification must indicate the right to representation, the description of the committee's terms of reference, the list of members of that committee, the source of the terms of reference, the right to the transcript of your testimony, as well as the complete list of questions the committee intends to ask you;

3.3 Important Comments

- (a) the employer, through its committee, can compel the presence of the person under investigation, or a witness. **HOWEVER**, the testimony of those persons must be **VOLUNTARY**. **No threat made by anyone must make you forget this point.**
- (b) **No one is required** to incriminate himself/herself or a colleague; too often, the employer is looking for his proof through interviews.

4. Advice for the Representatives of the Person under Investigation, or Witnesses

- a) Ensure that the items contained in section 3 of this policy are met;
- b) gather the full file of the investigation; the person under investigation or interrogation must become aware of the facts even before meeting with the committee;
- c) at the interview, exercise your right to question and cross examine all the witnesses, if deemed appropriate. Do not allow the employer to confine the union representative in an observer role with no right to speak. The union representative may speak at any time but may not answer on behalf of the person being interviewed.
- d) Take the personal notes of the testimony gathered. Any audio and/or video recording made during the interview must be made by mutual agreement.

- e) advise the person convened as to whether he/she must answer or not each question; review carefully with him/her the scope of each question; at the interview, if necessary, ask for adjournment before answering;
- f) demand from the committee all the time deemed necessary for the persons convened to prepare themselves carefully;
- g) ensure that the investigation committee remains within its original terms of reference, that it complies with the time limits; prevent the committee from asking suggestive questions, and from gathering evidence of hearsay;
- h) carefully advise the person convened **never** to meet with the employer without the presence of his/her representative being present and to **never sign** a document provided by the employer without informing his/her representative of the existence of such a document;
- i) the representative never meets with management or a member or members of the investigation committee without the presence of the member called as a witness or who is under investigation;
- j) carefully establish with management and members of the committee that the participation of the person under investigation, or of a witness, depends strictly on the conditions outlined in this policy;
- k) The union representative may, at any time, ask the national union representatives (NURs) at the Regional Union Office for technical assistance and advice. If there is any doubt as to what action to take, contact the CEIU regional union office. Assistance will be provided at all times.
- l) Demand that the employer provide the union representative with the list of all present and future witnesses in the matter as well as the notes taken when they testified. Notify the employer that the union reserves the right to examine or cross-examine all witnesses if it feels that this is required.
- m) National union representatives may call upon the CEIU NVPs for political involvement, as required, in this type of case.
- n) The union representative shall urge the member or witnesses to request a full copy of the investigation report and findings at the earliest possible date.
- o) The member shall be accompanied by a union representative when receiving the investigation findings or at any future meeting, disciplinary or other, with the employer.

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Conclusion

CEIU does not endorse fraud nor approve abuse or conflicts of interest in any way.

However, CEIU shall accompany members who so request while they are being subjected to such investigations or to reprisals by the employer.

CEIU shall carry out an in-depth analysis of the investigation file and of the employer's evidence in order to represent the member being imposed disciplinary or administrative action.

Where the wrongdoing is excessively serious, the PSAC bargaining agent shall not be able to support the case, and CEIU shall have to take this into account in its analysis.

Where the investigation involves several members, the employer shall notify the union that meetings are to be held soon, so that CEIU may prepare to assign representatives. The employer is not required to provide the names under the Access to Information Act.

Investigations shall be an item on the agenda of general membership meetings so that the general membership is informed of the position of CEIU. A copy of this policy shall be provided to each member and posted on the union bulletin board.

It is obvious that the Union does not endorse the holding of administrative investigations for several reasons. We refuse to cooperate in building up proof against one of our members. In the past, the employer abused this authority at our members' expense. No member is forced to incriminate him/herself, and furthermore, **NO MEMBER MUST DENOUNCE ANOTHER MEMBER:** for those reasons, administrative investigations must be abolished, and we must all work together towards that end.

October 1985

As amended Sept 2004, March 2005