Stewards Sourcebook

For use in U.S. locals.
A Publication of the Boilermakers Industrial Sector Services Department

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The Legal Rights of Union Stewards

The National Labor Relations Act, enacted in 1935 as part of the New Deal, has often been hailed as the Magna Carta of American labor. Although workers in many industries had previously organized strong unions, the NLRA was the first federal law to give workers the legal right to join a union without fear of management reprisal. It also required employers to bargain with unions chosen by their employees.

Section 7 is the heart of the National Labor Relations Act. It defines protected activity. Essentially it provides that:

> *Employees shall have the right to self organization: to form, join or assist labor organizations; to bargain collectively through representatives of their own choosing; and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection.*

Section 7 protects union and collective activity. It protects workers who take part in concerted activity: filing and processing grievances, organizing and participating in on-the-job protests, picketing and striking.

Section 8 of the act defines both employer and union unfair labor practices. Five types of employer conduct are illegal:

- Employer interference, restraint or coercion directed against the union or collective activity (Section 8(a)(1)

- Employer domination of unions (Section 8(a)(2)
- Employer discrimination against employees who take part in union or collective activities (Section 8 (a)(3)
- Employer retaliation for filing unfair labor practice charges or cooperating with the NLRB (Section 8(a)(4)
- Employer refusal to bargain in good faith with union representatives (Section 8(a)(5)

Section 8 also prohibits union unfair labor practices, including failure to provide fair representation to all members of the bargaining unit.

Section 9 prohibits the adjustment of an employee grievance unless a union representative is given an opportunity to be present.

The NLRB

The National Labor Relations Board (NLRB), headquartered in Washington, D.C., has 33 regional offices responsible for enforcing the National Labor Relations Act (NLRA). Regional Directors determine whether to issue unfair labor practice complaints. Administrative Law Judges conduct hearings and issue proposed orders if complaints issued by the Regional Director are not settled by the parties. Decisions of an Administrative Law Judge may be appealed to the five-member National Labor Relations Board, appointed by the President for five year terms. NLRB decisions may be challenged in Federal District Court.

Unfair Labor Practice Procedures

Charges of violation of the National Labor Relations Act must be filed in person or by mail at the NLRB regional office within six months of the violation. After the investigation and the taking of signed affidavits, the Regional Director either: (1) issues a formal complaint; (2) dismisses the charge; or (3) defers the charge to arbitration under its *Collyer* policy.

Complaints. Unless the complaint is settled before trial, an NLRB attorney presents the case to the Administrative Law Judge. The union has the right to be a party at the hearing and usually is represented with or without counsel.

The Administrative Law Judge issues a recommended order, which becomes final if neither party appeals. Appeals to the five-member National Labor Relations Board in Washington, D.C., are lengthy and often tie a complaint up for several years. The Board may affirm, modify, or reverse the Administrative Law Judge's decision.

Collyer policy. In *Collyer Insulated Wire Company (1971)* the NLRB adopted a deferral policy toward unfair labor practices filed by unions. Under the policy, the Regional Director defers issuance of a complaint if the union can grieve and arbitrate the alleged violation of law. In other words, if it can be grieved, it is a contract dispute, not an unfair labor practice.

What does the NLRB defer? Generally, all charges except refusal to provide information, interference with employees' *Weingarten Rights*, and charges of retaliation

for cooperating with the National Labor Relations Board. The NLRB will also not defer if the employer opposes arbitration or raises procedural barriers that negate the grievance/arbitration procedure.

Special Status of Stewards

Stewards and other union representatives have special legal status when they engage in union business, known as the *equality principle*. When representing employees, stewards are considered equals with management. Therefore, conduct which could otherwise lead to discipline to an employee must be tolerated by the employer *if the company tolerates it from management staff*. The Supreme Court has said that the NLRA contemplates "robust debate" and even gives a union license to use intemperate or insulting language without fear of restraint or penalty, in some cases.

The key word here is *equality*. If the company maintains a policy of disciplining supervisors for using insulting language, stewards will not get away with using it. Likewise, the equality principle will not apply when conduct is outrageous or far outside ordinary workplace behavior.

Also, the equality principle applies only when a steward is acting in an official capacity, such as investigating grievances, requesting information, presenting a grievance, or otherwise representing employees.

Retaliation

A steward cannot be punished or threatened with discipline, demotion, or other reprisals because he or she files grievances – even if management considers them to be overly frequent, petty, or offensively written. Retaliation in any form is illegal.

Likewise, holding stewards to a higher standard of conduct than other employees is illegal. Equal standards must be applied – except in cases when stewards encourage work stoppages which violate a no-strike clause.

The Right to Grieve

Grievants are protected under Section 7 of the Act. Grievants may not be retaliated against, threatened or harassed because they file a grievance – or many grievances. An employer is guilty of an unfair labor practice if it: uses harsh language to intimidate a grievant; threatens an employee for filing a grievance; increases a penalty because a grievance is filed; lays off an employee for pursuing a grievance; or threatens an employee who testifies at a grievance hearing or arbitration.

The NLRB has specifically ruled, "The solicitation of grievances is a protected activity for stewards as well as other employees." Stewards can encourage employees to file grievances. The fairly widespread notion that union stewards may not "solicit" grievances is false.

Investigating Grievances

There is no question that stewards can investigate grievances during breaks and other nonworking time. The NLRA does <u>not</u> require employers to permit union business during working time, and employers may establish rules restricting grievance activity during such hours. You can, however, negotiate a clause in your collective bargaining agreement which permits stewards a reasonable amount of time during working hours to

conduct union business. Many contracts have such a clause. In other cases, past practices established by the parties provide for grievance handling during working hours.

Adjusting Grievances

One of the least understood parts of the NLRA is Section 9(a). This section says:

Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, that any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect; Provided further, that the bargaining representative has been given opportunity to be present at such adjustment.

Section 9(a) recognizes the union as the exclusive bargaining representative of unit employees. No individual or other group of workers is allowed to bargain with the employer over contracts or working conditions.

The second part of Section 9(a) permits individual employees or groups of employees to present contract grievances or other complaints without going through the union, if they so desire. This permits management to listen to a worker who wishes to complain privately about his or her job assignment, pay, working conditions, etc. However, the last provision of Section (9a) protects the union. It forbids employers from adjusting an employee's grievance or complaint unless the union has been given an opportunity to be present. A worker can complain to a supervisor about his or her work, but a supervisor cannot agree to change that work or any provision of the contract without first calling in a union representative. A worker can complain about vacation dates, but management cannot change the schedule until a union representative is notified. Section 9(a) insures that no "under the table" deals will be made between management and individual employees.

The NLRB interprets "adjustment" as including the denial of a grievance or complaint. Thus, an employer commits an unfair labor practice if it refuses an employee's grievance without first calling in a union representative.

Supporting Grievances

The filing of a grievance does not limit the union's legal right to engage in on-the-job concerted activities. Even though there is a no-strike clause, union members may demonstrate support for members' grievances by:

- distributing leaflets during nonworking time
- circulating petitions
- holding meetings during non-work time to discuss the issue
- leading a delegation of employees during non-work time, carrying signs to support the grievance
- writing letters to newspapers
- picketing the home of the plant manager or other supervisor responsible for deciding a grievance

- establishing informational picket lines at the workplace, unless the contract bans such picketing
- wearing shirts or buttons or other items with slogans supporting the grievance and union's position

When conducted properly, these activities, sponsored by the union or by groups of employees, are protected activities under Section 7 of the NLRA. Before beginning aggressive tactics, such as picketing, it is always a good idea to consult your International rep.

The Right to Information

The NLRB, through numerous court decisions, has imposed a wide-ranging obligation on employers to disclose information that unions need in order to carry out their responsibilities. These rights exist during contract negotiations and also during the contract while processing grievances. As a steward, you may request information: when investigating grievances; when preparing for a grievance meeting; when deciding whether to drop the grievance or move it to a higher step; when deciding to arbitrate a grievance; and when preparing for an arbitration.

The right to information is very broad, but the union must make specific requests. You may not conduct a "fishing expedition" into the employer's records, but you are entitled to examine company documents which are relevant to the grievance. Attendance records, company memos, disciplinary records, evaluations, job assignments and descriptions, payroll records, personnel files, reports and studies, supervisors' notes and other relevant documents must be released to the union if they are relevant to processing the grievance.

During the course of grievance handling, employers must also answer pertinent factual questions. For example, in a subcontracting grievance you can ask for the name of the subcontractor, the date of the contract, a description of the work and the amount of the contract. You are also entitled to a copy of the contract and correspondence with the subcontractor. If necessary and relevant, employers may also be required to assemble data and statistics.

The NLRB has approved the right of unions to make general requests, such as, "Please supply all documents or records which refer or reflect the factors causing you to reject this grievance." Although an information request may be made orally, it is far better to put it in writing, being as specific as possible in identifying the records or data that you are looking for.

The NLRB has often disagreed with typical excuses of employers such as "you already have the information . . . your request is too large . . . the information was previously posted."

An employer defense which is sometimes successful is confidentiality. Federal law (The Health Insurance Portability and Accountability Act) contains a privacy rule that protects the confidentiality of most medical records. In addition, when an employer has an established personal privacy policy barring disclosure of certain confidential information, the NLRB has upheld the company's right to refuse to provide the union with this information. That is, if management is not allowed access to certain information regarding an employee, then the union will not be allowed access that that information. In cases in which *confidentiality* is asserted, the union may be able to get the information

by obtaining a written authorization from the grievant, modifying the information request, or challenging the legitimacy of the privacy policy at the NLRB.

The NLRB has not established a specific time period for employers to answer union requests. Employers are expected to act promptly, but the acceptable time period depends on the amount of time required to assemble the information.

For straight-forward requests, NLRB charges should be filed if more than two weeks go by and the employer does not provide the material or an adequate reason for its delay. Charges that an employer has failed to provide information to the union are not deferred under the *Collyer* doctrine.

TIP: *In your letter requesting information from the company, state a specific deadline for delivery of the information.* If your deadline is reasonable, failing to meet it could be deemed obstruction by the company.

The Duty of Fair Representation

Follow the advice in this booklet and you'll be attending to your duty of fair representation to all members of the bargaining unit

WE OFTEN HEAR inexperienced or misinformed stewards say something like, "I knew he didn't have a leg to stand on, but I had to take the grievance to step three because every member deserves representation from the union, even if he is wrong."

This statement suggests a misunderstanding of the duty of fair representation that can make the steward less effective in doing the job.

The term "Duty of Fair Representation" refers to the section of the NLRA that requires unions to give everyone in the collective bargaining unit the same level of representation. It doesn't matter whether you're an apprentice or a 30- year journeyman, whether you are the most popular person on the job or hated by everyone who works with you, or who you voted for in the last local lodge elections: you are entitled to representation for legitimate grievances.

However, this duty does not entitle members to tie up the union's resources with frivolous complaints that do not rise to the level of grievance, nor is it in the best interest of the local lodge or the International to take cases to arbitration when we know there is no way we can win them.

Grievances come in all shapes and sizes. So do grievants. Some people always seem to have a bone to pick with the boss; some want to grieve, but are afraid of what the boss will say; some not only want to pursue their grievances to the hilt, but will add any details necessary to strengthen their case — regardless of whether they are true.

Some grievants are loyal union members; others always seem to be undermining the union and may file a grievance just to "prove the union is worthless."

You must treat all of the workers in your bargaining unit equally – regardless of their membership status.

In states where union security clauses are not allowed (so-called right-to-work states), that means you must treat a grievance that comes from a nonmember the same way you treat a grievance from a member. We don't like this fact, but failing to treat everyone equally makes your local vulnerable to a charge of failure to meet your duty of fair representation (DFR). DFR lawsuits can be complex, time-consuming, and expensive, especially if you lose.

The law says you have to judge every grievance by the merits of the grievance — not the merits of the grievant — and that you must make a good-faith effort to win all grievances that have merit.

Effort is the key word. No one expects you to win every grievance, but if the grievance has merit, you have a duty to try.

And in order to protect yourself from that rare person whom you cannot convince that you did try your best, be sure to document every action you take so you can demonstrate your effort if you need to do so in a court of law.

You'll need the full support of your union to look after the best interests of your local lodge – as well as your own best interests – so contact your local lodge leadership if anyone ever threatens a DFR suit so they can contact your International rep.

On the following pages you'll find a description of the duty of fair representation from an attorney who often works with the Boilermakers lodges and the International.

Legal notes on the duty of fair representation

By Joseph W. Moreland, Blake & Uhlig, P.A.

The union's duty of fair representation attaches to virtually every aspect of the union's representation of its constituents' employment related interests. The duty obtains not only in grievance handling but also in the negotiation of the collective bargaining agreement. Here, however, we are concerned specifically with the duty of fair representation as it impacts upon your responsibilities in administering the collective bargaining agreement and representing members of the bargaining unit in grievance handling. In order to avoid breaching the duty of fair representation in this regard a union, when representing employees, must *not* engage in *arbitrary or bad faith* conduct. The union representatives must, at all times, avoid *engaging in fraud and deceitful, discriminatory or dishonest conduct*. When representing employees, the union representative must at all times act in good faith and with honesty of purpose. So long as the union representatives do this, they are giving a *wide range of* reasonableness in making decisions when representing employees in the bargaining unit. The union representatives will *not* breach this duty solely because they make a wrong decision about the merits of a grievance as long as the grievance has been processed in good faith and the union representatives have a reasonable basis for making the decision with regard to how far and in what manner the grievance will be processed.

Substantive Guidelines[1]

Improper Motives or Fraud

A union breaches its duty of fair representation if its actions are attributable to improper motives or fraud. For example, if the union refuses to process a grievance because of the employee's intraunion political activities, or the employee's nonmembership in the union, such refusal would breach the duty. Further, even if the union's conduct is not based on such considerations, its conduct would be unlawful if it is based on irrelevant or invidious considerations. For example, if the union refuses to process a grievance because of any employee's color or sex or because of personal animosity between the employee and the union's leadership, such conduct would be unlawful.

In determining whether the union is motivated by improper motives, the analysis would be similar to that in any other case where motive is a factor. Thus, for example, where there is some evidence of improper motivation, but the union asserts that it refused to process a grievance because the grievance was not meritorious, the fact that the union made only cursory inquiry into the merits of the grievance may undercut the union's defense. Accordingly, the fact is relevant to the analysis. However, the fact, standing alone, would not establish improper motive.

Fraud cases, like improper motive cases, involve intentional misconduct. If the union engages in fraud in its representation of unit employees, such conduct would be inconsistent with the duty to represent these employees fairly. However, it should be noted that proof of fraud in this connection requires evidence the union intentionally

misled the employee as to a material fact concerning his/her employment, and that the employee reasonably relied on that misrepresentation to his/her detriment.

Arbitrary Conduct

In this category of cases are those where the union's conduct is wholly arbitrary. That is, there is no basis upon which the union's conduct can be explained. For example, the union would violate the law if it refused to process a grievance without any inquiry or with such a perfunctory or cursory inquiry that it is tantamount to no inquiry at all. Similarly, if there is a contract or an internal union policy which clearly and unambiguously supports the employee's position, and the union, without explanation, refuses to support the employee, such conduct would be arbitrary and therefore violative of the law.

Notwithstanding the above, it must be emphasized that the union's inquiry into the facts concerning the grievance need not be the kind of exhaustive inquiry that one expects from a skilled investigator. Further, the mere fact that the union's investigation reaches a conclusion that is later shown to be erroneous does not establish a violation.

Similarly, if a contract provision supports the employee under one interpretation, and the union reasonably gives the contract another interpretation, the fact that the union's interpretation may be 'wrong' (as others might see it) does not establish the violation. So long as the union makes *some inquiry* into the facts and/or so long as the union's contract interpretation has *some basis in reason*, the union's refusal to process the grievance will not be considered arbitrary.

Gross Negligence

It is well established that mere negligence will not establish a breach of the duty of fair representation. Conceivable, however, there could be cases where the negligence was so gross as to constitute a reckless disregard of the interests of the unit employee. For example, one court held that a union breached its duty of fair representation by failing to notify an employee that here grievance would not be taken to arbitration, thereby leading here to reject a settlement offer she otherwise would have accepted. It was the court's view that, while a simple negligence was not enough to constitute a breach of the union's duty, acts of omission by union officials not intended to harm employees, sometimes may be so egregious, so far short of minimum standards of fairness to the employee, or so unrelated to legitimate union interests as to be unlawful.

Union's Conduct after It Has Decided to Grieve on Behalf of the Employee

Because of the way the law has developed, a special word should be added for cases in which the union has chosen to process a grievance for an employee and then undercuts the position of the employee in the grievance procedure. There is some indication in the decided cases that a union may have the higher responsibility of an advocate once it decides to process a grievance on the employee's behalf. However, the cases in which a violation has been found involve improper motives or arbitrary conduct, as these terms are used above. Therefore, if the union conduct is improperly motivated (as in "A" above) or if there is no reason at all for the union's conduct (see "B" above), such conduct will be considered to be in breach of the duty of fair representation.[2] However, the mere fact that the union has invoked the grievance machinery does not mean that it is

precluded from thereafter settling the grievance or acquiescing in the employers position. With respect to settlements, the union can consider the costs of further processing the grievance and decide to accept less than that which the employee seeks. Such action would be well within the "wide range of reasonableness ... allowed a statutory bargaining representative in serving the unit it represents ... " Ford v. Hoffman, 345 U.S. 330, 31 LRRM 2548 (1953). If the employer produces evidence which substantially undermines the employee's case, the union may reassess the grievance and would be privileged to withdraw it.

Conclusions and Checklist

The union's duty in handling grievances can be summarized with reference to the acronym AID.

1. Assist the grievant in initiating the grievance.

A. Do not prejudge the merits of an individual's grievance. Some grievances which appear on their face to be without basis may be seen in a different light upon investigation. Problems will be avoided if grievances are accepted from all those who wish to file such, even if they must later be dismissed upon investigation.

B. Apprise the grievant of applicable time limits in the collective bargaining agreement. An individual should not be misled or allowed to linger in ignorance about contractual time constraints which may, if ignored, preclude the assertion of contractual rights.

C. Help the grievant draft the grievance in clear language making appropriate reference to arguably applicable contract provisions.

D. Request a remedy. Specify what relief is being sought by the grievant through the grievance procedure. If in doubt, request broad relief along the lines suggested by the grievant.

2. Investigate the grievance.

A. Interview the grievant and get his/her side of the story including the following:

1. The grievant's view of the facts underlying the grievance.
2. The grievant's reasons for filing the grievance and arguments as to why the action complained of constitutes a contract violation.
3. Have the grievant identify any witnesses or others who may have information helpful to the grievance and what the grievant believes they can offer.
4. Ask the grievant if there is anything else of which the grievant is aware which may bear on the matter.

B. Get the employer's version of events.

1. Request of the employer all information in its possession which bears upon the grievance including documents and the identity of witnesses.
2. Don't just take the employer's position as accurate.

C. Interview witnesses identified as having relevant information.

D. Take notes. Even a brief written record of your investigation may be helpful later in preparing the case for arbitration or for demonstrating the degree of your efforts on behalf of the grievant.

E. Discuss the results of your investigation with the grievant and request of that individual whether there is anything more of which he/she is aware which may be of assistance to you in making a proper determination.

3. Decide

Make a reasonable determination as to whether the grievance has merit and should go forward, is without merit and should be dismissed, or if a compromise settlement should be sought.

A. Inform the grievant. Many problems arise simply because the grievant has not been kept reasonably apprised of the status of his/her grievance. If the decision is made to dismiss or settle the grievance for less than the grievant sought, the grievant should be advised of this *in writing*.

The statute of limitations for the initiation of legal action by the grievant begins to run only when the grievant has been advised that the union intends to take no further action in the matter.

B. If you decide to take the grievance forward, the union then assumes an additional responsibility – that of advocate on behalf of the grievant. This does not preclude the union from settling the grievance or even from withdrawing it after the matter is scheduled for arbitration. However, any such decision should be based upon a reasonable assessment or reassessment of circumstances with the grievant properly apprised of the same. A union officer is not held to the standard of an attorney in advocating the grievant's position in arbitration or in personnel proceedings but is expected to reasonably marshal the evidence and arguments supportive of the grievance.

As noted at the outset, thousands of pages and millions of words have been written about the subtleties of the duty of fair representation. The foregoing is intended as a sketch, a brief outline, of those fundamental factors which should be considered in grievance handling. Most important, however, is to keep in mind that *each member of the bargaining unit has a stewards and right to expect fair and reasonable treatment by the union*. Nevertheless, union officers are not expected or required to be perfect in their judgment. The law allows you even to be wrong on occasion so long as the conclusion is reasonably drawn from the results of diligent efforts on behalf of the individual.

Endnotes

1 These substantive guidelines are an edited version of a memorandum to field offices by NLRB General Counsel John S. Irving dated July 9, 1979.

2. In addition, there may be cases where the grievance procedures are wholly inconsistent with the most elementary concepts of a fair and impartial hearing. For example, if the grievant's interests are clearly adverse to the union official designated to represent him/her, or if the grievance is presented to a committee whose "union" members have interests clearly adverse to him/her, it may well be that the grievant is denied a fair hearing and that the union responsible therefore has failed to represent the grievant fairly.

Chapter Two – Investigating & Evaluating Grievances

Five Steps to Winning Grievances

There's no magic bullet, but following these five steps gives you an edge

1. Listen carefully to learn the facts from everyone you interview. Listening is harder than people realize. It is not a passive act. Ask questions to clarify facts and fill in information that the speaker leaves out.

The more information you gather from the first interview (with the grievant), the easier it will be. Even if it takes a while, get all the facts before you draw any conclusions about the problem.

Upset people offer a lot of opinions and conclusions. These are not facts. Pay attention to the facts of the case, not the "back story." A statement like "Joe has always had it in for me" is an opinion and of no use in a grievance. However, your questions might uncover that Joe has been giving other workers preferential treatment. That fact (once it is documented) can be used to win a grievance.

2. Test for a grievance. Apply the five tests for a grievance to the case to ensure it meets at least one test. You may find it helpful to go through them in order.

A violation of the contract is the most common grievance and usually the easiest to win, but check your facts against all of them. If necessary, discuss the problem with your grievance committee chairman, officer, or other stewards. The grounds for grievances include many grey areas; an experienced eye can help you determine where the boundaries lie.

Sometimes an action will be grievable on more than one ground. You should base your argument on only one of them. Comparing the facts against all five grounds will help you choose the one most likely to give you a victory.

3. Investigate thoroughly. Before writing the grievance, double-check the facts with available records and other persons who have information. People say misleading things for all sorts of reasons. They may be confused about exactly what happened, or they may have misunderstood something they heard. They may simply not remember the events well. Or they may think they can put one over on the boss (or you).

Double-checking will help you avoid presenting an unwinnable argument. If you base your argument on Joe's claim that he hasn't worked overtime for nearly six months, and at the hearing the company shows records that he worked seven days of overtime two months ago, you not only lose your grievance, you lose credibility for future grievances.

You owe it to your grievant to be thorough, but don't forget about the grievance time limits.

4. Write the grievance. Write a brief statement of the situation and conclude with the specific relief you seek. Your written grievance should be as simple and clear as possible without leaving out pertinent facts.

Putting a complex situation into a few simple sentences is not easy. Think about what you want to say before you begin writing. Refer to the facts you have collected in your Steward Fact Sheet (Chapter 4). Not only will this help you put the grievance on paper in a logical, step-by-step fashion, but it can also help you see whether you need to get more information to prove your point.

Your written grievance should name the grounds for the grievance —whether it is based on a violation of the contract, the law, company rules, well-established practices, or workers' rights. You probably won't need to be any more specific early on, but when you argue your grievance you must be ready to refer to the specific sections of the contract, law, etc., that have been violated.

If your collective bargaining agreement requires you to cite the specific clause of the contract that was violated, be sure to include "and all other applicable articles of the agreement." You may find later that a different clause in the contract provides a better argument. If more than one section of the contract was violated, cite the one you believe makes the best argument, then add "and all other applicable articles."

If your contract requires you to use a form provided by the company, do so. It is disheartening to lose a grievance on a technicality, like failure to file on the proper form or failure to file in the time limits.

5. Present the grievance in a firm but polite manner. One of the main purposes of a grievance procedure is to defuse the anger and hostility that can surround disagreements between workers and management. Your job is to talk about the facts of the problem, not the anger it provoked. When both sides remain calm and respectful, they are better able to find a mutually-agreeable remedy.

Try to understand the company's side. You can't convince them of the correctness of your position without first knowing where they stand. Learning that management agrees with you on some of your points frees you to spend more time arguing the points on which you disagree.

Argue the case step by step. The facts collected in your Steward Fact Sheet will guide the argument.

Your oral presentation will be more detailed than your written grievance. Explain each point thoroughly, but stick to the important facts. Unnecessary information can make your argument hard to follow.

Your goal is to resolve every grievance at the lowest level you can. That not only means less work for you, but it gives the worker relief much sooner. However, don't be discouraged if you are unable to settle the grievance right away. If you are still sure the grievance is legitimate, refer it to the next higher step.

Grounds for Grievances

Not every Complaint is a Grievance

The grievance procedure serves five very important purposes:

- To protect workers' democratic rights on the job;
- To establish a mechanism for enforcing the contract;
- To provide for orderly and fair settlement of disputes;
- To maintain healthful, safe, and agreeable working conditions; and
- To give each worker the support of the whole union when he or she has a dispute with management.

This last purpose is important. When nonunion workers have disputes with management, they are on their own. Union members are never alone. That is why many people consider the grievance procedure to be one of the most important parts of any collective bargaining agreement (second only to the union security clause).

However, not every complaint constitutes a proper grievance. The steward's first action on hearing a complaint is to determine whether it qualifies as a grievance.

Generally, five areas provide grounds for grievances:

1) the contract,
2) state and federal laws,
3) company rules and regulations,
4) well-established practices, and
5) workers' rights.

PLEASE NOTE: Although all five of these areas offer grounds for grievances, violations of the contract and company rules are the easiest grievances to investigate and present. Hence, they are the ones you are most likely to win. Whenever possible, base your grievance on a violation of the contract.

Violations of the Contract

Any time the employer violates a specific provision in the contract, you have grounds for a grievance. If the contract says the first shift starts at 7 a.m., any other starting time is grounds for a grievance.

A grievance can also arise from a violation of the intent of the contract. Let's say your contract states, "The company shall provide appropriate safety equipment to employees." To cut costs, the company stops supplying work gloves, saying gloves are clothing, not equipment. If the intent of this clause was to ensure that the company would provide all kinds of safety equipment, you probably have a grievance. Intent is never easy to prove and often relies on past practice or practice in a similar area. Does the company supply steel-toed boots?

Grievances also arise when a company action violates an agreed-to interpretation of the contract. Let's say your contract gives you "five days" following an extended absence to submit written proof that it was medically necessary, but does not specify whether these are calendar days or working days. The union and the company agreed to interpret this as Monday through Friday, not weekends. If the company later tries to count weekend days, you have grounds for a grievance.

Mutually agreed-to interpretations are legally binding for both sides, so it is important that when these interpretations are agreed to that you inform members, especially those who may become stewards.

Violations of local, state, and federal laws

State and federal laws protect workers from discrimination and unfair treatment on the job. If an employer action violates a law, the union may handle the grievance either by contacting the appropriate government agency or by using the grievance process.

Before you initiate any action based on a violation of the law, be sure that you understand what you are getting into. State and federal laws are complex and often confusing. We all know "front-porch" lawyers who think they understand the law, but reading a few statutes in the library or on the Internet does not make you an expert. When you suspect a member has a grievance based on a law violation, consult an expert.

Your International representative can help; so can the International's Department of Collective Bargaining Services. And you may want to consult an attorney.

Violations of Company Rules

Company rules and regulations generate grievances in two ways.

First, if management disregards its own rules or applies them unequally, there is grounds for a grievance.

Second, a grievance can arise if a company rule is unreasonable or is vague.

In some cases, a rule may be unreasonably applied. For example, the company may have a rule that says, "Where it is safe to do so, smoking is permitted, except in designated no-smoking areas." If the new manager orders no-smoking signs to be erected everywhere, so that smoking is, in effect, banned throughout the plant, the rule is being unreasonably applied.

Generally, contractors will lay down the rules for you when the job starts. These rules may differ from job to job, even with the same contractor and/or customer.

Violations of Well-established Practices

Well-established practices can only be changed by mutual consent. Discontinuing or changing a well-established practice without input from the union may result in a grievance. In effect, past practices can add to or delete from your collective bargaining agreement, just as if the language were inserted or deleted.

For example, say that for years workers have been stopping work 15 minutes before the end of their shift so they can wash up before leaving. A new supervisor comes in and says they have to start washing up on their own time. These workers probably have grounds for a grievance. Even though it is not mentioned in the collective bargaining agreement, the 15-minute clean-up time is a well-established practice.

If something occurs only a few times, it may not be grounds for a grievance. The practice must be consistently applied over a significant period of time.

Established practices can change over time. Just because the company did something a certain way five years ago doesn't mean you have grounds for a grievance if they do it differently now. Likewise, the company may discontinue even long-term, well-established practices that become illegal or are now considered unsafe.

It is often difficult to argue past practice to a contractor, because practices might not be the same on all jobs.

The union can also establish practices. One of the most important reasons you should aggressively pursue every legitimate grievance is that failing to do so could establish a practice that undermines your contract.

Violations of Workers' Rights

If an action of management violates basic fair treatment of a worker, that worker may have a grievance even if the contract does not say anything about the subject. Discrimination and workers' rights cover a broad range of incidents and practices. However, discrimination is very difficult to prove. Because discriminati0n lawsuits often bring big settlements, most people who believe they are being discriminated against hire an attorney.

Choose the best grounds for winning the grievance

If a worker's complaint falls into one of the areas named above, you probably have grounds for a grievance. You may even have grounds in more than one area. If so, find the argument that is most likely to win the grievance.

If the company's action violates a provision of the contract, use the contract to support your grievance, even if the action provides other grounds as well. These arguments are the easiest ones to make and the ones you're most likely to win.

In some cases, your choice may not be clear. Investigate long and hard before you choose. The first argument that comes to mind is not necessarily the best one.

One argument over-used by inexperienced stewards is company bias against an individual. Bias is nearly impossible to prove.

Grievance Time Limits

If you snooze, you lose

Most grievance procedures include time limits for taking actions. If you fail to act within the time limits specified, you lose any right to carry the grievance further.

Time limits and other details of grievance procedure are established by the contract. To handle grievances properly, you need to be fully aware of the time limits, both for the union and for the company, set in your contract.

Regardless of the time limits in the contract, the quicker you address a problem with management, the more control you have over it. When you first get the problem, you have a chance to work something out with management and avoid filing a grievance. Once a grievance is filed, the procedure takes over, and you lose influence with each new step taken. Stewards often don't even go to arbitration, except as witnesses.

Make the company meet their time limits

A grievance procedure also gives the company time limits. Hold the company to their time limits. You don't want the company dragging the matter out until the job is already over and there is nothing for you to win.

Everyone would like grievances to be solved through discussion, but often we can't get satisfaction that way. Every grievance procedure provides for written notice of

grievances. Writing up the grievance does not make the matter more important — every grievance is important — but it documents that you and the company have a dispute concerning the issue.

If the issue remains in dispute, the grievance may end up in arbitration. An arbitrator needs to know the facts, so your written grievance is an important document. It may become the first document in a paper trail that shows the arbitrator what happened and in what sequence.

Writing that document is extremely important. Don't go it alone. Get more experienced people to assist.

Request an extension if you can't meet the deadline

You may find that you cannot gather all the facts you need in order to properly represent your grievant within the time limit specified in the contract. Most grievance procedures allow you to request an extension. Even if your contract is silent on that issue, you can always get an extension through mutual agreement between you and the company.

But you are going to need a legitimate reason. Failure to get your butt in gear is not a legitimate reason.

A request for an extension of the time limits should always be in writing. Even if you work the details out verbally and both sides agree, give the company a letter formally requesting the extension and keep their written response on file. These letters provide an important paper trail if the matter goes to arbitration. They also help stewards handle future grievances by documenting the company's usual practices.

Before you request an extension, figure out how much time you'll need. Your request should be for a specific length of time, and you don't want to have to ask for a second extension if you can't finish your work in the time you've asked for.

The Steward Fact Sheet

This useful tool organizes information you'll need to process a grievance

If you do a thorough job of investigating your grievance, you'll end up with quite a bit of information. The **Steward Fact Sheet** is a useful tool that can help you organize that information. A blank copy of the **Steward Fact Sheet** is included as Appendix One in this booklet. For extra copies, ask your local lodge or contact the International's Department of Collective Bargaining Services.

This simple form can help you get ready to write up your grievance. In fact, if you conscientiously investigate the complaint and fill in all of this form, you should be able to write your grievance and argue just by using the information from the form.

Filling in all the sections is also a good way to double-check to make sure you're collecting all of the information you'll need to investigate and handle the grievance properly. Begin filling in this form as soon as you determine that you have a complaint that could lead to a grievance. The form contains places for the following information, some of which may not apply on all jobs:

- Lodge number
- Person preparing sheet
- Department
- Job classification
- Rate
- Location
- Supervisor's name
- When did the grievance occur? (Date and Time)
- How often? How long?
- Witnesses names, departments, job classification, and phone numbers
- The facts of the complaint.
- Where did it occur?
- Type of equipment (if applicable)
- Why is this a grievance? (Name the article in the collective bargaining agreement, the law, past practice, regulation, or unjust treatment.)
- Corrective action required.
- Employer's claim.
- Employer's records of conduct (verbal warning dates and reasons, written warnings, penalties, related information).

The form also reminds you to attach all documentary evidence — attendance records, posted policies, etc.

Each grievance is unique, and contracts differ greatly. Some areas on this form might not be important to your case and you can ignore them. But take a good, hard look at the facts before you do so. You don't want to leave out anything that might help you win.

Areas that you must not overlook are the sections requiring the reason this action is considered a grievance, the corrective action requested, and what the employer contends.

The basis for your grievance is crucial in determining how you will argue your case. You must determine whether your complaint involves a violation of 1) the contract, 2)

state or federal laws, 3) company rules and regulations, 4) well-established practices, or 5) workers' rights.

Writing this down will help you decide how to argue the case and will also help weed out complaints that seem serious but are not grievable. If none of these violations occurred, you do not have a grievance.

The corrective action you are seeking is also extremely important. Be sure you ask for a specific remedy. **If you don't specify the remedy you want, you can win the grievance but the grievant gets nothing.**

Keeping Good Records

Well-organized grievance information wins cases

For many stewards, the local lodge office takes care of the lion's share of recordkeeping. When grievances get complex, the lodge hall will get involved and they'll start up a file, make necessary copies, and keep track of everything.

But that doesn't mean you don't have to keep good records yourself. You do. And the better your records are, the easier you make it for the people in the hall when they take one of your cases to arbitration.

What kinds of records do you keep? Start with dates, times, and names. For stewards on construction jobs, you'll want to get a phone number (preferable mobile phone), too, in case you need to contact the person after the job has ended.

When a member starts telling you about a complaint, you need to immediately write down the date, the time, the member's name, and the nature of the complaint. You can then begin taking notes regarding the problem.

Let's get basic here: you're going to need a small notebook that you can carry in your pocket. Jot down notes as quickly as you can, but as soon as you get a free moment – when no one is talking in your ear – sit down with those notes and copy them over to a clean sheet of paper in readable handwriting – or better yet, type them or have someone type them for you. Otherwise, you'll be sitting in arbitration, looking down at your unreadable scrawl, saying, "At 10 am on the 27th – or is that noon on the 29th? – one of the other – the grievant was talking to the clerk – or was he walking on the deck? Does anybody remember?"

Don't throw away the notebook, though. It never hurts to have the original on file somewhere. Someone may want to verify that you took notes instead of just sitting in your office making it all up on the computer. .

If other members were involved, there were witnesses, or you need to verify anything with anyone else on the job, you will need to write down their names and contact information. Construction workers are by nature only temporarily on the job. By the time the complaint becomes a grievance, all those supporting people may be hundreds of miles away on other jobs – or fishing. You need to have their cell numbers or other reliable contact information so you can reach them if needed.

Use a different page in your notebook for each issue and name the issue at the top of the page. As you learn more about that issue, add your notes to this page. When you go back looking for something, this added level of organization will help you find it faster than if you have to read each page in its entirety to know what is there.

Keeping notes this way also helps keep the issues separate in your head. When you write down one thing, then turn the page to write down something else, the movement between these two actions works like a divider in your brain, separating the two issues in your memory.

Put a date and time on everything. Specify a.m. or p.m., or use 24-hour "military" time. Knowing the time can help jog your memory or someone else's memory regarding a particular conversation or event. A person's memory of an event will change over time. If you end up with conflicting statements about a particular event, knowing which description came closest after the event can help you determine which one is probably more accurate.

Put a tracking number on every piece of paper associated with a grievance. When you're handling more than one grievance, it is easy to mix the papers from one case with those from another. A document lying loose at the union office can now be identified and routed back to the steward or file where it belongs.

If your grievance procedure makes you wait to assign a number, use a working number on the document. Always put the tracking number in the same location on the page (such as the upper right corner) and do it in pencil, so you can easily change it to the "official" file number later.

The suggestions given here can help you come up with your own method. Take suggestions. Learn from others. No single method is foolproof. People have devised some very helpful systems through their many years of handling grievances.

Whatever system works for you is the best one, but the basic parts of the system should be the same for everyone in your local. You won't always be there. Files that are self-explanatory or which are based on a system everyone uses will be helpful even if you aren't around to answer questions.

The Grievance Log

Logs help you categorize and analyze grievances

In every field, we often rely too heavily on our own memories. Stewards (and local lodges) can benefit by keeping a log of the grievances their members bring to them so they can get a clearer picture of how a company handles certain problems. The "grievance log" does not need to be fancy or complex, just a list of complaints, the date and time, the article of the contract or nature of the complaint, whether it turned into a grievance, the outcome of the grievance, and the names of all the people involved – the grievant, witness, and supervisory people.

Grievance logs are enormously useful in shops, where they can be used to find issues for contract negotiations and problem areas within the shop. But they are also useful to construction lodge stewards.

Even if the job doesn't last very long, your log may reveal patterns you aren't aware of when you get the grievances one by one. For example, you may be getting all kinds of grievances with no apparent pattern, but when you look at the log, you see that three-fourths of your complaints arise within an hour of quitting time. Is that useful? You might need to be creative to figure out how to use it, but it certainly seems meaningful.

Your log also might reveal to you areas where the company is willing to negotiate and others where they won't listen and stick hard to the contract. If you see such a pattern, you can avoid a lot of frustration.

Logs can even be used to help you establish a "past practice." If every time a certain problem comes up, the employer handles it a certain way, then you know what to suggest when that problem rears its head again.

Grievance logs can be customized to contain whatever information you think is important to track. You may also want to share your logs with other stewards or with the local lodge office. If you are starting a job with a contractor you haven't worked with before, the grievance logs of other stewards working with that company could be very handy.

Be careful analyzing your information, though. To look at the big picture, you may want to calculate some percentages. For example, let's say that a quick glance at the grievance log shows Ned Barnes has been involved in twice as many grievances as any other supervisor. Sounds like a hardass, doesn't he?

Don't jump to conclusions. If Barnes supervises three times as many workers as any other supervisor, then his grievance ratio is actually pretty good.

Chapter Three – Presenting Grievances

Choosing Your Argument

You need to know what argument to choose and how to support your claim
To be a good steward you need to be part detective and part lawyer. When you first learn of the grievance, you act like a detective. You question witnesses and gather evidence to make sure there is a grievance.

Then comes a crucial decision. You need to decide what claim you are going to make and how you will argue your case. To make the right decision, you have to know something about putting together an effective formal argument.

Usually when we talk about arguments, we are talking about those noisy discussions in which both sides get angry and nothing ever gets resolved. But when we talk about arguing a grievance, we are using the term as an attorney or arbitrator would. We are talking about a formal argument, not a disagreement.

Not every grievance goes to arbitration, but you should always prepare your argument as though it will be heard by an arbitrator. First, a well-prepared argument is more likely to convince management that your case is strong. Second, you never know which cases will end up in arbitration; always be prepared.

What is a formal argument?
A formal argument is a course of reasoning aimed at demonstrating truth or falsehood. In preparing the argument for your grievance, remember this definition. Note that the argument will be a "course of reasoning."

That means your argument will be based on logic, not emotion. It will be organized. And it will have a specific goal or target.

To be logical, your argument will rely on facts or statements put forth as evidence. That is why it is important to follow good investigative procedure when you collect facts.

Collect all the facts you can. You may not use them all, but the more you have, the more choices you have for creating a strong argument.

Likewise, do not ignore facts that don't support your position. The other side may use those facts in their case. You must be ready to rebut them — that is, to offer evidence or arguments that show these facts are incorrect or that they should not apply in this case.

The burden of proof
There are two sides to every argument: affirmative and negative. The affirmative position is the side which makes the "claim." The negative position is one of rebuttal, refuting the claims or evidence of the affirmative. The burden of proof always rests with the affirmative position.

The negative position always has the advantage in any argument. Making a claim and proving it is difficult; refuting the claim or some portion of the claim is far easier.

The two examples on the following pages will help illustrate some of these concepts.

EXAMPLE 1: The company has given Joe Average a disciplinary step for missing work. The company says that Joe has in fact missed more than the allowable time, but since everyone knows he has been going through a divorce, they have been easy on him. Now they feel that Joe has had enough time to get his affairs in order, and they believe that the step is a "wake-up call" for Joe. Joe goes to his union steward to file a grievance to get the step removed.

Question: Is the company taking the affirmative or negative position?

Answer: The company is taking the affirmative position. They have the burden of proof.

Question: What do they need to prove?

Answer: If you look carefully, you see that the company has made three distinct claims:

1. Joe has missed work.
2. Joe missed "more than the allowable time."
3. The company has been easy on Joe — they have let him exceed the standard limits for attendance.

Knowing that a negative argument is easier to formulate, you tell the company you will rebut their claims. The company has the burden of proof. You simply need to show that what they are claiming is not accurate.

To win their first claim, the company must show that Joe missed work. So you need to determine what his attendance record has been. Examine the company's attendance records. Don't just take Joe's word for it, because the company will be able to show those records as evidence. If he "forgets" a few of his absences, the company can use the official record to make it look like you haven't prepared your case well.

To win their second claim, they must prove he missed more than is allowed. You now know how much work he has missed, the only question is how much time is allowed. Many things can determine that limit – an attendance policy, contract language, a work rule.

If your investigation shows Joe is under the set limit, you have won. If the company has never set a specific limit, you win. You cannot get a speeding ticket when there is no speed limit.

To win their final claim, the company has to prove they have been giving Joe a break. To refute this, you need to look beyond Joe's record. It might be necessary to request the attendance records of all employees who are similarly situated. If you find that all employees get a disciplinary step when they reach the number of absences Joe has reached, then the company isn't giving him a break, they're just enforcing the rule.

If other workers have missed more work than Joe without getting a disciplinary step, then clearly they are not giving Joe a break. They may even be treating him more severely than others.

In either of these cases, the mention of their easy stance on Joe has no merit, and should not become a permanent part of his file, even if they prove that he is over the

allowable limit. Such a statement may prejudice the handling of any grievances Joe files later.

Winning a partial victory like that may seem inconsequential, but every victory matters. Life is not a baseball game with a final score and a clear winner and loser. Every concession the company makes shows you are doing a good job arguing your grievances. And if Joe comes up for discipline again some time in the future, the absence of that negative comment could be very important.

EXAMPLE 2: Jane North has been a shop steward for about two years and has always been active in union affairs. She has never gotten along well with Bill Boss, the shift foreman, and in the last three months, she has filed an especially large number of grievances against him. She has also been seen in the last few months drinking heavily in a local bar on weekends.

On Monday morning, Bill sends Jane home on a crisis suspension. He alleges that she had alcohol on her breath, slurred speech, and bloodshot, red eyes. Jane's best friend and fellow steward, Sarah South, files a grievance stating that Bill is trying to retaliate against Jane for her recent activity as a union steward.

Question: What kind of argument is this, and how will they prove it?

Answer: The union has taken an affirmative position. They are claiming the foreman suspended Jane for her union activity. That was not a very good decision on Sarah's part.

How can she prove that Bill suspended Jane for her union activity? He claimed he did it because she was drinking. Since no one can read his mind, we really don't know what he was thinking. Proving that the company or an individual employee has ill will (animus) toward a person or toward the union is very difficult. Unless Bill Boss told someone that he suspended Jane in retaliation for her union work, then Sarah has no evidence to support her claim.

Sarah should have taken the negative argument. Instead of accusing Bill of retaliation, she should have simply demanded that he prove Jane was drunk. Then the burden of proof would have fallen on Bill.

How could Bill have proven Jane was drunk? He did not give her a Breathalyzer test. He didn't refer her to a substance abuse counselor. Even if Bill were able to come forward with more proof or witnesses, you'd still have room to maneuver. Does the company have a policy about handling people who are drunk on the job? If so, did Bill follow it? If the company has no policy, how has this problem been handled in the past?

As you can see, Bill has a difficult case to prove — one he would probably lose. But Sarah chose to argue the wrong position and will probably lose instead.

Stewards are often tempted to try to make an affirmative argument when faced with a grievance. If you remember that the negative argument is always easier to win, you will win more of your grievances.

Interpreting Contract Language

Figuring out what the contract says is not always easy
The key to success in most grievances lies in being able to interpret what the contract says. And contracts are not always easy to read. You don't need to be a lawyer, though, to interpret your collective bargaining agreement. You just need to learn some of the methods arbitrators use to interpret contract language.

First, you'll want to see if a similar grievance has been filed in the past. How was the matter handled? Generally, the resolution of an earlier, similar grievance will determine how you'll resolve this grievance.

If the issue hasn't been addressed before, determine whether it is mentioned in the contract, either directly or by reference to another document. If so, your job of interpreting begins.

Does the contract mention the issue specifically?
If the issue is specifically mentioned in the contract, read that section of the contract carefully to see if the language is clear and unambiguous.

For example, look at this language:
"Section 1: Management shall continue to make reasonable provisions for the safety and health of employees, not to include wearing apparel."

This sentence mentions the company's responsibility for safety and health, but leaves a lot of room for interpretation. Although it is not unclear, different readers might interpret it in different ways.

Key words in this language are "continue to make" and "reasonable provisions."

Let's say that the company decides to stop supplying the work gloves it has supplied in the past. Obviously, they are not "continuing" to make provisions, so that specific word may support a grievance. On the other hand, you would probably not be able to use this section to force the company to begin distributing safety equipment that they have not distributed in the past.

This section also contains what is often referred to as a "hedge" word: reasonable. Supplying safety goggles might seem like a "reasonable" provision to you, but the company may argue that it is unreasonable to expect them to provide such personal items.

Another point to remember is that when the contract mentions one item, but fails to mention another similar item, the contract is usually interpreted to mean that the unmentioned items were intended to be excluded. In the example above, the language mentions "wearing apparel." Does wearing apparel include boots and safety glasses?

Is the language clear and ambiguous?
In a dispute, each side is inclined to read a clause to mean what they want it to mean. When the company interprets a clause to mean one thing and you think it means something else, you need to make an effort to look at the language objectively.

Try to read the clause the way someone who knows nothing about your workplace or contract would read it. Essentially, that's what happens when the arbitrator comes in. The arbitrator has nothing to gain or lose, so he or she can be objective.

Look at this language: "Shift workers will be given 20 minutes from their regular shift for eating lunch, at the convenience of the management." It seems pretty clear. But

would it apply to a department that works only during the day? We don't usually call that shift work, but they probably expect a lunch break, too.

Ambiguous language is the type of unclear language that can be understood two different ways and both readings are reasonable. For example, "Employees must report any absence for illness or injury prior to the beginning of their shift" is ambiguous. The company would probably say it means you need to call in every day you will be out, but it is reasonable to read it as meaning you could call in one time for a multiple-day absence.

When interpreting ambiguous language, an arbitrator will consider several factors, including the intent of the parties during negotiation, whether one interpretation deprives a worker of other rights, whether either party has permitted a certain interpretation consistently in the past, normal industry practices, and whether an interpretation would bring harsh or unreasonable results.

Finally, if two interpretations seem equally reasonable, the arbitrator will probably not assess a penalty.

Key Terms Used in Contracts

Knowing exactly what these words mean can save you some serious headaches. Many words and phrases that frequently appear in contracts can cause problems for people when they first begin interpreting contract language. You may use these terms in different ways in your everyday life, but they have very specific meanings when they appear in a contract.

• **May** — Implies permission, but not obligation. Something can be done if the party wants to do it, but they are not required to do so. For example, "The company may provide a holiday turkey in December." If you don't get one, you have no grievance.

• **Should** — Expresses moral obligation, but not legal obligation. "The company should provide a holiday turkey in December." Again, don't count on getting one.

• **Shall** — Denotes compulsion. The party is obligated to act. "The company shall provide each employee a holiday turkey in December." This one you can take home and cook. If you don't get it, you've got a grievance.

• **Will** — Simply denotes the future. Does not imply compulsion. This verb confuses a lot of people. If you want to make sure the company does something, use "shall" or "must," not "will."

• **Must** — Implies necessity or compulsion. Stronger than shall. "Employees must call in prior to an absence for illness or injury." If you're going to stay out sick, you are obligated to call in first.

• **When (or if) appropriate** — Allows full discretion to management. "When appropriate, the company may re-assign employees to jobs in a similar pay class." In this case, the company decides where you work. Though you may argue over whether the pay is truly "similar," the company decides what is "appropriate."

• **When (or if) practical** — Slightly more compelling than "when appropriate." The company will want to decide what is practical, but the union can argue the point. "When practical, employees may take their breaks outside so they can smoke." In this example, there is a great deal of room for arguing either way.

• **When (or if) practicable** — Means when "workable." Management decides what is workable, so the decision still belongs to them, but there is room for discussion.

• **When (or if) possible** — Very compelling. The only argument for inaction is that it is not possible to do so — a very difficult case to support. "When possible, the company will notify employees 14 days prior to any layoff." Could the company argue it was impossible for them to see the layoff coming?

• **Normally** — Allows management to decide when a situation is other than normal. Arguments challenging what is "normal" require a great deal of documentation with evidence over a long period of time.

• **To the maximum extent practical** — Management decides whether an action is practical, so they determine the limit here, though there is room for argument.

• **To the maximum extent possible** — How much is possible? A lot! You'd better hope this phrase is part of a sentence obligating the company to do something — not you.

How to Present Evidence

Arguing your grievance is like arguing a court case. You must use evidence to support your claims — evidence that is trustworthy, quantified, and positive. Many grievances are lost not because evidence is lacking, but because the evidence is presented poorly.

In your investigation of your grievance, you will have collected evidence in the form of documents, records, photographs, and eye-witness testimony.

Use concrete evidence to back up testimony

Too often, grievances are argued entirely on the basis of testimony. You should always be on the lookout for ways to introduce concrete evidence, such as records, documents, and photographs.

Even one piece of concrete evidence can make a big difference. For example, testimony about a notice posted on the bulletin board is okay, but a copy of the notice itself is stronger evidence. Likewise, testimony that a machine was too close to a doorway for safety is not nearly as persuasive as a photograph of the machine in relation to the door.

Evidence must be trustworthy

To be trustworthy, a document must come from a reliable, knowledgeable source and must not show signs of being altered. For testimony to be trustworthy, the witness must sound credible and refer to facts to bolster his case.

Look at these two statements and ask yourself which is more likely to seem trustworthy to an arbitrator.

Example 1: "Fred Johnson has over 200 documented hours of classroom training in Hazardous Waste Disposal and holds three certificates, including a Class 1A. This information is in his personnel file."

Example 2: "My ol' partner Fred can teach you more about safety drunk than most people can sober. Everyone who knows him likes him. He's the best there is at his job."

The first statement would probably sound more trustworthy to an arbitrator because it is made in a more professional manner and uses quantifiable facts as evidence, not judgments or appeals to emotion.

Quantified evidence carries weight

Numbers are persuasive. When possible, use numbers in your presentation.

Absenteeism, seniority, written reprimands, education, training, and past experience are examples of evidence that can be quantified. You can count the number of absences a person has, or the years of seniority, or the years of experience on the job, or how many classes he has attended, or how many times he has handled a similar situation.

Ability, aptitude, personality, character, dependability, friendliness, and professionalism are terms that cannot be quantified. As much as possible, avoid using terms that cannot be quantified. If you must do so, back them up with quantified facts.

For example, saying, "Joe is dependable" is not very persuasive. It is your judgment of one of Joe's personal traits, and the arbitrator has no way of knowing what you base your judgment on.

If you add, "Joe has worked seven years at this job with only four absences, and his work has never failed a quality control inspection," then the arbitrator has a much clearer picture of Joe's dependability.

Positive evidence is better than negative

Negative words and words with negative connotations often make testimony sound biased or combative. Testimony should always focus on what happened, not what did *not* happen. In addition, testimony should avoid words that are provocative or inflammatory. Here are two descriptions of the same event.

Example 1: "I was present in the locker room during the entire argument between Len and his supervisor. I was seated next to Len on the same bench. The supervisor came in and began to talk with Len about a job Len had just finished in the shop. Things heated up. Len stood up and they hollered in each other's faces, but Len never hit, struck, or swung at the supervisor. After a while the supervisor stomped out and slammed the door."

Example 2: "I was in the locker room during the fight between Len and the supervisor. I didn't say anything when they started yelling at each other. They were hollering and

cussing pretty loud, and I figured I'd better get out of the room quick. I was gathering up my gear to leave when the supervisor ran out. I never saw Len hit him."

In the first example, the individual clearly states the facts as he saw them. He is sure about what he saw, where he was, and everything that happened. Although he points out something that did not happen ("Len never hit"), he is clearly describing what he was witnessing. All his sentences are positive statements about what he witnessed, with no interpretation on his part.

In the second example, the individual begins by using the word "fight," implying fists were thrown, even though he later says he never saw Len hit anyone. He uses the negative phrase "I don't like trouble," implying that maybe Len doesn't mind trouble. His final sentence is entirely negative, implying that he wasn't paying attention to what happened, not that he clearly saw Len didn't punch the supervisor.

'Just Cause' for Discipline

When employers discipline their employees, they need a good reason

Most union contracts include a "just cause" clause. That is, a clause that says workers may only be disciplined for just cause. *Just cause* for discipline means that the company has good evidence that an employee has done something to violate a company rule or policy or the collective bargaining agreement. This clause protects workers from arbitrary punishment.

Even where there is no specific "just cause" clause in the contract, arbitrators have held that, while employers have the right to discipline employees for misconduct, they do not have total freedom to discipline whenever and however they want. Generally, arbitrators have required that employers be able to prove that the employee committed the infraction. Furthermore, arbitrators will often reduce a punishment they deem to be overly harsh or inappropriate for the level of misconduct in question.

In 1966, arbitrator Carroll Daugherty listed seven criteria he believed should be applied when arbitrating a discipline grievance. Although other arbitrators are under no legal requirement to apply these criteria, they are often swayed by arguments that demonstrate the company has violated one of them. If you are faced with a discipline-based grievance, checking it against this list will help you determine whether you might have a winnable case as well as show you the argument(s) you might use to win it.

TIP: *Don't claim that the discipline "violated one of the seven tests."* Instead, use the language of the tests as they are explained here to make your argument. For example, "The discipline is unfair because the employee was not told that this particular behavior was not allowed on the shop floor."

Daugherty's seven tests for just cause are as follows

1. Was the employee given advance warning that the behavior could result in discipline? The clearest warning is a direct statement to the employee; .e.g., "If you continue to use that tool incorrectly, I'm going to write you up." But advance warning may also be contract language, information given during training, or company rules,

whether written or verbal. Ask questions to determine whether any warning was ever given.

2. Was the rule reasonably related to the efficient and safe operation of the business? Arbitrary rules that offer no advantage to the company, or that make the workplace unsafe, do not provide just cause. For example, a rule banning listening to music while working may be justified as improving efficiency; a rule banning listening to hip-hop but allowing other types of music is arbitrary and not just cause for discipline.

3. Did the employer try to determine whether the employee did, in fact, violate a rule? For example, if a supervisor sees an empty whiskey bottle near someone's work area and makes no attempt to find out who it belongs to, then he does not have just cause to discipline anyone for drinking on the job.

4. Was the employer's investigation conducted fairly and objectively? Sometimes supervisors accuse workers of misconduct before getting all the facts. They may even ignore statements or evidence that points away from the person they want to accuse. Stewards must investigate on their own to see if the company ignored evidence or "railroaded" the employee.

5. Did the investigation produce substantial evidence that the employee broke the rule? Employers cannot rely entirely on circumstantial evidence or make judgments based on no facts or ambiguous facts. For example, finding contraband near an employee's workstation is not just cause for discipline; the employer must find evidence connecting the worker to the contraband.

6. Has the company applied its rules, orders, and penalties without discrimination? Rules must apply consistently to all employees. We usually hear of discrimination when it applies to race, religion, gender, or ethnicity, but it often shows up in less obvious forms. For example, if the workers who play on the company softball team often come in late the day after a night game and are not disciplined according to the rule on tardiness, then the company can't expect to enforce that rule on other workers. Likewise, the night shift shouldn't be allowed to break rules that the day shift is required to follow.

7. Was the degree of discipline given in this particular case related to a) the seriousness of the offense, and b) the employee's record of company service? Even if the worker clearly broke a rule or order, the employee may have a grievance if the discipline seems unfairly harsh for the offense. Likewise, a lifelong employee with a good work record deserves to have his or her many years of trouble-free employment taken into consideration when discipline is given.

Asking these seven questions can help stewards determine whether a worker has a legitimate grievance based on a disciplinary action.

Past Practices

Once a practice is well-established, workers should be able to expect it to continue
Most grievances are based on a violation of the contract or company rules, but no contract or rule book can cover every minute detail of what occurs on the job. On the job, procedures and practices are often worked out between the supervisors and the workers verbally, and nothing ever gets written in the contract.

These unwritten agreements and standing policies give rise to the term "custom and practice," or what we more often call "past practice."

Past practice grievance are not as common as ones based on the contract or the rules and they are often difficult to win, but all stewards can benefit from learning how to use them successfully. Here are some guidelines.

First, the practice must not conflict with clear contract language or the law, nor encourage unsafe behavior. No arbitrator will let you continue an illegal or unsafe practice. If you argue that the supervisors have routinely ignored the contract on a specific point, an arbitrator will usually say, "In that case, get them to change it at your next negotiation."

Second, make sure the practice is clear and easy to understand. If the member can't explain the practice to you, or if he says they do it one way sometimes and another way other times, the actual practice may not be clear enough to win the grievance.

Third, find out how the practice began. Practices that were decided jointly between management and workers are more likely to be upheld by an arbitrator. If management can show they instituted it with no input from the workers or the union, then the practice will most likely be treated as a company policy, not a past practice.

If workers started the practice without consulting management, you'll need to show that management knew about it and made no attempt to eliminate it. Arbitrators often say the company should wait until the contract is opened to change an ongoing practice.

Fourth, you'll need to be able to show that the practice continued in a single form over a period of time. If the practice is new, it probably won't qualify. If you have prevailed in previous grievances based on the practice, that can be good evidence to show the practice has been ongoing, even if the grievances never got past the first step. However, if these grievances have been handled inconsistently, they won't support your argument very well.

Fifth, if the underlying reason for the practice is gone, then the employer can eliminate it. For example, if the company builds a break room, they can justify ending the practice of allowing you to take your break off-premises.

Sixth, the practice should give your members a clear benefit. If you cannot show that it benefits your member(s), the arbitrator may feel the grievance is frivolous. Of course, "benefit" is a term open to interpretation.

The other side of that coin is that if the practice causes no inconvenience or expense to the employer, the arbitrator is likely to rule in your favor.

Many contracts include a clause listing past practices that must be continued. This clause can sometimes be used to argue that other practices should be continued, even if they are not specifically mentioned in the contract.

Chapter Four – Educating Members

Teaching Members about the Contract

When members understand the contract, you win more grievances

The contract you are working under defines the relationship your members have with their employer. You need to thoroughly understand the contract, and you need to be able to explain it to members.

The union contract sets down in writing what an employer can and cannot do. It also defines what rights union members have and how those rights can be enforced. Members often overlook the most fundamental parts of the contract and focus on the economic parts — the wages, paid holidays, vacations, etc. Those parts are important, and union contracts nearly always guarantee much better economic conditions than workers can get without a contract. But they can only be effective because the contract gives the union the power to negotiate with the employer and a process for enforcing the contract.

Two parts of the contract most often overlooked are the grievance procedure and the employer's rights. The grievance procedure spells out exactly how you will handle grievances. If you don't know the rules of this road, you are going to be run over. Grievance procedures vary from contract to contract, but they usually include several steps, the final one being an appeal to a neutral third party.

The significance of that last part is easy to miss. No businessman wants to let anyone else tell him how to run his business. And yet, because of the collective power of organized workers, virtually every union contract includes a clause that says if the company and the union can't agree on how to handle a problem, the company will let an arbitrator decide what should be done — and will abide by that arbitrator's decision.

The contract should spell out the rules for the grievance process, including any time limits that apply and how each side is supposed to handle each aspect of the process. Your members may not have much interest in this part of the contract. That's why you need to make sure you educate them. Members who do not understand their role in the grievance procedure may tie your hands by failing to notify you in a timely manner or committing some other oversight that ends their grievance before you can even get started on it. If that happens, they'll blame you, ignoring their own mishandling of the complaint.

Likewise, a poor understanding of the grievance process may keep a member from realizing that there is a way to solve his or her problem. Some members will suffer in silence, building up resentment toward the union as well as the company, simply because they don't know how to get help.

You can't expect your members to know every detail of the grievance process — that's your job — but if they understand the basic parts, they can improve their chances of winning and make your job easier.

The employer's rights is a section most members never read, because there's nothing in it for them. But you need to read it and understand it well enough to be able to explain to your members when this part of the contract makes it impossible for you to file a grievance. You also need to understand this so the company doesn't expand their rights beyond what is written down.

Another reason to spend time getting to know every nuance of the contract you're working under is that some members will have copies of this contract as well, and they will read it and misunderstand it, then come looking to you with a grievance that has no merit. You need to be able to explain to them why their interpretation of the clause on overtime is not correct, or why the general foreman and not the steward gets to decide who is laid off first, or why they can't skip lunch and leave a half hour early every day.

As you educate your members, you will gain their respect. More important, they will pass along their knowledge of the contract to other members they talk with, alleviating more problems down the road.

Teaching Members about Weingarten Rights

When an interview may lead to discipline, the worker has certain rights
Supervisors and guards are often trained in interrogation tactics, which they use to get employees to confess to mistakes or wrongdoing. Employees are particularly vulnerable in closed-door sessions, where the only witnesses are members of management and what the employee says may result in harsh discipline — even termination.

Fortunately, a 1975 Supreme Court decision gives workers the right to union representation whenever they are being interviewed as part of an investigation. The Court's decision in National Labor Relations Board vs. J. Weingarten Inc. set several rules for disciplinary interviews, now known as ***Weingarten Rights.***

1. The worker may ask what the topic of the interview will be.

2. The worker may request union representation before or during the interview.

After the employee has requested union representation, the employer must do one of the following:

- Grant the request and stop all questioning until the union representative arrives.
- Deny the request and end the interview immediately.
- Give the employee a choice of having the interview without representation or ending the interview.

If the employer denies the request for union representation and continues to question the employee, the company is committing an unfair labor practice and the employee may refuse to answer all questions

These rules have come to be known as the Weingarten rights. Weingarten rights offer powerful protection from intimidating interviews. The presence of a union steward can help in many ways.

First, the steward can act as a witness, to prevent false accounts of the conversation. The steward can object to intimidating or confusing questions. The steward can offer advice to the employee. The steward can help the employee answer questions truthfully, so that management gets a clear understanding of what happened. The steward can also help members avoid making false admissions. If the employee has in fact done something he shouldn't have, the steward can point out extenuating factors.

Perhaps most important, the presence of a steward can help keep tempers cool. When tempers flare, the result is almost always bad for the employee.

It is the worker's responsibility to assert their Weingarten rights

Unfortunately, many employees never benefit from their Weingarten rights because they don't know about them. The company does not have to "read you your rights," as police must do with accused criminals. Your members need to understand their Weingarten rights and be ready to assert them when necessary.

It is your duty to educate them.

Weingarten rights apply only during investigatory interviews. An investigatory interview must meet two criteria: 1) management questions an employee to obtain information, and 2) the employee has a reasonable belief that his or her answers may result in discipline or other adverse consequences.

You may be involved in an investigatory interview if you are being questioned by management on any of the following topics:

- absenteeism or lateness
- accidents
- compliance with work rules
- damage to company property
- drinking, drugs, or fighting
- falsification of records
- insubordination or poor attitude
- poor work performance
- sabotage, slowdowns, or theft
- violation of safety rules

Not every question evokes Weingarten. When a supervisor speaks to you about the proper way to do a job, he may ask questions. Weingarten only applies if the interview could lead to discipline.

However, a routine shop-floor conversation changes character if your supervisor becomes hostile because he doesn't like your answers. As soon as he gets hostile, the meeting becomes an investigatory interview and these rights apply, because your answers may lead to discipline.

When a supervisor calls an employee into the office to announce a warning or other discipline, Weingarten does not apply, because management has already decided what to do and is merely informing the employee. But if the supervisor begins asking questions related to the discipline, then the meeting becomes an investigatory interview.

The steward is more than a witness

Supervisors sometimes maintain that the steward's only function at an investigatory interview is to be a silent witness. That is wrong. The steward has the right to counsel and assist the employee. Legal cases since Weingarten have set these rights and obligations:

- When the steward arrives, the supervisor must inform the employee of the subject matter of the interview. He does not have to reveal management's entire case.
- The steward can take the employee aside for a private pre-interview conference before questioning begins.

• The steward can speak during the interview, as long as he does not obstruct the interview or try to bargain over the purpose of the interview.

• The steward can interrupt to object to a question or request a clarification.

• The steward can advise the employee not to answer questions that are abusive, misleading, badgering, confusing, or harassing (be careful giving this advice)

• When the interview is over, the steward can provide information to justify the employee's conduct.

When members know how to assert their Weingarten rights, the local union is strengthened. A lodge that cannot protect its members from intimidation will also be weak at negotiation time.

Applying Weingarten Rights

Sometimes supervisors try to trick employees out of their rights. For example, the supervisor may imply that if the steward is involved, the company will act more harshly. This is an unfair labor practice. The supervisor is using the threat of discipline to make the employee give up his rights.

If the boss calls you at home to ask questions about any activity that might lead to discipline, you still have Weingarten rights. You can refuse to answer the questions until you consult with your union representative.

Stewards can — and should — take the initiative in asserting Weingarten rights. If the steward sees a worker being questioned, he can request to be included in the meeting. The company doesn't have to include the steward in all meetings with employees, but if the meeting is an investigatory interview, the employee must be allowed to decide whether he wants the steward present.

Weingarten rights do not apply to medical examinations, urine tests for drugs, or locker searches, unless the company asks the employee questions.

An employee who is asked to inform on other employees may assert his Weingarten rights, because he may face discipline if he refuses to answer the questions.

Counseling sessions required by an employer do not merit Weingarten if the personnel representative assures that the sessions will remain confidential and will not be used for discipline. But if notes from the session are kept in the employee's personnel records, or if other employees have been disciplined for what they said in counseling, then Weingarten applies.

Stewards also have Weingarten rights. If you are being questioned, you can request that another steward or the chief steward be present.

Workers may choose which steward represents them, but only if both stewards are equally available.

Limits to Weingarten Rights

The most important limit is that the worker must involve this right. If he or she does not ask for a union rep and makes damaging personal statements, those statements can be used against him by the company.

Sometimes, workers get carried away and try to use Weingarten rights in ways they don't apply. A worker cannot refuse to go to a meeting simply because he thinks an

investigatory interview may occur. He may only ask what the topic of the discussion will be and ask for a union representative.

Weingarten does not apply when the supervisor gives out a warning slip for misconduct, announces discipline, or lectures a group of employees about job performance. The company must ask questions in order for Weingarten to apply.

Weingarten guarantees union, not legal, representation. You cannot demand to have an attorney.

If an employee asks for a steward and the employer denies the request, the employee should end the interview and not say another word. The company cannot discipline an employee for asserting his Weingarten rights.

However, if the employee continues to talk and confesses to wrongdoing, the company can take disciplinary action. An arbitrator will not require an employer to make an employee whole for discipline resulting from a confession, even if the confession was taken in violation of the worker's Weingarten rights.

Putting it all into action

Weingarten rights are a great tool for protecting workers against intimidation on the job. These rights usually give the steward enough power to ensure that the company does not use unfair interrogation techniques.

Faced with an investigatory interview, your members should be ready to invoke these rights. Here is sample language the member can use:

"If this discussion could in any way lead to my being disciplined or terminated, or could affect my personal working conditions, I request that my union representative, officer, or steward be present. Without representation, I choose not to participate in this discussion."

Once those words are spoken, the member should not answer any questions until a union steward is present.

If the company violates the member's Weingarten rights, the local union should file an unfair labor practice charge with the NLRB (see Chapter 19). Here is sample language for the NLRB charge form:

"On January 26, 2000, the employer refused the request of John Jones for a union representative during an investigatory interview."

A Weingarten Rights Card – your lodge may want to distribute cards with this message. Members can just read the statement at bottom to invoke Weingarten.

> **INVOKE YOUR WEINGARTEN RIGHTS**
> If you are called into a meeting with a management representative and you have reason to believe that disciplinary action against you may result, you have the right to have a steward present during this meeting. Read the statement below to the management representative, and contact your steward immediately.
>
> **READ THIS STATEMENT TO MANAGEMENT:**
> "If this discussion could in any way lead to my being disciplined or terminated, or affect my working conditions, I request that my union representative, officer, or steward be present at the meeting. Without representation, I choose not to answer any question. This is my right under a U.S. Supreme Court decision called Weingarten.

Chapter Five – Special Cases

When a Member Asks for Advice

Have your tools handy, and remember to explain – not direct

When one of your members comes to you asking for advice, you need to be able to respond quickly, but you don't want to jump to a conclusion before you know all the facts, make a promise you can't fulfill, or worst of all – give bad advice that only makes the member's problem worse simply because you didn't do your research.

You and your members must work within a system. That system is often complicated and sometimes contradictory, and your members come with their own baggage. Knowing what advice to give is sometimes tricky.

Because you never know when you're going to be asked to represent a member, you need to always have your "tools" ready. A steward's tools include a copy of the contract, a copy of the company rules, a tablet, a pen or pencil, a watch, your brain, and both ears.

Don't forget your brain and ears. They are the most important tools.

When a member asks for advice, often the situation is heated – he has just been fired or ordered home for the day, or he has just been denied something that he is absolutely certain he is entitled to. Often more than one person is angry. You'll do well to keep in mind the four keys to giving good advice: stay calm, refer to the contract, record what happens, and provide information. Never try to tell the member what to do.

1. Stay calm. Members who feel they've been wronged by management can't help but get emotional, and emotion sometimes gets people discipline. When participants are emotionally involved and upset, they need calm, rational advice. You must remain calm in order to think logically about the best course of action. Also, by being calm yourself, you will help your member calm down.

2. Refer to the contract and company rules. To give advice, you must know what the contract and company rules say about the situation. In crisis situations, employees often feel they are being "singled out" or persecuted. Showing the employee the relevant rule or contract language helps them understand their options.

TIP: Look at the contract or other relevant document before you speak. No matter how good your memory is, you could be mistaken, and you don't want to give bad advice simply because you didn't read that overtime clause for the tenth time.

3. Write down what is happening. Taking notes early in the investigation is often the most important part of your representation. Write down names and contact information for witnesses, who might not be easy to find later in the process. Note the time, date, and names of all persons present.

4. Inform the member of his or her rights, the contract language, and the consequences of his or her actions. Do not tell him what to do, even though that may be what he asked for. Only he can decide what to do. Your job is to tell him what the rules (or contract language) say about his situation and the consequences of his actions.

Good advice informs and explains – it doesn't direct

Look at this imaginary scene where a steward is advising a member.

Steward: "Joe, for whatever reason, your behavior today has led the supervisor to believe he has reasonable cause to give you a urine test. Keep in mind that if you refuse to take the test, you may be subject to 'immediate suspension and termination.'"

Joe: "I don't want to take the test. What do I do?"

Steward: "I can't tell you what to do, but if you don't take the test, you will be sent home and you may be fired. To my knowledge everyone who has refused to take the test has been fired, and we have never won an arbitration case on a termination for refusing to take a drug test. On the other hand, if you take the test, we can deal with whatever the outcome is. If the test is clean, great. If the test is not clean, you might get fired, you might not, but either way we can deal with that issue through the grievance procedure."

Joe: "But he didn't have a good reason to require it. I am not acting erratic or unusual or dangerous."

Steward: "Maybe not, but the contract says 'in the judgment of the supervisor.' The supervisor made his judgment. We can disagree with it, but we can't overrule it."

Joe: "A lot of good you are. I have paid all that dues money all these years and now you won't help me."

Steward: "I didn't say we wouldn't help you. The union helps people by making sure the company treats our members fairly. The company's rule is clear. If you refuse to take the test, you'll be terminated. The company is consistent in applying this rule, so there is not much we can do. On the other hand, if you take the test, we have a chance to work out a compromise."

As you can see, the idea is to inform Joe of his options, help him understand the process, and let him decide. Meanwhile, you are writing down the time, dates, places, people, and relative details of the incident, just in case you have to file a grievance.

Representing Members in Dispute with Each Other

Protect the rights of all members based on facts and the contract, not popularity

Some of the most difficult grievances arise when the best interest of one member conflicts, or appears to conflict, with the best interest of another. For example, if you file a grievance for a member who isn't getting assigned overtime that he believes is rightly his, those members getting the improperly assigned overtime may feel you are taking money out of their pockets — even if the company is clearly violating the contract.

Arguments between members can become nightmares for stewards — especially when they turn physical. Members often take sides after a fight, expecting one member to receive better treatment than the other. The steward's duty is always to represent the rights of both members based on the facts of the case — regardless of popular opinion or who people believe was "justified."

When two members get involved in any kind of disagreement that ends in disciplinary action, you're going to feel squeezed by friends on both sides. You must stay focused on learning what actually happened so you can determine whether the company treated the men fairly. You can't take sides.

Anticipate problems and act on them immediately
Start gathering facts right away. Tell participants to write down everything that happened from 15 minutes before the event until 15 minutes after. It's important they write down what actually happened while it is still fresh in their minds. The more they think about what happened, the more they will change the memory in their own minds. Those first recollections are as close to the truth as you're going to get.

Interview eyewitnesses as soon as you can for the same reason. Once they go back to the job, they'll discuss the incident, and they may mix up what they saw with what people tell them. The temptation to revise a memory in order to blame the person you don't like is so strong that many people do it without realizing what they're doing. Studies show that after a few days, most people remember "seeing" things that they actually heard about from others at the scene.

As you question witnesses, ask each one to name anyone else they think was nearby and may have seen what happened. The more witnesses, the better. In an arbitration, your case is only as strong as your documented evidence. Your written notes are the best documentation you have most of the time, so be sure to take good ones. Write down all the details. You never know which one might be the one that turns the case for you.

Eyewitnesses often don't see much
Grievance are won on facts, not opinions or conjecture. Eyewitnesses often tell what they *think* may have happened, rather than what they saw. You may find yourself repeatedly saying things like, "Did you actually see that happen? What were the exact words he said? Did you hear him clearly, or are you saying what it sounded like to you?"

Stay focused on getting a description of what happened, not how the observer interpreted the event. For example, if a man falls down, witnesses often conjecture that he "must have been pushed" or "must have been drunk" or was "wearing the wrong shoes." People interpret what they see. You need to push them to only report what they saw, not what they have concluded about what they saw.

Be ready for contradictory testimony. People notice different things. No one sees everything. But these pieces may add up to a picture of some kind.

Sexual Harassment Grievances

They are especially challenging when they pit one member against another
Another problem that frequently pits one member against another is sexual harassment. Even when they don't involve conflicts among members, these cases present a challenge, because people have many different emotional responses to this type of allegation.

Stay centered on your main goal: to ensure that all members are treated fairly.

Two indisputable principles should guide you in handling a sexual harassment grievance. First, the union does not condone or tolerate sexual harassment in any situation. Second, the union's role in any grievance is to make sure that all members are treated fairly, no matter what they have been accused of doing or who does the accusing.

Study the company's sexual harassment policy
Nearly every company has a sexual harassment policy. The policy should provide a procedure that protects both the accused and the accuser. Unlike other complaints, a

person who accuses another of sexual harassment may become the target of further abuse by other workers — sometimes inadvertently. For example, if details of an incident become known on the shop floor, workers may gossip about what happened, causing more embarrassment for the accuser.

In other cases, workers may retaliate against the accuser. They may claim the accuser has a grudge or is not telling the whole story. Your company's policy should provide a way for workers to make complaints in private, to a person specifically designated to hear these complaints, which remain confidential.

The company should guarantee that they will not retaliate against an accuser, unless the charge is malicious and there is no doubt that no harassment ever occurred.

Most company policies include a "zero tolerance" clause, promising to deal with allegations quickly and to use drastic measures to stop harassment when necessary. Flagrant harassers are usually fired.

Whatever your company's policy, every worker is entitled to work in a harassment-free environment.

Sexual harassment takes many forms

Supervisors engage in sexual harassment if they link a company reward to sexual conduct. This is called a quid pro quo, Latin for "this for that." Sex does not have to be directly mentioned for an offer to be harassment. A boss's offer of more overtime if he can drive you home afterward is a quid pro quo offer.

Another kind of sexual harassment is sexually inappropriate conduct with a worker. Examples would be a boss who exposes himself, or a worker who touches a co-worker in a sexual way.

Workers do not have to tolerate unwanted sexual advances from their bosses or from co-workers, nor do they have to put up with a sexually oppressive work environment. If the boss loves to tell dirty jokes that he knows offend some of his workers, he is creating an oppressive environment.

Workers can also create oppressive environments, and the company policy must provide a way for harassed workers to get the oppressive behavior stopped. The oppressive atmosphere is a gray area. People like to have a good time, so sometimes jokes and conversation get spicy. It also isn't unusual for one worker to ask another one for a date. How do you know when someone has crossed the line?

The answer is that each person creates his or her own line, and when someone crosses it, he or she says so. If the harasser has been warned but continues to cross that line, then the behavior becomes sexual harassment – even if there is no overt sexual content to the harassment. For example, when workers make Aids jokes around openly gay men, or when they lock the only woman on the job in a port-a-john for an hour, they are engaging in sexual harassment. The law says that if these victims bring their complaints to the workers, the behavior must end or the company will be liable. That usually means someone gets fired.

The Role of the NLRB and ULPs

ULPs ensure the company complies with labor law

The NLRB can be a valuable ally, if used properly. But you must understand the role of the NLRB to take advantage of their help. The NLRB's role is to ensure that companies and unions comply with the National Labor Relations Act (NLRA).

Here is where many locals go wrong. They expect the NLRB to step in and solve their grievance.

The NLRB does not get involved in grievances themselves — nor contract negotiations. They step in when the union or the company charges the other party with failing to comply with the NLRA. If a company or union strays from the provisions of the NLRA, it is committing an unfair labor practice (ULP).

Getting the NLRB to issue an unfair labor practice complaint against an employer is a strong bargaining chip. After that happens, if the union and the company cannot settle their dispute, it will go before an administrative law judge (ALJ) who can issue an order requiring either or both parties to do certain things. For example, if a worker is fired for trying to organize other workers, the ALJ might order the company to offer him re-hire and to pay him for all the days he missed because of the illegal firing.

Don't confuse your grievance with a ULP

Too often, an inexperienced steward or union representative will have good cause for a ULP, but will make the wrong argument to the NLRB. When the case is deferred, they go away grumbling that the NLRB is useless. In truth, they have simply not learned how to use ULPs to get what they want.

Just because what the company is doing seems unfair doesn't make it an unfair labor practice. Only violations of the NLRA are grounds for a complaint.

In general, the NLRB files unfair labor practice complaints for refusal to provide information, interference with employees' Weingarten rights, company retaliation for union activity, refusing arbitration, or creating barriers so the grievance/arbitration process cannot go forward. Nearly everything else gets deferred. If you think you have a ULP, speak with an International rep before you proceed.

Proceed with your grievance while awaiting the NLRB's decision

After you file your ULP with the NLRB, you must continue to pursue your grievance. Filing a ULP does not stop your grievance clock. File the grievance, too, and adhere to all deadlines in your grievance procedure. If you don't, you will lose the grievance and the ULP claim may be dismissed.

If the NLRB issues a complaint after you have already lost a grievance, you may be able to revisit the grievance – if you filed it properly to begin with. But there's usually no recourse once the time limit has passed.

Keep in mind, too, that winning the complaint does not mean you'll win the grievance. For example, because of your ULP, the court might require the company to turn over information to you; if that information doesn't help your grievance, you could win the ULP and lose the grievance.

Courts have given unions broad access to information

The NLRA and subsequent court decisions have given unions broad access to company information that is necessary for the union to do its job. You may request relevant information at any point in the grievance process. But you can't go fishing. You must request specific information that applies to your case.

You may make a general request of a type, if it specifies an identifiable group of documents: "Please supply all documents or records which reflect the factors causing you to reject this grievance."

Sometimes a company will deny a request because the information is "personal." Some records truly are "personal" and you don't have a right to them – medical records, for example. But nearly everything else – payroll records, job assignments, overtime hours, etc – is fair game if it applies to your grievance.

In "right-to-work" states, employers often incorrectly believe they do not have to provide information about nonmembers. But the union represents all workers in the bargaining unit, members or not. If the union needs nonmember information to conduct its business, the company must supply it. For example, one local asked for the names and addresses of all bargaining unit employees prior to a contract negotiation. The company said nonmembers are not the union's concern.

But the NLRB sided with the union when the local argued that they needed to be able to contact all bargaining unit employees in order to learn what changes they wanted in the contract. Although nonmembers do not get to vote on the contract, they must live under it, and the union must consider their input when negotiating.

ULPs are useful – when used wisely

The value of ULPs is clear. If companies were able to derail grievances by refusing information, threatening employees with retaliation, or simply refusing to enter into arbitration, we could never win any grievances.

But ULPs must be used correctly.

If you're thinking of filing a ULP, check first with your International representative. He may wish to consult the International's Department of Research and Collective Bargaining Services. You may need to consult an attorney as well.

Filing frivolous ULPs only wastes everyone's time and destroys your credibility.

Appendix One – The Steward Fact Sheet

Steward Fact Sheet
For union purposes only

LOCAL NUMBER: _____ PREPARED BY: _____

CONTRACTOR: _____

LOCATION (JOB SITE): _____

SHIFTS & HOURS: _____

AGREEMENT: _____

NAME	PHONE NUMBER
SUPERINTENDENT: _____	_____
GENERAL FOREMAN: _____	_____
FOREMAN: _____	_____

EMPLOYEE(S) FILING COMPLAINT: _____

EMPLOYEE(S) DATE OF HIRE: _____ SHIFT: _____

PERMANENT ADDRESS: _____ PHONE: _____

TEMPORARY ADDRESS: _____ PHONE: _____

WHEN DID THE COMPLAINT OCCUR?

DATE: _____ TIME: _____

HOW OFTEN? _____ HOW LONG? _____

NAMES OF WITNESSES INVOLVED:

NAME	SHIFT	PERMANENT ADDRESS/PHONE	TEMPORARY ADDRESS/PHONE
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

WHAT ARE THE FACTS OF THE COMPLAINT: (MAKE SURE TO INCLUDE ALL POINTS MENTIONED ON THE CHECKLIST FOR EACH TYPE OF COMPLAINT.) ATTACH ADDITIONAL PAGES TO COVER ALL EVENTS.

_____

_____

_____

_____

_____

_____

WHERE DID THE GRIEVANCE OR COMPLAINT OCCUR? (INCLUDE A DIAGRAM, SKETCH OR PHOTO IF HELPFUL.)

EXACT LOCATION: _____

TYPE OF EQUIPMENT (IF APPLICABLE): _____

AISLE, JOB NUMBER (IF APPLICABLE): _____

WHY IS THIS CONSIDERED TO BE A GRIEVANCE OR COMPLAINT? (THE ARTICLE IN THE COLLECTIVE AGREEMENT? SUPPLEMENT? LAW? PAST PRACTICE? REGULATIONS? UNJUST TREATMENT?)

_____

_____

_____

CORRECTIVE ACTION REQUESTED: GRIEVANCE SETTLED AND REDRESS IN FULL (TO PLACE THE GRIEVANT IN EXACTLY THE SAME POSITION HE/SHE WOULD HAVE BEEN HAD THE INCIDENT NOT OCCURRED.)

_____

_____

_____

EMPLOYER CONTENDS: _____

_____

EMPLOYER RECORD OF CONDUCT:

VERBAL WARNING ISSUED (DATES/REASONS): _____

WRITTEN WARNINGS ISSUED (DATES/REASONS): _____

PENALTIES IMPOSED: _____

ANY RELATED INFORMATION: _____

PLEASE NOTE:

DOCUMENTARY EVIDENCE SUCH AS SENIORITY LISTS, WAGE SCHEDULES, WORK TICKETS, RECORD OF SIMILAR GRIEVANCES, ETC., SHOULD BE ATTACHED. IT IS VERY IMPORTANT THAT DATES, TIMES, STATEMENTS AND REFERENCES ARE NOT CHANGED ONCE ESTABLISHED AS FACTS.

_____
DATE GRIEVANCE OR COMPLAINT WAS REPORTED

_____
SIGNATURE OF STEWARD

_____
SIGNATURE OF GRIEVANT

Revised: 9/95

Appendix Two – Writing Letters

Keys Points to Remember about Letters and E-mails

1. Every letter (and every e-mail) is a legal document. Don't say anything you wouldn't want to have to defend in court.

2. In general, letters (and e-mails) are not private. Once you send your letter to a company rep, he or she can forward it to any other company rep for whom the message might be relevant.

3. You should always be courteous and respectful, even when you disagree intensely.

4. Never curse or say anything off-color in a letter (or an e-mail).

5. Always date every letter.

6. Number the letter using your local lodge's file numbering system.

7. Put the full name, title, and address of the recipient on the letter.

8. Stick to ONLY ONE topic in the letter.

9. Use a subject line so the recipient can see right away what the topic is.

10. Keep it short and as simples as you can make it.

11. When making a request, put the request in its own paragraph.

12. Be as specific as you can be when asking for documents and records.

13. Put both your name AND YOUR TITLE on the letter below your signature.

14. Sign the letter.

15. Identify who will receive copies of the letter on the letter.

16. Send copies to those named in #15 above.

17. Keep a copy for yourself.

Sample Letter

Sample Request to the Company for Information Needed to Process Grievance

Always include full name and address, even if you are hand-delivering. If sending by FAX, put "Sent by FAX" above the address.

Local 999
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers
999 Brotherhood Way
Somewhere, NS I2B 2C7

July 11, 1999

Date everything

File: 12345

File numbers help you keep track

John Smith
Human Resource Manager
Pocahontas Inc.
9876 North South Street
Imaginary, NS V8O 2L4

Dear Mr. Smith:

In the past, the Company has always issued leather work gloves with a pull-tab tightener at the wrist. Recently the Company has begun issuing heavy canvas gloves with a rubberized, nonskid coating on the palm, inside fingers, and finger tips.

In order to process a possible grievance arising from this change, I need to examine the safety standards and recommended uses for both the old and the new gloves. Please provide me with the following documents:

1) Safety standards for both gloves
2) The style name and number of the new glove
3) Name and address of the glove's manufacturer
4) An explanation of the need for the change.

Be as specific as possible in your request.

Please provide these items within five days of receipt of this letter. If for any reason you cannot comply with this request, please notify me in writing within five days of receipt of this letter.

Give a specific deadline for response.

Thank you for your cooperation.

Sincerely,

I. B. Union
Steward, Local 999

Give your name AND title.

cc: John Blank, President L-999

Remember to make copies for everyone who needs to keep track of this matter

Appendix 3 – Submitting Stories to *the Boilermaker Reporter*

It's easy, and your members will love you for it

Nothing makes people happier than seeing their names in print – except, of course, seeing their photo in print.

The editors of the Boilermaker Reporter are always looking for stories that will interest our members. And what interests our readers most is what other members and other locals are doing. So the next time one of your members tells you about a significant accomplishment – whether by the member or someone from the member's family – jot down the details and send them off to the Reporter. If you can get a photo that helps tell the story, send that as well.

We do the rest. You don't have to worry about making the story sound good or getting the grammar and punctuation just right. That's our job. All you have to do is get the basic information together and give it to us – by letter, FAX, phone, or E-mail.

The one thing we rely on is that you include everyone's name (and title, for local lodge officers) and be sure you SEPLL THEM CORRECTLY. (See how easy it is to make a mistake. If you do that with your best friend, you may be looking for a new one.)

Also, be sure to include contact information so we can get back to you.

What are we looking for?
We like stories about members doing things together, whether on official union business or on their own. We always publish stories about local lodges helping their communities in some way, as well as stories about members helping members through some difficulty.

If someone takes photos at the annual picnic, or the day your lodge volunteers at a local school or charity, send those in with an explanation of what is in the photos. If a group of members get together and help out a community member who needs special assistance, send us the details and let us tell the entire union about their good deed.

When members accomplish something unusual in their hobbies or on the job, we want to hear about it. Did your local lodge set a new safety record? Send us the details. Has one of your members recently won a race or published a book or built a car? Let us share those happy accomplishments with their union brothers and sisters.

In recent issues we've run stories about members' children beginning their professional sports careers in football and baseball, a local lodge raising money for a children's hospital, members winning competitions, local lodges celebrating their birthdays (any lodge that lasts 50 years or more deserves notice), members serving in Iraq and Afghanistan, and local lodges who have three (sometimes four) generations all working on the same site.

Here's the rule of thumb: Any activity or accomplishment that you find interesting enough to put down on paper and send to us will probably be interesting to other members as well.

Before you send anything, it is always best to discuss it with your local lodge president or business manager. We always run stories by them before publication, so if the primary officers know what you're up to, you can save time (and maybe some heartburn).

If you have questions, call us at 913-371-2640. Just ask for ***the Reporter*** and you'll be able to reach whoever is available.

The Boilermaker Reporter
753 State Ave, Suite 570
Kansas City KS 66101
913-371-2640
913-281-8104 (FAX)
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