

Steward Training Manual

1. Rights and Responsibilities of a Union Steward

If you are a steward, committee-person, delegate or other union grievance representative, you are part of an extraordinary group, estimated to number more than 250,000 men and women, in 53,000 local unions across the United States. Union stewards represent departments, shifts, and work sites. They monitor collective-bargaining agreements, advise employees on contract provisions, confront employers over safety issues, and represent employees in grievance proceedings.

A steward's job is important and exciting. You protect jobs and welfare of your fellow employees and use your leadership skills to build the union.

Your position, however, is not without perils. To be effective, you must protest management actions that violate the collective-bargaining agreement, are arbitrary or unfair, or threaten the health or safety of employees. In response, management may try to intimidate or harass you or impose discipline.

To prevent reprisals -- and to gain management's respect - you must be well prepared. Your most valuable tools are union solidarity, contract rights and labor law rights.

A Union Stewards rights are determined by three basic factors:

Union Solidarity.

This is the cohesion and determination of employees you represent. A steward backed by a unified group, willing to act if the steward is attacked, has significant freedom of action.

Contract Rights.

A strong union contract forbids discrimination against union activities and guarantees time for union business.

Labor Law Rights.

Federal and state labor laws prohibit interference with legitimate union activities, protect stewards in presenting grievances, force employers to supply grievance information, and require employers to bargain before making changes that affect employees. As a Steward, you have two main jobs---first, building a strong union in your work place; and, second, grievance handling.

You must have a strong union behind you if you're going to be able to carry on your job of handling grievances effectively. Your attitude and effort you put into your job is what counts. Make it a privilege for your fellow workers to be active union members who attend meetings regularly and willingly pay their dues. Being a know-it-all or overbearing steward doesn't do this. A lot of it will come about by the example you set. Enthusiasm and sincerity are contagious. You can always sell better what you believe in yourself.

Like most vitally important jobs, that of a steward is very difficult. In fact, it may seem like a steward is expected to be all things to all people at once. Of course that is impossible, but by

understanding the various roles of a steward and doing your best fulfilling them, the steward will contribute greatly to the strength of the union.

The roles of the steward can best be described as that of a negotiator, leader, educator, communicator, organizer and political activist. (As steward, be sure to greet the new hire on their first day.) “Know your contract!” This is the first commandment for the steward. Your fellow workers don't expect you to know everything, and they respect you a lot more if you don't try to bluff your way out of things. But they do expect, as their leader, to be well informed. To educate workers so they understand and cooperate with union policies, you must first educate yourself. To know if the company and the union are living up to their agreement, you must know what's in it. Unless you know what it says, you cannot tell a worker if he's right about it. You certainly can't discuss it intelligently with management.

Read over every word of it. Discuss it with union officers. Become familiar with the provisions. Understand how they apply to special conditions in your department. Remember the union is not a slot machine where the worker puts in his dues and gets the jackpot in the form of higher pay, shorter hours, better lighting, longer vacation----, it all takes work! But it's worth it. As steward, you have to do a lot of the day to day work. But if you are a good leader, you'll get cooperation from your fellow workers and your union officials as well as from management and this helps make the job easier.

You will have headaches, but you will also get breaks. Stewardship gives valuable experience. From adjusting plant grievances you may come to represent labor in industry-wide conferences, policy-making conventions or even government agencies. The keystone of the local union may be the stepping stone to greater union leadership.

2. Establishing Yourself In The Role Of Steward

For new stewards the first few days on the job as a union representative are critically important. You have to demonstrate to the membership that you can get the job done. Your members must feel comfortable coming to you to resolve work-related issues.

At the same time, your supervisor and other management personnel are going to watch you and probably test you.

Establish your position.

When workers go directly to management, to another steward or to a higher union officer with a grievance, without going through their assigned steward, we call that process bypassing. Bypassing is a problem for many stewards, especially new ones.

Sometimes the employee may speak with the immediate supervisor to solve problems informally. Whenever possible, we should encourage the member to bring along his/her shop steward to make sure that the employee gets treated fairly. Often, when members go into meetings with their supervisors they are unaware of their rights and the stipulations of the contract.

As a steward you cannot assume that the membership will automatically respect your abilities. Respect must be earned by showing the members that you will apply your skills and knowledge of the contract to represent all the members to the best of your ability.

Keep the lines of communication open between yourself and other union representatives.

Management's test.

Remember that if you are a new steward, management will often test you to see how well you represent the member. That test may be in the form of denying you reasonable time to do your job or giving you an extension of a time limit on a first step grievance. Your supervisor may try in some way to interfere with your investigation of a grievance by denying access to records. Or the supervisor may simply say no at your grievance meeting even though your member's grievance is a clear case of injustice and a breach of the agreement.

Expect to be tested. Don't get angry or frustrated. Supervisors are often trained to incite a steward so that they will blow the grievance meeting. Don't lose your cool.

Establish the Union

When they hire in, new workers are often given expensive "orientation" from management, but may not be exposed to the union view. Not realizing the struggle that went into winning these gains, many of them may believe that wages and conditions they enjoy come from the goodness of someone's heart.

Get those new members early. Even if they are on probation, a friendly piece of advice and support will be long remembered.

Represent the rank and file

Always treat the member with respect and dignity. Work with the member. It is a sign of empowerment and the strength of the union as a group. The operative word is always “we” not I. The word “they” is always reserved for the company or management, not the local union or the international. If you truly believe that the union is not simply a servicing center for the membership, then these terms should be second-nature.

Always tell the truth. Sometimes you will have to say “no” and then try to convince the member that you are right. Have a reason for the decision and have some alternative strategy for the member if the situation merits it.

You have to keep favoritism out of the grievance procedure and avoid letting your personal feeling about a member cloud the way you represent him or her.

When one group of members is pitted against another, and while those who are favored might think small advantages are worth fighting for, everyone loses. Fair representation is a basic principle of unionism because:

1. It is right and the members are right to expect it.
2. Because it works to the benefit of all.
3. Because when it is missing, or someone thinks that it is missing, there are likely to be legal difficulties for the union and its officers.

Time and money spent on legal defense would be better spent in building the union.

Build solidarity

Being situated right in the middle of the structure amid the union, management and the rank and file, the grievance representative can do a lot to build unity. In everything you do, you are setting an example to the rank-and-file that they have power and that power is the union. Your actions every day build the union.

3. New Stewards Take Note

You were just elected as steward for your section or work area. Congratulations. Today is the first day of your new life. With that title comes the important responsibility of defending the union and its members.

All too often stewards are thrown into the thick of things before they have the proper training. Since Steward Training is not available on a regular basis, here are some tips for the new stewards.

First of all, remember that as a steward of the union you have the support of your local, your international union and the 30,000 members who comprise the union. That means that if you don't know the answer to questions or are not familiar with procedures, ask your local leadership. With your position comes a huge responsibility and you need to be able to provide the right answers to members and follow the correct procedures in your dealings with management. Your members will respect you for following this simple advice.

Take your time. Listen carefully. Write things down. Buy yourself a spiral notebook and begin to document your activities. If you investigate a grievance, write down the 5W's in your notebook or on the grievance investigation sheet that the local provides with the grievance form.

Be on your toes. You will be tested by management the moment you become a steward. Think of it as hazing. But don't give in. Act professional and be aware of your rights. Your supervisor or manager will probably try to tell you what you can or cannot do as a steward. Remember you are hearing this information from a self-serving and biased source.

Know your rights. You are management's equal in all matters relating to the contract and the union-employer relationship. Your contract may outline some of your rights as a steward but much of it has a legal basis. That means the "sit down and shut up" mentality of some supervisors is incorrect, unprofessional, and in some cases downright illegal. If you are denied rights which make your defense of a member impossible, make sure your local is aware of this situation--immediately.

Check out our local's Steward Update on a regular basis for grievance guidance. You will also receive the Steward's Update newsletter on a regular basis. As you read over it, highlight those items of particular interest. Keep a file for them so that you can easily refer back to them when needed.

You are a representative of your union to your members. Introduce yourself and greet new hires. Be the strongest advocate for the union on the property. Pass along information from your local. Squelch any rumor before it spreads. Work together with your local's officers. That means the politics of the past union election, if there was one, is over. You are part of the team.

If a member comes to you with a complaint that could be grievable, investigate it quickly and professionally. Resolve the issue in the quickest and fairest way. Don't make the member wait unnecessarily for an answer. Tell him/her that you will get back to them with an answer and then get back to them. If the issue is not grievable, see if there is a way to resolve it.

If there is no grievance, be honest with the member but explain why the issue is not a grievance under your agreement. Work with other stewards so that they are aware of the issues you have

been presented with. You don't want a member going behind your back to another steward because he/she did not agree with your decision not to press a complaint.

Read everything you can about your work--your local web site, your SPFPA magazine, Steward Update, the daily newspaper, and labor books. Make sure education is part of your union's regular business.

4. Goals of Union Steward

The following twenty-four items will serve as a checklist for you. Refer to them as a guide in fulfilling your obligation as Union Steward.

1. Keep yourself informed on union affairs.
2. Serve as an example to your members.
3. Keep the members informed on union policies and union activities.
4. Attend union meetings and union affairs. Encourage and bring the members from your department. Don't chide members for missing meetings. Think of other ways to communicate with them.
5. Meet the new members early, inform them, educate them, help them become members - make them more than dues payers.
6. Get your location to act as a union - have them stick together.
7. Act as a leader - do not let personal likes or dislikes prejudice your actions as a grievance representative.
8. Fight discrimination, whether it be overt or very discreet. Discourage prejudice of any kind.
9. Keep accurate and up-to-date records. Write it down.
10. Do not promise, if you cannot deliver.
11. Encourage political action on the part of your members. See to it that they are registered and vote.
12. Be an active politically. Encourage members to exercise their right to vote, and to vote for labor friendly candidates.
13. Know how to refer to the union contract, by-laws, and international constitutions. If you are not sure, seek help so that you can become familiar with the documents.
14. Encourage and support the union's activities on behalf of organizing the unorganized.
15. Inform the membership of union services. Encourage them to take advantage of not only the services the union sponsors outright, but those that the union helps subsidize. If your local does not already have a community services representative, encourage the local in creating one.
16. Fight, whenever you meet it, the anti-union element. You can best do this by being informed and being dedicated to the labor movement.
17. Do not hesitate or stall. If you do not know, admit you do not know. Then try to get the answer.
18. Keep your workers informed on sources of information. Give pertinent information whenever a worker wants it.

19. In dealing with the management, remember that you are the elected or appointed representative of your fellow members. Never consider yourself to be inferior to management representatives. You are always their equal.
20. Be proud of your position. Remember you are a union representative of your local union which has the full support of tens of thousands of members bound together in an international union, with the support of millions of other union members.
21. Wear your union button and encourage your coworkers to wear it.
22. Investigate every grievance as if it were your own. Keep the member informed. Make sure you keep your deadlines. There is no excuse for missing a time limit. Research every grievance as if it were going to arbitration but try to resolve it at the lowest possible level. Keep your local union informed of the status of each grievance.
23. Attend and encourage attendance at any labor education program that might be available to you and your members.
24. Remember your goal is to be the best union representative you can be. Always strive for this goal. Excellence has no substitute.

5. Listening to others

Listening is a skill. Unfortunately, we are far better talkers than we are listeners. But you can't be a good speaker without being a good listener. One skill relies on the other.

In grievance handling, the shop steward needs to be able to listen and watch the member and the supervisor. Much of what you need to know may be conveyed to you through body language or inference, not in direct speech. Here are some pointers on how to become a better listener and observer.

Stop talking--you can't listen while you are talking.

Empathize with the other person--try to put yourself in his/her place so that you can see what he/she is trying to get at.

Ask questions--when you don't understand, when you need further clarification, when you want to show you are listening. But don't ask questions that will embarrass or show the other person up.

Don't give up too soon--don't interrupt the other person; give him/her time to say what he/she has to say.

Concentrate on what is said--actively focus your attention on the words, ideas, and feelings related to the subject.

Look at the other person--face, mouth, eyes, hands will all help to communicate with you. Helps you concentrate, too. Makes the other person feel you are listening.

Leave your emotions behind (if you can)--try to push your worries, your fears, your problems, outside the meeting room. They may prevent you from listening well.

Control your anger--try not to get angry at what is being said; your anger may prevent you from understanding what is said.

Get rid of distractions--put down any papers or pencils you have in your hands; they may distract your attention.

Get to the main points--concentrate on the main ideas and not the illustrative material. Examples, stories, or statistics are important, but usually are not main points. Examine them only to see if they prove, support, define the main ideas.

Share responsibility for communication--only part of the responsibility rests with the speaker; you as the listener have an important part.

React to ideas not to the person--don't allow your reactions to the person influence your interpretation of what is said. The ideas may be good even if you don't like the person.

Don't argue mentally--it is a handicap to argue with him/her mentally as he/she is speaking. This sets up a barrier between you and the speaker.

Use the difference in rate--you can listen faster than he/she can talk, so use this rate difference to your advantage by: anticipating what he/she is going to say, think back over what he/she has said, evaluate his development.

Speech rate is about 100 to 150 words per minute, thinking is 250 to 500.

Listen to what is not said--sometimes you can learn just as much by determining what the other person leaves out in his/her discussion as you can by listening to what he/she says.

Listen to how something is said--we frequently concentrate so hard on what is said that we miss the importance of the emotional reactions and attitudes related to what is said. Attitudes, and emotional reactions may be more important.

Don't antagonize the speaker--it may cause the other person to conceal their ideas, emotions, and attitudes. Try to judge and be aware of the effect you are having on the other person. Adapt to him/her.

Listen for their personality--one of the best ways of finding out information about a person is to listen to him/her talk; as he/she talks you can begin to find out what he/she like and dislikes, what his/her motivations are, what his/her value system is and what makes him/her tick.

Avoid jumping to assumptions--they can get you into trouble. Don't assume that the speaker uses words the same way you do; that he/she didn't say what he/she meant, but you understand what he/she meant; that he/she is avoiding looking you in the eye because he/she is telling a lie; that he/she is distorting the truth because what he/she says doesn't agree with what you think; that he/she is unethical because he/she is trying to win you over to his point of view. Assumptions like these may turn out to be true, but more often they just get in the way of your understanding and reaching agreement or compromise.

Avoid classifying the speaker--too frequently we classify a person as one type of person and then try to fit everything he/she says into what makes sense coming from that type of person. He/she is a Republican. Therefore, our perceptions of what he/she says or means are all shaded by whether we like or dislike Republicans. People have the trait of being unpredictable and not fitting into their classifications.

Avoid hasty judgments--wait until all the facts are in (or at least most of them) before making any judgments.

Recognize your own prejudices--try to be aware of your own feelings toward the speaker, the subject, the occasion, and allow for these pre-judgments.

Identify the type of reasoning--frequently it is difficult to sort out good and faulty reasoning when you are listening. Nevertheless, it is so important a job, that a listener should bend every effort to learn to spot faulty reasoning when he/she hears it.

Evaluate facts and evidence--as you listen, try to identify not only the significance of the facts and evidence, but also their relation to argument.

6. Nobody's Perfect – 20 mistakes

We all make mistakes. We're human. Shop stewards even make mistakes. Some of these mistakes are particularly serious. Here is a list of 20 mistakes that shop stewards make. Read them over. Nod your heads. But don't make them again!

1. Always wait until a workers comes to you with a grievance.
2. Walk around the worksite with a chip on your shoulder.
3. Pretend to know all the answers to all problems.
4. Give out false information or spread rumors.
5. Fail to keep members posted on disposition of grievances.
6. Violate company rules.
7. Violate the contract.
8. Always try to talk members out of filing grievances.
9. Present a grievance that isn't one.
10. Forget to investigate a grievance thoroughly before handling.
11. Blow up when dealing with the supervisor or workers.
12. Use profane language to intimidate the boss.
13. Argue a grievance by taking personal issue with the supervisor and directing personal remarks.
14. Miss membership meetings.
15. Bawl out a member in front of co-workers or in front of a supervisor.
16. Stall when workers call you.
17. Keep all the information to yourself.
18. Permit workers to push you around.
19. Enhance the supervisor's prestige by permitting the supervisor to use you as means of doing his/her dirty work, such as enforcing company rules or calling the workers down for minor abuse of certain privileges negotiated by the union.
20. Manage the workers.

7. Ten Mistakes A Steward Should Never Make

1. Miss your deadline.

You know what the contract says, but somehow you forget to file the grievance within the specified time. The grievance, in almost every case, becomes history. Two pieces of advice. Keep a calendar diary with dates marked in red so you won't miss deadlines. And if you need more time, ask for an extension from management and get it in writing.

2. Never get back to the grievant.

This usually happens when the steward determines that the member has no grievance. Rather than be the bearer of bad tidings, the steward disappears. This is irresponsible. If the issue is not grievable under the contract, see if it can be resolved in another manner. If not, tell the member that the issue cannot be written as a grievance, and give him/her the reasons.

3. Bad mouth the union.

If you have a problem with the way things are done or with your leadership, discuss the issue(s) in a rational manner. Get off the soapbox and see if the difference can be resolved. There's plenty of room for discussion and disagreement. But when it spills out on the shop floor or at a meeting when management is present, such disagreements can permanently weaken the union. A house divided against itself will fail.

4. Drop the routine fly ball.

You are the steward with responsibilities outlined by the constitution and by-laws. You should not make basic mistakes. Grievances should be written correctly. Information should be shared. You should know your rights. If you are unsure or don't know the answer, ask.

5. Sit down and shut up at meetings with management.

In your role as a steward you are the union advocate. This role is an active one. You are the equal of management. You may ask questions, ask for and get records to process grievances, and even raise your voice at meetings when necessary.

6. Lose control.

A major no no. You or a member may be baited at a grievance meeting so that you will get angry. A steward who argues out of anger and not facts will lose the grievance. Period.

7. Write long grievances.

Grievances should be short and sweet. Management is being paid big salaries to supervise. Don't do the work for them. Your grievances should identify the grievant, outline the problem in a sentence or two, state what article of the contract is being violated, and what remedy you want to make the grievant whole. Save the arguments for the meeting. A good poker player never tips his/her hand.

8. Meet the grievant for the first time at the grievance hearing.

If this is the first time you've met the member, you are inviting trouble. Big time. You should talk to the grievant face to face when you investigate the grievance and write it.

You should also talk to the grievant prior to the hearing to familiarize him/her with the process. When they walk into the room, they should feel as comfortable as possible. They should know that yes, no, and I don't know are acceptable answers at a hearing. Describe the room to them, who will be there, and what they will be asked.

9. Wait for the member to come to you with the problem.

If you do this, you will never gain the respect of the membership you represent or the management you must deal with. Problems can often be resolved before they explode into grievances. And members may not be as aware of contract violations and grievable issues as you are.

10. Forget to take a breather.

This is intense work. Stewards work a full-time job and then take on their union responsibilities. This kind of existence is rewarding but is fraught with burn-out. Take time for yourself and your family.

8. When Questioning by the Boss Could Lead to Discipline... Ask for a Union Steward

When management begins to ask you questions that could lead to your being disciplined, you don't have to face it alone.

If you have a reasonable belief that answers you give could be used by the boss to discipline you, the U.S. Supreme Court says you can refuse to answer any questions until the union steward is on the scene and has had a chance to talk things over with you first. It's your right to have the steward present during the questioning to advise you, ask supervisors for clarifications, and provide additional information at the end of the session.

If you are called at home and asked the same kind of questions, you have a right to insist on waiting to answer them in the presence of a steward.

Once your union representative is allowed to participate, you are required to answer the questions truthfully.

These protections are known as your Weingarten rights--named after the 1975 case in which the court decided the rights exist.

The Weingarten ruling applies specifically to union members covered under the National Labor Relations Act. However, a similar right is often negotiated into collective bargaining agreements covering Railway Labor Act (RLA) employees and public sector employees. (To find out if they are covered, public sector employees and employees covered by the RLA should consult their local union.)

The Boss Doesn't Have To Offer

The boss is under no obligation to tell you about the right to have a steward present.

You have to know your right and ask to use it.

Once you've asked for the steward, any attempt by management to continue asking questions before a steward gets there is illegal. If supervisors pressure you by telling you that "you're only making things worse for yourself" by asking for a steward, that's against the law too.

What to Say if Management Asks Questions That Could Lead to Discipline

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

Better Safe Than Sorry

The steward can serve as a witness to prevent supervisors from giving a false account of the conversation. Many people find it hard to talk under pressure. The steward can help you explain things. If you're hot headed, the steward can help you keep cool.

Stewards have often dealt with similar situations before and can help you figure out what you should and shouldn't say. You do have to answer the questions, but stewards can help you figure out the best way to do so. They can also provide information to management after the questioning is over that can help explain your situation.

If you don't insist on having your steward present, you can't later challenge discipline taken against you on the grounds that you didn't have a steward with you.

Know the Limits

Just as it's important to know what your Weingarten rights are, it's also important to know the limits.

You're not entitled to have a steward present every time a supervisor wants to talk to you-- like about how to use a certain tool or what your assignments are for the day. But if the discussion begins to change into questioning that could lead to discipline, you have the right to ask for your steward before the conversation goes any further.

If you're called in to the supervisor's office for an investigation, you can't refuse to go without your steward. All you can do is to refuse to answer questions until the steward gets there and you've had a chance to talk things over.

9. What is a Grievance?

Too often, a shop steward does not know the answer to this basic question. A member comes to you with a problem. They spell out an incident, an event, or a problem and then tell you to file their grievance.

If you respond immediately, in the affirmative, better read further.

Shop stewards and local union officers are vested with the responsibility of enforcing the contract for everyone in the bargaining unit. That is a right we demand as a union when we organize workers. To enforce the contract, the union negotiates a grievance procedure which is the chief way, but not the only way, we can get justice for our members. According to one survey, some 91 percent of surveyed union contracts include a grievance procedure.

The first question we need to ask ourselves when a member comes to the steward with a problem is, "is this issue a grievance?"

Strategically, we are asking is there any way we can deal with the issue through the official grievance network?

The textbook definition of a grievance is a violation of the terms of the contract or interpretation or application of the contract.

That's a pretty narrow definition of a grievance and one with which most union representatives might feel uncomfortable. But, as we all know, textbooks are not the final word on anything. So let's develop this definition a bit further.

A grievance is more than likely a violation of an employee's rights on the job, a right that is usually, but not always defined by the contract. In seeing a grievance in this way, we can understand better that the best place to look for a way to defend the member is in the language of the contract.

If you have any doubts as to the contract's importance on this fundamental issue, think about how your employer tries to chip away at the contract-- not just at contract negotiations, but every day. The employer knows that if all else fails, it is the contract that protects our members.

So for all practical purposes, every union officer must go back to the contract first when a member comes in with a complaint or a problem. The contract provides us with the strongest ammunition in resolving the issue for our member.

That is why it is so critical to know your agreement and use it as creatively as possible to write grievances. Many local officers have surprised themselves by grieving issues on language in the agreement which is close enough to the problem to get a positive response from management.

Is the contract the only means to resolve member's grievances? Of course not. But it is probably the strongest leg you have to stand on.

A grievance may exist if the company or employer violates the law. In almost every case, contract language or employer practices cannot violate the law.

Also, there is the issue of past practice. Most new shop stewards rely on the concept of past practice far too often. Past practice is roughly defined as a practice that has been repeated over a

period of time. It's not something that has happened once or twice or that has been in place for a week. It is a practice which has been going on for enough time and so frequently that it appears to a reasonable person that both sides have agreed informally to conduct their business in this manner. The contract must also be silent on the practice. (See "Can Employers Change the Rules in the Middle of the Game?")

The best advice is that stewards should not take it upon themselves to grieve on the basis of an employer violating past practice. Discuss the issue with other union officers. There may be language in the agreement to the contrary. Or the union may lose too much by challenging the change in practice.

Lastly, there are many grievances that fall into a large category which we say are discipline-related. The union can challenge certain rules or their application. We may argue that a member is being disciplined without "just cause" or he or she is suffering from disparate treatment. The two expressions are simply an arbitrator's or lawyer's way of saying the member is being disciplined unfairly.

So the best advice that can be offered in handling a member's problem is to check the contract first. If there is any reasonable way of dealing with the issue as a contract violation, you ought to use it.

You and your local union are only limited by the contract, the skills of the grievance representatives, and the power of the local union.

10. Can Employers Change the Rules in the Middle of the Game?

For years, your employer has allowed you and your co-workers to play radios while sorting packages. But, one day, your boss says: "No more radios!" Your contract does not say anything about radios. Can your boss make this change?

Until recently, your boss has allowed you to stop work a few minutes early so you can wash up. Now, she says you have to stay on the job until your finish time. The contract is unclear about whether you have "wash-up time." What can you do?

You've always been allowed to use three sick days each year to stay home with your children if they are sick. Now your boss says you can't stay home unless you are sick. The contract specifically says sick days can only be used if you are sick. What happens?

In some situations like these, you can fight the actions of employers who change the rules on their own -- thanks to a legal principle called "past practice."

You won't find mention of past practice in any labor laws. The tradition of giving weight to how things were done in the past has been developed by arbitrators who rule on disputes over the interpretation of union contracts.

What makes something a past practice? The practice must be a customary way of doing things in your workplace that, while not spelled out in the contract, has been done for a long time, has been done consistently, and has been done with the knowledge and acceptance of both your boss and the union.

In the "radios" and "wash-up time" examples, the employer knows about and has allowed those activities for years. There's nothing about playing radios, one way or the other, in the first contract. In the second example, the contract is unclear as to whether or not wash-up time is allowed.

In both these situations, you would have a strong case if you filed a grievance against your boss.

It would be much more difficult to win this kind of grievance if the contract clearly prohibited the activity.

Take the third example listed above -- the practice of using sick days to take care of sick children. Here, the contract was clear. It specifically said you could only use sick days for your own illnesses. So, it would be hard to win a past practice grievance.

Cases involving employee benefits or privileges make for strong past practice grievances. But, in most situations, it's much harder to argue "past practice" when employers change methods of operations or introduce new technology. Other contract language may be helpful (like a requirement to give the union notice about changes), but the argument that "we've always done it that way" probably would not work in those cases.

Being aggressive--and timely--in defending your contract can help stop management from using past practice as a defense against a union grievance. If workers wait years to file a grievance against a new management policy that isn't directly addressed in the contract, management may argue that it has become a past practice. This is why it is very important to challenge management actions right away when you think they may violate your rights.

Many situations aren't cut and dried, and this area of labor law can be very complex. But this should not stop you from discussing the problem with coworkers and seeking advice from your steward or local union officials if you think your employer has violated your rights by changing the rules in the middle of the game.

Past Practices Victories

Examples of past practices not written in a contract but enforced by arbitrators because employers had allowed them for a long time include:

- Lost time pay while seeing the company doctor
- The right to swap shifts
- The right to receive sick pay during layoffs
- The right to use company vehicles to commute to work
- Yearly company picnic
- Discounts on company products
- Free meals and coffee
- Pay for travel time
- Considering the lunch period as paid time
- Christmas bonus

11. Get It in Writing

As shop stewards we spend a lot of time talking -- preaching unionism; communicating important information about our job; educating members about critical legislative issues; or just telling members what they missed at the monthly union meeting.

We live in a talking culture. We forget to put things down in writing.

That's not what they teach in business school or in law school. Supervisors and lawyers have been trained to put everything down on paper.

It allows them to control what is called the record. If you go into a grievance meeting and your supervisor takes notes, chances are those notes will form what is called the record of the meeting. Your memory and their memory can be faulted. Notes cannot.

That is why it is important to get into the habit of buying a small notebook and using it in all of your capacities as a steward. Most important, use it while you are handling complaints and grievances.

In your interview step with the member, write down what he or she says. Don't worry about spelling. Just get it down. Use your grievance interview sheet to help write down the story.

The very act of writing the member's story down conveys a professional image of your role to the member. And just as important, the member will be more truthful in giving you the whole story -- warts and all.

Sometimes members think they are helping the steward by embellishing a story to make it more convincing. Our role as steward is to get the truth and get the member justice. The act of writing contributes to that goal.

Taking notes in the grievance meetings conveys a sense of no-nonsense and professionalism to your employer counterparts as well.

The employer's paper trail

Let's take this issue of writing a step further. How many of us have been in the situation where the employer has created a paper trail in order to build a case against our member? Verbal warnings and letters may be indicated on some kind of disciplinary sheet in the member's personnel file.

What does the member usually do if they are assessed a verbal or written warning? In all too many cases the member does nothing. Stewards and the local union itself must counsel all members never to accept discipline that the member and/or the local union feels is unjust.

That doesn't mean every letter of warning has to be arbitrated. In many cases, it is sufficient to challenge that letter with the member's and/or union's version of what happened. This challenge should be put in writing and attached to the record or it should be properly entered directly on the discipline sheet, if possible.

If these warnings are not challenged in writing, they stand as accepted. Management has made an art form out of progressive discipline. The union needs strong ammunition in any disciplinary situation, because the next incident could trigger time off or termination.

Employer harassment

There are times when a member comes to his or her steward with a complaint about a supervisor who seems to be picking on the member. He or she gets the worst assignments. Or the supervisor always seems to be breathing down the member's neck.

Issues such as employer harassment (sexual harassment is a different which we will deal with in another section) are ones which usually boil down to the member's version of the story versus the supervisor's version.

As soon as a member comes to you with a harassment issue you have got to tell the member to document each and every incident in which the harassment occurs. Just as management builds disciplinary cases against our members, we have got to build the case against the offending supervisor.

Tell the member to write down the incident, when it happened, what happened, and were there any witnesses. By putting together a record of the harassment, the member is directly involved in the grievance process and the local union will have the necessary documentation to make the best case.

Remember, get into the habit of writing down everything.

12. Grievance Interview

The key to good grievance handling is a proper investigation and that process should start with interviewing the member who comes to you with a problem. Based on this key interview, you will make a number of important decisions such as what to do with the problem, whether to investigate it further, and how to resolve the issue.

We all know that most work problems are not very simple. In order to get at the heart of the matter, the steward has got to speak with the member and find out exactly what happened.

That means we have to develop three critical skills: interviewing, listening and writing.

If a steward is going to follow-up the problem, he or she has to be sure what happened. We must use the same interviewing skills that any investigator -- be it an insurance claims officer or a police officer -- uses.

We ask and answer the “five W's”

:

Who

-- is involved? Name(s) of the worker(s) and the basic work information about the member(s) such as department, shift, job title, seniority, employee number. Most of this information will also be needed on the grievance form. You also need to find out some other information: Who witnessed the incident or who else was involved? Who from management was there?

When

-- did the incident or condition occur? Get dates and time as accurately as possible.

What

-- happened or didn't happen? What did the worker(s) do? What did management do or not do? What happened in the past?

Where

-- did the incident take place.

Why

-- did the incident occur? In answering this question, you may have to sift conflicting opinion to get at the facts.

More Tips

Do it in person and spend time. Asking the five W's may not be difficult. Getting useful answers is another story. Your member may be so hot under the collar that you may have to wait a few minutes before he or she can settle down and tell you the whole story accurately and factually.

Take notes. Always take notes. You can't remember everything and taking notes conveys to the member that you are taking this issue in a serious manner. The member may also take your concern more seriously and give you more facts and less opinion if he or she sees that their

words are being written down. Some statements or facts may not seem important at first, but take it all down. Later investigation may make this unimportant information crucial to your case.

Use the grievance investigation form. The sheet will help you interview the member and help you complete a full investigation of the matter. You will be one step ahead if you pursue the complaint as a grievance. Additionally, the worksheet will remain in the union files so if the grievance is appealed to a higher level of the grievance process, your investigation work will be preserved for other union grievance officers.

Let the member tell the story. Make sure that you take enough time with the member. Listen to what the worker says without giving an opinion or making empty promises. Have them tell the whole story and make notes as you go along so that you can follow up on specific details later.

Follow up. Steer the interview back to the specific issue and ask for greater detail.

Keep in mind two other questions:

What else

-- do I need to conduct a proper investigation? What further information is needed? The success of any investigation means you start with the member but you must also consider other sources of information.

How

-- should the issue be resolved? A solution to the problem or complaint may arise in the course of the interview. Give the member a chance to help resolve the issue. Use your knowledge to guide the worker by making sure he or she understands the effect of any suggested solution. Lastly, prepare yourself for the possibility of a full-blown grievance. Begin to think about the remedy you will seek to correct the injustice.

There is no magic to interviewing a member. Just make sure that you have the time to conduct a full interview, listen carefully, and write things down.

13. Handling Grievances

There is no magic to handling grievances. Your membership expects you to give them a fair shake. That is one of the many functions of the union.

Your ability and credibility are the strongest attributes you possess to doing your job in a fair and professional manner

To help you keep your eyes on the process and gain justice for your member, here are 21 key points in grievance handling. Read them carefully and then read them again.

1. Know your membership.
2. Encourage your members to submit all grievances to their representative.
3. Discourage members from shopping around for a representative to file their grievance.
4. If the member has a complaint, not a grievance, take the time to explain why it cannot be processed as a grievance.
5. Do not make promises you cannot keep.
6. Know your collective bargaining agreement. Read and reread it.
7. Get all the relevant facts about a grievance and record them.
8. Make sure the grievant knows what the issues are.
9. Be honest with the grievant.
10. Separate personal vendettas from real grievances.
11. Plan your case and prepare at every stage.
12. Keep the grievant informed at every stage.
13. Try to settle the grievance early on.
14. Discourage the member from discussing a grievance with management.
15. Try to retain your member's confidence at all times.
16. Discourage your members from processing their own grievances or settling privately with management.
17. Listen to the grievant--know when he/she is telling the truth.
18. If a worker has an obvious grievance and won't file it, find out why.
19. Do not take bad grievances.
20. Keep written records of all conversations. You will need them.
21. Set up a filing system that works for you.

14. What Does “No” Really Mean

Many stewards hear the word “no” more often than they would like. It might happen like this.

A member comes to you with what seems like a clean grievance. They have been bypassed for overtime and according to your investigation they were at the top of the list, but were never asked. Simple?

You decide to meet and discuss the issue with management because it appears that the supervisor committed some oversight here. But when you get into the supervisor's office, he begins to talk about emergency work and needing to assign an available employee without going to the list. Your jaw begins to drop, the muscles tighten and it takes all your effort not to explode. You have just entered the world of grievance denial.

What happened?

Bad decisions

Chances are the supervisor on duty made a poor decision and management is now using the emergency work excuse as a cover. Of course the member has been wronged, but management doesn't like to admit it made mistakes. So it compounds the mistake and gets the union members angry.

Here's another scenario. Your shop has enjoyed a practice for many years. There is nothing in the contract that deals with the practice but a new supervisor decides to end it. You protest through the grievance procedure and are told the grievance is denied. When you ask why, the supervisor reads you the management rights clause of the agreement.

Don't take no for an answer

We have to live with bad answers and grievance denials but that doesn't mean the process ends. Your first move is to explain to the grievant what just happened and make it clear that the union will not allow management to play games with his/her grievance.

Next, you must research and document the grievance thoroughly, if you have not already done so. Make sure that your notes of the first level meeting go into the union's file in case the second step appeal is handled by a different union officer. Insure that record is complete. Talk to the chief shop steward, executive board member, or local officer so that the proper person can make the strongest case on appeal to the next step.

Always consider the reason for the denial but your rebuttal is not necessarily the primary argument. If a member is passed over for overtime and there was no real emergency, stick to your guns about the bypass. If the supervisor hides behind the management rights clause--and they often will--insist that the employer consider the practice as part of the unwritten agreement between both sides. Show that the practice has been ongoing for a long enough time period that it appears to reasonable people that this is the way both sides conduct their business.

What about no answer?

Let's take a variation of this case. Suppose the supervisor doesn't answer your written grievance within the time limits set out in the agreement. The union must then choose to move the grievance up on appeal to the next step.

In the space on the form for management's reply, write in that still empty space, "not answered in a timely manner," and appeal to step 2. Do not miss out on the time limits.

When a supervisor does not reply to a grievance, it is usually because he or she is overworked, negligent, can't make a decision or won't make a decision. I have heard senior management complain that their worst nightmare in the grievance process is to go to arbitration where their lower people did not answer the appeals and the union progressed the grievance. Most of the time, they would settle the grievance to save face.

Employers will go to the issue of time limits first when responding to a grievance. And the language that justifies a rejection of the grievance on the basis of missing the time limit is usually found in the labor agreement. Good grievances--grievances with merit--can be lost when management sees that the union has missed time limits.

Keep appealing

The key is not to let management control the grievance procedure through denial or refusals to reply. Their hope is that denial or silence might make the grievance go away. As frustrating as these tactics are, they cannot be allowed to divert the union from its primary task of defending members' rights on the job.

15. Writing a grievance

One of the most difficult jobs of any grievance representative is writing a grievance. Many of our contracts provide for the steward or representative to write the grievance on behalf of the member. By having the steward write the grievance, the union is better able to track the issue and control the grievance procedure. The member is better represented and the process is used to build solidarity in the local union.

Your grievance form

The first step of the grievance process is an informal meet and discuss meeting involving the member, steward, and first line supervisor. Your goal is to settle issues early. In order to be effective towards this goal you must make advance preparation. Use your investigation form when interviewing the member, and follow the steps in the “Grievance Interview” section. Review the section “A Dozen Points on Grievance Presentation”. Take a pad and pencil with you when you meet with the supervisor for the first step grievance meeting, and take notes of each participant’s statements. If you are unable to resolve the issue at this meeting, let the supervisor know that you will need a verbal response by the second working day after the grievance was presented.

If the grievance is denied, complete the first step grievance form including the company's response and submit it to your Local President. Include a copy of the investigation form and any pertinent notes. Your Local President will assign a number to the grievance and submit a 2nd step grievance form to the company. The contract states that, “If the Union does not carry a grievance to the next higher Step within ten working days after the Company has rendered its decision, the grievance shall be considered settled in favor of the Company.” Be aware of timeliness issues and mark deadlines on your calendar for follow-ups.

Be timely

You must be timely in the presentation of your grievance. That means you should file it within the proper amount of time that is stipulated in your contract. Be careful of contract language. Working days and calendar days are different. Filing after the knowledge of the occurrence is different from having to file after the date of the incident.

When you write the grievance, limit the statement to basic information. Provide only enough information to identify the grievance so that management understands what the basic problem is, what violations have occurred and how the problem should be fixed.

Be brief

You are not obligated to tell management in a grievance all of the results of your investigation. Don't do their work for them.

Omit the union's arguments, evidence and justification for its position. You should save that for the grievance meeting. You don't need to tip your hand before you get to that grievance meeting. Avoid personal remarks. State the position of the union not opinions. Opinion words include “I think,” or “I believe.” Avoid them.

When stating why there is a grievance use the phrase “management's action is in violation of the contract including Article VIII, Section 4 and 5.” (Example) Allow for the possibility that there could be other violations.

The remedy

You need a remedy in every grievance. By filing a grievance you are demanding that management right an injustice. Management will not give you anything. You've got to tell them what you want.

When you write your remedy, don't limit it. In grievances that involve money, benefits, or protests of discipline, use the phrase “the grievant should be made whole in every way including” Then ask for what you want.

The general phrase “made whole in every way,” means that the grievant should receive any and all losses due to management's action. The word “including” allows you to add specific remedies later on in writing or in oral discussion with management.

Just because you use the phrase “made whole in every way,” does not mean that management or even an arbitrator will search out the specific benefits management has denied your grievant. It is up to you to list verbally or in writing any remedies not noted in the original grievance.

Keep the grievant up to date on the process of the grievance. Your job doesn't end when the form is filed.

16. Resolving Issues Early

Here is the problem today for a local union steward. A member comes to you and asks you why their grievance has not been solved. “It amounts to a few hours overtime,” they tell you. “Why does it take four months to get settled?” Good question, you say to yourself. Why must it take so long?

An experienced steward understands the grievance process and his/her key role in making the procedure work. It begins and hopefully ends with the steward and member. No step two or three. No arbitration.

This might sound like heresy but it is common sense. Few grievances should ever go up the grievance ladder and even fewer should go to arbitration. When a large number of grievances go up the grievance ladder, there is a serious problem with the procedure and its use. And that often signals a poor relationship between the employer and the local union.

Why should issues be resolved early?

1. Members see results quickly. Minor issues should be tackled and resolved immediately. This shows the member that the union can deliver. Needless delay over a resolvable issue demonstrates weakness not strength.
2. Justice delayed is justice denied. This is an old saying which rings true today. How does it look to a member when a resolvable issue has to be processed in a way that takes months?
3. Resolving issues at an early stage builds up a relationship with your counterpart in supervision. It means that the issue doesn't go downtown or off the property and that makes the supervisor look good. This can also serve as the confidence building process which allows for other issues to be tackled.
4. Reducing the issue to a written grievance often forces both sides to posture and become inflexible.
5. Issues that could be handled by discussion can become costly grievances.

This does not mean we shouldn't file grievances. On the contrary, we should treat every grievable issue as if it will go to arbitration. Stewards should perform a thorough investigation and advocate in the strongest possible terms if a written grievance is merited and a step one meeting is necessary.

Let's also go through a reality check here. Your intentions may be the best but the road to hell is paved with the best intentions. Supervisors may not see early issue resolution as in their best interest. They might view sitting down with you to discuss issues as ceding over some of the little power that they have. They may also not be in the position to resolve issues informally. Usually, these are the same supervisors who must call Labor Relations to get an answer on your first step grievance. And then there are supervisors who are hostile to any kind of reasonable request.

But there is still a strong case for an informal discussion with management on workplace issues.

Where they can feel comfortable, stewards should take advantage of “open door” policies to meet and discuss issues with supervisors. There is no reason why a steward cannot schedule a pre-grievance meeting with his/her counterpart in management. We already do some of this “meet and discuss” when we go into the supervisors’ office over the nonpayment of overtime or problems with work scheduling.

If we can begin to meet and discuss, we can also begin to carve out areas where we can successfully resolve bargaining issues. And by doing so we can spend more of our time on other key steward roles such as organizing and political action.

17. Dozen Points on Grievance Presentation

Many stewards do the basic work of grievance preparation. They listen to the grievant, investigate the issue and then decide whether the problem is grievable under the contract.

Once the decision is made to go ahead with the grievance, the steward usually requests a meeting with his or her counterpart in management. The grievance is then presented in an oral or written form.

Here are some hints on what to do prior to and at that meeting.

1. Prepare the case beforehand.

Have your facts down in writing. Organize and understand your notes to guide your presentation. Be confident. Anticipate the company's argument and have your answers ready. Make an effort to talk to the worker alone before you meet the supervisor.

Talk the case over, if necessary, with other representatives, your committee people, or others who might help you.

2. Avoid arguments among union people in the presence of the company.

Once you are in the meeting with management, maintain a united union front. If you have a difference of opinion during a meeting, take a recess and iron the problem out in private. It does not look unprofessional to call a short recess. If the grievant looks as if he or she is damaging the case, stop the meeting and ask for a short break until things calm down.

3. Stick to the point, avoid getting led off on side issues by the company.

Insist on discussing the issue raised by the grievance only, nothing else. Take notes during the conference.

4. Get the main point of the company's argument.

Try to narrow the area of difference between union and company. Listen intently and look for solutions to the problem that the company may feel it can only reveal by subtle implications, hints, indirect suggestions, or body language.

5. Disagree with dignity.

Avoid getting excited, angry or hostile. On rare occasions, after you have reasoned that there would be an advantage to the union, such behavior may be advisable. The steward is cautioned to keep him/herself under complete control less he/she lose the advantage. Don't get goaded into anger. When the company has no case at all, they may try to provoke you.

6. Avoid unnecessary delays. Justice delayed is justice denied.

If the company asks for more time, try to determine whether it is an attempt to stall or it is based on a sincere desire for more facts needed to settle the case. If the company is not trying to stall, you should grant a reasonable extension. You may need to go back to the company on another grievance and ask for more time.

But when company delays are intentional, the more time that passes, the "cooler" the grievance becomes and the less support you will get from the worker or workers involved. The more grievances that are piled up in the procedure, the more likely that the company will try to "horse-trade" a settlement of a few grievances for dropping of others.

7. Settle the grievances at the lowest possible step of the grievance machinery.

But make sure they are properly settled. It helps to build better relationships in the department. The union representative will feel like the vital part of the union that he/she is. The union representative also wins respect from the members of his/her department. Don't pass the buck. If you can settle the grievance in the first step, do so.

8. The burden of proof is on the supervisor.

In discipline cases, this is true. In money grievances, you might try to apply the same strategy. Let the supervisor try to justify and prove that the action he/she has taken is correct. Don't try to show where he or she is wrong. Let the supervisor first carry the burden of proof in telling you how he/she is right.

9. Avoid bluffing

It is only a matter of time until your bluff is called; it is in the long run wiser to develop a reputation for honesty.

10. Maintain your position on a grievance until proven wrong.

Avoid hasty conclusions that you were wrong. Take time to give the matter considerable thought.

11. Be prompt...Follow the grievance through.

Refer the grievance to the next step when not settled. Give the representative above you all the facts; also the arguments used in your discussion with the supervisor. Don't allow the grievance to lay around. Delayed grievances mean delayed justice. Keep a constant check on the progress of the grievance and at what step it is. Report back to the grievant and the department--they're concerned too.

12. Enforce the contract!

Contract administration is a day-to-day activity and should involve the stewards and the rank-and-file. The best contract in the world has no value if the workers and the union representatives do not require the company

18. Ten Rules to Prepare Witnesses for the Grievance Hearing

Last week you went to a disciplinary hearing in which you presented the case for the union. Your case rested on the testimony of another member who you brought to the hearing. Then management questioned the same member. All of a sudden he got flustered and backtracked on the story. The witness no longer sounded credible, even to you. What happened?

A disciplinary case will be judged on the facts and you must present those facts through documents and witnesses. When you use a witness you must make sure of the witnesses' story. A solid grievance investigation including good interviewing techniques are basic to this process. But there is more.

A good grievance is only as good as the witnesses and the grievant. You must insure that the story they tell is consistent and they stick to it. That means you must adhere to the following rules in preparing your witness.

1. Know what your witness will say.

Once you have interviewed the witness, sit down with him or her and tell them the questions you will ask. Plan those questions according to the information the witness has offered.

2. Go through a dry run of your questions ahead of time.

The questions and answers at this stage are meant to increase their comfort level, not to put words in their mouth or get them to memorize their story. Anyone can see through a concocted story or one too-well rehearsed.

3. Tell the witness what they can expect in their cross examination by management.

Give them some possible company questions ahead of time and see how they respond. Tell them you will make sure that the company does not go off base on their questions.

4. Answers should be brief and non-technical. Tell them not to argue.

5. Witnesses must not be evasive.

If they cannot remember or do not know, they must say so. "I don't know," or "I can't remember" are perfectly reasonable answers. They do not necessarily weaken a witnesses' story despite what they might think. "No" and "yes" are also respectable replies to questions.

6. When the company questions the witness on cross-examination, answers should be as short as possible.

Do not let your witnesses do the work for the company. Make the company prove their case.

7. If the witness is sure of the facts, tell them to use words like "I remember."

Words like, "I think" or "I believe" are weak and do not necessarily indicate facts.

8. Don't let witnesses get shaken by cross-examination.

When you have a particularly strong witness, management may try to get the member excited, make them lose their temper or get careless with an answer. What they are trying to do is destroy a witness' credibility. Step in to prevent this. Don't let your witnesses be hounded or badgered. Don't let anyone put words in their mouth.

9. During your interview with the witness, walk them through the entire hearing.

They have to know ahead of time what to expect. Describe to them the physical layout of the room, who will be there, and what will happen. The more they know ahead of time, the more comfortable they will be.

10. In any proceeding, tell the witness to admit, if asked, that they have spoken with you ahead of time.

Don't let them think that the interview conference isn't part of the process. If they are asked, "What did your union representative tell you to say at the hearing," the proper reply is, "He/she told me to tell the truth."

Disciplinary hearings are uncomfortable and stressful events for members and witnesses. Once you realize this fact, you must try to do everything in your power to make your people more comfortable. Following these 10 simple rules will help.

19. Seven Ways To Lose a Winning Grievance

What's worse than losing a grievance? It's losing a grievance that you and everyone else knew was a 100 percent sure winner.

Losing “sure winners” happens every day -- not because of the quality of the grievance, but because of the way the union handles it. Making a fundamental error or forgetting a basic detail can snatch defeat from the jaws of victory.

Here are seven sure fire ways to lose even the best grievance.

1. Missing a Deadline

If you were management, would you give the union a little slack if they filed an appeal too late -- especially on a case that was going to cost the employer either a lot of money, authority or embarrassment? No way.

If you have to do something within a certain time frame, get it done. It could be filing a document, preparing for a hearing, submitting a brief or filling out a form. It makes no difference. The longer you wait, the greater the chance that you'll miss the deadline and lose your case.

2. Wait Until Somebody Brings the Issue to You

Just because nobody brought a problem to your attention earlier doesn't mean the union shouldn't have known about it. If it started happening a year ago, and nobody made it an issue until recently, it may be too late to do something.

That's why somebody, preferably a group of stewards, needs to examine changes in the workplace as they are happening. Can management do that under the terms of the contract? Does it hurt employees? Is it legal? If you wait until someone complains about it, it may be too late.

3. Fail to Arrange for Witnesses to Attend Hearings

You may have a fantastic eyewitness who will verify everything the grievant alleges. But if you wait until the last minute to notify the eyewitness about a hearing date, you may find that he or she is out of town, in the hospital, or just plain unreachable. Then where will you be with no corroborating testimony?

Be sure your witness knows when and where the hearing is, too. Witnesses aren't much good if they show up at the wrong place or time to testify.

4. Don't Prepare Your Witnesses

There's nothing like the sinking feeling you get in a grievance session when a grievant or witness says something that destroys your case. Go over every question you will ask beforehand. Witnesses shouldn't volunteer information. Their answers should be short, factual, and to the point.

5. Fail to Cite the Most Compelling Section of the Contract

Some people routinely add the words “other related sections”; to the part of the grievance form that asks you to specify the contract section that was violated. Later in the grievance process, somebody may figure out that some other section of the contract provides a stronger argument. Always check the full contract first. Talk it over with someone else who knows the agreement. Cite all the articles that reasonably seem to apply. But if you can hold open your options (by listing “and other related sections”) until you are asked to be more specific, you may buy some time to strengthen your case.

6. Get Personal

It lessens your victory if management drags out the grievance process needlessly long. If they stall things because they think they can win, there's not much you can do. But when they do it just out of spite and personal animosity, maybe you could have prevented it by keeping the grievance process strictly professional and not a grudge match between two individuals.

Winning is its own reward. You were right and management has to acknowledge it. Don't give them an unnecessary reason to postpone the final resolution.

7. Figure Out What Winning Really Means After It's Too Late

“Winning” is not always as clear as it seems. Sometimes winning means getting redress -that is, undoing a wrong or winning some sort of compensation for the victim. In other cases winning means setting a precedent for the future. In yet other cases, winning may be seen as holding management accountable for its actions -- an apology, public acknowledgment that they were wrong or embarrassment of a particularly authoritarian boss. Know what kind of win you want when you start the process, because these goals may be competing -- or even exclusive of each other. You may “win” the grievance, in the formal sense, but if you didn't demand the right resolution, it probably won't feel like much of a victory.

20. When the Member Doesn't Have a Grievance

For most shop stewards, the process of handling grievances is pretty routine. We are out there on the property, every day making sure that management holds to the agreement.

And when the member comes to us with a problem, we check it out. We do the proper grievance investigation to determine whether the issue is really grievable under our agreement.

But what happens when we do all we can but the problem is not a real live grievance? It's happened to all of us. Your coworker--someone you've worked with for ten years asks you to file the grievance that just isn't a grievance.

What do you do?

Let's start with what you shouldn't do. Don't file the complaint or issue if you know it isn't really a grievance. If you do, you are transmitting three pretty poor messages.

Wrong Message

First, the member thinks you can actually achieve something with the grievance procedure that it isn't designed to do. The member gets the impression that the grievance is a lottery and every entry has equal weight. That simply isn't true and it is isn't fair to the member or to other members. Besides you raise expectations which you can't fulfill.

Second, it damages your credibility with management. Part of the goal of grievance handling is to resolve problems; and grievance resolution needs the cooperation of both sides. If you go to management with lousy grievances, you will quickly lose the company's respect. Your judgment will be called into question when you present other issues which might be very legitimate grievances.

Lastly, filing frivolous or poor grievances can make management retaliate and poison the relationship with the union on even larger issues.

What should you do?

Tell the member straight out that the problem isn't grievable under the contract. Explain why. Don't take for granted that members understand the union's role in handling grievances and what the repercussions are for filing frivolous ones. Explain what the process can achieve and what it can't. Talk about the bottom line issue of justice for all members.

Don't procrastinate

Don't procrastinate but deliver the news directly and sympathetically. Expect some emotional heat at this discussion, but listen sympathetically so long as you personally don't have to bear the brunt of any outburst.

Also keep good notes as to your decision and if there is a stewards' meeting at the local, make it part of your report so that the member does not go shopping around for another steward to file the grievance.

Try to resolve the issue

See in what other ways you can resolve the issue. There is no reason why you can't go with the member to discuss the issue with supervision. If the issue is serious enough, discuss it with your officers to come up with a strategy to deal with it.

If the problem is a personal one, direct the member to a union counselor or other appropriate services that are available to the members.

Saying no to the member about filing a grievance is one of the toughest responsibilities you have as a shop steward. Some members will never be satisfied with the answer. But for most members, some demonstration of concern and possible resolution will go a long way in building the local union.

21. The Disciplinary Interview

When any local union examines the number of grievances filed in a year, they usually report that most of the paperwork deals with the issue of discipline.

While we don't often challenge the right of management to issue rules, we are more likely to challenge the manner in which management enforces the rules.

In most cases of discipline, members have a right to a fair investigation and a hearing on the alleged infraction.

While details and procedures may differ in certain contracts, there are some basic rules which apply to all disciplinary hearings.

1. The member should always ask for union representation.

First and foremost, if a member is called into any labor-management meeting in which he or she feels that discipline may be assessed as an outcome of the meeting, they should ask for a union steward to be present.

This is right that a local union must make clear to its members. Contracts and bargaining laws may differ as to how that right should be exercised, but the bottom line is that no member should go into this kind of meeting without union representation.

Few members are well-versed in their contractual rights, work rules, and limitations on managements' rights as a union officer. A steward has protected rights at any labor-management meeting when acting as a union representative. A member does not. That means a steward can say things and act in the kind of advocacy role that a member cannot. And that role is protected usually by law and/or contract.

A steward has two key roles at any disciplinary hearing: (1) to protect the member, (2) to protect the union and the contract. These roles are inter-related.

2. What should the member do if the meeting is not a formal one?

Unfortunately, many meetings which result in discipline do not appear to be formal hearings when they start. A member might be pulled aside by a supervisor who asks, "Would you mind stepping into my office for a minute?"

A member should always question the nature of the meeting. "What's up?" is the usual response. A better answer might be, "I will comply with your request if you tell me what the nature of the meeting is" or "Sure, just tell me what this is all about."

If the supervisor's answer in any way indicates that the supervisor may be investigating an incident, reviewing a record, or if you feel that the meeting or its outcome in any way will take the direction of discipline, the member must ask to have a union representative present.

If the member is unsure of the content of the meeting, he or she should still ask for a union representative to be present. Denial of that request under certain laws and contracts is grievable and can (although not always) mitigate the discipline assessed over the alleged offense.

3. What should the steward do if the meeting has already started?

There will be times when the member does not exercise his or her right to representation at a disciplinary meeting. If the shop steward finds out and sees the supervisor's door closed, the steward should knock at the door and request that the supervisor inform the member that a union officer is outside waiting to sit in at the meeting.

If the request is denied, document the denial in writing and ask the supervisor to sign it. What you are doing is creating a record that the supervisor is denying the member his or her rights to representation.

22. Preparing Discipline Cases

A majority of all grievance cases handled by local unions concern some form of discipline -- alleged absenteeism, poor job performance, insubordination, or inappropriate work behavior. The percentage of disciplinary cases can range as high as 70-80 percent of all grievances. This means that shop stewards and local union grievance officers must spend a lot of time handling these cases.

In the long term, they must also develop strategies to handle management at the local level to prevent such cases from even arising.

Steward and leadership training concerns both these issues. This column will address the issue of actually handling the disciplinary grievance.

Key is Credibility

For the union, discipline cases deal often with the issue of credibility - whether the member's version of what happened can be reasonably believed. The issue must be handled by the local union in such a way so that if the case was to be submitted to arbitration, the union side would be believed by the neutral.

This means that the grievant's story must be constantly tested to determine exactly what happened. It's human nature to be emotionally involved in an incident. A grievant might describe what happened to himself or herself but their choice of words might give an inaccurate description of the chain of events.

Or they may stretch the truth in order to get you to believe them. Details of conversations might be invented. The member might mistakenly place a witness closer to the incident than they actually were.

Check the story

A steward must constantly go over the story, checking every aspect of it. Challenge the story as you would expect management to challenge it. Explain to the member that you are not doing this to undermine him or her, but to help put forward the strongest case.

Try to find other credible witnesses who support the grievant's story. Different witnesses see the same event differently. Don't be surprised at this.

Talk to the supervisor or company witnesses beforehand. Check out their story and write it down. You might need to refer back to these conversations at the disciplinary hearing or grievance appeal. If you can show that the supervisor said one thing to you at your meeting and then he or she contradicts this story at a hearing, you begin to build a case that questions the supervisor's credibility.

Check Records

As a representative of the union, you have a right to the member's personnel record. Employers may have specific procedural policies about getting the record, but you need it prior to any meeting with management.

If you can't get it in time, request a postponement of the meeting without prejudice to the negotiated time limits on hearings or grievance appeals. In most cases management will be reasonable about postponements because they may at some other time come to the union with a similar request.

Make certain that the member's record is accurate. If there are entries on the record which should have been removed after a certain time period (some contracts have time limits for adverse entries), hold the employer to those time limits.

Employers use personnel records to build their case against a member.

Check the Contract and Rule Book

Hold the employer to the same standard that they use on union members. Refer to the contract and rule book to see if there was a violation. Even if there was a violation of the rule book by the member, the rule must be reasonable and known. Ignorance of the employer's rule is not a strong defense, but there may be some mitigating circumstance such as poor communication of the rule by the company.

If the rule is not reasonable or related to the work, safety of others, or company image, you may be able to argue that the grievant should not be held culpable.

Is the Employer Consistent?

Compare the member's actions with others. Make sure that he or she did not do things any different or worse than others who were not disciplined at all or received a lesser penalty. You may be able to argue that the company is being arbitrary or discriminatory.

Look for Motive

In cases of insubordination, check to see if the grievant was provoked or tried to defend himself or herself. Consider the supervisor's motive. Was the member being set up?

Your role is to build the strongest case for the member and that means making a believable case.

23. The Steward's Role at a Hearing

The nature and procedures of disciplinary hearings are governed by law, contracts, and/or procedures.

In general, the steward should follow these guidelines at a hearing:

1. Speak to the member prior to the hearing. If it is a formal disciplinary hearing with a notice, check the notice and proceed with an investigation of the alleged infraction. If you are called in at the last minute, seek a postponement so that you can make a proper investigation. If the meeting is informal, make sure the member has time to talk with you ahead of time or take a recess to get some understanding as to what happened.
2. Prior to the hearing, inform the member who will be present, how the meeting will be conducted and what he/she should expect.
3. Get as much information as you can beforehand. Do not let the employer withhold information. If they do, speak to your local union. Document any denials of information in writing and get it on the record.
4. If there are any witnesses at the meeting or hearing you should question them as you see fit. In most formal hearings, the process of questioning the company's witness is called cross-examination. You have a right to ask these witnesses questions to determine the accuracy of their testimony and their biases. Your rights to questioning should not be interfered with by management. If you are denied that right, make sure that such denial is entered on the record.
5. It is perfectly proper for members to answer questions with, "yes," "no," or "I don't know." Once the member has answered a question, he/she is under no obligation to elaborate.
6. At most hearings the steward can take as active a role as he/she sees fit.
7. You can stop the meeting at any time to speak privately with the member.
8. Take notes or bring in a second person to take notes.
9. Do not rely on the supervisor's notes.
10. The written record is important. It documents what actually was said, not what was allegedly said. Cases have been won and lost on the accuracy of the record.
11. The bottom line is to make sure that the member is treated as fairly as possible under circumstances that are heavily weighted against him/her. You must handle all discipline as if the case will go to arbitration. Remember, even if the investigation does not go the way you had hoped, you can challenge the discipline, how management conducted itself through the process, or the just clause section of your contract by appealing through your grievance procedure.

24. Documenting Discipline: What the Bosses Do

For those stewards who question why documentation in their grievance work is necessary, I would like to share with you some information which is put out by human resource managers. These are the folks who counsel supervisors how to enforce the infamous rule book our members must live by. This material is from their training.

According to one source, their primary reason for documentation is to avoid lawsuits. By logical extension, in a unionized environment, they use documentation to weaken our challenges in the hearings or the grievance procedure.

1. Outline only the critical facts:

Disciplinary memos should have no opinion, only facts which can be verified by documentation and interviews.

2. The 5W's:

Just as we use the 5W's for grievance investigation so should supervisors use this form of investigation to assess discipline. Who is involved in the rule violation, when did it occur, what rule was violated, where did it occur, what discipline should be imposed and why is it appropriate?

3. Identify the rule:

The clearest case for discipline is a specific rule violation. If the supervisor cannot come up with one and is disciplining on some subjective standard such as "poor judgment" he/she needs to match that charge against what is understood to be an accepted standard of behavior or performance. The less precise the write up; the stronger challenge we have in the grievance procedure.

4. Show that the rules was communicated to the employee:

This clearly comes under the topic of just cause. Employees cannot be expected to follow rules if they do not know what they are. Supervisors are told to show how the rule was conveyed to the employee.

5. Bring out the record:

Major violations aside (fighting, insubordination, theft), disciplinary action can involve repetitive violations such as lateness, poor work performance or attendance. Managers are counseled to produce the record showing previous related violations including discipline and/or counseling.

The key for union stewards is that the record must be related to the alleged violation and it must be timely. Check the time limits spelled out in the contract. If there is a two year limit, then violations beyond the two year limit should be pulled. Also, we often are presented with an entire work record which the employer then uses to characterize the member as "having a poor work attitude." Don't let this happen.

6. Document the record:

Managers should attach any record related to the rule violation to the disciplinary memo. This is important. It is used to justify progressive discipline. Attach copies of the rule violation in itself or incorporate it into the memo.

7. Describe the business reason for enforcing the rule:

Clarify for all concerned why the rule exists. This is particularly important in a non-union setting when an employee chooses to go to court to challenge discipline.

8. Make clear what are any future expectations:

Again this is legal cover so that discipline is not viewed as punitive. The expectation can simply be a restatement of the rule.

9. Show how the employer will help:

This goes to the issue of reforming inappropriate behavior and reasonableness on the part of the employer. One management document states: "Judges and juries like to review disciplinary documentation which indicates that an employer is willing to help the employee solve the problem." The memo might mention additional training or more frequent employer evaluation of work performance.

10. Date the document and identify the author:

If a supervisor ghost writes the memo for a manager's signature, the manager must be apprised of the content of the document he/she is signing.

11. Get the employee to sign the document:

This is to indicate receipt of the memo. It does not mean agreement with the substance of the memo. Refusals to sign must be noted for the record to indicate that the employee was present with the memo.

Our contention is that there are often two sides to a story and we want the record to reflect it. This is the time we should try to get our version of the story on the record. If you can get your version on the same form, fine. But some managers will not allow this. So you should get them to attach a statement to the form or letter. If this is rejected, make a copy of the union statement and file it with the union. It will then be included in the union record if the discipline is grieved.

12. Keep records confidential:

Only those managers who need to know should have a copy of the memo.

Advice for the steward: Hold the company to this policy.

By understanding how managers think and why they respond to alleged disciplinary infractions

25. Insubordination - A Dozen Questions to Ask

One of the most troubling and difficult issues for the shop steward is the issue of insubordination. Many contracts say in clear language that an employee can be disciplined and discharged for insubordination.

For employers, insubordination is considered one of the deadly sins, right up there with theft and violence. They will be hard-nosed and unforgiving on the issue. That is why for almost every discipline case involving insubordination arbitrators hold to the rule “obey now, grieve later.”

But in the heat of an argument or in situations where a member may be provoked beyond all common sense, the thought of filing a grievance over the issue may be furthest from their mind.

Let's go over some of the basics here. First, insubordination is usually defined as the failure by an employee to perform a task or comply with an order given to him or her by a supervisor. An arbitrator will usually look at an employee's compliance with a reasonable order as basic to the conduct of the employer's business. Arbitrators take the issue of insubordination very seriously and consider it a major infraction beyond the rules of progressive discipline.

Simply put, refuse a reasonable order and you can be discharged.

Life, however, is never that simple. There are a number of issues which must be taken into consideration in any insubordination case.

1. Was the employee given a direct order?

Mere instructions, suggestions, and/or advice are not the same as a direct order. A smart supervisor will say in no uncertain terms, “I am giving you a direct order to complete that job.”

2. Was the member aware that he or she was given a direct order?

A member may not have understood that the language used by the supervisor was a direct order.

3. Was the language clear?

For example, a member might be told to stop smoking. As part of their job, they may go to another location in the facility and light up another cigarette. Caught smoking a second time, the supervisor might discipline them for disobeying an order. But how clear was the original order? The employee might have thought that he had to stop smoking at his original work location only.

4. Was the order audible?

Many of our members work in very noisy locations.

5. Was the member given forewarning of the consequence of a refusal to follow the order?

A smart supervisor will use words that clearly indicate a disciplinary consequence will follow the refusal to obey the order: “If you do not comply with my order, I will take you out of service. ”

6. Did the employee willfully disobey or disregard the order?

Most cases demand that the refusal to follow an order be willful. A member may say that she was provoked by a supervisor, by abusive language for example. If a member comes to you with that kind of defense, you must dig down deep to find out why. In most cases, provocation is viewed by an arbitrator as a way of lessening the discipline, but not overturning it. An exception to this might be if the order was an affront to the basic dignity of the member. Racist or anti-union comments in the form of an order, for example, have no place in the shop and should be reported immediately to the union for action.

7. Was there an ongoing dispute between supervisor and member?

If this can be documented over a period of time, the issue may be harassment. But to prove harassment, you need clear documentation from the member of instances where he or she was picked on.

8. Was the supervisor being unreasonable?

The supervisor may have had a tough deadline to meet for production and a small incident set him or her off. The likely target becomes the member who just happens to appear in the cross hairs.

9. Was the order reasonable and necessary to the safe, orderly and efficient operation of the business?

Did the order violate the contract, work rules, past practice, past arbitration decisions, or the law?

10. Did the member feel that complying with the order would endanger himself or herself and his/her coworkers?

The right to refuse dangerous work is upheld by the Occupational Safety and Health Act. You must make your members aware whether they are covered by this language or state statute that is similar. If the work is unsafe, a member must report it and ask that it be made safe. Rather than an outright refusal, safer language might be, "I will comply with your request when the unsafe condition is corrected."

11. Was the member set up?

This has happened often enough to make us suspicious of employer motives. If you are suspicious of the situation, make a thorough investigation. Check for witnesses and motive. Recreate the incident as accurately as possible.

12. Did the charge of insubordination arise out of the member executing his/her role as a union officer?

If the member is a shop steward and got into a shouting match with the supervisor at a grievance meeting, the steward's conduct is protected. In cases of union duties, the steward or officer is an equal of management in labor-management issues and cannot be disciplined for exercising that role.

As a shop steward, you need to thoroughly investigate all charges of insubordination. In certain cases, you may be able to lessen the punishment, particularly if the employer is inconsistent in applying standards of behavior to your unit. But that means your local needs to keep excellent records. Also, a good work record may mitigate punishment in borderline insubordination cases.

The bottom line is that as a communicator, you must tell all members never to refuse a properly worded direct order. Check with a union officer before considering disobeying the order, even those health and safety orders. Lastly, a member can safely obey most orders and grieve later.

26. How Can They Make My Life Miserable?

There are many ways a supervisor can make your life miserable. Let's take a look at some of the ways management can try to wreck the grievance procedure and what you can do to counter them.

1. The stall:

No it's not a piece of plumbing. This strategy is designed to make you wait. Your supervisor never replies to your request for a meeting or worse, never answers the first step grievance.

It is used for a variety of reasons, but the bottom line is that your request for some action is ignored. The tactic is frustrating and demanding. Your response should always be business-like. If the request for a meeting goes unheeded, make it again. If it is ignored a second time, put the request in writing with a copy to the union and the supervisor's boss.

If the issue is a response to a grievance, chances are the boss is trying to get you to miss your time limits. Never let that happen. If you do not get an answer within the time limits set out in the contract, appeal the grievance to step two with a note that the first step grievance was not answered in a timely fashion. Document your action and make sure the local union is aware of the problem. The second step appeal is made by a union officer so follow your local's procedure, and don't miss your deadline because of the stall.

2. The blow out:

In this scenario, the boss wants you to lose your cool, usually at the grievance meeting. You could be ridiculed, ignored, yelled at -- anything to get you hot enough so that your emotions and not your intelligence rules. When you get angry, you forget your game plan and the meeting ends as a shouting match.

Sometimes the boss will aim the strategy at the grievant. Have you ever been at a meeting when the supervisor turns to your member and says something like this: "Did you really think you could get away with that?" Or "Aren't you old enough to know better?" Lines like this are designed to get the member angry enough to say something they should not. The member might disclose something on record which does not even belong in the meeting or they might lose their cool and become insubordinate.

At the grievance meeting, do the talking. Tell the member what to expect and not to get flustered or angry with any question which is asked. Educate the member before you go into the meeting. You can stop the meeting at any time to regroup and cool things down.

3. The trade.

Formally called horse-trading, this tactic has nothing to do with ponies. It is an attempt by management to get something before they give something. You may be asked to give on one grievance to get a settlement on another. Never fall for this ploy. Decide all grievances on their merit. Horse-trading is an area in which the local union can incur liability.

4. Divide and conquer:

A house divided on itself will not stand. And neither will a local union. Never allow any member to be played off against another. Never air disagreements in front of management. Have your discussion outside the room, out of earshot.

5. Side Issue.

Here, the supervisor will bring up extraneous issues, other grievances, or the latest new company rule. If the meeting has been called to discuss a grievance, redirect the conversation back to the issue at hand, over and over again. Don't get sidetracked. Keep control of the meeting.

6. Shifting the burden of proof.

This is often used in a disciplinary hearing or appeal. Management is charging the member with some kind of infraction. Under the general rules of discipline, they must prove their case. Let them speak and prove their case. This doesn't mean you stay stone silent during the meeting. You should play a very active role in defending the member, but it is the employer's job to carry the burden of proof.

These are six tactics that are used by management at the grievance meeting. They may be used to test the new steward; or to take control of the procedure back from the local union which has been successful in using it. Don't be fooled. Be forewarned and prepared

27. The National Labor Relations Act

The principal labor law in the United States is the National Labor Relations Act (NLRA). Before its passage in 1935, employers were free to spy on, interrogate, discipline, fire, and blacklist union members. Nonetheless, during the Great Depression workers took over factories, engaged in citywide general strikes, and battled police and private security forces. Some historians believe that Congress adopted the NLRA to steer labor struggles away from potentially revolutionary confrontations.

The NLRA declares collective bargaining as an official policy of the United States.¹ Employers are forbidden from discriminating against workers who join unions, exercise leadership, or engage in strikes. The NLRA spurred organizing in the automobile, steel, electrical, meatpacking, rubber, and other industries. By 1945, union contracts covered a third of the private sector workforce.

In 1945 and 1946, a great wave of strikes swept the country. In response, business interests petitioned Congress to amend the NLRA. The Taft-Hartley Act of 1947 prohibited solidarity strikes, closed shops, and secondary picketing. The Landrum-Griffin Act of 1959 imposed further restrictions.

Key Provisions

The NLRA has 41 sections. The most important are Sections 7, 8, and 9.

Stripped to its essentials, Section 7 reads: 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 8(a) defines employer violations. These are known as “unfair labor practices” or “ULPs.” Five types of conduct are prohibited:

- Interference, restraint, or coercion directed against union or other collective activity [Section 8(a)(1)]
- Creation or domination of a labor organization [Section 8(a) (2)]
- Discrimination against employees to discourage support for a union [Section 8(a)(3)]
- Retaliation for filing ULP charges or cooperating with the NLRB [Section 8(a)(4)]
- Refusal to bargain in good faith with union representatives [Section 8(a)(5)]

Threats and interference in union activity violate Section 8(a) (1). Discharges and suspensions violate Sections 8(a)(1) and (3). Unilateral changes, refusals to supply information, and denials of union assistance during investigatory interviews violate Sections 8(a)(1) and (5).

Section 8(b) proscribes union unfair labor practices, including unfair representation, bargaining in bad faith, and secondary picketing.

Section 9 sets out procedures for union certification elections.

National Labor Relations Board

The National Labor Relations Board (NLRB) enforces the NLRA. The NLRB has 52 regional and sub-regional offices. See addresses in Appendix A.

A five-person board heads the NLRB. The President of the United States, with Senate consent, appoints Board members to staggered five-year terms (one member's term expires each year). The President also appoints a General Counsel, who is in charge of prosecuting unfair labor practices.

ULP Charges

Union attorneys, officers, and stewards can file unfair-labor-practice charges. The charge must be filed within six months of the event or conduct that forms the basis of the charge. Charge forms can be requested from an NLRB office or downloaded from the NLRB website: www.nlr.gov. Procedure. A ULP charge can be hand written or typed. The easiest method is to fill it in on the NLRB website. Print and sign it, then mail, fax, or hand deliver the charge to the Regional Office with jurisdiction over the worksite. The NLRB will serve a copy on your employer. (The union should do this itself if near the end of the six-month limitations period.) Investigation. Board agents investigate ULP charges by interviewing witnesses and reviewing documents. When the investigation is complete, the agent and his supervisor make a recommendation to the Regional Director to issue a complaint, defer, or dismiss the charge.

Complaint.

If the Regional Director concludes that a complaint is warranted, the Board agent will inform the employer and attempt to bring about a settlement. If these efforts fail, a complaint will issue and the matter will go to hearing before an Administrative Law Judge (ALJ). An NLRB attorney will prosecute. The ALJ can order the employer to cease its illegal conduct, make up for any harm, and post a notice promising not to commit further violations. The ALJ cannot impose imprisonment or issue a fine. The employer or the union (or both) can appeal an ALJ decision to the five-member Board in Washington. Further appeals can be taken to a U.S. circuit court and the U.S. Supreme Court.

Deferral to arbitration.

Under a policy called “deferral,” Regional Directors hold up investigations of ULP charges if the matter appears resolvable under the parties’ grievance and arbitration procedure. The NLRB justifies deferral as a way of conserving resources. Unions contend that the policy takes away their right to have ULPs rectified by the NLRB and forces them to incur arbitration expenses for matters that may not be covered by the contract. The NLRB applies its deferral policy to most ULPs by employers that occur while a contract is in effect. The following are exceptions:

- Refusals to furnish requested information
- Violations of Weingarten rights (see Chapter 5)
- Retaliation against employees for filing NLRB charges Deferral may also be withheld if the deadline for a grievance has expired and the employer refuses to allow a late filing; if the employer has exhibited hostility to the grievance and arbitration process; or if animosity between the union and the grievant could affect the union’s handling of a matter. Despite the likelihood that a Regional Director will defer, there are several reasons to file ULP charges:
- The NLRB’s preliminary investigation may induce the employer to rectify the violation.
- If the charge is deferred, the union grieves, and the case is taken to arbitration, the arbitrator will be more likely to apply NLRA precedent when deciding the matter.
- If the arbitrator rules against the grievance, the union can ask the Regional Director to revoke deferral, reopen the ULP investigation, and issue a complaint.

Dismissal.

In addition to lack of merit, a Regional Director can dismiss a ULP charge because the violation is technical, minor, or of limited duration, and no other meritorious ULP charges have been filed against the employer for the past several years.

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