

Laborers'
International
Union of
North America

LiUNA!

Feel the Power

Stewards Training Module

PUBLIC EMPLOYEES DEPARTMENT



Introductions and Class Overview

Introductions and Class Overview (30 minutes)

- Preview of what you are covering today – go through agenda
 - o Focus on the goal of the training and let them know the training will be interactive
 - o Preview group exercises to put stewards' skills to use (if you are using these)
- *Ask the students:*
 - o Name
 - o Where they work
 - o What is their job title/duties there
 - o Why are they a steward
- *Have entire group stand up – ask the students to stay standing if they have been a steward for this long:*
 - o One year
 - o Two years
 - o Three years
 - o Five years
 - o 10 years
 - o 20 years
 - o Applause!!
 - o (If your Local hands out service pins, talk about that)
- *Ask: why do we need a union at our workplace? How would our workplace be different if there is no union?*
 - o Answers could include specific issues in the workplace (for example, our jobs would have been contracted out; I would have lost my pension, our work schedules would still be lousy, etc.). More general answers include: solidarity; a CBA; release time to represent workers; political power (we elect our bosses); because with no union, we would be at-will employees (and explain why that is bad – essentially no rights in the workplace); better health and safety, labor-management committees; more ULPs; fewer trainings.

2

Qualities of a Good and (Bad) Steward

Qualities of a Good and Bad Steward (60 minutes)

Materials needed: Flip Chart/Markers/Tape/Dot stickers

- Divide class in half.
- Have half of the group brainstorm a list of GOOD steward qualities and have the other half brainstorm a list of BAD steward qualities (*15 minutes*)
- Students will then report their lists to the group and the instructor will write the ideas on a flipchart. Once the group with the GOOD list finishes, ask the group with the BAD list if they have other ideas (and vice versa). (*30 minutes*)
 - o **Good:** honest; good listener; good follow through; responsible; ability to resolve conflict; recognized as a good problem solver; honesty; credibility and integrity; assertive and decisive; ability to deliver the tough (even if sometimes unpopular) news. Recognized and respected for possessing a strong work ethic; commitment to the principles of justice; equality; security; fairness and democracy. Open; friendly and approachable with a willingness and desire to help. People oriented; compassionate and understanding; who are able to develop a rapport with the members; make them feel comfortable and provide them with supportive encouragement. Well-developed verbal and written communication skills; thorough and well organized; well-developed listening skills; the ability and willingness to give your undivided attention. Positive; motivated; enthusiastic and energized supporter (and promoter) of the Union.
 - o **Bad:** Fail to represent fairly; make backroom deals; overpromise/do not manage expectations; fail to meet/speak with new workers; miss deadlines; fail to file a grievance; meet with management alone; fail to get settlements in writing; fail to publicize victories; fail to organize.

Dot stickers. Give each member three stickers and ask them what they consider the most important of the good qualities and put a sticker on that quality. See which qualities get the most stickers and talk about why those are good steward traits at your Local/workplace. (*15 minutes*)

3

Tools of the Trade

Tools of the Trade (30 minutes) – (reference page 5 of Stewards Manual)

Flip Chart

- Ask the students to think of important tools that stewards should always have handy (5 minutes – can be done in pairs/teams or individually). If done in pairs have the pairs or teams report to the class what they think is the most important tools of the trades are and write on a flip chart.
 - Collective bargaining agreement – MOST IMPORTANT
 - Current list of members
 - Union contacts how to call when you need help? Union steward/union office, etc.
 - Member cards/forms
 - File/tracking system – how do you track grievances, ULPs, EEO, etc.?
 - Union website address, Facebook page, Twitter account, etc.
 - Brag sheets/newsletter – what has your Local done lately for the members
 - Union “swag” on buttons/pins, union pens, union lanyards, etc.
 - Information on upcoming union events – membership meeting, rally, picnic, etc.
 - What else?

4

Steward Duties

Module for Stewards Training

Steward Duties (60 minutes)

Materials needed: PowerPoint and Flip Charts

- Review PowerPoint with students - time permitting have students do the exercise for the special Stewards Rights (after slide on Special Stewards Rights of PowerPoint)
- EXERCISE: Roles of the Steward (starting with sixth slide of the PowerPoint presentation), break class into 5 groups. Assign each group one of the five categories (Note: clarify what each category means)
 - New Employee Point of Contact (i.e. member orientation)
 - Contract Administration (i.e. knowing the contract and checking it)
 - Member Communications (i.e. communicating with members on issues from local union financial status, politics, and status of bargaining and/or grievances)
 - Union Communications (i.e. communicating with local union officers/agents and keeping them informed)
 - Internal Organizing (i.e. signing new members, getting uninvolved members to be active)

Ask students to discuss and then report examples of what a steward might do in carrying out that activity on a flipchart.

Have each group rotate so each team adds roles to reach flipchart.

After each report, review the appropriate slide to corroborate or add to their list.

- HANDOUT: 3 Ways The Law Protects Union Stewards
- EXERCISE: What Special Rules Protect Union Stewards
- INSTRUCTOR NOTE: Click <http://www.liuna.org/steward-duties> for answer key
- Stewards Manual

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ROLES OF A STEWARD

What a Steward Should Know/Have

Steward Qualities

Steward Roles/Duties

Steward Tools

How to investigate grievances, etc.

Qualities of a Good Steward

- Good communicator – oral and/or written
- Good listener
- Approachable/make members feel comfortable
- Honest
- Good problem-solver
- Responsible
- Decisive
- Good supporter/promoter of the union

Qualities of a Bad Steward

- Represent unfairly or unequally
- Make backroom deals with management
- Promise remedies too quickly
- Fail to speak with new workers
- Fail to adhere to time limits
- Fail to file grievances (or ULPs, etc) that have merit
- Meet with management alone
- Fail to get settlements in writing
- Fail to publicize victories
- Fail to organize

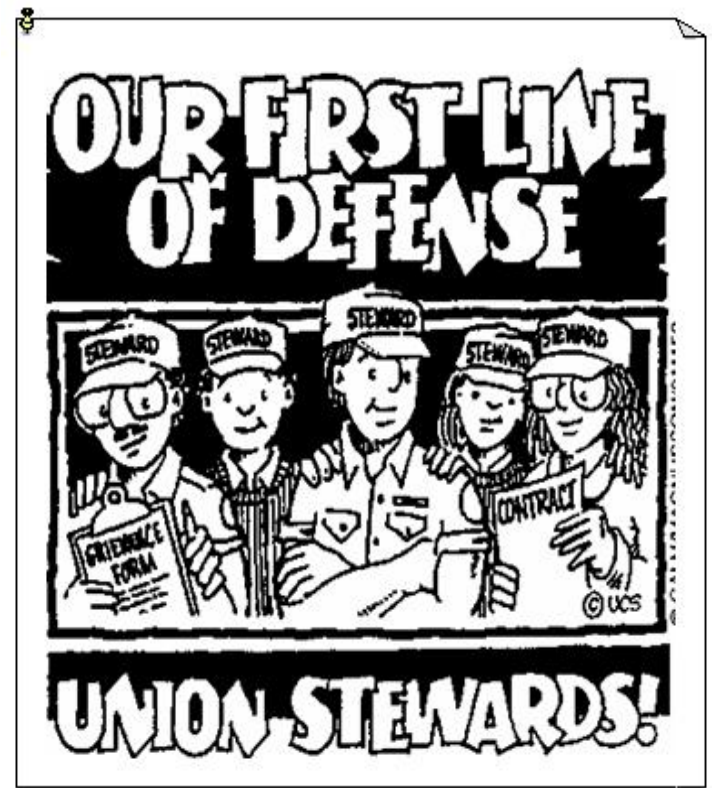
Tools of the Trade

- Collective bargaining agreement
- Current list of members
- Union contacts
- File system
- Current literature
- What else?



Roles of the Steward

- New Employee Point of Contact
- Contract Administration
- Member Communications
- Union Communications
- Internal organizing



New Employee Point of Contact

- Value of first impressions
- To them YOU are the union
- Less is more
 - Save the details for later
- If not you than who?



Contract Administration

- Be familiar with your contract
- Know your grievance procedure
- Duty of Fair Representation
 - All bargaining unit members treated equally
- The steward is the union
ADVOCATE
 - not an impartial arbitrator



Member Communications

- Union meetings: when, where, etc.
- Union position on matters
- Politics: why important to them
- Volunteer and social activities
- Status of bargaining, grievances, etc.



Member Communications

- Always find time to talk
 - Schedule time that works
- Always get back to people
- Always be honest
- “I don’t know” is OK
- Respect people’s privacy/dignity



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Union Communications

- Problems you can't resolve
- Problems you have resolved
- Member complaints/ concerns
- Opportunities for member involvement or interests
- Members in need
- Ideas for better meetings
- Trouble on the horizon



Union Communications

- Always be honest
- Admit when/if you make a mistake
- Ask for help/support

Internal Organizing

- Identify/sign up new members
- Help with union paperwork
- “Organizing never stops”

*Why Should I
Form A Union
At Work?*

**Your
voice
at work**



Special Steward Rights

- Equality Rule
- No Reprisal Rule
- Equal Standard Rule

Recording Keeping

■ Your notes may be the difference between:

- Winning or losing a grievance
- Defending or dropping a loser
- Getting a better contract
- Defending yourself from charges



Stewards: Lead by Example

- Go to Union meetings
- Participate in Union functions
- Follow the workplace rules
- Be “straight up”
- Register to vote and VOTE
- Support other unions’ causes



Steward 10 Commandments

Steward Manual p 4

1. Love the union
2. Know yourself
3. Be a credible employee
4. Talk straight to the members
5. Assess your opposition
6. Tackle small problems before they get big
7. Anticipate surprises
8. Set limits
9. Involve others
10. Your worksite is one part of a whole

3 WAYS THE LAW PROTECTS UNION STEWARDS

THE EQUALITY RULE

The rule applies when stewards are doing union business, not when they're working at their job.

- Stewards have special status
- The steward's role in grievance meetings and other areas of union representation is that of and equal to management's role
- In these representation situations, the steward is not bound by the rules of boss-worker conduct, where the worker ranks beneath the boss, obeys boss, doesn't question boss's knowledge or authority, etc.

For example, when engaged in union business, stewards may:

- Raise their voice when talking with management
- Use forceful language and gestures
- Threaten legal action
- Disagree or show lack of respect for management's opinions and decisions
- Refuse to do what a supervisor tells them to do **AS A STEWARD**
Example: ("Diane, do NOT file any more grievances about rates on those machines!")

There are limits. Even when doing union business, stewards may not:

- Physically assault management or threaten violence or physical harm
- Engage in personal attacks or name calling
- Use extreme, unprovoked profanity
- Encourage slowdowns or wildcat strikes prohibited by the contract

THE NO REPRISALS RULE

- For doing their work as union representatives, stewards can't be:
- Denied promotions or transfer opportunities
- Denied overtime
- Assigned less desirable work
- Supervised more closely
- Harassed, intimidated, disciplined or threatened with discipline

THE EQUAL STANDARDS RULE

Stewards can't be held to a higher standard (or allowed to lower standard) of work performance.

HOW DO YOU ENFORCE THESE PROTECTIONS?

If your supervisor or some other management person is clearly violating these protections, you owe it to yourself and to the union to protect their actions. You can either file a grievance (because the employer is violating the law) and/or file charges with the labor board and/or a ULP. If you allow the company to get away with it, not only will the employer continue to ignore your protections but they will probably start treating other stewards the same way.

What Special Rules Protect Union Stewards?

1. Steward Sally Sanders has been at third step grievance meetings for two hours this afternoon. When she gets back, she finds she's not on the daily overtime sheet. She asks Supervisor Fred Tucker why, and he says, "You weren't here so I couldn't ask you if you could work." Should Sally get overtime?

(Circle one): **YES** *or* **NO**

2. Fred's actions start Sally investigating overtime. At lunch and breaks, she talks to people in the break room and people who are working in other departments. She gives them fliers and asks them to sign overtime grievances. One day in the break room Fred walks up to her "You're breaking so many rules here I should have thrown you out the door." he growls. "You think you can run a union meeting here on company property?" Pass out these union papers all over the plant? Can Fred "throw her out the door"?

(Circle one): **YES** *or* **NO**

3. Ever since Sally started questioning overtime, Fred spends at least an hour a day standing by her machine, watching her work. He says he's trying to find out why her work is so bad. He's given her two warnings for poor quality in two weeks, even though she's run the job for two years without a warning of any kind until now. Can Fred do this?

(Circle one): **YES** *or* **NO**

4. Sally enters Fred's office to schedule grievance meetings. "Fred, we're getting further behind on grievances..." she begins. Fred interrupts her. "Sally, I am the supervisor, and I think it's more appropriate for you to call me Mr. Tucker." Sally shocked. She's always called him Fred, and would feel like a child if she called him "Mr." while he called her "Sally". Can Fred insist on this?

(Circle one): **YES** *or* **NO**

5. Whenever work in Sally's department bottlenecks during inspection, someone is transferred to help out. Most people get an extra \$1.25 an hour for work in the higher pay grade. The worker with the highest quality rating is supposed to get the transfer. For the past several months, that has been Sally. Even with recent problems, Sally still has the highest rating. So there's steam coming out of her ears when Fred tells her why he's transferring Denise today. "I know you're still highest, but you're slipping while Denise is getting better. And you're the union steward, you're supposed to set an example. I have to show people you're not a good example." Sally loses it. "Fred, you are a scheming, lying worm and I'm tired of your abuse!" she shouts. "Keep it up Sally", he says, "And I'll have you on insubordination." Is Sally in trouble?

(Circle one): **YES** *or* **NO**

6. In addition to Sally, nine workers who signed the group grievance on overtime show up at Fred's door for their grievance meeting. He stares at them a minute, then turns to Sally. "I don't know what game you're playing, young lady, but this isn't funny. I am not going to turn a grievance meeting into a circus. I'll meet with you and one other associate and that's it." Sally turns to them. "Everybody just stay here a minute. Fred," she says calmly, "Last week you agreed..." Fred interrupts, "Sally, shut up and listen". He puts his hand close to her face as he raises his fingers to count off. "One, you will call me Mr. Tucker. Two, I refuse to meet with this entire group. Three..." "No Fred, you shut up and listen," Sally shoots back, raising her own hand to imitate Fred's gestures. "One, you've broken the law over and over and I'm filing charges with the Labor Board tomorrow. Two..." "Two nothing!" Fred roared. "You have tried to assault me with that hand in my face, you have threatened me, you have been insubordinate, and You Are Fired!" Is Sally out of a job?

(Circle one): **YES** *or* **NO**

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Steward Manual

NON-CONSTRUCTION

EDUCATION DEPARTMENT

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INTRODUCTION

You have a great opportunity as a LIUNA steward.

As a steward, you welcome new members to our union.

You solve problems at work.

You communicate the goals of your elected leadership to your co-workers.

You build unity and solidarity.

To most of your co-workers, you *are* the union.

This is a great opportunity and an important responsibility.

This is why LIUNA is investing the time and resources to teach you as much as you can about your new position. Of course, you have already proven your leadership ability--or else you wouldn't be reading this manual. But all of us can always learn more. That's what this manual is all about.

The manual outlines the things you'll need to know to do your job well. There are other skills you can only learn on the job and from your union leaders.

If you have questions, contact your Local Union leaders. They are always willing to share their experiences and ideas with you. They are there to help you.

Congratulations on your new leadership position. You are a key part of building a better workplace, a stronger union and a more just world for all workers.

FACTS ABOUT LIUNA

LIUNA Structure

The Laborers' International Union of North America (LIUNA) represents more than 800,000 members who belong to more than 560 local unions throughout North America. Most of these Local Unions are a part of over 50 District Councils where they combine resources for power.

There are several professional departments at the International Union that offer services intended to make things better for the membership. Some are Education, Organizing, Legislative, Legal, Minority Advancement and Public Affairs. There are more.

LIUNA holds a convention every five years where delegates from the United States and Canada vote on resolutions to the International Constitution. The Constitution sets the guidelines for governing the union. All of the officers of the International Union, including the General President, the General Secretary-Treasurer, and Vice Presidents, are subject to membership election immediately following the General Convention.

The TRI-FUNDS

LIUNA has three independent labor-management trust funds that offer further services:

- Laborers'-Employers Cooperation & Education Trust (LECET)
- Laborers -AGC Education & Training Fund
- Laborers' Health & Safety Fund of North America

These three funds work with Local Unions and management on issues of increasing union job opportunities, worker skills training and worker safety issues, as well as many others.

LIUNA Members

LIUNA members have many different callings. They are employed in fields such as construction, food service, health care, hazardous waste removal, public service, maintenance, mail handling and more.

LIUNA represents workers from all over the United States and Canada. We also help workers in other countries by supporting their efforts to organize and improve workers' rights.

THE ROLE OF THE STEWARD

A Steward...

Solves problems. When members have a problem, they bring it to their steward. Some problems are job related; others are not. The steward helps the member and others who may be affected to identify possible solutions and work for necessary changes.

Leads members. LIUNA members look to stewards for knowledge, experience, and guidance. By working with members to stand up for their rights on the job and encouraging members to participate in the union, stewards help build an active and unified membership.

Communicates and informs. Stewards are the key points of contact between LIUNA members and their union leaders. Stewards are responsible for keeping Local Union leaders informed about members' concerns and questions, and for keeping members informed about LIUNA programs and goals.

Educates. LIUNA stewards help members understand how to use and interpret the contract, participate in the union, and learn about broader issues that affect them and their communities.

Organizes. Stewards help Local Union officials organize members to participate in activities designed to improve conditions on the job and in our communities. Stewards do this by:

- Welcoming new employees.
- Winning and enforcing contract rights and benefits.
- Increasing unity among the members.
- Encouraging more workers to join the Laborers'.
- Increasing participation in union meetings.
- Supporting LIUNA legislative campaigns to benefit working people.
- Increasing contributions to LPL (Laborers' Political League), the Laborers' political action fund in the United States.
- Supporting LIUNA efforts to build alliances with community organizations on common goals.

TEN RULES FOR STEWARDS: BASIC RULES TO LIVE BY

1. **Love the union and show it.** You are the day-to-day representative of the union. Your actions on and off the job reflect both you and the union. Take every opportunity to express and explain your commitment to the union and its members.
2. **Know yourself.** Be honest about your strengths and weaknesses. Ask yourself, “What more do I need to learn? What is the best way to deal with conflict? What is the best way to communicate with people? What do I need to be more effective as a steward?”
3. **Be a credible employee.** Follow the contract and abide by the rules of the workplace. Your actions will help set the example of how management and workers should act.
4. **Talk straight with the members.** You will be the bearer of both good news and bad. If you are straight with members about what is going on, they will know they should be straight with you.
5. **Size up your opposition and act accordingly.** There’s no single all-purpose way to deal effectively with management. A good strategy involves a thorough assessment of management’s strengths and weaknesses. Sometimes you should come on like gangbusters. Sometimes you should sit in the back row and watch management self-destruct. When facing opposition from union members-as you surely will from time to time-deal with them respectfully.
6. **Deal with small problems before they become big ones.** Strive to settle problems before they become grievances. Strive to settle necessary grievances at the first step. Bring issues of concern to the members’ attention when they first come up, so members may be alert to the possibility of contract violations at the earliest possible instance.
7. **Prepare against surprises.** Surprises are great for birthdays, but they can be a real drag at grievance presentations, contract negotiations, meetings with the boss and union meetings. Prepare ahead of time for what will be said and done.
8. **Set limits.** You are not the slave of the membership. You will be expected to work long and hard and will want to do so, but you have the right to set limits. Doing so will make you a more effective steward in the long run.
9. **Involve others in the work of the union.** You are not a one-person show. The best stewards-the ones whose workplaces have really effective unions-involve other members in all kinds of union work, including investigating grievances, passing petitions, registering voters, attending union and community actions and organizing unorganized workers.
10. **Recognize that your worksite is just a part of the whole.** You need to look beyond the problems of your worksite and become part of organizing on a larger scale for the improvement of workers’ lives. This means you need to be active in your community, the political process and other progressive causes and coalitions that organize and promote those improvements.

Source: AFL-CIO Steward Manual

WHAT STEWARDS NEED TO KNOW

Important Materials for Stewards

As a steward, you are the “go to” person when someone has a question or a problem. You’ll be able to address these issues better if you keep on hand important information:

Many stewards keep a special notebook and files to keep track of the following:

- Names, addresses, phone numbers, job titles, and work schedules of workers you are the steward for.
- Seniority list (updated periodically).
- List of supervisors by department.
- Records of all investigations and cases involving grievances or other problems.
- The contract (collective bargaining agreement).
- Employer policies/personnel manual/work rules.
- Civil service regulations (public sector only).
- Federal, state, and provincial (Canada) health and safety regulations.
- Grievance forms.
- Materials to use in signing up new members (authorization and dues check-off cards, information about the union).
- Materials for signing up members to contribute to LPL, the Laborers’ political action fund.
- Your steward manual.

Know the Contract

You should keep a copy of the contract between the employer and the union in a place where you have easy access to it. You may want to keep a copy at home as well as a copy at work.

The contract is the primary law of the workplace. It includes most of the terms and conditions of employment, such as wages, hours and working conditions in your workplace. However, it is only as strong as the union members and leaders who enforce it.

You should be familiar with all sections of the contract. No one expects you to be an expert on the contract in the first few months. You will learn the contract over time as issues and questions come up.

In the meantime, ask for help from other stewards, your local officers or business agent. This will help you to learn more about the meaning of each part of the contract.

Know Your Co-Workers One-on-One.

As a steward, it is important that you maintain frequent personal contact with each member in your area. If you have too many workers in your group to be able to do that, you may need to ask your Local Union to recruit more stewards.

Make it a habit to talk with every worker one-on-one or in small groups about the job, the workplace, and our union. Keep up the contact between you and the individual members. Don't let anyone slip through the cracks. Many workers will not seek you out even if they have something important to say. You will have to talk with them to find out what's on their minds.

Unless your contract allows you to contact workers during working hours, you must talk with them during break times or before or after work. If you don't see them often on the job, keep in touch by telephone.

Frequent contact is the only way to keep on top of problems, rumors, suggestions, and complaints. It is also a way to show members and management that the union is well organized and united.

If it's possible where you work, try scheduling meetings at the lunch break on the same day each week or each month to have a brief discussion of union activities with the members in your area.

Know Your Members' Needs

Often, the most important part of communicating with members is not what you say, but what you hear. Listen carefully to what the members say to you. Try to answer their questions and make them feel comfortable in coming to you. However, the fact that you are a steward does not mean that you must have all the answers.

Before you give a reaction or an opinion, listen carefully and ask plenty of questions. For instance: "What's an example of that?" or "Why do you think that happened?," or "What do you think should be done now?" Questions like that will help you understand members' concerns better, and will show them that you value their views.

Show you understand what the member is saying. You may not be able to do exactly what the member wants done, but it will help to start by showing some interest.

For example: "I can see how you feel about that. So let's try to figure out whether anything can be done" or "I agree with you that the supervisor could have handled it better. That's something we could talk to management about. But I don't want to promise that we have grounds for filing a grievance until we look into it more."

Give members opportunities to make clear what they want to know. Many people are reluctant to admit they don't know something. Try questions like, "Is there anything else about this that isn't clear to you?" or "What else would you like to know?"

If you don't know the answer to a question, don't guess. Promise to check and get back to the member, or have her or him go with you to ask someone who knows. Make sure you follow up on whatever you promise to do.

NEW MEMBER ORIENTATION

It is the steward's responsibility to welcome every new employee into the union. If at all possible, do this on the worker's first day on the job. First impressions have a lasting impact.

Under some Laborers' contracts, stewards are given a block of time to provide union orientation. If not, you must find time during a break or before or after work. In any case, set aside enough time with new workers so they feel welcome.

You should explain the union to new employees even if they are required by your contract to become members. The union will be stronger if new employees understand why they are in it and what it does.

The approach described below may be useful. It can be done in as little as 20 minutes. Much of this advice may also be helpful in talking to experienced workers who have not joined the union (in situations where workers are not legally required to become members).

1

Get to know each other. New employees want to know that they are accepted. Find out where they worked before, how they chose this job, what questions they have about the work, whether they have a family, and so on. Such questions show your interest in them first as people. Tell them a little about yourself as well - perhaps a story about your first day on the job.

2

Give the worker a copy of the union contract. Explain that the contract contains gains negotiated over the years through member sacrifice and unity, and that it legally guarantees the rights and benefits members enjoy.

Don't try to explain all its provisions. Instead, pick out a few, such as wages, vacations, and holidays, and show the worker where these are in the contract.

The goal is not to teach new workers everything about the contract on their first day - especially since they already will be overloaded with new information.

- Show that workers' rights and benefits are achievements of an effective union and not gifts from the employer.
- Encourage workers to review the contract more thoroughly later.
- Emphasize that you, the steward, are knowledgeable about the contract and the person to come to with job-related problems.

3

Help new workers see union membership as a natural part of their job, and, if your contract doesn't require them to become members, ask them to join.

- Emphasize the large number of other workers who belong.
- Explain that "the union" is the members. We are the union. It is not an outside institution.
- Point out that decisions in LIUNA are made through a democratic process during union meetings and elections.
- Explain that they have to be a member to have a voice in union decisions, such as whether to accept a contract settlement or who will be elected to union office.
- Point out that what the union achieves depends on the employer and the public seeing workers' unity and active participation.
- Get the new employee to start identifying with the union.

4

Explain the dues and what they provide - before you are asked about it. Some suggested points:

- Explain why you feel paying dues is important.
- Explain that the amount of dues is determined democratically.
- Give examples of what the dues pays for: contract negotiations by experienced negotiators; solving on-the-job problems; union education and training programs; communications (newsletters, bulletins); legal representation; health and safety experts; and research on the employer's future plans and finances.
- Point out that the improvements our union wins easily offset the cost of dues.

HELPING YOUR LOCAL BUILD AN ACTIVE AND INFORMED MEMBERSHIP

The Steward's Role

Membership involvement is the key to our power as a union:

- Finding solutions to on-the-job problems often depends as much on the amount of unity the membership shows as on the arguments we put forward.
- Winning better contracts or legislation depends largely on how organized and unified we appear to management or to public officials.

Stewards play an important role in helping the Local Union get members involved.

Getting Members Involved

Organization

Membership involvement depends on a strong network for two-way communications with every member. The members know best what is going on in the workplace. They are the best source of information and the union needs to be able to access that source easily and quickly.

Stewards work with local officers and business agents to set up that network. But since stewards are with fellow members on a daily basis, it is largely up to you to make it work.

Education

Through your communication network, you can find out what issues are most important to members in order to match their interests to the needs of the local. Through education, members will learn why these issues are important and how their involvement will make a difference.

Action

Local Unions sometimes organize actions on a particular issue in order to accomplish three goals:

- They send a clear message to management or politicians that members are united and serious about the issue.
- They allow members to participate directly in an activity, helping them see that “we are the union.”
- They may draw public attention to the union’s goals, helping to build community support.

A few examples of actions include wearing the same color of clothing on the same day, wearing a sticker or button, or presenting petitions or postcards to management officials. (*NOTE:* Buttons or stickers may not be permitted for some workers who interact with the public. Check first.)

Recruiting Volunteers and Keeping Them Active

Serving as a steward requires a lot of time and hard work, but don’t feel you have to do it all yourself. Get help from other members. Involving others helps you get the job done and strengthens members’ understanding of the union. Here are some examples of what members have been asked by their Local Union to do:

- Help give out leaflets to workers who are organizing at a nonunion employer.
- Picket an employer in the area where workers are on strike.
- Collect food for members in the local who have been laid off.
- Write an article for the local newsletter.
- Circulate a petition about legislation on health care or workers’ rights.

A newsletter article or bulletin board notice asking for volunteers usually is not enough. You probably will need to actively recruit people in person.

Tips to Get Members Involved

Target people to approach in person. Keep lists of potential volunteers with their names, phone numbers, activities they're involved in, and any interests they have. Try to match activities to the abilities, interests, and time volunteers can contribute.

Remind potential volunteers of the special skills or expertise they have to contribute. When members believe their particular skills are needed, they feel more committed to the work.

Think about who should talk to the potential volunteer first. Members should be asked to participate by someone they know and respect.

Give people choices. There is plenty of work to be done, so this shouldn't be a problem. Ask which of some specific assignments you can count on them for; assume that they will pick one. Write down their names once they agree. This shows that they are expected to follow through.

Don't overload new people. The easiest way to discourage volunteers is to give them too much work. Ask someone to take on one limited task. If they agree and carry it out, ask them to do something else. If there's too much to be done, recruit more volunteers.

Be clear about the job you are asking them to do and the time that's involved. People generally are unwilling to make an open-ended commitment, but will volunteer for jobs with a definite beginning and end.

Assure recruits they'll have the training and support they need. As their confidence grows, so will their participation.

Make sure volunteers complete their assignments. This sends the message that their contribution is important, and helps you catch mistakes early on.

Encourage people to report their successes, no matter how small. Give them recognition at meetings, in newsletters, or on bulletin boards.

Involve members' families and retirees in union work. That gives you a larger pool of people. Some members will find it easier to participate if their families are involved as well.

Make it fun. While it may be union work it should not seem like work. Many people get involved in activities as much for the social interaction as the cause.

Increasing Attendance at Union Meetings

Stewards play a major role in getting members to come to union meetings.

Ask each member to attend. Most of the time, just posting a notice isn't enough. More members will attend if they are personally asked to do so.

If you can't contact each member yourself, ask others to help you. For example, you could ask the most active members to take responsibility for inviting particular co-workers.

Ask those who didn't attend why not. Talking to each member who didn't attend can help you suggest ways to increase turnout at meetings. For example, some members may not be able to attend because they have no ride. Perhaps carpools could be organized. Others may not be able to find child care. Perhaps teenagers could be recruited to take care of children in a separate room during the meeting.

Asking members directly is the best way to find out if the meetings are at an inconvenient time, or if certain subjects they are interested in should be added to the agenda.

Tell workers who didn't attend what happened at the meeting. It's important to keep people as informed as possible. Plus, the more they learn about union activities, the more likely they'll become interested in getting involved.

Ask those who attend to recruit for the next meeting. Members are the union's best recruiters. Surely each member can convince one other member to join him or her at the next meeting. If put into play, attendance would double each time.

Help make meetings interesting. Your union officials must handle business at union meetings that can seem dry to the average worker. Suggest ways that can make meetings more understandable and interesting to the members you work with.

UNIONS' LEGAL PROTECTIONS AND RIGHTS

This section describes legal rights for private sector workers in the United States. Similar rights may apply to public sector workers and workers in Canada. Check with your Local Union.

Legal Protections for Stewards

While performing union duties, a steward has the legal right to be treated as an equal by management. Under the National Labor Relations Act (NLRA), union stewards (and other union representatives) cannot be punished or discriminated against because of their union activity, such as filing grievances or speaking out on behalf of other workers.

Among other things, an employer may not:

- Order a steward to perform extra or more difficult work than it would otherwise assign to a similarly situated worker.
- Deny a steward pay opportunities or promotions.
- Isolate a steward from other workers.
- Deprive a steward of overtime.
- Enforce rules more strictly against a steward.
- Supervise a steward more closely than other employees.

Duty of Fair Representation

The union and its representatives, including stewards, have a legal obligation to represent all workers in the unit fairly, regardless of their membership status, race, religion, nationality, age or gender.

A worker who believes that the union has not met its “duty of fair representation” may file “unfair labor practice” charges with the National Labor Relations Board.

Therefore, stewards must be sure to do their best to handle each problem fairly even if the worker is not a union member, has unpopular beliefs, or has personality conflicts with the steward or other union leaders.

This doesn't mean the union can be found guilty of unfair labor practices simply for making mistakes or losing a case. It does mean that **each steward must...**

- **Conduct a full, fair, and unbiased investigation** and document it before deciding whether to pursue a grievance.
- **Act within time limits** for filing grievances.
- **Handle each case based on the facts** and not on who the worker happens to be.

Workers' Rights to Union Representation (*Weingarten*)

Stewards work hard to prevent management officials from intimidating workers. This is especially important when supervisors conduct closed-door meetings to try to get employees to admit wrongdoing.

The right to have a steward or other union representative present in such meetings was established by the U.S. Supreme Court in a case known as *Weingarten*.

According to the Supreme Court, a worker is entitled to have a union representative present when a supervisor asks for information which could be used as a basis for discipline. Similar rights exist for public employees, but the rules vary from state to state, so check with your Local Union.

The worker must ask for union representation before or during the interview. Management has no obligation to inform workers of this right (*unless the collective bargaining agreement requires otherwise*). Stewards should regularly inform all workers:

“If you are ever called in by management and asked questions you think might lead to discipline, you have a legal right to request your union steward or other union representation to be present.”

Once a worker asks for a union representative to be present, any attempt by management to continue to ask questions is illegal until the steward arrives.

Sometimes, it is a good idea to give out wallet sized cards such as the example on the next page to members so that they will know what to say to management if called in to a meeting that could lead to discipline.

"If this decision 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."

(This is my right under a Supreme Court decision, called *Weingarten*)

The Steward's Role in Interrogation Meetings...

1

Before the meeting takes place, ask management its purpose. By doing this, you will be able to prepare the member for the meeting.

2

Before the meeting with management, meet privately with the worker. Give the worker the following advice:

- Anticipate questions that may be asked.
- Watch what you say. It may be used against you.
- Don't volunteer any extra information and keep answers short.
- Keep calm during the meeting.
- You are not alone! The union is here to help you.

3

Take good notes on who says what. Keep them in a notebook for reference if the case goes to another step or if you need arguments in another case.

4

Stop the supervisor from harassing or abusing the worker. You have the right to ask the supervisor to clarify questions so the worker can understand what is being asked.

You also have the right to give the worker advice on how to answer questions, and provide additional information to the supervisor after the meeting ends.

However, under the Weingarten rules, stewards do not have the right to tell workers not to answer questions or to give answers that are untrue. *If workers refuse to answer questions, they can be disciplined.*

5

Recess the meeting for a few minutes if you need to talk privately with the member. You may also need to ask that the meeting be continued at another time - for example, if new information is presented that requires more investigation or preparation.

SOLVING PROBLEMS ON THE JOB

When a member comes to you with a problem, get all the facts before seeking a solution.

1

Interview the Member

Listen well and let the member express his or her feelings about what has happened. Ask questions to get all the facts and understand the situation. Don't interrupt with comments that may discourage the member from giving the full story.

Repeat what you have learned back to the member. Ask him or her to stop and correct you if you have gotten something wrong.

Ask the member (and other members affected by the same problem) to help you get the facts you need and come up with proposed solutions. You'll do a better job with their help, and they'll become more involved in the union.

2

Get All the Facts and Analyze the Situation

Use the six W's

Who is involved?

What is the problem, and what do we want done about it?

When did or does the problem occur? Did it happen recently enough to fall within any time limits in your grievance procedure? Be specific: (time, date, shift, week; is it an ongoing problem?)

Where does the problem occur? (In the parking lot, in one work group, on one shift)

Why does the problem occur?

Witnesses?

3

What Kind of Problem Is It?

The solution to a problem hinges on what type of problem it is. Following are some possibilities:

- Contract Violation?
- Violation of federal, state, provincial, or local laws or regulations?
- In conflict with employer's work rules, personnel manual, civil service regulations, or other policies?
- Violation of past practice (a practice that the employer and union have accepted over an extended period of time)?
- Violation of fair treatment (treating one worker by different standards or rules than other workers)?

Even if a worker's problem does not fit into any of those categories, you should still try to help find a solution.

4

What Are Possible Solutions?

If management would agree to any solution workers wanted, what would it be? Discuss this with the affected workers, other stewards, and, if needed, with the business agent or Local Union officers.

Consider all possible solutions, and weigh the pros and cons of each. For example, would a particular solution cause new problems for other workers?

5

Decide on a Course of Action

Work with Local Union officials, the affected members, and other stewards to develop a strategy.

- **Informal meeting with management.** Many on-the-job problems are solved this way. Lay out the problem clearly and offer a solution. Listen carefully to management's response for possible areas of agreement.
- **Communicate and educate.** If appropriate, make sure other members know about the problem, the union's proposed solution, and management's position. See what ideas they have.

This process will prepare the way for further action, if needed. Sometimes, the mere fact that you are talking with other members about a problem will convince management to agree to a solution.

- **File a grievance.** If the employer has committed an offense, such as a violation of the contract, a change from past practice or an uneven application of the rules, a grievance may be necessary.

Sometimes your Local Union may take other action to get problems solved. For example*:

1. Showing membership unity. The Local Union might organize petitions, moments of silence, or parking lot rallies to support workers who have been treated unfairly.

2. Filing a complaint with a government agency such as the Occupational Safety and Health Administration or the Equal Employment Opportunity Commission. Local Union officials can help you decide whether you have grounds for such a complaint.

3. Involving public officials. In some situations, pressure from politicians can convince management to agree to a solution.

4. Organizing community pressure by showing citizens how mistreatment of workers also affects them or by appealing to allies that the Laborers' have helped in the past. In some cases, LIUNA family members or retirees may be able contribute time and ideas to make these tactics successful.

5. Using the news media to gain community support and pressure the employer.

*Note that most of these alternatives depend on member involvement or commitment to be successful.

USING YOUR GRIEVANCE PROCEDURE

When is a Work Problem a Grievance?

As a steward, you will be asked to help find solutions to a wide range of problems. It is important to know when a worker's particular problem includes grounds for a grievance. The five possible grounds for a grievance are:

Violations of:

- The contract
- A federal, state, provincial, or municipal law
- Employer's rules or policies
- Fair treatment
- Past practice

Before you file a grievance, check your contract to find out about your specific grievance procedure.

"Work Now, Grieve Later"- Except for Unsafe Conditions

Arbitrators generally expect workers to follow management's instruction while waiting for a grievance to be filed and resolved. The major exception is if workers face serious danger to their health and safety if they do so.

Your Contract's Grievance Procedure

Grievance procedures generally provide for a series of steps. It is important that you be familiar with the grievance procedure which has been negotiated by the union and which is explained in your contract. **It is also essential that you act according to any time limits specified in the contract.** Even the most worthy grievances can be lost if the time limits in the contract are not met.

While grievance procedures vary by contract, typically, the steps in a grievance procedure include...

- Step 1** Meetings between the steward and immediate supervisor.
- Step 2** Meetings between a Local Union representative and worksite management if there is no solution after Step 1.
- Step 3** Some contracts provide for another meeting between the Local Union and management. Others involve a grievance panel with representatives from both the union and management.

Generally, the grievance procedure becomes more formal and is dealt with by people at higher levels of authority as the steps progress.

Final Resolution. If the grievance is not resolved through the grievance procedure the Local Union decides to drop the grievance or proceed to arbitration. In arbitration a neutral third party hears the case and determines the resolution. The use of arbitration must be specified in the contract.

Your contract spells out the particular grievance procedure that applies to you and your co-workers. Read it carefully. In addition your Local Union may have a preferred process for pursuing grievances. Check with your Local Union representatives.

Time Limits for Grievances - YOU HAVE TO MEET THEM!!!

No matter how winnable a grievance, you can expect to lose it if you miss the time limits under your contract for processing the grievance at each step.

Advantages and Limitations of the Grievance Procedure

Advantages

- Makes it clear to management that the union will not ignore violations of workers' rights.
- Draws upper management's attention to the failure of supervisors to observe the contract or the law.

- May achieve a solution - an arbitrator's or panel's decision - which takes the final say away from the employer.

Limitations

- Management can delay a final decision, frustrating members and putting economic pressure on those affected, particularly in discharge cases.
- Members passively expect "the union" to take care of everything, instead of involving themselves in more aggressive actions to help solve problems.
- Arbitrators sometimes split the difference - for instance, giving a fired worker the job back but without back pay, or ruling in the union's favor one time and then management's favor the next, even if the union was right both times. They do this because they fear they will have a hard time getting new cases if they get a reputation for finding in the workers' favor too often.

Given these advantages and limitations of the grievance procedure, you may have to...

- File a grievance in order to pressure the employer and make sure you meet the deadlines.
- At the same time, look for additional ways to bring about a solution.

Checklists for Analyzing Grievances

Depending on whether you have a non-discipline or a discipline grievance, use the appropriate checklist to analyze the grievance and develop the strongest arguments.

Checklist For Non-discipline Grievances

If no discipline is imposed, then the union must prove that an offense, like a contract violation, has occurred.

- ☐ Is this a contract violation?
- ☐ Is this a violation of federal, state, provincial, or municipal law?
- ☐ Is this a violation of employer rules?
- ☐ Is this a violation of equal treatment of all workers?

- ☐ Is this a violation of past practice? How long has this past practice existed?

Discipline Grievance Checklist

If the employer has imposed discipline, then the employer must prove it had "just cause."

- ☐ Was the employee adequately warned of the consequences of his/her conduct? The warning may be given orally or in writing. Were the employees given copies of any workplace rules or asked to sign something saying they saw copies?
- ☐ Is the employee being punished for conduct which has been allowed in the past? Management can't suddenly begin to crack down without first warning employees.

NOTE- The employer may not have to give a warning about certain conduct - for example, stealing company property - which workers are expected to know is unacceptable.

- ☐ Was the employer's rule or order reasonably related to efficient and safe operations?
- ☐ Did management investigate before administering discipline? Who, if anyone, did they talk to?
- ☐ Was the investigation fair and objective?
- ☐ Did the investigation produce substantial evidence or proof of guilt?
- ☐ Was there equal treatment? Were the rules, orders, or penalties applied even-handedly and without discrimination?
- ☐ Was progressive discipline used? Was a verbal or written warning given for the first offense?
- ☐ Was the discipline imposed too harsh? Was the discipline reasonably related to the seriousness of the offense?
- ☐ What does the employee's past record look like? How many years of service does the employee have? Any past disciplinary action? If yes, when and for what?

ESSENTIAL INFORMATION TO HELP ANALYZE GRIEVANCES

Just Cause

A key question in discipline cases is “Did management have ‘just cause’ for imposing the discipline?”

The “just cause” standard is written into most union contracts. Some contracts may use “cause”, “proper cause”, “reasonable and sufficient cause”, etc. These usually mean the same as “just cause”.

Even if a contract does not use the words “just cause”, an arbitrator may apply that standard anyway.

“Just Cause” means that the employer...

- Had good reason to discipline the worker
- Took action consistent with past practice.
- Treated the worker as other workers have been treated.
- Took action that was appropriate for the particular offense.

Past Practice

Past practice is a consistent and frequent pattern of conduct by the employer over a period of years which benefits employees. Both management and the union must have known about and accepted the conduct.

An example of a past practice is a fifteen minute wash-up period at the end of a shift, not mentioned in the contract, which for years has been allowed by a particular employer. If an employer tries to discipline someone who was following a well-established past practice, you should file a grievance.

Past practice can also be used by management against employees. If members wait years to file a grievance against a new management policy that is not directly addressed in the contract, management may argue that it has become a past practice. That is why it is very important to challenge management actions right away when you think they may violate members’ rights.

Progressive Discipline

The union should argue that management should use a system of progressive discipline, under which the employee is warned for a first offense and given a penalty for a second offense before being hit with a discharge. Even if not stated in the contract, an arbitrator may consider this to be reasonable.

A common pattern in progressive discipline is:

1. Oral Warning
2. Written Warning
3. Suspension
4. Discharge

Note that progressive discipline may not apply for certain major offenses like violence or theft of employer property.

Equal Treatment

All employees must be judged by the same standards, and the rules must apply equally to all.

All employees who engage in the same type of misconduct must be treated the same unless there is a good reason for a difference (such as differences in fault, or differences in past records).

If arguing that an employee has not been treated equally, it's important to show that management knew that other employees had committed the same offense and treated them differently.

WRITING A GRIEVANCE

Most LIUNA Local Unions have a grievance form which must be used when filing a formal grievance. You should request copies of this form and be familiar with the information required.

Below are some general points on writing a formal grievance.

1

Limit Details to Basic Information

Provide only enough information to identify the grievance so that management understands...

- What the basic problem is.
- What violations occurred.
- How the problem should be fixed.

2

Don't Limit Contract Violations

In stating why there is a grievance, say that the employer's conduct "*violates Article ___ of the contract, and all other relevant articles of the contract.*" The last phrase protects you in case you discover that more parts of the contract were violated than you thought.

3

Avoid Personal Opinions and Characterizations

The grievance states the union's position, not your (or the grievant's) opinion. Avoid the use of phrases like "I think" or opinions about managers.

4

Don't Limit the Remedy or Solution

In stating the remedy or solution you want, say you want the grievant "made whole in every way." Don't forget to include whatever specific remedies the union has in mind to solve the problem or issue.

The phrase "made whole in every way" protects you in case you think of ways the employee has been hurt by management that didn't occur to you at first.

5

Consult With the Grievant

Go over the written grievance. Explain the requested remedy or solution and get the grievant's full understanding and agreement so there is no question later. If you and the grievant disagree about the proper remedy, consult with your business agent or Local Union officers.

6

Consult With Local Union Officials

For grievances that are difficult or complicated, or that affect the whole workforce, it is important that you consult your Local Union officials for proper wording. However, **make sure you file the grievance within the time limits in your grievance procedure.**

THE STEWARD'S ROLE IN BUILDING THE UNION

Building LIUNA Grassroots Political Action

Our union's grassroots political action program gives LIUNA families a voice in government. It allows us to counteract powerful corporate special interests on issues such as workers' rights, fair trade, health care reform, fair taxes, regulatory reform, and investment in good jobs. Stewards play a big part in involving our members in our political action program.

1

Campaigning on Issues

Our union conducts campaigns on major national, state, or local issues to hold politicians of all parties accountable to working people. These issue campaigns may involve petitions, rallies, town meetings, visits to public officials, or other actions. Often, these campaigns are organized in cooperation with other unions and community groups. You can help by participating yourself, encouraging others to do so, and keeping all workers informed about the campaigns.

2

Electing Pro-Labor Candidates

Stewards should help the Local Union with voter registration drives, support for pro-labor politicians, and getting out the vote on Election Day. Your Local Union Officers can give you more details.

3

Strengthening LPL in the United States

LPL (Laborers' Political League) is the LIUNA political action fund in the United States. LPL is necessary because union dues money cannot be contributed to political candidates.

Every member you represent should be asked to contribute to LPL. New employees should be asked shortly after starting the job. A good time to ask for LPL contributions is when you are discussing ongoing LIUNA campaigns on important political issues.

Some contracts provide for LPL contributions to be deducted automatically from the paychecks of any member who signs up for LPL check-off. If you do not have that contract right, members must send in their contributions to LPL.

Your Local Union or Regional Office can give you the necessary forms.

Supporting LIUNA Organizing

As Laborers, we understand that everything we have achieved can be taken away if we do not continue to organize. Non-union employers try to paint the union as an outside institution that is only interested in workers' dues. The best way to counter that is for current union members to talk face-to-face with workers who are considering organizing a union. That can take place at workers' homes or other locations where private conversations are possible.

Successful Local Unions train stewards to help make these contacts. Others ask stewards to encourage co-workers to be trained as volunteer organizers. The International Union assists Local Unions that want to conduct volunteer organizer training.

When you run into unorganized workers on the job or in the community, ask them about their jobs and their concerns. After lots of listening and asking questions, tell them how being part of the Laborers' International Union of North America gives you more of a voice in the workplace and community as well as helps you solve work-related problems.

Reaching Out to the Community

Many Local Unions have ongoing programs to work with community groups - some political, some social, and some charitable. These relationships help strengthen our communities and can result in valuable alliances when we need help achieving union goals.

Many locals use a simple survey like the one shown on the next page to find out from their members what ties they have to community groups. It is helpful to have the information in hand and build better links to the community before a crisis when the local needs community support.

LIUNA COMMUNITY ACTION SURVEY

Help Strengthen and Improve Our Community and Our Union.

Our ties with organizations in the community and elsewhere can help us to win contracts, better working conditions, and development in our community. Our union is trying to improve our relationship with community groups and to work with those groups toward common goals. Please help by answering the questions on this survey.

1. Please list any organizations in which you or your family members are active (PTA, religious groups, ethnic groups, civic organizations, political action groups, etc.). Also list the role you play in the organization (member, officer, volunteer, etc.).

ORGANIZATION

YOUR ROLE

1. _____
2. _____
3. _____
4. _____

2. Do you have any ideas about ways in which our Local Union can work with community organizations with which you are involved?

3. Please rank the following issues by importance. Start with a "1" for what you feel to be the most important priority for our Local Union Community Action Plan, a "2" for the next issue of importance, and so on until you have ranked all of the choices. If you feel that a high priority issue is not listed, please add it in the space provided. Add as many as you would like.

____ Child Care	____ Education	____ Taxes
____ Domestic Violence	____ Health Care	____ Transportation
____ Drug Abuse	____ Housing	____ Other(s) -Please List

Name _____

Address _____

WorkPhone _____ HomePhone _____

Staying Informed

Your Local Union Officials are your primary source for information about your Local Union and its activities. In addition, there are various LIUNA sources with updates on collective bargaining, legislation, organizing, and other union activities.

If your Local Union, District Council or Regional Office produces a newsletter, read it. The International Union publishes a magazine, *The Laborer*, which is a good source of information on issues and activities that are important to members. It is mailed to the homes of all LIUNA members.

Other sources of useful information are the following LIUNA websites:

www.liuna.org

www.laborers-agc.org

www.lecet.org

www.lhsfna.org

And the AFL-CIO website:

www.aflcio.org

These websites have links to other organizations that affect working people.

CONCLUSION

Your role as a steward is vitally important to the success of your local and to the labor movement as a whole. Your union officers can't be everywhere at once and they can't do everything by themselves. That is why they need good leaders like you to help carry the ball. Your work as a steward will make the union stronger and make things better for all the members your Local Union represents.

This manual includes a lot of information. It may seem overwhelming at first, but over time it will come more naturally to you. This manual and training is one of many tools and resources at your disposal. Take advantage of this and all training and publications that you have available to help you learn more about your union and how to improve your skills. Seek assistance from your Local Union and from other members and stewards as you need it. That is what a union is all about.

5

CBA Scavenger Hunt/ Know Your Contract

CBA Scavenger Hunt/Know your Contract (45 minutes)

Materials needed: CBAs for each worksite

- EXERCISE -Scavenger Hunt – have students work in pairs to answer questions about

YOUR CBA (suggested questions on the next page). Goal: to teach the stewards what the most important parts are in your CBA – what sections of the contract are grieved the most? Most important part of the CBA – know the deadlines to file a grievance!

Collective Bargaining Agreement (CBA) Scavenger Hunt

1. Where would you find definitions of terms used in the CBA? _____
2. How long does your employer have to post a position vacancy? _____
3. What section deals with the scheduling of vacations? _____
4. Are Weingarten rights included in the CBA?
Yes_____ No _____
5. Does a worker have to provide a note from their health care provider if they are absent from work because of illness? _____
Contract section _____
6. What section of your contract addresses just cause? _____ Is it the same section as progressive discipline? _____
7. Can you grieve something not specifically stated in the contract? _____
8. How many days do you have to file a grievance at Step 1? _____

6

Investigating a Grievance

Investigating a Grievance (90 minutes)

- HANDOUTS - Suggestions for Interviewing a Grievant
Investigating Grievances Get the Facts: Remember the 5 W's & 1H
- EXERCISES - (Tardiness and Discrimination) – 4 handouts
 - o Main points: (15 minutes)
 - Must get all sides of the story
 - See “Good Steward Qualities” flip chart page
 - Is there more to the story than what the worker is telling you?
 - What laws/authorities govern? Is this a violation of the: (Ask students for examples and flip chart answers)
 - CBA
 - Federal or state law, or city ordinance
 - Past Practice
 - Disparate treatment
 - Workplace policy
- Review HANDOUT: Suggestions for Interviewing a Grievant
Review HANDOUT: 5 “W’s” and 1 “H” - (reference page 18 of Stewards Manual in Tab 4)
 - o Who
 - o What
 - o Where
 - o When
 - o Why
 - o How
- Remind the stewards to think about not only making the union’s case but also what would management say its argument/case is?
- EXERCISE: Interviewing a Potential Grievant - Pair up students. One is the steward first, and one is the member. Then switch.
 - o Tardiness – spend 10-15 minutes interviewing the worker; then spend 5 minutes filling out the form together. (20 minutes)
 - o Discrimination - spend 10-15 minutes interviewing the worker; then spend 5 minutes filling out the form together. (20 minutes)
- Recap (15 minutes)
 - o Good steward qualities
 - o What was the easiest part of the interview?
 - o What was most challenging?

Suggestions for Interviewing the Grievant



1. **SET A TIME** to discuss the grievances when you won't feel rushed. If you only have a few minutes, the grievant might feel that you don't think their problem is important.
2. **LET THE GRIEVANT EXPLAIN** the problem. If he or she is upset, just listen for a while. Then ask questions to get the full story. Be patient, listen carefully and make eye contact. Make sure you've got the facts right on key points. ("So he told you it wasn't important one day, but the next day he wrote you up for it? How did he explain that?") When something isn't clear, don't hesitate to ask it again. ("I missed something there. Would you go over that again?") If the grievant makes statements like, "Everybody else does..." or "The supervisor always told us..." get the specifics: who, what, when, where, and who else would testify to it?
3. **KEEP CLEAR NOTES** of your discussion. You might use the grievance fact sheet to make sure you've asked all the basic questions.
4. **EXPLAIN WHY** you want to have all the facts before you meet with the supervisor. Tell the grievant when you don't know something that the company knows, it only hurts the union's chance of winning the grievance.
5. **TRY TO FIGURE OUT** the company's position. If the company's actions don't make sense, you're probably missing something. Ask the grievant why they think the company did what it did, or how it will justify its actions in the grievance meeting. Remember, grievants naturally tell their own side of the story. Explain that you're trying to figure out what the company will say to be better prepared for the meeting.
6. **EXPLAIN RELEVANT** contract language, what determines just cause, prior grievance settlements on similar issues, and anything else that will help the grievant understand the strengths and weaknesses of the grievance. Ask the grievant what he or she wants done to resolve the problem, and discuss the possibilities of winning that settlement. And never promise a victory, even when you are sure you will win.
7. **TELL THE GRIEVANT** what you will do next. Are you getting information from the company? Will you be interviewing others before the grievance meeting? When is the meeting, or when will you set it up? One way to avoid misunderstandings with the grievant is to keep him or her informed at every step of the procedure until the grievance is settled.

Investigating Grievances

GET THE FACTS: REMEMBER THE 5 W's & 1 H

WHO... is involved? Name(s) of the grievant(s), shift, job classification, etc. Have they been disciplined before? Has a similar grievance been filed on the same issue? Who is the supervisor? Who are the witnesses? Remember the union itself may be the grievant.

WHEN... did the incident or condition occur or begin? Give dates and times as accurately as possible.

WHERE... did the grievance take place? Give the exact location, job site, etc.

WHAT... is the grievant's story? Management's position? The reports of witnesses? Are there any records that might help support your cause? Collect all the facts you can, always looking for the hard facts, but accepting and weighing "less convincing evidence" and different versions.

WHY... is this a grievance? Has the contract been violated? What about violations of past practice, the law, or Health and Safety rules. Is the issue one of unjust action or application of company rules, contract interpretation, etc.

HOW... should the grievance be settled? What adjustments are necessary to correct the injustice? You want to return the aggrieved worker to the same condition he or she would have been in, had the violation not occurred? You want to make sure that the union's authority or jurisdiction is protected.

Interviewing a Potential Grievant

Age Discrimination

Grievant: Kelly O'Sullivan

"Hey, (name of the steward). I've got a beef. My supervisor has it in for me because of my age."

Additional facts that the employee uses but only in response to specific questions. *Volunteer nothing.*

I'm 55 years old. I've been working as an equipment operator for the Army Corps of Engineers for 25 years and have been a union member the entire time.

Much of my work is light to medium duty. But sometimes I have to lift or move heavy things. I used to be able to do that pretty well. But over the years the work takes a toll on your body. Now I have the younger workers do the heavy stuff. Twice I had back injuries that involved workers comp. I don't want to have that happen again.

Most of the workers they are hiring now for these jobs are in their twenties. There's only one other worker around my age who's 50.

Sometimes the younger workers poke fun at us. Its good natured fun, I know they don't mean anything. But I don't like it when the boss does it. Sometimes the Supervisor calls us names like Pops or Grandma. That's annoying enough. But the last Friday, someone told me he heard the Supervisor talking to the head of the Maintenance Department saying how we need to get some of these old workers to retire and make room for young blood. The same day, while I was taking a break after moving some heavy boxes, the Supervisor jumped on me, telling me if I can't keep up he'll find someone who can.

Today, the Supervisor promotes a young guy (age 30) with just 5 years on the job for a position I applied for. I've worked hard for the government and there's still a lot of work I can do. They need to give me a break!

Steward Reporting Sheet

Age Discrimination

Information you have:

Kelly O'Sullivan is upset and claiming age discrimination.

Notes from interview with the Grievant: _____

Is this Grievance worth pursuing with what you have? **YES/NO**

If **YES**; what factors support your case: _____

If **NO**; Why not? How will you explain to grievant: _____

Interviewing a Potential Grievant

Tardiness

Grievant: Dana Smith

“Hey, (name of the steward). My supervisor is playing favorites and singling me out for being late. I want you to file a grievance now! You have to represent me!”

Additional facts that the employee uses but only in response to specific questions. *Volunteer nothing.*

Yesterday, I got suspended for 5 days for being tardy. In my office, tardy is not being at your work station at 7a.m.

I’ve worked here for 2 years. I’m not a union member.

Last year, I got a verbal warning for being tardy when my car wouldn’t start. That was the first time I’d ever been late. I didn’t talk to the Union about filing a grievance or anything back then because I didn’t think it was a big deal.

Yesterday, when my supervisor saw me getting a cup of coffee a couple of minutes after 7, she said she was sick and tired of workers being tardy for the start of the workday and she suspended me for 5 days!

I see lots of other people at the coffee machine lots of times at and after 7am. I can see the coffee machine from where I work, and I could even name several people who stand around talking every Monday morning until several minutes after seven. They don’t get warnings. I don’t want to get them in trouble. But that’s favoritism, and that’s not right.

My supervisor doesn’t like me and is picking on me.



Weingarten Rights

Weingarten Rights (*45 minutes*)

Materials needed: PowerPoint Presentation

- Review PowerPoint and ask students Weingarten questions in the presentation (answers in PowerPoint notes)
- Review Weingarten rights factsheet

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Weingarten Rights

**N.L.R.B. v. Weingarten, Inc.
420 U.S. 251 (1975)
United States Supreme Court**

- **NLRA goal: workers entitled to “mutual aid and protection”**
 - Weingarten helps meet this goal
- **Equivalent to 6th Amendment right in a criminal trial (right to attorney)**
- **Court in Weingarten found that worker could not be disciplined for refusing to cooperate in an investigatory interview that she reasonably believed would result in discipline after being denied union representation when she asked for it.**

Weingarten Basics

- Allows a union steward to be present when ALL of these conditions are met:
 - Worker requests representation
 - Investigatory interview
 - Worker reasonably fears discipline
- Burden is on the WORKER
 - Some CBAs have negotiated “*Miranda*-like” language – burden on Employer

Weingarten - Justification

- Fear/Uneven Playing Field - A single employee confronted by an employer investigating whether certain conduct deserves discipline may be too fearful or inarticulate to relate accurately the incident being investigated or too ignorant to raise extenuating factors.
- Union Assistance - Also, a knowledgeable union representative could assist the employer by bringing to light favorable facts and save the employer production time by getting to the bottom of the incident at issue.

When Weingarten rights apply

- When worker reasonably fears discipline
- Meetings that do not start out investigatory but become that way
- Meetings when the worker does not reasonably believe he/she will face discipline but later realize discipline is possible
- Phone interviews
- Polygraphs

When Weingarten Rights (Usually) DON'T apply

- When the worker does not ask for union representation
- During non-investigations
 - Locker search
 - Urine test
- During a disciplinary announcement (i.e. no questions)
 - Unless Employer begins asking questions

Weingarten – Employer Obligations

- Employer has 3 options when an employee asks for a steward:
 - Grant the request and delay questioning until a steward arrives
 - Deny the request and end the interview immediately
 - Give the employee the choice of:
 - Having the interview without representation
 - Ending the interview

Employer Obligations, part 2

- **When the steward arrives at the meeting, the employer must:**
 - Inform the steward about the subject matter of the interview
 - Allow the steward to have a private meeting with the Bargaining Unit Employee (BUE) **BEFORE** the Employer's questioning begins
 - Allow the steward to speak during the interview (BUT, steward cannot insist the interview end)
 - Allow the steward to object to a confusing question and require the Employer rephrase
 - Allow the steward not to answer questions that are misleading, confusing, or abusive
 - Allow the steward to provide information to justify the worker's conduct (once the interview ends)
 - Caucus with the employee if needed

Weingarten remedies

- Employee can refuse to answer questions
- Employee/Union can file a ULP
- In the arbitration process – Weingarten due process violation can lead to reversal of discipline/discharge

Weingarten – Stewards' rights

- NOT just to observe
- **Witness AND advocate**
- Can enter a meeting where the steward reasonably believes a worker is being interviewed and may be disciplined.

Weingarten Question 1

Susan's boss calls her at home and asks if she knows anything about the files that are missing from the office. *Does Susan have Weingarten rights in this case? Why or why not?*

Weingarten Question 2

Juan's boss calls him into his office and tells him that a toolbox is missing from the shop and he thinks Juan stole it. *Does Juan have Weingarten rights in this case? Why or why not?*

Weingarten Question 3

Leslie's boss conducts a locker search looking for illegal drugs. *Does Leslie have Weingarten rights in this case? Why or why not?*

Weingarten Question 4

Tim's boss calls him in to her office and asks if he stole tools that are missing. Tim asks if he can have a steward. *Has Tim exercised his Weingarten rights in this case?*

Weingarten Question 5

Barney's boss screams and yells at the staff all the time and always writes people up. Barney's boss stops by his desk and yells to Barney that he's sick and tired of people coming back late to lunch and that he wants to see Barney in his office in 5 minutes. *Does Barney have Weingarten rights in this case?*

Weingarten Question 6

Mike's boss tells him that she is conducting an investigation into stolen files and starts asking Mike questions about this. Mike tells the boss that he wants his steward, Saul, to be present for this meeting and that he is exercising his Weingarten rights. The boss says no because Saul is will be unavailable for 24 hours. *Can Mike ask that the meeting be postponed until Saul is available?*

Weingarten Question 7

Peter, another steward, is available now, but Mike and Peter don't get along. Can the boss make Mike use Peter as his steward instead?

Weingarten Question 8

Mike agrees to have Peter his steward at the Weingarten meeting with the boss. The boss does not let Peter speak during the meeting, ask any questions, or talk in private with Mike. **What can Mike/Peter do? What might an arbitrator do if Mike is disciplined?**

WEINGARTEN RIGHTS

Your Right to Union Representation During an Investigatory Interview

What are Weingarten rights?

The U.S. Supreme Court ruled that federal law gives workers, including federal employees, the right to request union representation during investigatory interviews. The name of the court case was the *National Labor Relations Board v. Weingarten*. These rights are now known as “Weingarten rights.” The Federal Service Labor-Management Relations statute codified these rights in 5 USC Chapter 71 at 7114(a)(2)(B) and required that the Agency annually notify the employees of these rights at 7114(a)(3).

When can an employee exercise his/her statutory Weingarten rights?

Weingarten rights ONLY apply during an investigatory interview. The worker can request union representation before or at any time during the interview.

What is an investigatory interview?

An investigatory interview occurs when both these factors exist:

- Management questions an employee to obtain information; AND
- The employee has a reasonable belief that discipline or other adverse actions may result.

What does an employee need to do to exercise his/her statutory Weingarten rights?

- The employee must clearly state to the management official that he/she wants a union representative to be present.

What does an employer have to do when a worker asks for union representation?

An employer has three options when a worker requests union representation:

- Grant the request and delay questioning until the union representative arrives;
- Deny the request and end the interview immediately; OR
- Give the employee the choice of:
 - Having the interview without representation
 - Ending the interview

NOTE: the employer does NOT have to inform the worker that he/she has the right to a union rep.

NOTE: if a particular union representative is not available, and will not be available in a reasonable period of time, the employer can ask that another union representative attend the meeting instead.

What are an employee’s rights if the employer denies his or her request for union representation?

The employee can refuse to answer questions. Further, the worker or union can file a ULP.

What are a steward’s rights during an investigatory interview?

- The steward’s role is NOT just to observe. The steward must be allowed to advise and assist the employee in presenting the facts.
- When the steward arrives at the meeting, the employer must:
 - Inform the steward of the subject matter of the interview – i.e. the type of misconduct being investigated
 - Allow the steward to have a private meeting with the worker before the employer begins questioning the employee
 - Allow the steward to speak during the interview. (The steward cannot insist that the interview be ended, but the steward may call a caucus to speak privately with the worker during the meeting).
 - Allow the steward to object to a confusing question and ask that the question be clarified so the worker understands what is being asked.
 - Allow the steward to advise the employee NOT to answer questions that are abusive, misleading, or harassing.
 - Allow the steward to provide information to justify the worker’s conduct (once the interview ends).
- Further, a steward may enter a meeting where the steward reasonable believes that a worker is being interviewed and may be disciplined. However, if the worker refuses representation, the steward must leave.

Examples of when Weingarten rights apply

- When the worker reasonably believes the interview will result in discipline.
- Meetings that do not start out as investigatory interviews but that become one.
- Meetings in which the employee at first does not reasonably believe he/she will be disciplined, but later realizes discipline is possible.
- During phone interviews.
- During polygraphs (lie detector tests)

Examples of when Weingarten rights do **not** apply

- When the worker does not clearly ask for union representation.
 - Example: During an investigatory interview, the employee asks his manager if he should ask for a union rep, instead of directly stating he wants a union rep.
- During non-investigations, such as a urine test or locker search.
- During a disciplinary *announcement* (i.e. no questions), which federal law states is different than an *interview*.
 - BUT, if the supervisor begins asking the employee questions (interviewing him/her), then Weingarten rights apply and the worker has the right to union representation.

8

Duty of Fair Representation

Duty of Fair Representation (60 minutes)

Materials needed: PowerPoint Presentation

- Review PowerPoint, including True/False questions about the Duty of Fair Representation
- HANDOUT: Duty of Fair Representation checklist
- EXERCISE: Pair up students to answer questions for “Meeting the Duty of Fair Representation”
- INSTRUCTOR NOTE: Click www.liuna.org/fair-rep for answer key

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Duty of Fair Representation

LIUNA Stewards' Training

Duty of Fair Representation

- Flowing from the Union's right to exclusive representation is its Duty of Fair Representation
- Obligation to represent all members*, to enforce the Collective Bargaining Agreement, practices, workplace rules, and applicable laws based upon reasonableness and uniformity.
- Does not mean you have to represent them no matter what.
- *(and sometimes non-members in a "Right to Work" area)

Duty of Fair Representation – History

- Right created in 1944 - Railway Labor Act – US Supreme Court
 - Cases dealt with CBAs with racially discriminatory purpose/effect
- **Broader DFR – *Fort Motor Co v. Hoffman* (1953)**
 - First DFR US Supreme Court case that did not deal with racial discrimination or intentional misconduct
 - Court held that a union has the discretion to make reasonable distinctions between BUEs without violating its duty to represent all workers fairly.

DFR – History, continued

- 1967 - *Vaca v. Sipes* – key DFR case (US Supreme Court)
- Court established ground rules governing the union's duty to investigate employee complaints and process employee grievances.
 - Established 3 concepts of DFR.
- Federal and state courts/PERBs have also dealt with other DFR issues like exhaustion of internal union remedies and right to a jury trial.

DFR

- Criteria for avoiding a DFR charge – must NOT act:
 - In bad faith
 - In an arbitrary manner
 - In a discriminatory manner
- What do these terms mean?

DFR – What to take into account

- Grievances – based on merit
 - Must at least investigate
- Union can take cost of representation into account
- Member vs. non-member
 - In the Federal sector, unions do NOT violate DFR if they don't equally represent a non-member outside the grievance process (no DFR violation to refuse to rep a member at EEO, MSPB, OSC, etc)
- Member 1 vs. Member 2
- Negligence vs. intentional

DFR

- Fact-dependent
- What was the action? Did it fit one of the 3 categories for violations?
- Not always agreement arbitrator to arbitrator or court to court (different circuits around the country, etc)
- Continually being refined by courts/PERBs

DFR - Recap

- If the grievance has **merit**, generally have to file because covered by the CBA.
- Can't act in a manner that is:
 - *Bad faith*
 - *Arbitrary*
 - *Discriminatory*
- May NOT however, have to go to arbitration
- Federal Sector differences

Duty of Fair Representation

True/False

1. A steward can't be expected to fight his/her hardest for a worker who constantly bad-mouths the Union.

Duty of Fair Representation

True/False

2. If a grievance is thrown out because the steward missed a filing deadline, the Union is automatically violating the DFR.

Duty of Fair Representation

True/False

3. It is important that the Union does a thorough investigation of every grievance.

Duty of Fair Representation

True/False

4. The Union does not have to file a grievance if the Union believes it is not winnable.

Duty of Fair Representation

True/False

5. A Union can agree to a compromise settlement even if the member isn't willing to compromise.

Duty of Fair Representation

True/False

6. If a Union takes sides in a dispute between two members (e.g. seniority), it can be held liable for not properly representing one of its members.

Duty of Fair Representation

True/False

7. Once a Union files a grievance for a member, it must pursue it, even if new facts indicate that the grievant was wrong.



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DUTY OF FAIR REPRESENTATION CHECKLIST

DO

Get a calendar – use it!

Investigate before deciding whether or not to file by:

- Speaking with the grievant
- Speaking with witnesses
- Speaking with management
- Reviewing available documents – including your CBA!
- Seek and review other documents if time permits

Consider the effect on others in the bargaining unit.

If the grievance is good and there's no harm to others, file it.

If the grievance could harm the bargaining unit, discuss with union officers.

If the grievance could harm an individual, inform him or her and listen to the worker's position before deciding whether to proceed.

Inform the grievant and others in the bargaining unit who are directly affected of the status of the grievance of the status of the grievance.

If you decide not to file, explain the reasons why to the worker.

Use labor law to make your case.

Always discuss potential settlements with the grievant.

Decide whether to file based on the merits of the grievance.

DON'T

Forget time limits.

Make decisions based only on:

- What the grievant says
- What management says

Make decisions based on whether or not you like the grievant.

Make decisions based on whether or not the grievant is actively for or against the Union.

Meeting the Duty of Fair Representation

1. Do we have to grieve and arbitrate every grievance that employees bring us to make sure we don't get sued?
2. Willie was suspended for two weeks for absenteeism. The company offered one week's back pay. Given Willie's record, the union thinks this is a good settlement. But Willie wants to arbitrate for full back pay. If we settle for the one week's pay, is Willie likely to win a DFR case?
3. I filed a grievance for Michael over a pay issue. But after getting more information, I believe management is right. Do I have to continue pursuing the grievance since it's already been filed?
4. Two workers – Linda and Marie, are discharged for fighting. We want to file a grievance on Marie's behalf because we think Linda provoked her, but Linda told us that if we filed a grievance for Marie but not her, she'd sue us for unfair representation. Would she have a case?
5. We are in a right-to-work state and sometimes I have to file grievances for people who aren't union members. When I do, I tell them it costs money to run a union, and they should be ashamed of taking the benefits without sharing the costs. Can I get in trouble?

9

Due Process

Due Process *(45 minutes)*

Materials needed: PowerPoint Presentation

- Review PowerPoint and then factsheet for Seven Tests of Just Cause
- HANDOUT: Seven Tests of Just Cause

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Due Process

Due Process Rights – Basis in US Constitution

- US Constitution – Article 14, Section 1:
 - *nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*
- Article 5:
 - *nor be deprived of life, liberty, or property, without due process of law*

Due Process

- Means different things in different contexts:
 - Constitutional/criminal law
 - Deprivation of freedom
 - *Miranda* rights – police have to affirmatively tell you that you have rights (to remain silent, etc).
 - Employment/Labor law
 - Public workers have a property right to their job.
 - Management DOES NOT have to affirmatively tell you that you have rights

Due Process: *Loudermill v. Cleveland Board of Education*

- **Permanent Public Employees are conferred a “property interest” in their public employment**
 - Due Process usually applied in private sector union workplaces, too – but those rights come from the CBA, not Constitution.
- Public sector property rights arise out of both law and contract
- Cannot be deprived of this property interest (your job) without due process
 - the right to notice of the charge (pre-termination notice)
 - an explanation of the employer’s evidence and
 - an opportunity to present his/her side of the story

Due Process

- Applies to permanent (non-probationary and non-temporary) workers
- Usually can't be waived – some state courts have ruled on this:
 - Alaska – Court held that DP rights are independent of a CBA requirement granting them
 - NY – said union can waive DP rights in a CBA
- Legitimate expectation of continued employment
 - Different from at-will

Contractual Sources for Due Process Rights

- Just cause provision – usually interpreted to mean that due process is implied
 - Arbitrator can rule due process exists implicitly even if no just cause provision in the CBA
- CBA may have specific due process guarantees – such as requirements for a written warning before discipline, or a requirement that management must investigate before a final decision is made



Feel the Power

Seven Tests of Just Cause

Most collective bargaining agreements state that an employer must show “just cause” in order to discipline an employee. “Just cause” means the employer must have a reason (“cause”) for imposing discipline and the reason must be fair (“just”).

Although most contracts include a “just cause” provision, very few of them adequately define what it means. In 1964, Arbitrator Carroll Daugherty established a single standard to determine if the discipline or discharge of an employee can be upheld as a just cause action. The test is known as the “Seven Tests of Just Cause.” To show that discipline was justified, the employer must be able to answer YES to the following seven questions:

1. Reasonable Rule or Order - *Was the employer’s rule or managerial order reasonably related to the orderly, efficient and safe operation of the business?*

This rule or order must not be arbitrary, capricious or discriminatory and must be related to the employer’s stated goals and objectives. Even if this order is unreasonable, the member **MUST** obey, except in cases when doing so would jeopardize health or safety.

2. Notice - *Did the employer give any warning as to any possible discipline or consequence that could result from that employee’s action or behavior?*

Warnings can be in writing or oral. Note that management does not need to provide a warning to the employee for some very serious offenses for which the employee should know they will be subject to discipline (example: commission of a crime at work – theft, assault, etc.). The employee must have at least *constructive* notice of the rule alleged to have been violated (this would not apply to the capital crimes of theft, etc.). The employee may win the arbitration if he/she did not know the conduct was prohibited, even if his/her conduct breached the rules.

3. Investigation - *Prior to administering discipline, did the employer conduct an investigation to determine whether the employee did in fact violate or disobey a rule or order?*

The employer’s investigation must be made **BEFORE** any disciplinary action is invoked. Where immediate action is required, however, the best course is to suspend the employee pending investigation with the understanding that he will be restored to his job and paid for time lost if he is found not guilty. The employer bears the full responsibility for collecting any and all facts that are relevant to the final decision.

4. Fair Investigation - *Was this investigation fair and objective?*

The employer has the obligation to conduct a fair, timely and thorough investigation that respects the employee’s right to union representation and due process. Once gathered, all facts must be evaluated with objectivity, and without a rush to judgment. Example: if management only interviews management witnesses but no union witnesses, an arbitrator would likely find that the investigation was not fair or objective.

5. Proof - *Did this investigation uncover any substantial proof or evidence that the employee was guilty of violating or disobeying a direct rule or order?*

Although there is no requirement of being preponderant, conclusive, or "beyond a reasonable doubt," any proof or evidence must be truly substantial. Employees have less rights in the workplace than in court, but the employer must still have real evidence to discipline the employee. While conducting the investigation, the employer must actively seek out witnesses and search for evidence. If an offense cannot be proven, then no penalty could ever be considered just.

6. Equal Treatment - *Did the employer apply all rules, orders and penalties evenhandedly and without discrimination to ALL employees?*

If other employees who commit the same offense are treated differently, there may be discrimination or disparate treatment, both of which would automatically violate this test. Likewise, if management has never or rarely or unevenly enforced this rule in the past, they cannot suddenly reverse course and "crack down" on an employee for the same action.

7. Penalty - *Was the degree of discipline administered reasonably related to either the seriousness of the employee's offense or to the record of past service?*

A proven offense does not merit a harsh discipline unless the employee has been proven guilty of the same (or other) offenses several times in the past. Although an employee's past record cannot be used to prove guilt in a current case, it can be used in determining the severity of discipline if guilt is established in the current case.

Should two or more employees be found guilty of the same offense, their respective records will be used to determine their individual discipline. Thus, if employee A has a better record (or more seniority) than employees B or C, then the employer has a right to give a lighter penalty to employee A without being discriminatory.

The employee's offense may be excused through mitigating circumstances. For example, a warehouse employee found asleep on the job may be excused by the mitigating circumstance of being under medication by the company doctor. Or, an employee with domestic troubles may be proven incompetent rather than negligent, the latter indicating a willful deliberation.

10

Exercise:
Weingarten Duty
of
Fair Representation
and
Due Process

Weingarten, Duty of Fair Representation and Due Process Exercise

- Place participants in teams of two to three people
- Exercise: What Would You Do?
- Ask students to review the scenario and answer the questions with their team
- INSTRUCTOR NOTE: Click <http://www.liuna.org/weingarten> for answer key

Exercise - What Would You Do?

Scenario #1

Tanya is a school custodian for Liunaville Elementary School. She has worked there for 9 months. Liunaville is a right to work jurisdiction (no agency fee law) and Tanya is not a union member.

Danielle is the steward for LIUNA L. 1234.

Mr. Meany is their supervisor.

The school custodians must report to work by 4pm and work until midnight Monday through Friday.

Tuesday, February 21

Tanya comes to work at 4:10pm. Her babysitter was late so she called Mr. Meany and left him a voice mail at 3:30pm to tell him she would be a little late. (The CBA requires all workers who will be late to call their supervisor to let them know as soon as possible, but before their shift begins).

When Tanya gets to work, Mr. Meany confronts her and asks why she was late, yelling "I am sick and tired of you coming in here whenever you want! What's your excuse this time??" Tanya asks if she can have a steward present. Mr. Meany says that Danielle is not there today so Tanya should just tell him why she was late. Tanya asks if they can talk tomorrow when Danielle is back at work and Mr. Meany just walks away.

Wednesday, February 22

8am: Tanya receives an e-mail from Mr. Meany that says she is suspended for 10 days for being late and to not come back to work until then.

Noon: Tanya meets with Danielle, the union steward. Tanya tells Danielle that she was suspended for 10 days and wants the union to file a grievance. Danielle says that the union won't file a grievance for Tanya because she is busy and doesn't have time. Besides, she says, Tanya is not even a union member.

QUESTIONS

1. Were Tanya's *Weingarten* rights violated by Mr. Meany? Why or why not? Be specific.
2. Name 2 things that Mr. Meany could have done differently to be sure that he avoided a *Weingarten* violation in this scenario?
3. Did Danielle violate the union's duty of fair representation? Why or why not?
4. Did Mr. Meany provide Tanya due process? Why or why not?



Legislative Update

Legislative Update – time permitting (no materials)

Review legislative issues in your city/county/state/Congress that are important to your members.

Example: pension attacks in the legislature, health care changes, release time/official time changes, etc.

Discuss how when these issues are legislated, they take away our right to bargain.