



## Resource Materials\*

\*A good place to find answers to a Shop Steward's questions!!

**SECTION**

**1**

## **Establishing Yourself In The Role Of Steward**

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

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

### **Establish your position.**

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

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

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

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

### **Management's test.**

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

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

### **Establish the Union**

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

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

### **Represent the rank and file**

Always treat the member with respect and dignity. Work with the member. It is a sign

of empowerment and the strength of the union as a group. The operative word is always "we" not I. The word "they" is always reserved for the company or management, not the local union or the international. If you truly believe that the union is not simply a servicing center for the membership, then these terms should be second-nature.

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

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

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

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

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

### **Build solidarity**

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

**SECTION**

**2**

## Goals of a Union Steward



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

- Keep yourself informed on union affairs.
- Serve as an example to your members.
- Keep the members informed on union policies and union activities.
- Attend union meetings and union affairs. Encourage and bring the members from your department. Don't chide members for missing meetings. Think of other ways to communicate with them.
- Meet the new members early, inform them, educate them, help them become members - make them more than dues payers.
- Get your location to act as a union - have them stick together.
- Act as a leader - do not let personal likes or dislikes prejudice your actions as a grievance representative.
- Fight discrimination, whether it be overt or very discreet. Discourage prejudice of any kind.
- Keep accurate and up-to-date records. Write it down.
- Do not promise, if you cannot deliver.
- Encourage political action on the part of your members. See to it that they are registered and vote.
- Be an active politically. Encourage members to exercise their right to vote, and to vote for labor friendly candidates.
- Know how to refer to the union contract, by-laws, and international constitutions. If you are not sure, seek help so that you can become familiar with the documents.
- Encourage and support the union's activities on behalf of organizing the unorganized.
- Inform the membership of union services. Encourage them to take advantage of not only the services the union sponsors outright, but those that the union helps subsidize. If your local does not already have a community services representative, encourage the local in creating one.
- Fight, whenever you meet it, the anti-union element. You can best do this by being informed and being dedicated to the labor movement.
- Do not hesitate or stall. If you do not know, admit you do not know. Then try to get the answer.
- Keep your workers informed on sources of information. Give pertinent information whenever a worker wants it.
- In dealing with the management, remember that you are the elected or appointed representative of your fellow members. Never consider yourself to be inferior to management representatives. You are always their equal.
- Be proud of your position. Remember you are a union representative of your local union which has the full support of tens of thousands of members bound together in an international union, with the support of millions of other union members.
- Wear your union button and encourage your coworkers to wear it.
- Investigate every grievance as if it were your own. Keep the member informed. Make sure you keep your deadlines. There is no excuse for missing a time limit. Research every grievance as if it were going to arbitration but try to resolve it at the lowest possible level. Keep your local union informed of the status of each grievance.
- Attend and encourage attendance at any labor education program that might be

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## **Nobody's Perfect**

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

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

## Ten Mistakes A Steward Should *Never* Make

- 1. Miss your deadline.** You know what the contract says, but somehow you forget to file the grievance within the specified time. The grievance, in almost every case, becomes history. Two pieces of advice. Keep a calendar diary with dates marked in red so you won't miss deadlines. And if you need more time, ask for an extension from management and get it in writing.
- 2. Never get back to the grievant.** This usually happens when the steward determines that the member has no grievance. Rather than be the bearer of bad tidings, the steward disappears. This is irresponsible. If the issue is not grievable under the contract, see if it can be resolved in another manner. If not, tell the member that the issue cannot be written as a grievance, and give him/her the reasons.
- 3. Bad mouth the union.** If you have a problem with the way things are done or with your leadership, discuss the issue(s) in a rational manner. Get off the soapbox and see if the difference can be resolved. There's plenty of room for discussion and disagreement. But when it spills out on the shop floor or at a meeting when management is present, such disagreements can permanently weaken the union. A house divided against itself will fail.
- 4. Drop the routine fly ball.** You are the steward with responsibilities outlined by the constitution and by-laws. You should not make basic mistakes. Grievances should be written correctly. Information should be shared. You should know your rights. If you are unsure or don't know the answer, ask.
- 5. Sit down and shut up at meetings with management.** In your role as a steward you are the union advocate. This role is an active one. You are the equal of management. You may ask questions, ask for and get records to process grievances, and even raise your voice at meetings when necessary.
- 6. Lose control.** A major no no. You or a member may be baited at a grievance meeting so that you will get angry. A steward who argues out of anger and not facts will lose the grievance. Period.
- 7. Write long grievances.** Grievances should be short and sweet. Management is being paid big salaries to supervise. Don't do the work for them. Your grievances should identify the grievant, outline the problem in a sentence or two, state what article of the contract is being violated, and what remedy you want to make the grievant whole. Save the arguments for the meeting. A good poker player never tips his/her hand.
- 8. Meet the grievant for the first time at the grievance hearing.** If this is the first time you've met the member, you are inviting trouble. Big time. You should talk to the grievant face to face when you investigate the grievance and write it.

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

- 9. Wait for the member to come to you with the problem.** If you do this, you will never gain the respect of the membership you represent or the management you must deal with. Problems can often be resolved before they explode into grievances. And

## Ten mistakes a steward should NEVER make

members may not be as aware of contract violations and grievable issues as you are.

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

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## The Grievance Interview

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

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

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

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

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

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

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

**Where** -- did the incident take place.

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

## More Tips

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

**Take notes.** Always take notes. You can't remember everything and taking notes conveys to the member that you are taking this issue in a serious manner. The member may also take your concern more seriously and give you more facts and less opinion if he or she sees that their words are being written down. Some statements or facts may not seem important at first, but take it all down. Later investigation may make this unimportant information crucial to your case.

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

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

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

**Keep in mind two other questions:**

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

**How** -- should the issue be resolved? A solution to the problem or complaint may arise in the course of the interview. Give the member a chance to help resolve the issue. Use your knowledge to guide the worker by making sure he or she understands the effect of any suggested solution. Lastly, prepare yourself for the possibility of a full-blown grievance. Begin to think about the remedy you will seek to correct the injustice. There is no magic to interviewing a member. Just make sure that you have the time to conduct a full interview, listen carefully, and write things down.

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**SECTION**

**5**

## **Handling Grievances**

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

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

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

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

## **Writing a Grievance**

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

### **Your grievance form**

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

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

### **Be timely**

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

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

### **Be brief**

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

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

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

### **The remedy**

You need a remedy in every grievance. By filing a grievance you are demanding that

management right an injustice. Management will not give you anything. You've got to tell them what you want.

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

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

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

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

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## **A Dozen Points on Grievance Presentation**

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

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

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

### **1. Prepare the case beforehand.**

Have your facts down in writing. Organize and understand your notes to guide your presentation. Be confident. Anticipate the company's argument and have your answers ready. Make an effort to talk to the worker alone before you meet the supervisor. Talk the case over, if necessary, with other representatives, your committee people, or others who might help you.

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

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

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

Insist on discussing the issue raised by the grievance only, nothing else.

Take notes during the conference.

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

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

### **5. Disagree with dignity.**

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

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

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

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

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

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

### **8. The burden of proof is on the supervisor.**

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

**9. Avoid bluffing**

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

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

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

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

Refer the grievance to the next step when not settled. Give the representative above you all the facts; also the arguments used in your discussion with the supervisor. Don't allow the grievance to lay around.

Delayed grievances mean delayed justice. Keep a constant check on the progress of the grievance and at what step it is. Report back to the grievant and the department--they're concerned too.

**12. Enforce the contract!**

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

**SECTION**

**7**

## **Ten Rules to Prepare Witnesses for the Grievance Hearing**

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

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

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

1. Know what your witness will say. Once you have interviewed the witness, sit down with him or her and tell them the questions you will ask. Plan those questions according to the information the witness has offered.
2. Go through a dry run of your questions ahead of time. The questions and answers at this stage are meant to increase their comfort level, not to put words in their mouth or get them to memorize their story. Anyone can see through a concocted story or one too-well rehearsed.
3. Tell the witness what they can expect in their cross examination by management. Give them some possible company questions ahead of time and see how they respond. Tell them you will make sure that the company does not go off base on their questions.
4. Answers should be brief and non-technical. Tell them not to argue.
5. Witnesses must not be evasive. If they cannot remember or do not know, they must say so. "I don't know," or "I can't remember" are perfectly reasonable answers. They do not necessarily weaken a witnesses' story despite what they might think. "No" and "yes" are also respectable replies to questions.
6. When the company questions the witness on cross-examination, answers should be as short as possible. Do not let your witnesses do the work for the company. Make the company prove their case.
7. If the witness is sure of the facts, tell them to use words like "I remember." Words like, "I think" or "I believe" are weak and do not necessarily indicate facts.
8. Don't let witnesses get shaken by cross-examination. When you have a particularly strong witness, management may try to get the member excited, make them lose their temper or get careless with an answer. What they are trying to do is destroy a witness' credibility. Step in to prevent this. Don't let your witnesses be hounded or badgered. Don't let anyone put words in their mouth.
9. During your interview with the witness, walk them through the entire hearing. They have to know ahead of time what to expect. Describe to them the physical layout of the room, who will be there, and what will happen. The more they know ahead of time, the

more comfortable they will be.

10. In any proceeding, tell the witness to admit, if asked, that they have spoken with you ahead of time. Don't let them think that the interview conference isn't part of the process. If they are asked, "What did your union representative tell you to say at the hearing," the proper reply is, "He/she told me to tell the truth."

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

**SECTION**

**8**

## **Preparing Discipline Cases**

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

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

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

### **Key is Credibility**

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

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

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

### **Check the story**

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

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

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

### **Check Records**

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

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

Make certain that the member's record is accurate. If there are entries on the record

which should have been removed after a certain time period (some contracts have time limits for adverse entries), hold the employer to those time limits.

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

### **Check the Contract and Rule Book**

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

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

### **Is the Employer Consistent?**

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

### **Look for Motive**

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

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

**SECTION**

**9**

## **The Steward's Role at a Hearing**

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

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

1. Speak to the member prior to the hearing. If it is a formal disciplinary hearing with a notice, check the notice and proceed with an investigation of the alleged infraction. If you are called in at the last minute, seek a postponement so that you can make a proper investigation. If the meeting is informal, make sure the member has time to talk with you ahead of time or take a recess to get some understanding as to what happened.

2. Prior to the hearing, inform the member who will be present, how the meeting will be conducted and what he/she should expect.

3. Get as much information as you can beforehand. Do not let the employer withhold information. If they do, speak to your local union. Document any denials of information in writing and get it on the record.

4. If there are any witnesses at the meeting or hearing you should question them as you see fit. In most formal hearings, the process of questioning the company's witness is called cross-examination. You have a right to ask these witnesses questions to determine the accuracy of their testimony and their biases. Your rights to questioning should not be interfered with by management. If you are denied that right, make sure that such denial is entered on the record.

5. It is perfectly proper for members to answer questions with, "yes," "no," or "I don't know." Once the member has answered a question, he/she is under no obligation to elaborate.

6. At most hearings the steward can take as active a role as he/she sees fit.

7. You can stop the meeting at any time to speak privately with the member.

8. Take notes or bring in a second person to take notes.

9. Do not rely on the supervisor's notes.

10. The written record is important. It documents what actually was said, not what was allegedly said. Cases have been won and lost on the accuracy of the record.

11. The bottom line is to make sure that the member is treated as fairly as possible under circumstances that are heavily weighted against him/her. You must handle all discipline as if the case will go to arbitration. Remember, even if the investigation does not go the way you had hoped, you can challenge the discipline, how management conducted itself through the process, or the just clause section of your contract by appealing through your grievance procedure.

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7. Was there an ongoing dispute between supervisor and member? If this can be documented over a period of time, the issue may be harassment. But to prove harassment, you need clear documentation from the member of instances where he or she was picked on.

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

9. Was the order reasonable and necessary to the safe, orderly and efficient operation of the business? Did the order violate the contract, workrules, past practice, past arbitration decisions, or the law?

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

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

12. Did the charge of insubordination arise out of the member executing his/her role as a union officer? If the member is a shop steward and got into a shouting match with the supervisor at a grievance meeting, the steward's conduct is protected. In cases of union duties, the steward or officer is an equal of management in labor-management issues and cannot be disciplined for exercising that role.

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

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

## **Insubordination - A Dozen Questions to Ask**

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

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

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

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

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

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

1. Was the employee given a direct order? Mere instructions, suggestions, and/or advice are not the same as a direct order. A smart supervisor will say in no uncertain terms, "I am giving you a direct order to complete that job."
2. Was the member aware that he or she was given a direct order? A member may not have understood that the language used by the supervisor was a direct order.
3. Was the language clear? For example, a member might be told to stop smoking. As part of their job, they may go to another location in the facility and light up another cigarette. Caught smoking a second time, the supervisor might discipline them for disobeying an order. But how clear was the original order? The employee might have thought that he had to stop smoking at his original work location only.
4. Was the order audible? Many of our members work in very noisy locations.
5. Was the member given forewarning of the consequence of a refusal to follow the order? A smart supervisor will use words that clearly indicate a disciplinary consequence will follow the refusal to obey the order: "If you do not comply with my order, I will take you out of service."
6. Did the employee willfully disobey or disregard the order? Most cases demand that the refusal to follow an order be willful. A member may say that she was provoked by a supervisor, by abusive language for example. If a member comes to you with that kind of defense, you must dig down deep to find out why. In most cases, provocation is viewed by an arbitrator as a way of lessening the discipline, but not overturning it. An exception to this might be if the order was an affront to the basic dignity of the member. Racist or anti-union comments in the form of an order, for example, have no place in the shop and should be reported immediately to the union for action.