

SOLIDARITY IN ACTION: A GUIDE FOR UNION STEWARDS

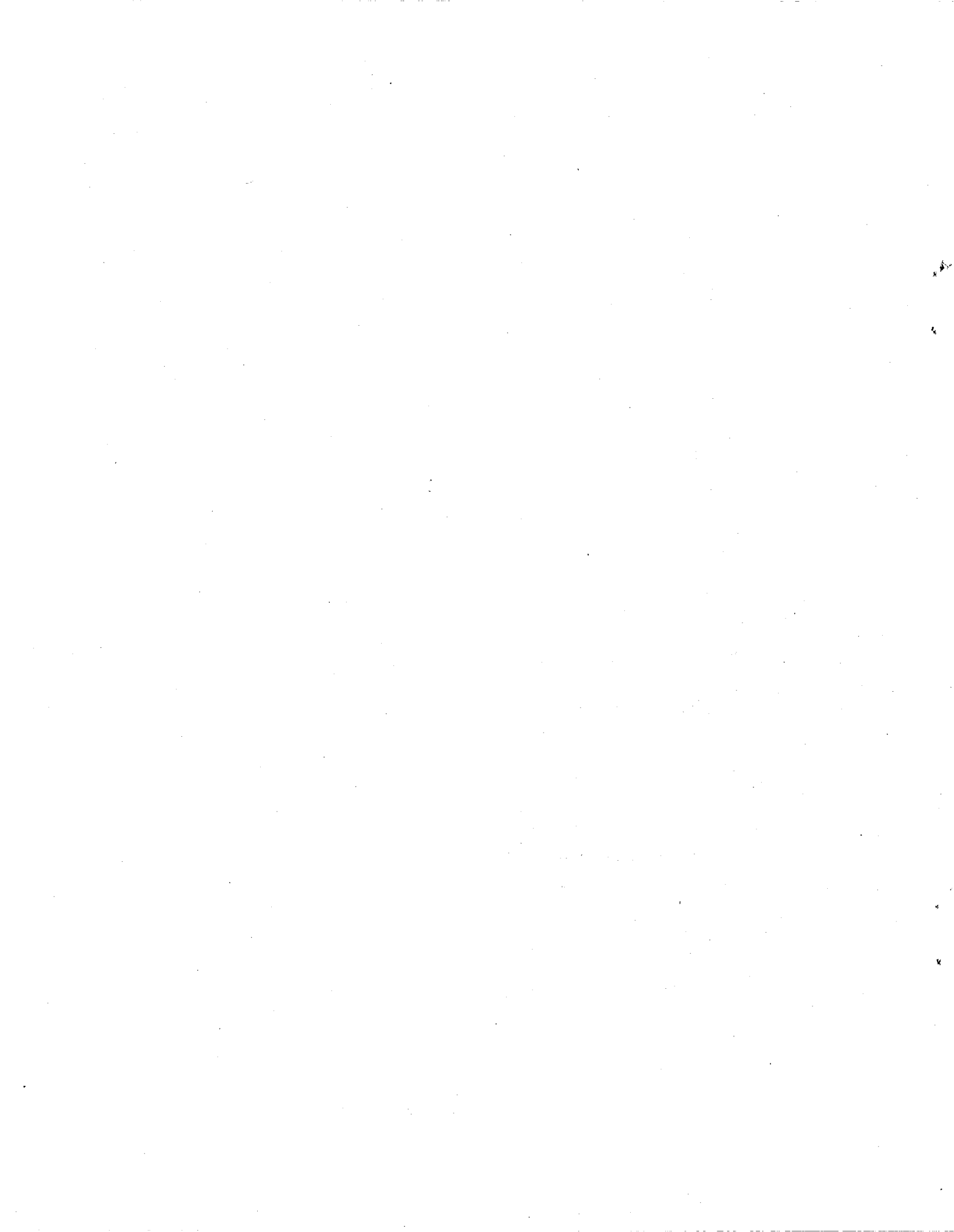


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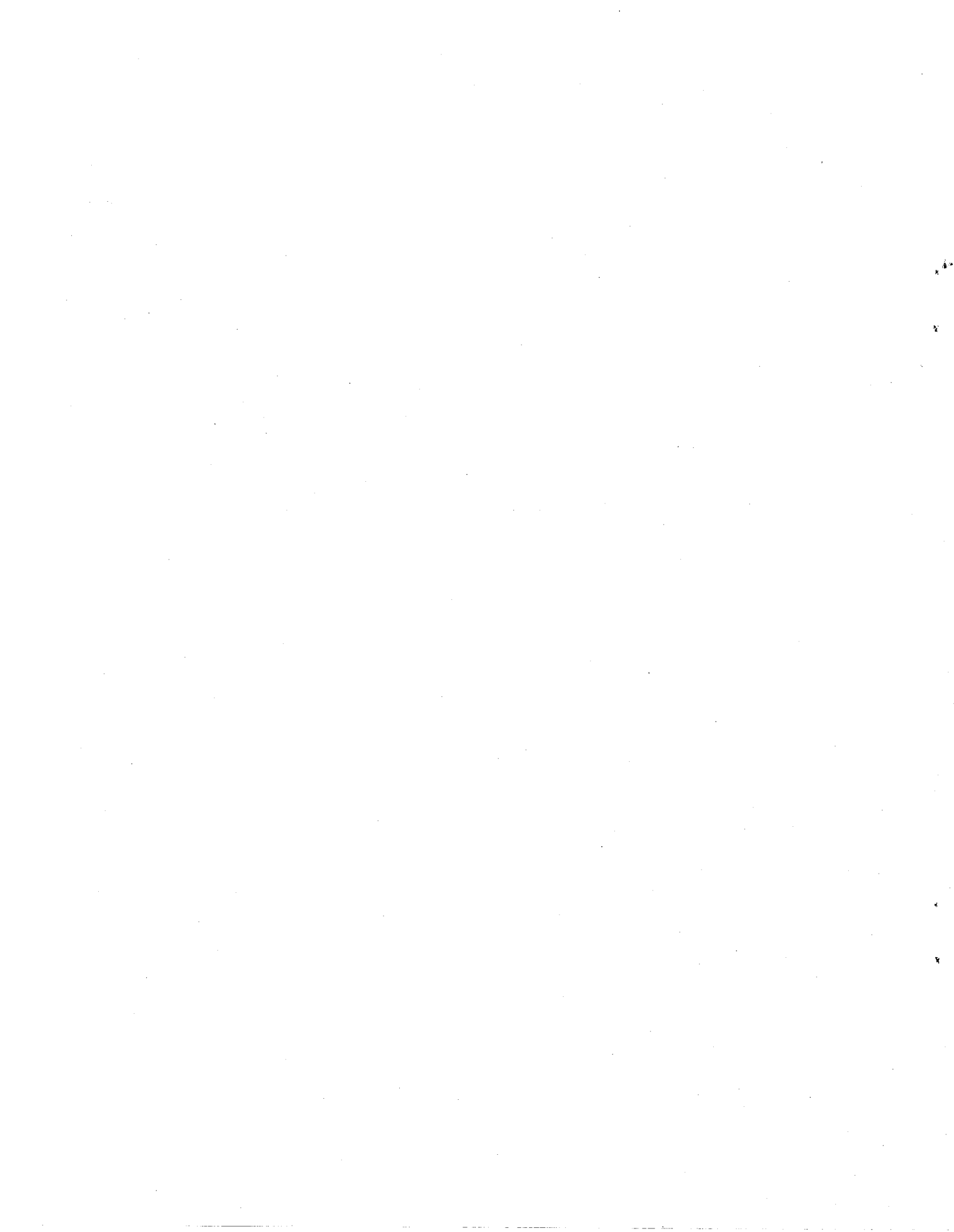
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PART I:

**THE ROLES OF UNIONS
AND THE UNION STEWARD**



THE ROLE OF UNIONS IN TODAY'S ECONOMY

Workers are being squeezed in every sector of the economy

- ◆ **Health care costs soaring**—In 2008, the cost of premiums for employment-based health insurance rose at twice the level of inflation. Linked to high costs, the number of uninsured Americans has climbed to over 46 million.
- ◆ **Productivity up, wages down**—Between 1947 and 1973, workers' productivity doubled, and so did the value of average income-adjusted wages. In recent decades, however, wages have remained stagnant despite productivity increases. From 2000-2006, productivity rose 11%, but median family income fell by 1.1%.
- ◆ **Pensions eroding**—In 1979, the majority of employers offered some form of pension; by 2006, the number had slipped to 42.8%. The quality of pensions has also declined, with only 18% of employers offering defined-benefit pensions.
- ◆ **Job insecurity**—Decades of job losses linked to globalization, combined with the current economic crisis have created intense job insecurity for American workers.



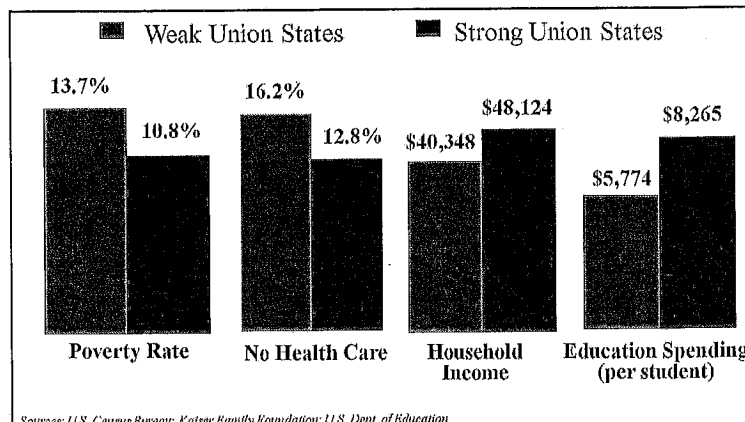
Income inequality has reached its highest level since 1928

- ◆ Between 1979 and 2006, the wealthiest 1% of Americans experienced a 144.4% increase in their annual earnings, compared with only a 15.6% increase in annual earnings for the bottom 90% of Americans.
- ◆ The top 1% of wage earners now take in 23% of all U.S. income, the highest income inequality for any year on record, except 1928.

Sources: Economic Policy Institute, "The State of Working America 2008/2009"; National Coalition on Health Care: www.nchc.org

Today, and throughout U.S. history, workers have won important economic victories by forming strong unions.

In today's workplaces, the union difference is clear. Union workers earn higher pay than non-union workers; they are 18.3% more likely to have health insurance, and 22.5% more likely to have pension coverage. Equally important, union workers have a voice in their conditions of work, and the security of a union contract.



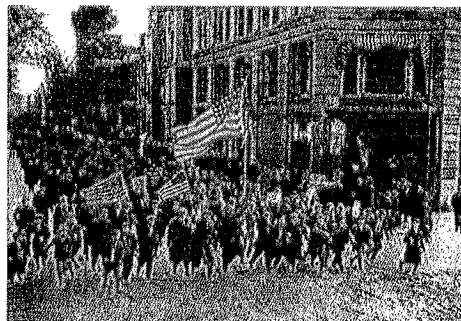
Sources: U.S. Census Bureau; Kaiser Family Foundation; U.S. Dept. of Education

The impact of unionization spreads far beyond the workplace. The graph to the left compares the ten states with the highest level of unionization to the ten states with the lowest level of unionization, suggesting that unions may have a positive impact on several aspects of "quality of life" in communities.

THE ROLE OF UNIONS IN TODAY'S ECONOMY

Throughout the history of the United States, workers have had to join together and struggle to win basic protections at work, and in society. In many cases, their efforts to organize have been met with violence and repression by employers and elected officials. Often against incredible odds, unions have succeeded in winning fundamental rights in the workplace, and in society in general such as:

- ◆ Protections against child labor
- ◆ The right of all children to attend school
- ◆ Minimum wage laws
- ◆ The right to breaks, and regulations on hours of work
- ◆ Safety regulations in the workplace, and compensation for injured workers
- ◆ Civil rights and anti-discrimination protections
- ◆ Unemployment compensation



Unions today face incredible challenges, and important opportunities. Decades of aggressive anti-union tactics by employers and weakened labor laws have contributed to a sharp decline in union membership. At the same time, recent surveys have indicated a growing interest in forming unions among American workers. Some unions have developed new strategies for growth despite employer hostility— in 2007, unions had the largest single-year increase in membership since 1979. However, unions are currently uniting to demand major legal reforms to restore workers' right to organize.

The “Union Triangle”—it takes more than bargaining and grievances to defend and improve workers' rights

Most union members understand that negotiating contracts and filing grievances are important ways to protect and improve their conditions at work. However, contract and grievance victories can be swept away quickly by a new law or regulation. Similarly, if 95% of the workplaces in an industry are non-union, even the best negotiators in the few unionized facilities will lack the power to win significant improvements.

The three interdependent functions of the union are often called “The Union Triangle.” If any one of these programs is weak, efforts in other areas will usually suffer.

ORGANIZING
(INTERNAL AND EXTERNAL)

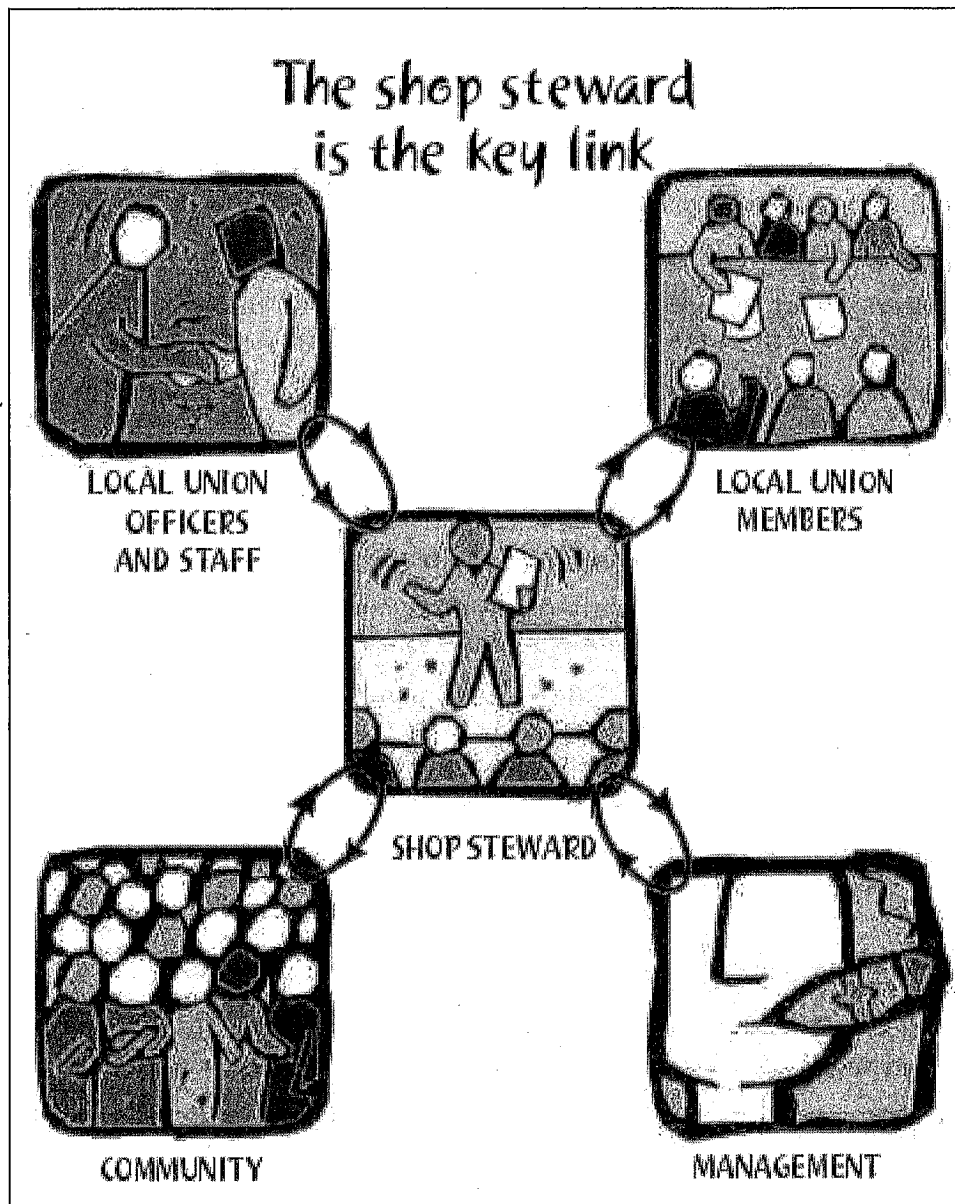
POLITICAL ACTION
(STATE AND FEDERAL)

REPRESENTATION
(BARGAINING, GRIEVANCES)

THE ROLES OF A UNION STEWARD

Where does the union steward fit into the work of the union?

As the graphic below depicts, the union steward is a key “link” between rank-and-file-members and all of the union’s functions. As a steward, you make collective bargaining agreements meaningful by helping your co-workers to implement and defend their rights on a day-to-day basis. You are in the best position to understand your co-workers’ concerns and priorities, organize them to take action, and communicate their priorities to other union leaders. You are in the best position to educate your co-workers about the union’s negotiating, organizing, and political goals.



Reprinted from the UNITE HERE website:
www.unitehere.org/resources/docs/STEWARDLINK.PDF

THE ROLES OF A UNION STEWARD

ORGANIZER

Your most important job is to build a united, active membership in your workplace. The union's ability to defend and improve conditions will always depend on the collective power of its membership.

- **Welcome new employees and invite them to join the union.**
- **Plan conversations with existing non-members to recruit them to join the union.**
- **Constantly find ways to involve more members in the activities of the union, such as solving workplace problems, supporting negotiations, or participating in political action.**

COMMUNICATOR & EDUCATOR

The most effective form of communication is one-on-one workplace discussion. Flyers, newsletters, emails, and meetings are all important, but the best way to inform members, get feedback, and recruit participation is through one-on-one discussions.

- **Listen and learn** about workers' problems and concerns
- **Teach workers about the union**, for example: rights under the contract, bargaining goals, or political efforts of the union that relate to workers' particular interests.
- **Always, challenge members to help win improvements**—be specific in your request.

PROBLEM-SOLVER

Stewards should be prepared with various strategies for solving problems.

Some legitimate workplace problems are grievances, some aren't. Some only affect one person, others affect a group. Different problems require one or more of the following:

- **Mobilizing members to solve problems as a group.** When issues affect large numbers of workers and have provoked strong worker reactions, they may be best handled through a group action, such as a petition, a "march on the boss," a button day, etc.
- **Holding informal discussions with management**, the steward, and affected workers.
- **Using the grievance procedure** to address violations of the contract.

LEADER

Actions speak louder than words—a steward sets the example as a good worker, a good union member, and a unifying advocate for workers' rights.

- **Build unity:** find common ground on problems that threaten to divide your co-workers.
- **Be an active participant in union decisions and actions:** contract campaigns, conventions, political action, and organizing efforts...and always bring a co-worker!
- **Maintain a good work record;** don't give management a valid excuse to discipline you.

THE ROLES OF A UNION STEWARD

THE STEWARD'S TOOLKIT

In order to carry out the many roles and duties of the steward, it is helpful to have certain resources close at hand. Consult with your chief steward or union representative to be sure you have everything you will need. Some specialized material may be at the union hall or in resource centers somewhere out of the steward's immediate grasp. Even so, every steward should have a "tool kit" with some basic components.

A SAMPLE TOOL KIT:

1. The contract
2. Summary plan descriptions for the insurance and pension plans
3. A current list of all workers you represent as steward, with contact information, member status, shift information, and job title
4. A seniority list of all workers you represent as steward
5. Grievance investigation forms and/or paper, and a pencil
6. Grievance forms
7. A grievance file for your department (or access to the Local's entire grievance file) for reference
8. A list of union officers, their locations, and phone numbers
9. Employer rules, regulations, and policies (including job descriptions, wage rates for the area you represent as steward)
10. A "New Member Kit" which might include: membership cards, check-off cards, contract, By-laws and Constitution, Union publications, history of the Local and the International Union
11. The Local Union Constitution and By-Laws
12. A guide to applicable labor laws
13. Unemployment compensation, workers' compensation, and other pertinent materials including address and phone number of the local compensation office; also, any available union resources for these topics

PART II:

ORGANIZING



Whether in Negotiations, Grievances, Political Action: A Union's Source of Power is an Active Membership.



"At the banquet table of nature, there are no reserved seats. You get what you can take, and you keep what you can hold. If you can't take anything, you won't get anything, and if you can't hold anything, you won't keep anything. And you can't take anything without organization." - A. Philip Randolph

How can stewards build an active membership?

As a steward, it is your job to be a leader. If your co-workers are not participating in the union, don't complain—make a plan to get them involved!

1. **Know your co-workers.** The more you understand about your co-workers, the better you will be able to perform all aspects of your steward role. It's not as easy as it seems! The following two pages offer suggestions for assessing your work area.
2. **Systematically recruit non-members and new employees.** Pages 9-11 offer tips for having effective conversations with non-members and new employees.
3. **Whenever possible, get workers involved in solving workplace problems.** The very best time to get people involved in the union is when a workplace problem personally affects them. If a problem affects a group of workers, consider organizing them to take part in collective actions that might help bring about a victory (petitions, buttons, surveys, large group meetings with management). If the problem does not lend itself to collective action, consider recruiting the grievant to participate in union committees or efforts relating to their concern.
4. **The more you involve members, the easier it becomes.** There are endless opportunities to involve members in the union. The same member who won't attend meetings might be willing to do political door-knocking. Find out what interests each member, and keep trying. If a member has one positive union experience, he/she is far more likely to get involved in the future. For example, involve members in:
 - ♦ **Political action**—political elections, signing postcards in support of pro-union laws, attending town-hall meetings with elected officials, or lobby days at the capitol.
 - ♦ **Negotiations**—contract surveys; petitions, rallies, or other actions to show support for the negotiating team; distributing updates; educating about new contract rights
 - ♦ **Representation**—health and safety or other committees, gathering information in preparation for labor-management meetings, mobilizing around grievances
 - ♦ **Organizing**—talking to non-members and new employees, or volunteering to help workers in non-union facilities form unions

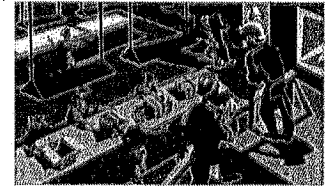
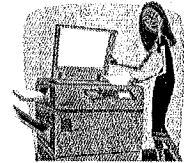
Don't expect everyone to get involved right away. If only a few people participate the first time, that's fine—now you have a core group to start with. Think about who you are missing and why. Each time you have an action, make a plan to involve a few more!

ORGANIZING: ASSESSING YOUR WORK AREA

WHAT DO YOU NEED TO KNOW ABOUT THE WORKERS YOU REPRESENT?

There are some obvious facts that are important to know:

- ◆ **Who are they?** Names, contact information
- ◆ **Where do they work?** Departments / work areas
- ◆ **When do they work?** Shift / work schedule
- ◆ **What do they do?** Job titles and descriptions
- ◆ **Are they union members?**
- ◆ **How long have they worked here?** Seniority



There is other, less obvious, but very useful information worth knowing:

- ◆ **What are the problems or goals that interest them at work?** For a single mother, scheduling problems might be her top priority. For a worker near retirement, the priority might be reasonable workloads. For a new, young worker, pay might be the top priority. Knowing what your co-workers care about helps you connect them to the union's efforts in ways that are meaningful to them.
- ◆ **What is their current opinion of the union?** If you are prioritizing your efforts, it's worth knowing how each non-member feels about the union. Focus on the people who seem to be undecided, rather than those who are vocally opposed to the union.
- ◆ **Which group of co-workers do they socialize with?** People often make decisions in groups, not just individually. If someone eats lunch each day with a group of co-workers who are very critical of the union, it will likely be difficult to get them involved. If they spend time with co-workers who are positive about the union, but haven't yet gotten involved themselves, talking to them should be a priority.
- ◆ **What community organizations are they involved with outside of work?** If a co-worker is very active in his church or neighborhood association, he might be willing to coordinate community outreach in support of a union goal or activity.

LISTS VS. CHARTS FOR ORGANIZING

Once you've gathered information about your co-workers, how do you keep track of it so you can use it to create an organizing plan? It's difficult to visualize the information you need in a simple list, so most organizers use charts to create a clear, visual plan for organizing.

Why are charts so helpful? Look at the examples on the following page, highlighting the difference between lists and charts...

ORGANIZING: ASSESSING YOUR WORK AREA

The following list provides basic information—who your co-workers are, and whether they are members. It tells you that you have more non-members than members...but that's about all it tells you.

Assembly Department List

Members:

Sara Hayes
Tommy Smith
Christy Brown
Jason Park
Kelly Mathes
Karen Brand
Missy Clark
Cindy Carnes
Carla Robinson
Sue Kelly
Bob Bett
Joe Johnson

Patty Lewis
Rosa Miller
Greg Ferguson
Rhonda Montgomery
Terri Lewis
Susan Struthers
LaTonya Marshall
Donna Craig
Sandy Courtney
Donald Jones

Non-Members

Paula Harris
Theresa Pool
Jerry Kopp
Nichole Parsons
Robin Allen
Vicki Lincoln
Gary Moore
Patty Petersen
Kim Roland
Lisa Stiver
JoAnn Park
Deb Clark

Matt Michaels
Jeff Lee
John Scott
Bill Meyer
Cathy Mitchell
Nancy Haas
Sue Valentine
Kelly LaPorte
Tom Carpenter
Nathan Wise
Shirley Eaton
Mandy Robinson
Brian Atkins

By charting out member status, rating whether non-members are undecided or opposed to the union, and identifying activists (stars) and friendship networks, you can see which areas are good target areas, which are not, and which conversations should come first.

Assembly Department – Shift, Rating, Friends

1	Union Member
2	Undecided
3	Anti-Union

22 Members / 48 Total

★ = Union Activist

1st Shift

1	Sara Hayes	★
1	Carla Robinson	★
1	Christy Brown	
1	Kelly Mathes	
1	Joe Johnson	★
1	Jason Park	
1	Tommy Smith	
1	Karen Brand	
1	Missy Clark	
2	Cathy Mitchell	
1	Cindy Carnes	
1	Sue Kelly	
2	Nancy Haas	
1	Bob Bett	
3	John Scott	
2	Bill Meyer	

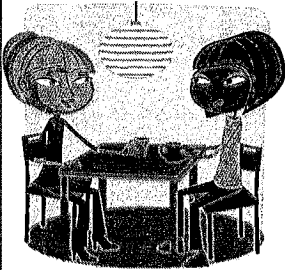
2nd Shift

3	Matt Michaels
3	Jeff Lee
3	Jerry Kopp
1	Patty Lewis
2	JoAnn Park
2	Deb Clark
1	Rosa Miller
3	Gary Moore
2	Patty Petersen
2	Kim Roland
2	Lisa Stiver
2	Paula Harris
2	Theresa Pool
2	Nichole Parsons
2	Robin Allen
2	Vicki Lincoln

3rd Shift

1	Rhonda Montgomery	
3	Kelly LaPorte	
3	Shirley Eaton	
3	Mandy Robinson	
1	Greg Ferguson	
3	Tom Carpenter	
3	Nathan Wise	
2	Brian Atkins	
3	Sue Valentine	
1	Terri Lewis	★
1	Susan Struthers	
1	LaTonya Marshall	
1	Donna Craig	
1	Sandy Courtney	
1	Donald Jones	
3	Renee Fahey	

ORGANIZING: SIGNING UP NON-MEMBERS



ADVANTAGES OF ONE-ON-ONE COMMUNICATION:

- ◆ Most people will not join or become active in the union unless they are asked in person.
- ◆ Talking one-on-one provides an opportunity to get feedback, answer questions, and hear what people are thinking about.

SAMPLE

ORGANIZING CONVERSATION AGENDA:

1) Introduction

Get the person's attention, show the urgency of the discussion.

Union negotiations with management are beginning soon! I'd like to hear your thoughts and let you know how negotiations work.

2) Ask Questions and Listen – Find out what the person cares about

People join because the union is linked to things they care about—find out what the person wants to change and why.

If you could improve anything at work, what would it be? How has that problem affected you and others you work with?

3) Educate - Connect the union to the person's concerns

Explain the union difference. Be sure to give specific examples of recent victories or current goals that relate to the person's issues and interests.

Have you tried to solve this problem alone? How did that go? As a union, we all stand together to solve problems and win gains. For example, just last week we won an important grievance about...

4) Move the Person to Action!

Explain why the person's involvement matters. Don't "beat around the bush" or drop hints – ask the person to join!

If the answer is no, find out why, and return to the issues mentioned earlier.

Be prepared to follow up with another action (upcoming meetings, joining committees) this person can take, to become an active member.

Do you think it will be easy to win the changes you mentioned? In fact, in the last negotiations, management proposed taking away rights we already have. If we want to move forward, we all need to stand together and do our part. The first step is to join the union. Here's your card!

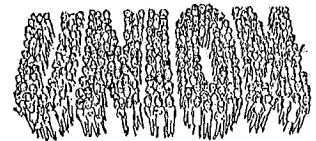
ORGANIZING: SIGNING UP NON-MEMBERS

HANDLING THE “YEAH, BUTS ...”

Ideas for Dealing with Common Objections

Why should I join the union when I get exactly the same wages and benefits as everyone else, without paying dues?

- ◆ **Actually, when you are not a member, all of us get less.** When we have fewer members, that tells management that some workers are not standing behind the union’s proposals for improvements, and won’t enforce the rights in our contract. When we all stand together to protect and improve our working conditions, we have the strength to accomplish more.
- ◆ **Only members have the right to make important decisions that affect you and your work,** such as deciding on priorities for negotiations, voting on the agreement, and choosing union officers. Do you really want other people making the decisions that affect you?
- ◆ **Our union also has many members-only benefits,** such as [give examples]



I can’t afford to pay dues.

- ◆ **Dues provide the resources we need to have an effective organization, so we can win higher pay, better benefits, and improved working conditions.** This is an independent, member-run organization—there are no corporate donors! It’s more expensive not to be a member in the long run. If our membership is low, we’ll be less able to improve our wages and benefits.
- ◆ **Dues are a great investment.** In the last negotiations, management proposed xxx for a raise, but we negotiated to receive xxx. That difference alone is much more than the cost of your dues. Without a union, we would have to accept whatever management gave us.



We don’t have any problems in my department. My supervisor is fair, and we get along great.

- ◆ **That’s good to hear—our union works hard to improve conditions and treatment,** because we all deserve a fair and respectful workplace. With a union contract, our rights are protected even if we transfer to a different area, or we get a new supervisor.
- ◆ **The union also gives us a voice in decisions that our supervisors can’t control** like pay, benefits, and company policies.



I’m not interested. I don’t have time to worry about the union.

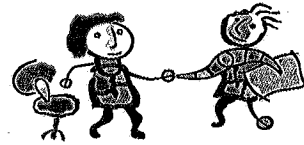
- ◆ **Are you interested in improving your wages, benefits, etc.?** The only way we have a chance to do this is by working together through the union.
- ◆ **It only takes a minute to join.** Other members and officers are working very hard to improve our workplace; the least the rest of us can do is support their efforts by joining.

ORGANIZING: WELCOMING NEW EMPLOYEES

APPROACHING NEW HIRES

When should you approach new workers?

Research Says: Immediately and Often!



The following lessons are drawn from Building More Effective Unions, by Paul F. Clark.

New employees form early and lasting impressions of the union.

Behavioral science research finds that people's earliest impressions and experiences with an organization are the most influential.

The best way to educate new employees is through both formal orientation programs and informal one-on-one discussions. In addition to workers' rights to discuss the union at work, many unions negotiate the right to have a presentation in management's new employee orientations. Studies show that **quality union orientation** programs and **frequent one-on-one conversations** with union members each have a measurable impact on increasing new employees' commitment to the union. Even if you've reached new hires in orientation, it's essential to follow up in person!

Planning is essential for a quality orientation program. Just holding a union orientation is not enough to influence new employees' commitment to the union, according to research. The **quality** of the program is the key factor, particularly the amount of relevant information conveyed. Unions have limited time in orientation programs, so it's important to plan an agenda that allows you to discuss priority topics within your time limits.

One-on-one discussions should happen early and often. Ideally, a union steward or activist should greet a new employee during his/her first day on the job, at the beginning of the workday. Overall, research suggests, the more **frequently** union activists have positive discussions with new employees, the greater their commitment to the union.

NEW EMPLOYEE ORIENTATION

Don't Lecture! Preparing Discussion Questions for New Employee Orientation

In general, meetings and conversations work best when participants can relate the information to their own experience. So, prepare questions to help draw out their experiences, such as:

- ◆ **What attracted you to this job?**
- ◆ **Have you worked in a union workplace before? What was the best thing about being union?**
- ◆ **Have you ever worked in a place that had poor working conditions?**
- ◆ **What is the difference between being in a union and non-union workplace?**



Source: SEIU 1199 New England Delegate Education Materials

PART III:

LEGAL RIGHTS

LEGAL RIGHTS: RIGHTS OF STEWARDS

RIGHTS OF A UNION STEWARD

- 1. To represent workers** in the early stages of the grievance procedure. (In fact, representing all workers fairly is your legal responsibility! See Duty of Fair Representation, p. 28)
- 2. To request and receive from management information** that you need to process an actual or potential grievance. (See Right to Information, p. 22)
- 3. To be present at an investigatory interview** that may lead to disciplinary action, if a worker requests a steward (see Weingarten Rights, p. 24)
- 4. To speak as management's equal when representing workers.** The law protects a steward's ability to speak freely when representing members in meetings with management (with certain restrictions— See Equality Rule, Limits of These Rights, p. 19)
- 5. To be protected from discrimination as a result of union activity.** A steward cannot be punished or threatened for grievance activity, or held to a higher work standard than other employees. (See No Retaliation or Discrimination, Equal Standard Rule, p. 19)

WHICH LAW APPLIES TO YOU?

Type of Worker	Applicable Labor Law
Private sector and US Postal Service Employees	National Labor Relations Act
Iowa state, county, city, & school district employees	Iowa Public Employee Relations Act
Federal employees	Federal Service Labor-Management Relations Statute

LEGAL RIGHTS: RIGHTS OF STEWARDS

WORKER RIGHTS UNDER U.S. LABOR LAW

Beginning with the 1935 National Labor Relations Act, labor law has recognized workers' rights to form and join unions, collectively bargain, and act collectively to improve conditions in the workplace. Similar rights apply to public sector workers under separate state and federal laws.

Your rights to carry out your duties as a steward are protected under the employee rights sections of the law reprinted below.

THE NATIONAL LABOR RELATIONS ACT (NLRA) — 1935 *APPLIES TO PRIVATE SECTOR WORKERS*

Sec. 7. [§ 157.] Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection ...

IOWA PUBLIC EMPLOYMENT RELATIONS ACT (PERA), CHAPTER 20, IOWA CODE — 1974 *APPLIES TO IOWA STATE, COUNTY, CITY, AND SCHOOL DISTRICT WORKERS*

20.8 Public Employee Rights. Public employees shall have the right to:

1. Organize, or form, join, or assist any employee organization.
2. Negotiate collectively through representatives of their own choosing.
3. Engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection insofar as any such activity is not prohibited by this chapter or any other law of the state.

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE (FSLMRS), TITLE 5, U.S. CODE — 1978 *APPLIES TO FEDERAL GOVERNMENT WORKERS*

§ 7102 Employees' Rights. Public employees shall have the right to:

1. Organize, or form, join, or assist any employee organization.
2. Negotiate collectively through representatives of their own choosing.
3. Engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection insofar as any such activity is not prohibited by this chapter or any other law of the state.

LEGAL RIGHTS: RIGHTS OF STEWARDS

LEGAL PROTECTIONS FOR STEWARDS

Whenever you act in your capacity as a union steward, you step out of your role as a worker and become an official union representative. This gives you special legal protections when dealing with management.

EQUALITY RULE

Whenever you deal with management as a steward, you do so *as an equal*. This means you have the right to openly disagree, question, and argue with management when necessary without being disciplined. Labor law recognizes that a steward cannot effectively represent workers unless s/he is able to freely communicate with management as an equal.

NO RETALIATION or DISCRIMINATION

Labor law specifically prohibits management from disciplining or intimidating you because of your union activity. For example, management cannot deny you promotions or other benefits, assign you extra work or undesirable jobs, or act in other ways that attempt to discourage you from doing your job as a steward.

EQUAL STANDARD RULE

It is also illegal for management to hold you to a higher standard than other workers or to harass you with extra supervision or stricter rules. As a steward, you should expect co-workers to look to you as an example—and you can protect yourself and the union's reputation by doing your job well. But being a steward does not allow management to expect more from you or discipline you more harshly than other workers.

LIMITS OF THESE RIGHTS

You should keep in mind that your speech and actions are legally protected only when you are acting *in your capacity as a steward*. The law may not protect you from discipline, for example, if you shout obscenities at a supervisor in front of other workers while on the job (this would likely be considered insubordination). Generally, the more formal the setting (a grievance meeting, arbitration hearing, etc.) and the clearer it is that you are acting as a union representative, the greater freedom of expression you have and the more legal protection.

LEGAL RIGHTS: RIGHTS OF STEWARDS

RIGHTS TO ORGANIZE, EDUCATE, AGITATE

Union stewards (and all workers!) have the legal right to:

- Talk to co-workers about the union in the workplace, unless working a job where absolutely no talking is allowed on any subject. However, management may legally limit conversations that occur in the presence of customers, patients, etc.
- Sign up new members at work
- Distribute and/or read union literature at work (during non-work times and in non-work areas, such as break or lunch rooms or parking lots)
- Initiate or participate in “concerted activities”—which can include a very wide range of actions conducted in or on behalf of a group of workers. Examples could include everything from wearing a union button, t-shirt, sticker, or armband, to circulating a union petition, talking to the boss about fixing a safety hazard, attending a rally or demonstration, handing out union newsletters in the break room, etc. Almost any non-violent, peaceful collective action of this sort is legally protected under labor law. In the private sector, concerted activity rights include the right to strike (when a contractual no-strike clause is not in effect).

YOUR CONTRACT MAY INCLUDE RIGHTS IN ADDITION TO THESE LEGAL PROTECTIONS, SUCH AS:

1. The right to circulate in your department.
2. Designated space to post union literature on workplace bulletin boards, and/or the right to take time to post notices on the bulletin board.
3. The right to meet with new hires during their orientation.
4. The right to unpaid or paid leave for union business.

LEGAL RIGHTS: RIGHTS OF STEWARDS

RIGHT TO REPRESENT WORKERS AND ENFORCE THE UNION CONTRACT

As a union steward, you have the legal right to:

- Aggressively enforce and police the contract
- Vigorously represent workers in the grievance process
- Initiate, solicit, file, and process grievances
- Speak out freely in enforcing the contract
- Investigate grievances or potential grievances, e.g., by interviewing witnesses (including management), visiting work sites where grievances occurred, and requesting relevant documents from management, etc.
- Conduct other union business (e.g., help members deal with workers' compensation claims, referrals to government agencies, community services, employee assistance, etc.)

YOUR CONTRACT MAY INCLUDE RIGHTS IN ADDITION TO THESE LEGAL PROTECTIONS, SUCH AS:

1. The right to investigate and handle grievances on paid time.
2. The right to circulate in your department.
3. The right to unpaid or paid leave for union business including education for union duties.
4. The right to be notified of bargaining unit member discipline.
5. The right to "superseniority"—greater seniority rights during layoffs and recalls to ensure continuity in contract enforcement.

LEGAL RIGHTS: RIGHTS TO INFORMATION

By law, the union has a broad right to receive relevant information from management at any stage of the grievance process, including investigations to determine whether a grievance exists. Management must provide you with this information upon request—this is considered part of management's "duty to bargain."

Examples of information you have the right to receive (as long as it is relevant to the particular grievance you are working on) include:

- Personnel files
- Attendance records
- Discipline records
- Job descriptions
- Performance reviews
- Payroll records
- Equipment specifications, injury logs, Material Safety Data Sheets, etc.
- Seniority lists
- Management correspondence
- Time study records
- Bargaining notes
- ...and much, much more

To document your requests for information, always make your request in writing. Date and sign your request and keep a copy for the union's files.

To: Hugh Head, Human Resources
From: Jane Union, Steward
Date: August 1, 2008
Re: Possible overtime grievance

To investigate a possible grievance in Dept. A, I request the following information:

- 1) Job descriptions for all second shift employees in Department A.
- 2) Current seniority list for Department A.
- 3) List of overtime assignments made in the past three months in Department A.

Please provide this information by August 8.

Sincerely,
Jane Union

WHAT IF MANAGEMENT REFUSES OR STALLS ON PROVIDING INFORMATION?

If management refuses or fails to provide information in a timely manner, the union may need to apply pressure through workplace actions or a grievance (if your contract also asserts your rights to information).

Management refusals of relevant information requests are violations of labor law and can also be the grounds for a labor board charge (see p. 27).

LEGAL RIGHTS: RIGHTS TO INFORMATION

WHAT IF MANAGEMENT CLAIMS INFORMATION IS CONFIDENTIAL OR PRIVATE?

In most cases, management is legally required to provide the union with any relevant information it possesses for employment purposes—including otherwise “private” employee information (health records, test scores, etc.). If there is a particular privacy concern, the employer and union may agree to remove individual names from certain data, or to have individuals sign a release authorizing the union’s access to the information. In cases where unions have challenged management claims that information is too “private” to release, labor boards consider the question on a case-by-case basis, and generally apply a balancing test weighing the union’s need for the information against employees’ privacy rights. Most employers are *not covered* by laws like the Privacy Act (which applies only to federal government agencies) or HIPAA (which applies only to health care providers and insurers). These laws *do not* give your employer rights to withhold relevant information from the union.

IS THERE ANY INFORMATION THE UNION CAN'T GET?

The union’s right to information is very broad and well-established, so you should feel confident in boldly asserting this right. The basic legal test is whether the information is relevant and readily available, so there are a few limits:

- An overly broad or large information request may be denied if it places an “undue burden” on management.
- The union may be required to pay costs for time or photocopies for large information requests (these costs may be bargained over, or the employer may agree to simply let the union look at the records).
- In the private sector, you usually don’t have rights to see the employer’s financial information (unless the employer claims an “inability to pay” during bargaining).
- Information on employees you *don’t* represent (e.g., supervisors outside the bargaining unit) is usually off limits, unless you can show clear relevance to a particular grievance (e.g., investigation of non-bargaining unit employees doing bargaining unit work).

LEGAL RIGHTS: WEINGARTEN RIGHTS

As a steward, you play an essential role in protecting members' Weingarten rights:

Workers called to an investigatory interview with management which they reasonably believe may lead to discipline are entitled to union representation.

The Weingarten rule was established by a 1975 Supreme Court case (*NLRB v. Weingarten*). It provides an important way for stewards to ensure that workers are not intimidated or coerced during closed-door sessions with management. Whenever a worker being questioned by management has a reasonable belief that discipline may result, the worker has the right to union representation, but, the worker must request union representation before or during the interview in order to exercise this right.

STEWARDS' RIGHTS IN WEINGARTEN MEETINGS INCLUDE:

- Asking management what is the reason for the interview.
- Meeting privately with the worker for a few minutes before questioning begins. You can counsel the worker to stay calm, to keep answers short and to the point, and to avoid volunteering extra information. Remind them that "anything you say can be used against you."
- Speaking during the interview.
- Objecting to intimidating or harassing questions.
- Asking for clarification of confusing questions.
- Warning a worker against losing his/her temper or making fatal admissions. A steward may also advise a worker against denying everything (giving the appearance of dishonesty) or informing on others.
- Providing information, at the end of questioning, to justify the worker's conduct.
- Serving as a witness, and taking careful notes.

WHAT IF MANAGEMENT VIOLATES WEINGARTEN RIGHTS?

Once a worker requests representation, management must either provide a steward or end the interview. If management denies a request for representation and proceeds with the interview, a worker has the right to refuse to answer questions. The best strategy for a worker in this situation is to stay put and repeat the request for a steward or remain quiet. Illegal refusal of a worker's Weingarten rights can be grounds for a labor board charge (see p. 22).

LIMITS ON WEINGARTEN RIGHTS:

- Workers do not have a right to request a *particular* union representative or to delay the interview until another steward is available. Once a steward has been provided, management is under no obligation to find a different representative for the worker.
- There is no legal right to representation in a meeting whose only purpose is to inform the worker of discipline management has already decided to impose.

LEGAL RIGHTS: WEINGARTEN RIGHTS

EDUCATING MEMBERS ABOUT WEINGARTEN RIGHTS

It is up to workers to request union representation, and to avoid answering questions in investigatory interviews without union representation. Even if an employer violates the Weingarten rule, any information gained during the interview may still be used to discipline the worker. For example, if the worker has asked for a union representative and been denied, any confessions or other statements made during the interview can still be grounds for disciplinary actions.

As a steward, the best way to ensure that management is respecting Weingarten rights is to educate your members about their rights to representation.

Many unions have created wallet-sized cards that are distributed to members, with the following information:

WEINGARTEN RIGHTS

(If called to an investigatory interview with management that could lead to discipline, read the following to management or present the card before the meeting starts):

“If this discussion could in any way lead to my being disciplined or terminated or have any effect on my personal working conditions, I respectfully request that my union representative, officer, or steward be present at this meeting. Without union representation, I choose not to participate in this discussion.”

CHECK YOUR CONTRACT!

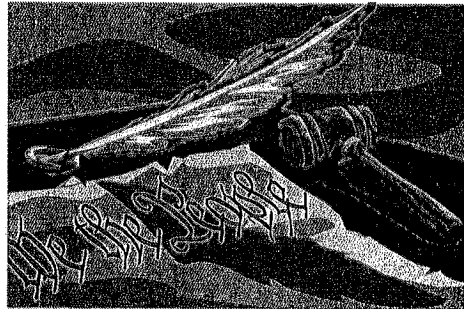
Some contracts contain language that improves on Weingarten rights, and requires management to automatically inform and/or include a steward whenever a worker is called into an investigatory interview.



LEGAL RIGHTS: PUBLIC EMPLOYEE RIGHTS

GARRITY RIGHTS (PUBLIC EMPLOYEES ONLY)

Unlike private sector workers, public employees have workplace rights derived from the U.S. Constitution. The Bill of Rights was written to protect us from abuses by the government. The 5th Amendment gives you the right to remain silent when questioned by the *police*, but it doesn't give you the right to remain silent when your *employer* asks you questions, even about possible crimes. However, if you are a public employee, your employer *is* the government, so the 5th Amendment *does* apply, according to the Supreme Court's 1967 decision in *Garrity v. New Jersey*, 385 U.S. 493.



The *Garrity* rule can be applied in two different ways:

A public employee can refuse to answer management's questions about possible criminal actions, relying on the 5th Amendment. If management accepts that refusal, then the worker may not be disciplined based on his refusal to answer the questions, although he may be disciplined based on other evidence that the already has.

On the other hand, if management orders the worker to answer the questions, under threat of discipline or discharge, then the public employee's answers cannot be used in any criminal proceedings, but they can be used as a basis for disciplining the public employee. It's up to the worker being investigated to decide if the risk of discipline for refusing to answer is worse than the risk of criminal charges that might result from answering the questions.



LEGAL RIGHTS: UNFAIR LABOR PRACTICES

WHAT IF MANAGEMENT VIOLATES YOUR LEGAL RIGHTS?

Labor law specifically prohibits management from interfering with any of the rights discussed in this section. If management violates one of these legal rights, the union can file a charge with the appropriate labor board.

Category of Employee	Applicable Labor Board	Charge
Private sector and U.S. Postal Service	National Labor Relations Board (NLRB) www.nlr.gov	Unfair Labor Practice (ULP)
Iowa state, county, municipal, school district employees	Iowa Public Employment Relations Board (PERB) iowaperb.iowa.gov	Prohibited Practice Complaint (PPC)
Federal employees	Federal Labor Relations Authority (FLRA) www.flra.gov	Unfair Labor Practice (ULP)

WHAT HAPPENS IF YOU FILE A CHARGE?

The labor board will consider the charge and, if it has merit, may investigate and eventually conduct hearings and issue a ruling. (Except PERB, which does not conduct investigations, and where it's up to the parties to collect their own evidence.) Under labor law, legal remedies for a violation are generally limited to ordering the employer to cease the behavior and post notice of its violation, and/or awarding back pay to workers who have lost wages due to illegal discipline for union-related activity. Board decisions can also be appealed in court.

Because the legal process of pursuing board charges can take a long time, it is often just one part of a broader union strategy to educate and mobilize members to pressure management to comply with the law and respect workers' rights.

If you suspect a violation of labor law, consult with your union officers and staff about it or contact your international union for further advice on how to respond.

WHAT IS THE DIFFERENCE BETWEEN A GRIEVANCE AND A LABOR BOARD CHARGE?

A grievance is a claim that management has violated your union contract. A labor board charge is a claim that management's action has violated labor law. In cases where a matter is covered under *both* your contract and labor law, you can file both a grievance and board charge—though the labor board will generally defer considering the charge until the union first pursues it under the grievance procedure.

LEGAL RIGHTS: DUTY OF FAIR REPRESENTATION

WHAT IS THE DUTY OF FAIR REPRESENTATION?

Once workers elect a union, the union becomes legally certified as the exclusive bargaining representative for all employees in the bargaining unit. Courts have ruled that this right to exclusive representation carries with it a duty to fairly represent all employees, members and non-members alike. This means the union is obligated to listen to and consider potential grievances raised by all workers in the bargaining unit, without discrimination or favoritism.

If a worker believes the union has failed to provide fair representation, s/he has the right to file a labor board charge against the union, often called a "DFR" claim or charge.

Does this mean the union has to take every grievance all the way to arbitration?

No, but it does mean that decisions on whether to file grievances and how far to pursue them should be made based on the merits of each case.

How can stewards help protect the union from DFR claims?

The duty of fair representation does not mean that you and other stewards are required to be perfect or always be right—it just requires that you do your best to be thorough and fair. When asked to rule on duty of fair representation claims, labor boards and courts generally consider whether the union's action was **arbitrary, discriminatory, or showed bad faith.**

General guidelines for protecting the union from DFR charges include:

- Fully investigate all possible grievances.
- Observe all grievance procedure time limits.
- Adopt a standard procedure for deciding whether to proceed with a grievance
- Keep the grievant informed; always make it clear that union decisions about the grievance are based on the merits of the case and the interests of the whole bargaining unit.

OTHER RIGHTS TO KNOW ABOUT

Stewards do not need to be experts on all aspects of law governing the workplace, but it is helpful to know enough to be able to detect when a violation might be occurring so that you can seek further information.

Stewards are often in a position to educate workers about their basic rights under these laws, to assist workers in defending their rights, and if necessary to file grievances or complaints with government agencies charged with enforcing these laws. Many of the workplace legal protections listed may also be covered (and are often exceeded) by language in your union contract. When this is the case, your grievance procedure may be the most effective way to uphold workers' rights under these laws.

For more information on individual laws listed here, contact the Labor Center or your international union.

IMPORTANT FEDERAL LAWS

Fair Labor Standards Act (FLSA)

Sets national minimum standards on minimum wage, child labor laws, and overtime pay. Enforced by the U.S. Department of Labor Wage and Hour Division.

Occupational Safety and Health Act (OSH Act)

Establishes the general duty of employers to provide a safe and health workplace, along with specific health and safety standards for various jobs and industries. Also gives workers rights to see the employer's required OSHA injury logs, and protects employee rights to refuse dangerous work under certain conditions. Enforced in Iowa by Iowa Occupational Safety and Health Enforcement (IOSHA).

Family and Medical Leave Act (FMLA)

Guarantees covered employees up to 12 weeks of unpaid leave per year for 1) treatment or recovery from a serious health condition, 2) care for a spouse, child, or parent with a serious health condition, 3) caring for a newborn, adopted, or newly-placed foster child. Enforced by the U.S. Department of Labor Wage and Hour Division.

LEGAL RIGHTS: ANTI-DISCRIMINATION LAWS

ANTI-DISCRIMINATION LAWS

With the exception of the Iowa Civil Rights Act, the laws listed below are enforced by both the Equal Opportunity Employment Commission and the Iowa Civil Rights Commission.

Age Discrimination in Employment Act (ADEA)

Forbids age discrimination, including mandatory retirement, against any employee or job applicant over 40, with some exceptions.

Americans with Disabilities Act (ADA)

Prohibits discrimination against qualified persons with disabilities and requires employers to make “reasonable accommodations” to allow disabled job applicants and employees to perform work for which they are qualified

Equal Pay Act

Requires equal pay for men and women for similar work in the same establishment.

Title VII of the Civil Rights Act

Prohibits employment discrimination in hiring, promotion, or job assignments on the basis of race, color, sex, national origin, or religion.

Iowa Civil Rights Act (state law—enforced by IA Civil Rights Commission only)

Prohibits employment discrimination based on race, color, creed, national origin, religion, sex, sexual orientation, gender identity, pregnancy, physical disability, mental disability, or age.



LEGAL RIGHTS: STATE WORKPLACE LAWS

IMPORTANT STATE LAWS

Iowa Workers' Compensation Act

Requires employers to provide financial compensation to workers who suffer work-related injuries or illnesses. Enforced by the Iowa Division of Workers' Compensation.

Iowa Drug Testing Law

Allows employers to test workers for drug or alcohol use within certain constraints (e.g., all employees must first be provided a written copy of drug testing policy). Note that under labor law, unions still maintain the right to bargain over any newly implemented drug testing policy.

Other workplace rights under state law

- **The right to pee** at work "when need" arises—clarified in a Jan. 21, 1998 memorandum from Iowa Labor Commissioner interpreting OSHA's requirements that employers provide restrooms.
- **The right to refuse job-related lie detector tests**—Iowa Code 730.4.
- **The right to see your own personnel records**—Iowa code 91B.1.

ENFORCEMENT AGENCY CONTACT INFORMATION

Iowa Occupational Safety and Health Enforcement (IOSHA)

(515) 242-5870, www.iowaworkforce.org/labor/iosh

U.S. Department of Labor, Wage and Hour Division

(515) 284-4625 (Des Moines District Office), www.dol.gov/esa/whd

Equal Employment Opportunity Commission

1-800-668-4000 (Chicago District Office), www.eeoc.gov

Iowa Civil Rights Commission

(515) 281-4121, 1-800-457-4416, www.iowa.gov/government/crc

Iowa Division of Workers' Compensation

(515) 281-5387, 1-800-JOB-IOWA, www.iowaworkforce.org/wc

PART IV:

**SOLVING PROBLEMS
AND HANDLING GRIEVANCES**

SOLVING PROBLEMS & HANDLING GRIEVANCES

SOLVING PROBLEMS AS A UNION STEWARD

Solving workplace problems while upholding and enforcing the union contract is the steward's primary responsibility. Your goal should always be to solve problems **at the lowest level possible**—ideally, before a grievance is ever filed.

A few other things to keep in mind when doing the challenging work of solving problems and handling grievances as a union steward:

- ◆ You are not alone! Seek and use the knowledge and support of your local union leadership, fellow stewards, and active members to help you solve problems.
- ◆ Problems are often solved and grievances often settled not just based on who has the strongest case or most logical arguments, but because of the support and strength the union has in the workplace.
- ◆ If you see or hear of a problem or a possible contract violation, you do not have to wait for workers to come forward to complain about it. You have the right to take action to require management to act fairly and follow the contract.
- ◆ Your job is to fight for your co-workers and defend their rights under the contract. This does not mean you will always like or even agree with every worker you represent, but it does mean you must often separate your personal feelings from your overall duty to the union and the contract. Remember that even in cases where a worker is clearly "guilty" of making a mistake, the union is still responsible for making sure that management has issued any discipline in a fair manner, and fighting for the worker's right to a chance to improve.

"SCREENING" PROBLEMS & IDENTIFYING GRIEVANCES

As a steward, you may receive all kinds of complaints from co-workers. Some of these will be complaints you can pursue through mobilizing members, meeting with management informally, or filing a grievance. After you hear a complaint and gather all the facts, you may decide it is a valid grievance or a potential legal claim (or both) or you may decide that the complaint is one that requires some other approach. In some cases, you may determine a complaint is a personal problem the union cannot address. The process of sorting out issues and possible solutions is sometimes called "screening" and is one of the most important functions of a steward.

See the chart on the next page for ideas on initially responding to new problems or complaints that come to you.

SOLVING PROBLEMS & HANDLING GRIEVANCES

OVERVIEW: HANDLING WORKPLACE PROBLEMS

GET THE FACTS.

- Identify the problem.
- Gather the 5 W's.
- Interview others involved.
- Request any needed documentation.
- **Watch timelines, in case a grievance may be necessary!**

ANALYZE THE FACTS.

Does the problem violate any of the following?

- The contract
- A work rule or regulation
- A policy or procedure
- Any federal, state, county, or municipal law
- Any health and safety regulation
- Past Practice

Did management's action constitute unfair or unequal treatment of a worker or group of workers?

Did management engage in discrimination or harassment?

Did the problem involve disciplinary action?

How many people are affected? Which work areas?

How strongly do people feel about this problem?

Does this problem merit further action? →

DETERMINE YOUR STRATEGY.

- Hold an informal meeting with management—decide which manager to approach, and with which worker (or group of workers?) Plan your questions, message, and acceptable remedies carefully.
- Is there a way to mobilize members to solve this problem? If so, what kind of mobilization might fit the problem?
- If a grievance should be filed, is there still a way to support the grievance through member actions, in the hopes of reaching a faster settlement?

IF THE CASE IS TOO WEAK

- Discuss this with the worker. Give the person a chance to offer any additional evidence.
- Help the worker understand the risks of pursuing a weak case, and encourage the worker to participate in any related committees or union efforts.

SOLVING PROBLEMS & HANDLING GRIEVANCES

Remember—a grievance is only one tool for solving problems.

Some problems will require you to have other strategies in your “toolbox.”



When should you consider mobilizing your co-workers to solve a problem?

Any time you are confronted with a problem, you should consider all the possible strategies for solving it. Will an informal meeting between the steward, the grievant and management likely resolve the problem? Is there a track record of solving this sort of problem through the grievance procedure? Should you file a grievance *and* mobilize workers to sign a petition so management takes the grievance more seriously? Should you organize a group of workers to meet with managers about the problem?

Below are just some of the situations in which mobilizing your co-workers may be more effective than simply filing a grievance:

- ◆ **When a large number of workers is affected by the problem.**
- ◆ **When the contract is unclear and/or doesn't address the problem.**
- ◆ **When managers are repeatedly violating the contract, or refusing to settle grievances in a timely manner.**
- ◆ **When workers are hesitating to file grievances alone, for fear of retaliation.**

How have other stewards mobilized their co-workers to solve problems?

- ◆ **“March on the Boss”**—organize a group of workers to meet with management
- ◆ **Petition**—create a unifying petition, and get a large percentage of workers to sign it
- ◆ **Group grievance**—depending on your contract language, file on behalf of the largest possible number of workers affected (could mean filing many individual grievances simultaneously)
- ◆ **Stickers or buttons**—organize a day when the majority of workers wears a sticker or button highlighting the problem
- ◆ **Involve allies**—for example, if a certain elected official could influence management to solve the problem, organize workers to meet with that official

SOLVING PROBLEMS & HANDLING GRIEVANCES

Below is an example of a form that you could use to consider whether and how to mobilize co-workers around a workplace problem:

Mobilizing to Solve Problems—Sample Form

of members in work area: _____

Issue _____

To whom is this issue important? _____

How many people are affected by this issue? _____

Can people be mobilized around this issue? Yes () No ()

Can this issue:

Increase the visibility of the Union ? Yes () No ()

Improve representation of underrepresented groups in the union?? Yes () No ()

Leadership already involved with this issue _____

Leadership who would need to get involved: _____

How can Pressure be exerted on:

Decision-makers in Management _____

Outside decision-makers: (government agencies, employer associations, public, etc.)

Remedy or Goal to be achieved

Is this issue winnable or partly winnable? Yes () No ()

Possible actions	Who will do?	When?
Grievance	_____	_____
Group meeting with decision-maker	_____	_____
Buttons, T-shirts	_____	_____
Newsletter article	_____	_____
Phone tree	_____	_____
Involving allies	_____	_____
Petition	_____	_____

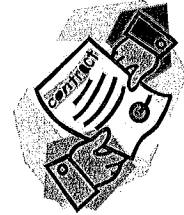
* Teresa Conrow, "Contract Servicing from an Organizing Model," *Labor Research Review* #17, p.48

SOLVING PROBLEMS & HANDLING GRIEVANCES

WHAT IS A GRIEVANCE?

Is it a grievance? How do you know?

It depends on what your contract says. A grievance may be defined as a contract violation, or a violation of laws, policies, or past practices. Most collective bargaining agreements include a definition of a grievance, usually in the first paragraph of the grievance procedure. Every contract is different, though, and your contract language may include other kinds of disputes or it may exclude certain issues from the definition of a grievance. For example:



“Disputes concerning benefits or eligibility under the pension plan described in Article 22 must be resolved through the appeals process described in the pension plan documents and are not subject to the grievance procedure.”

“Notwithstanding any other provision of this Agreement, the release of a probationary employee shall not be a grievable matter.”

Can you grieve violations of a company policy or work rule?

Again, it depends on how your contract defines a grievance. Does it specifically include or exclude those kinds of disputes? Other sections of the contract may also affect whether you can grieve a policy violation. For example:

“The Company retains the right to make and enforce reasonable rules and regulations, so long as those rules and regulations do not conflict with any provision of this Agreement.”

A clause like that arguably makes a company rule grievable, if (1) the rule is unreasonable or (2) it's being enforced in a way that is unreasonable or (3) if the rule conflicts with any provision of the contract.

Can you grieve violations of past practice?

In many cases, clear, consistent, long-established past practices are considered to be part of a contract even if they are not written down. If the past practice meets all the necessary criteria (see: p. 62) a violation of past practice can often be grieved. However, the right to grieve past practice violations may be affected by what your contract says. For example, a contract's management's rights clause might specifically allow management to make changes in past practices. Or the grievance definition may specifically include (or exclude) violations of past practice.

SOLVING PROBLEMS & HANDLING GRIEVANCES

Can you grieve violations of the law?

Usually, it depends on what your contract says. There are several ways that legal violations can also be grievances. A contract with a broad definition of a grievance may include legal violations:

“Any dispute concerning wages, hours or working conditions may be submitted to the grievance procedure for resolution.”

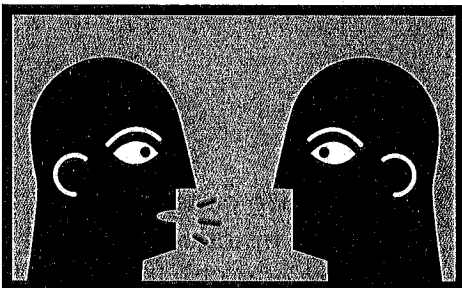


That kind of language is broad enough to include almost any workplace issue—including legal issues. For example, a worker who is assaulted by a supervisor can call the police and file a criminal complaint or sue the supervisor for civil damages. Under this language, the worker might also be able to file a grievance.

Some contracts also explicitly incorporate the law. Contract language that says management will “comply with all OSHA standards” or will “grant leave in conformity with the provisions of the Family and Medical Leave Act,” makes violations of these laws automatic violations of the contract.

The union steward’s primary responsibility is to represent workers’ rights under the contract. Although they are not legally *required* to do so, some unions choose to provide limited representation in other circumstances (workers’ compensation, disability or discrimination cases, or civil service appeals, for example). If the issue is important enough, a union may even initiate a court case to protect workers’ rights. Nobody expects you to be a lawyer, but it’s helpful to have some familiarity with the most important laws affecting the workplace. *See: pp. 29-31 for a short description of the most important workplace laws.* If you encounter a problem that looks like a possible legal violation, talk to your local leaders to see what the union’s policy is on dealing with such cases.

What if it’s *not* a problem the union can address?



The steward’s main duty is to enforce the contract and to identify issues that are appropriate for resolution through the grievance procedure or other union actions. But there are plenty of serious problems that aren’t grievances, legal issues, or even work-related—and stewards may still be in a position to offer help and support. For example, when a worker’s performance is suffering because he’s worried all the time about being able to pay the mortgage, a referral to a debt counselor or other community services may be the most important thing that a steward does.

SOLVING PROBLEMS & HANDLING GRIEVANCES

THE GRIEVANCE PROCEDURE

The grievance procedure is the process the union and employer have negotiated for use in resolving workplace disputes. How your particular grievance procedure works is spelled out in your contract.

Steps in the Grievance Procedure

Most grievance procedures consist of a series of meetings or "steps" designed to give the union an opportunity to contest some decision or action taken by management. Usually, the first step is a meeting between the grievant and the grievant's immediate supervisor. In some contracts, the first step is "informal," meaning that the grievance does not have to be in writing. Usually, the last step in the process is arbitration.

Between the first step and arbitration, most contracts have one or more intermediate steps. Generally, each step moves the dispute through the hierarchy of management and becomes increasingly more formal. If the second step is a meeting with the department head, for example, the third step might be a meeting with the plant manager. Although the first step might not even be in writing, in almost all contracts, the grievance must be in writing after that.

Grievance Procedure Time Limits

Almost every contract attaches time limits to the grievance procedure. A steward must know the time limits and be especially careful not to miss deadlines. **Failure to meet contractual time limits usually means that a grievance is "dead"** and can't be advanced to the next step, even if the grievance involved a very blatant contract violation. Time limits in most contracts dictate:

- ◆ Deadlines for filing the original grievance
- ◆ Deadlines for management's response to a grievance
- ◆ Deadlines for appealing a grievance from one step to the next.

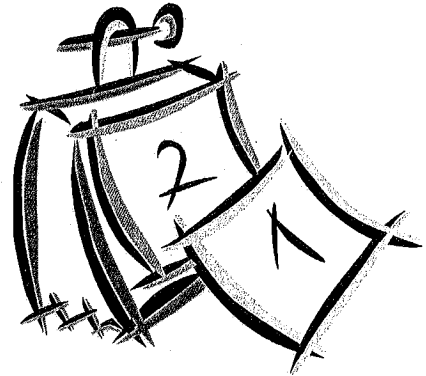
If a grievance isn't filed within the initial time limit, then the union has missed an opportunity to challenge management's action. Generally, the time allowed for filing a grievance starts running out from the date when a contract violation first happened or from when a worker or the union first *knew (or should have known)* about the contract violation.

Most contracts also set time limits for management's responses at each step of the process. For example, if the first step is an informal meeting between the grievant and his/her immediate supervisor, the contract might require a written response from the supervisor within ten days of the informal meeting. Once the union receives the written response, it typically has a few days to move the grievance to the next step. Or if management fails to answer (indicating a denial of the grievance), the union is usually still responsible for moving the grievance to the next step.

SOLVING PROBLEMS & HANDLING GRIEVANCES

DON'T LET TIME RUN OUT ON YOU!

Grievance procedure time limits are important, since failure to meet them can have serious consequences. Obviously, as a steward, you need to know the time limits of your grievance procedure and be very careful not to let the time limits run out. Failure to comply with the time limits of the grievance procedure can mean missing an opportunity to enforce the contract, but can also expose the union to a duty of fair representation charge from a disappointed grievant. Don't let that happen to you!



Use this table to check your own contract language and note what steps and time limits apply to your grievance procedure:

STEP OF GRIEVANCE PROCEDURE				
TIMELINE FOR UNION GRIEVANCE OR APPEAL				
WHO REPRESENTS UNION?				
WHO REPRESENTS MANAGEMENT?				
TIMELINE FOR MANAGEMENT RESPONSE				

SOLVING PROBLEMS & HANDLING GRIEVANCES

TYPES OF GRIEVANCES

It's important to know what kind of grievance you are dealing with. Most grievances can be classified into two main categories:

- ◆ **Discipline grievances**
- ◆ **Contract interpretation grievances**

There is a significant difference in how the two types of grievances are handled:

DISCIPLINE GRIEVANCES

Discipline grievances arise when management disciplines a worker (reprimanding, writing up, suspending, or firing someone, etc.) in a manner that the worker and union find to be unfair.

In disciplinary cases, the **burden of proof is on the employer** to show that the worker who was disciplined was guilty of misconduct and that the discipline was appropriate to the misconduct.

In discipline grievances, the issue usually is whether management had "just cause" to discipline the grievant. If a discipline grievance goes to arbitration, the arbitrator probably will analyze the case using "The Seven Tests of Just Cause." These tests can help you analyze discipline cases and develop strong arguments. **Go to pp. 64-65 for more on using the standards of "just cause" to fight Discipline Grievances.**

CONTRACT INTERPRETATION GRIEVANCES

Contract interpretation grievances can arise in relation to any section of the contract.

Contract interpretation grievances may involve disputes over pay, benefits, transfers, layoffs, promotions, overtime, scheduling, health and safety, or any other clause of your contract.

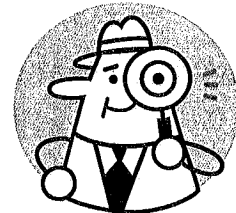
In contract interpretation cases, the **burden of proof is on the union** to show that a contract violation has occurred and that its interpretation of the contract is more plausible than the employer's.

If a contract interpretation case goes to arbitration, the arbitrator will use principles of contract interpretation to decide whose interpretation of the contract is the correct one. These principles can help you evaluate whether you have a strong case. **Go to pp. 60-61 for more tips on using these principles to fight Contract Language Grievances.**

SOLVING PROBLEMS & HANDLING GRIEVANCES

INVESTIGATING WORKPLACE PROBLEMS

Investigating a problem or potential grievance almost always begins with interviewing the people involved to collect as many facts as possible, and/or requesting necessary information from management. Structuring your research and interview questions around the "5 Ws" can help you get necessary information quickly.

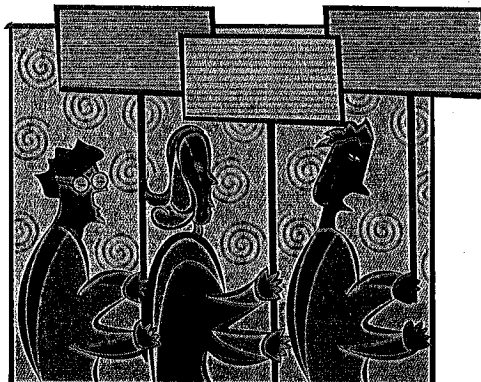


THE "5 Ws":

- WHO?** Identify by name the worker or group of workers, the immediate supervisor, and any other persons involved in the complaint (witnesses, co-workers, etc.)
- WHAT?** What exactly happened? What actions (or inactions) gave rise to the problem? Be specific!
- WHERE?** If an incident was involved, determine the precise location, department, and job site of the incident.
- WHEN?** Determine the time and the date of the incident. If it's an ongoing problem, try to determine when it started and when workers first learned of it.
- WHY?** Why is this incident a grievance? What section of the contract has been violated? And/or are past practice, management rules, or state or federal law being violated?

AND REMEMBER TO ALSO ASK YOURSELF THE "ONE H":

- HOW?** How can I involve the grievant and other members in solving this problem? How can I educate members about the problem and mobilize them to help the union win the potential grievance?



SOLVING PROBLEMS & HANDLING GRIEVANCES

INTERVIEWING TO GET THE FACTS

Who should you interview?

Interviews are almost always a primary source of information in investigating a potential grievance. Depending on the case, to get the “5 Ws” you may have to interview several sources:

- ◆ Grievant(s)
- ◆ Supervisor(s): It is important to try to get management's version of the facts before you actually fight the case. Interviewing management may also give you a better idea of their reasoning, which can help prepare you for presenting the grievance later on
- ◆ Fellow workers; witnesses
- ◆ Other union stewards, officers, or staff familiar with similar grievances
- ◆ Other experts if relevant (health care provider, health and safety officer, etc.)

Before the interview:

- ◆ Write your questions out ahead of time. Review the “5 Ws” and prepare questions that will help you answer each one. You should not plan to follow your scripted questions exactly, but having them written out will help make sure you cover them all at some point in the interview.
- ◆ Be ready to take notes and/or use an investigation fact sheet to keep track of information you collect (see pp. 46-48).
- ◆ Schedule a time/place for the interview when neither of you will be rushed.

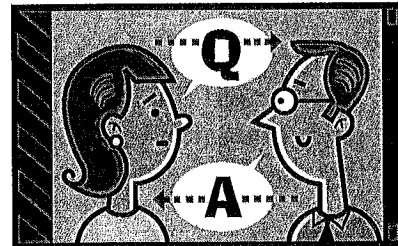
During the interview:

FIRST: Set the tone. If it's a first interview with a grievant, make it clear that you and the union are sincerely interested in what they have to say and in helping to solve the problem. Try to put the person at ease so that they can speak freely. When

interviewing management, explain your purpose, stick to the business of collecting facts and do your

best to avoid argument. Remember that at this point, you are just *investigating*.

This is not the time to lay out your case—that can and should be saved for later in the process if and when you have to hold a grievance meeting.



SECOND: Listen. Let the person tell her/his story in her/his own words. Even if parts of the story may seem irrelevant to you at first, you may get crucial information this way. It's especially important to show that you are willing to listen both to the facts of the case *and* the grievant's feelings about it. At this stage, you can keep your comments to a minimum of short responses to show you are following along (“I understand” or “I see what you mean”) and follow-up questions as necessary (“Could you tell me the exact words that person said?” or “Do you remember what time it was when that happened?”)

SOLVING PROBLEMS & HANDLING GRIEVANCES

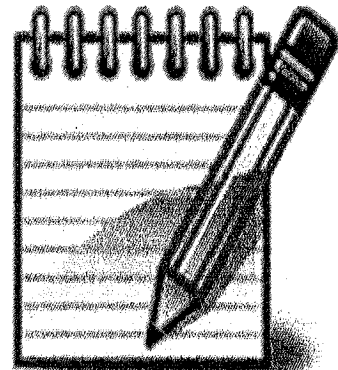
THIRD: Cover the “5 Ws.” This is the time to review your prepared questions and see what you still need to ask to complete your collection of facts. Now you should begin to direct the interview by asking follow-up questions. For example: “You said earlier that this happened right when everyone was returning from lunch. Can you tell me the names of any other workers who were present when this happened?”

FOURTH: Discuss possible solutions with the grievant. This is important first of all so that you know what the grievant might consider to be a fair settlement. Try to involve the grievant in coming up with ideas by asking, “What do you think would be an ideal solution to this problem?” You may have your own ideas already, but rather than just saying that you’ll “take care of it,” discussing solutions with the grievant can serve as an education about the need for members to be actively involved in the grievance process. Likewise, if you see problems with the case or know some remedies are probably out of reach, now is the time to educate the grievant about the grievance process and what the contract says.

THE IMPORTANCE OF TAKING NOTES

Research shows that humans remember only a fraction of what we hear. It is almost guaranteed that you will not remember all the facts correctly unless you write them down.

- ◆ Written notes from interviews often become essential to others in the union who may have to work on the grievance at later steps or at arbitration. Always date the notes of your conversations.
- ◆ Written notes help you keep track of conflicting or changing accounts. Notes can help you compare the facts as told by a grievant and a supervisor. Or if a supervisor tells one story one week, but changes it during your first grievance meeting, you have documentation of the discrepancy.
- ◆ Taking notes is part of being an “active listener” and is a concrete demonstration that you are taking seriously what someone says. To management, it also sends a signal that you consider the conversation to be “on the record.”
- ◆ Reviewing notes toward the end of an interview can help you check to see whether you have collected all of the “5 Ws.” You can also review notes with the grievant to confirm that you have recorded facts and statements accurately.



SOLVING PROBLEMS & HANDLING GRIEVANCES

OTHER SOURCES OF INFORMATION

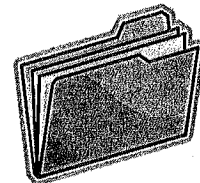
- ◆ **Management records and documents.** Remember that by law management must provide the union with information relevant to a grievance or grievance investigation. You can request almost any documents management possesses (personnel files, attendance records, health and safety records, job descriptions, etc., etc.) as long as you can argue that they are related to the case at hand. [Review rights and tips for requesting information: pp.22-23]
- ◆ **Union grievance files and past grievance settlements.** Your union's grievance history can help you see patterns in management's actions and/or give you ideas of how other stewards have dealt with similar problems. Knowing whether a "precedent" exists because the union has grieved the same issue in the past can be essential to your strategy. Prior union wins on the issue can help you prepare your case and support your argument for a quick settlement. Prior union losses on similar issues can signal that you need to strategize with others on how to fight the issue differently this time.
- ◆ **Arbitration standards and trends.** In some cases, it might help to research trends in arbitration cases that deal with similar issues. See Part V (p. 59) for more information on how familiarity with basic arbitration standards can help you prepare your arguments. For access to copies of published arbitration decisions, you can contact your international union, reference librarians at law libraries, or the University of Iowa Labor Center.
- ◆ **Laws and regulations.** If you think you are dealing with a problem that might include a violation of the law, consult with union officers and staff about how to respond. If you need to research a particular law, sources of help include your international union, reference librarians at law libraries, and the Labor Center.

KEEPING A GRIEVANCE FILE

Maintaining a file for each grievance you work on helps keep you organized and also serves as an important resource for your union. This file will be essential if others have to handle the case at later steps, and eventually will become part of the union's grievance files.

For each grievance you work on, your file might include:

- ◆ Completed investigation fact sheets (see next page).
- ◆ Dated notes from interviews and notes on your thoughts about the case.
- ◆ Copies of any information requests submitted to management and any documents you receive from management.
- ◆ Any other research or supporting evidence (past grievance settlements, arbitration cases, relevant laws or regulations, etc.).



SOLVING PROBLEMS & HANDLING GRIEVANCES

SAMPLE GRIEVANCE INVESTIGATION FACT SHEET

Grievance Fact Sheet

(This sheet is not intended to go to management. It is only to be used for the union's investigation of the grievance. It should be kept in the union's file relating to this grievance.)

Grievant Name _____ Phone _____

Department _____ Job _____

WHO is involved? _____

WHO from management is involved? _____

WHAT happened? (If there was an incident, **WHERE**, **WHEN**, and **WHO** saw it?)

WHAT else is important to this case? (Grievant's record, other history of the problem, questions of just cause, management's position, etc.?)

WHY is this a grievance? (contract violation, past practice, company rules, laws?)

WHAT do we want the company to do to make it right?

Steward _____ Date _____

SOLVING PROBLEMS & HANDLING GRIEVANCES

WRITING GRIEVANCES: THREE EASY STEPS

The key to writing a grievance is to keep it simple! Your union may have a particular form or format for stewards to use to write grievances—if so, use it! But whether you write the grievance on a prepared form or on a blank sheet of paper, almost every grievance contains just three key elements:

- ◆ What happened (what did management do or not do to cause the grievance)?
- ◆ Why is it a grievance?
- ◆ What does the union want management to do to solve the problem?

These three questions can almost always be answered using just three short sentences:

First Sentence: What happened?

What did management do (or fail to do) to cause the grievance, and when and/or where did they do it?

Example: On or about May 1, 2008, management unjustly reprimanded Ms. Jane Hardworker.

Second Sentence: Why is it a grievance?

What part of the contract (or law, policy, past practice, etc.) did management violate?

Example: This violates Article IV, Section 9, and all other relevant Articles of the contract.

Third Sentence: What do you want?

What remedy is the union seeking? What do you want management to do to fix the situation?

Example: The Union demands that management immediately revoke the reprimand, remove all references to the discipline from Ms. Hardworker's record, and make her whole in every other way.

DATE: May 2, 2008

FROM: A. Union Steward

TO: Manny Manager

On or about May 1, 2008, management unjustly reprimanded Ms. Jane Hardworker.

This violates Article IV, Section 9, and all other relevant Articles of the contract.

The Union demands that management immediately revoke the reprimand, remove all references to the discipline from Ms. Hardworker's record, and make her whole in every other way.

SOLVING PROBLEMS & HANDLING GRIEVANCES

KEY PRINCIPLES OF GRIEVANCE WRITING

When in doubt, leave it out!

Because you usually know a lot about a case and also have strong feelings about it, often the most challenging thing about writing a grievance is knowing what NOT to include.

Some things **DON'T belong** in the written grievance:

- ◆ Arguments (save these for the grievance meeting)
- ◆ Evidence you have collected to support your case (save this for making your case when you present the grievance)
- ◆ Personal theories, observations, and feelings (writing these down is not going to help your case and may distract from the essential points you need to make ; personal attacks may also make it harder for management to agree to the settlement you are seeking).

What should be eliminated from this first draft of a written grievance?

The second shift clerk job should have been awarded to Orville Bush. I know for a fact after talking to Orville that Pete Smith is an unfair supervisor and didn't give Orville the job because he hates Orville ever since he filed a work comp claim last year. Because of this and because Pete is an idiot who doesn't understand the contract, he refused to give Orville the job. This violates our contract language on job bids and seniority and the union will not stand for it anymore. My research shows that this is the third time this year that Pete Smith has tried to screw someone out of a job transfer. We demand that you give Orville the job he deserves and that Pete Smith be reprimanded for violating the contract once again.

The same grievance could be written in these three short sentences:

On or about May 1, 2005, management refused to award Orville Bush (clock #54289), the second shift clerk job.

This violates Article 3, Section 2 of the contract, and all other relevant articles.

The union expects management to make Orville Bush whole in every way, including but not limited to immediately transferring him to the second shift clerk job and issuing back pay for the hourly rate difference for time missed on the clerk job, including overtime.

Be specific ... but leave your options open:

- ◆ Include specific names, dates, and numbers of contract articles. Spell out exactly what remedy the union wants.
- ◆ But also use language that will allow flexibility later on. You never know what you may find out, or what may change, later in the grievance process. Include phrases that will allow you to expand or make corrections if necessary. This is important because if your case eventually goes to arbitration and you have limited the scope to a certain contract article, that is what the arbitrator must focus on. The same goes for remedies: if you win, your award may be limited to only what you have asked for.
- ◆ See the next page for ideas of useful phrases to use.

SOLVING PROBLEMS & HANDLING GRIEVANCES

USEFUL PHRASES TO USE IN WRITING GRIEVANCES

1) Useful phrases to use in sentence one: What happened?

“On or about” or “Beginning on or about” Examples:

*On or about November 4, 2008, management unjustly terminated Joe Jones.
Beginning on or about March 23, 2006, management failed to offer overtime to the most senior qualified employees on second shift.*

“and all other affected employees” Example:

On or about July 17, 2009, supervisors removed required guards on fan blades near the work stations of Bob Gold, Mary Silver, and all other affected employees.”

2) Useful phrases to use in sentence two: Why is it a grievance?

“all other relevant articles” or “any and all other articles that may apply” or “all other relevant contract articles, management policies, and state and federal laws”

*This violates Article 2, Section 1 of the collective bargaining agreement, and any and all other articles that may apply.
This violates contract Article 17 (“Health and Safety”), OSHA standard 1910.212(a)(5), and all other relevant contract articles, management policies, and state and federal laws.*

“including, but not limited to” Example:

This violates master agreement articles, including but not limited to, Article 1, Article 11, and Article 12.

3) Useful phrases to us in sentence three: What do you want?

“make whole in every way” Example:

The union demands that management immediately reinstate Mr. Jones with back pay, remove the record of this discipline from his file, and otherwise make him whole in every way.

“including, but not limited to” Example:

The union expects management to take immediate actions including, but not limited to, re-posting for bids on the job in question and posting all future job notices in full compliance with Article 12 of the contract.

“and any other appropriate relief” Example:

The union requests that management make Ms. Hardworker whole by revoking the reprimand, removing it from her file, and any other appropriate relief.

SOLVING PROBLEMS & HANDLING GRIEVANCES

PREPARING TO MEET WITH MANAGEMENT

Prepare your facts and arguments. Review all of the evidence you have collected and decide what your strongest arguments are in this case. It's better to have one or two strong, convincing arguments (and to keep repeating them) than to have five weak ones. Write down the arguments and facts you intend to present. Think about how you can argue for your remedy: why would it be in everyone's interest to settle this now?

Union Arguments	Supporting facts
_____	_____
_____	_____
_____	_____

Anticipate management's position. You may have a good idea already (from your prior interviews) of what management's position is. How will you respond to their claims? What remedies might management offer and how will you respond?

Management Arguments	Union Responses
_____	_____
_____	_____

Prepare the grievant. Prepare the grievant for what will happen at the meeting, reviewing what you plan to say and what you anticipate management might say. Make it clear that you will do most of the talking and that you need to remain in charge of the meeting. If you plan to have the grievant speak to some aspect of the case, rehearse this ahead of time. Remind the grievant not to volunteer extra information, and make sure the grievant will be able to control her/his emotions during the meeting. Plan a nonverbal signal to use in case either of you decides you need to pause for a caucus during the meeting.

Know your remedy and settlement range. Both in format and in terms of how it may legally affect your contract, a grievance meeting is a form of bargaining—and you should prepare just as you would for contract negotiations. Review remedy options with the grievant and consult union leadership about acceptable settlements that will not undermine your contract. Explain to the grievant the remedy the union is asking for and what a realistic outcome is. Have a “settlement range” in mind; make sure you know what would be a satisfactory bottom line for the grievant and, above all, the union before you agree to anything.

SOLVING PROBLEMS & HANDLING GRIEVANCES

MEETING WITH MANAGEMENT

The steward, not the grievant, should present the grievance. The Steward's role in a grievance meeting is to be an advocate for the grievant. This meeting is an important opportunity to convince management to change the decision that created the grievance. Very few managers want to admit that they made a mistake, so this can be a difficult task. The steward will generally have more experience than the grievant in presenting a strong argument, and keeping the meeting "on track."

The steward should decide whether it is helpful to have the grievant attend the grievance meeting. If the grievant does attend, ordinarily the grievant should be quiet unless the steward calls on the grievant to talk. Remember, a grievance meeting is not part of the investigation process. Management does not have any "right" to question the grievant during the meeting. If management tries to cross-examine the grievant, the steward should intervene to protect the grievant, perhaps by ending the meeting.

Frame the issue. At the beginning of the meeting, focus the discussion by formally summarizing what the union believes the grievance is about. This can help keep the discussion centered on relevant contract language, rather than the personalities involved. The issue should be stated in the form of the question that the Union wants to address in the grievance meeting.

"The issue in this grievance is whether management violated the contract by not awarding the second shift clerk job to Orville Bush."



Present the grievance with a clear, logical argument. If you present the grievance in a way that makes it sound inevitable that the union will win eventually, a manager may be convinced to resolve the problem now, rather than have an arbitrator decide the case later in a way that is more costly and embarrassing.

- ◆ State the issue of the case (see "frame the issue" above)
- ◆ Present the main points of your argument.
- ◆ Include a reference to the relevant contract language

"Article 3, Section 2 of the contract, requires that all vacancies be awarded to the qualified bidder with the most seniority. Orville Bush was the most senior bidder. And he has all the qualifications outlined in the job description. The job was improperly awarded to another bidder with similar qualifications, but less seniority."

Review the facts that support your argument in more detail. If you know what management's case will be, point out the flaws in their argument.

Conclude the meeting with a description of your requested remedy.

SOLVING PROBLEMS & HANDLING GRIEVANCES

TIPS FOR MEETING WITH MANAGEMENT

Act as an equal. Grievance meetings should be a meeting between two parties on equal footing. Remember that when you are acting as a steward your rights to speak freely with management, defend the rights of your members, and uphold your contract are legally protected (review rights discussed on pp. 17-21). Ask yourself: "Would this supervisor treat another management person this way?" If not, then you should not expect to be treated that way when acting as a steward, and may have to do extra work to command respect and assert your rights to be treated as an equal when handling grievances.

Remember your goal. You are striving to settle the grievance at the lowest level possible. Start out by assuming you have a chance to convince everyone involved that it would be best to resolve the issue quickly. At early stages, try to avoid backing management into a corner or putting them on the defensive; leave them an "out" so that they have room to cooperate in negotiating a settlement with you.

Stick to the point and take charge of the meeting. If a supervisor wants to shift the discussion to unrelated issues, insist that you return to the grievance at hand. If management wants to stall with too much small talk or pauses for interruptions (phone calls, etc.), firmly remind them why you are there and get the meeting back on track.

Maintain a united front. Avoid ever having an argument among union people in the presence of management. Call a recess if needed. Make sure management knows that union membership is united behind the grievance.

Take notes to record what management says.

Repeat your best arguments and facts. Don't let management derail you or bait you into a defensive position on weaker aspects of your case. If you get off track, return to your best arguments. It's ok, and in fact usually effective to repeat yourself.

Disagree with dignity. Avoid getting excited, angry, or hostile. On rare occasions, when planned and strategically timed, showing such emotion might be useful to make a point. But usually, losing your cool means you have also lost control of the meeting.

Be ready to end or suspend the meeting. If unexpected information (from the grievant or the supervisor) crops up during the meeting, you may need to call a caucus to discuss it with the grievant or collect your thoughts. If the information radically alters the case, you may need to ask to postpone the meeting so you can better prepare. If you're getting no response or only "no" as a response from management, use your judgment on when the meeting has become unproductive and end it by indicating you intend to move the case on to the next step of the process.

SOLVING PROBLEMS & HANDLING GRIEVANCES

USEFUL QUESTIONS WHEN MANAGEMENT SAYS "NO"

Since it is nearly always in the union's best interest to reach a fair settlement early in the process, try to get as much information as possible about management's position when they are refusing to settle a grievance. You may discover that they don't fully understand the grievance, or you might identify new settlement options.

The following examples from "The Union Steward's Complete Guide, 2nd Edition," provide suggestions for getting management to say more than "no" to your grievances:

- ♦ **Do you understand the problem we are trying to solve with our remedy? How do you see that problem?** Maybe the supervisor isn't clear on the real issue. Getting him or her to state it may open the door to a resolution.
- ♦ **Can you explain how you arrived at that position?** If you understand management's logic you may be able to more successfully counter their arguments. Or maybe a particular supervisor misunderstands or doesn't know about a basic fact in the case.
- ♦ **What about our proposed remedy do you have a problem with?** Maybe the remedy's fine with the supervisor but one element sticks in his/her craw. You might be able to modify the one point, as long as your basic issue is dealt with.
- ♦ **Do you have other suggestions for how we can resolve this?** Who knows, maybe s/he's got an approach that will be acceptable, or at least a place from which to start.
- ♦ **What are you concerned would happen if you agreed to our proposed remedy?** The answer may surprise you: it may be something you can assure management is not in the cards. They may be overestimating the impact. Or they may misunderstand the true nature of the remedy you're seeking.
- ♦ **This is very important to us. Are you saying you have no flexibility at all?** If a supervisor indicates flexibility, you'll know you've got some room to operate. If they don't, at least you'll know you've hit the wall and can prepare for the next step.

Source: The Union Steward's Complete Guide, 2nd Ed., ed. David Prosten, pp. 56-57.

PART V:

ARBITRATION BASICS FOR STEWARDS

ARBITRATION BASICS FOR STEWARDS

Thinking Like An Arbitrator

Arbitration is the final step of most grievance procedures. Even though you may not be directly involved in arbitration hearings, it can be very helpful to you as a steward to understand how arbitration works. Thinking "like an arbitrator" can help you evaluate whether you have a weak grievance or a strong one. Incorporating the kinds of "standards" that arbitrators use into your grievance presentations may strengthen your arguments. It certainly will signal to management that you have done your homework and have a strong case that you are prepared to take to the next step.

What is arbitration?

In an arbitration hearing, a third party hears arguments and evidence from both the union and management and issues a decision. Arbitration was intended to be a simple and informal way for unions and employers to resolve disputes without going to court, but over the years the process has become more formal. Usually, an arbitrator conducts a hearing in much the same way a judge would conduct a trial, although the atmosphere is more relaxed and the rules aren't as formal.



Two key principles of arbitration make it very different from court, however:

- ◆ Arbitration is very specific to your contract. An arbitrator's decision interpreting one contract does not establish any "precedent" for any other contract.
- ◆ An arbitrator's decision is almost always final and "binding." This means it cannot be appealed to court unless the arbitrator obviously engaged in serious misconduct, issued an illegal award or made a decision based on something other than the contract.

Where do arbitrators come from?

Arbitrators are supposed to be neutral people who have some knowledge of labor relations but are not connected to the union or the company. There are no specific qualifications for being an arbitrator. Many arbitrators are lawyers or college professors, retired human resource managers, or former union representatives. Your contract may spell out a process that your union and management must follow to select an arbitrator. Arbitrators are usually selected from a list provided by a government agency (e.g., the Federal Mediation and Conciliation Service, Public Employment Relations Board), or a private company (American Arbitration Association). Often both parties take turns eliminating names from the list until only one name remains.

ARBITRATION: CONTRACT LANGUAGE CASES

How Do Arbitrators Decide A Case?

The arbitrator's mission is to resolve disputes by interpreting what the contract says. There are no hard and fast rules about how an arbitrator should interpret contract language. However, over the years there are certain "standards" that have become generally accepted by most arbitrators. That doesn't mean every arbitrator in every case will follow them, but these standards do offer guidance in trying to predict how an arbitrator will decide a particular case.

For more information:
The most widely recognized authority on trends and standards in arbitration is a book called *How Arbitration Works*, Elkouri & Elkouri, 6th Ed., 2003.



ARBITRATORS' STANDARDS FOR INTERPRETING CONTRACT LANGUAGE

Arbitrators generally attempt to interpret contract language based on what the union and management intended when they negotiated the language. What do arbitrators look for in trying to determine what the parties intended?

1. Clear and unambiguous contract language. If the meaning and intent of the language is clear on its face, then the arbitrator does not need to consider anything outside of the agreement. If the language is *not* clear, *then* the arbitrator may consider other evidence to clarify the intent of the parties. It's up to the arbitrator to decide whether language is ambiguous (has more than one possible meaning).

2. Bargaining history. One of the best ways to determine the intent of contract language is to look at how and why it was originally negotiated. Was there a particular problem the parties were trying to solve? Was the current language written to replace earlier language? At the time the language was drafted, did the parties discuss specific examples of how the language would be applied? Bargaining notes, copies of draft proposals and even personal recollections all can be presented as evidence at the arbitration hearing in order to show how the language was intended to work.

3. Past practice. Most arbitrators believe that how language has been interpreted in the past can help determine how it should be interpreted in a present dispute. Past practice is simply a pattern of handling a certain situation in a certain way. The idea is that if there is a clear and consistent way of doing things that has existed over a period of time and that no one has objected to, then the union and the company have agreed to that way of doing things, through their actions if not in written words. (See pp. 62-63 for a more detailed discussion of past practice.)

4. Ordinary meaning. Words should be given their ordinary and popularly accepted meanings, unless something indicates that the parties intended some special or technical meaning. A reliable dictionary definition may be used.

ARBITRATION: CONTRACT LANGUAGE CASES

5. Interpretation of the contract as a whole. The contract should be interpreted as a whole. In other words, if there are two ways to interpret a piece of language and one interpretation contradicts some other part of the contract, an arbitrator is likely to favor the interpretation that is consistent with other parts of the contract.

6. Interpretation in light of the law. If one interpretation of a piece of language is consistent with the law and the other is not, then the arbitrator is likely to choose the interpretation that is consistent with the law.

7. To express one thing is to exclude others. Making a list implies the parties intended to exclude things not included on the list. For example:

"For purposes of job bidding, the term 'qualifications' means prior experience, training and seniority."

"The following offenses are considered so severe that they will result in immediate discharge for the first offense and there shall be no progressive discipline requirement: theft, fighting, drinking on the job, or insubordination."

In these examples, an arbitrator would probably reject a claim that having a college degree could be considered in evaluating a job bidder's qualifications or that progressive discipline didn't apply in cases of excessive absenteeism.

8. Interpretation against the party who drafted the language. The purpose of this rule is to encourage careful writing. The party that makes a proposal must carefully write the proposal in order to make the language as clear as possible. If the proposal is still ambiguous after all other rules of interpretation have been considered, then an arbitrator is more likely to rule against the party that drafted the language, and to give the benefit of the doubt to the party that accepted the language.

9. Experience and training of the negotiators. The more experienced and knowledgeable the negotiators who bargained the agreement, the more likely is the arbitrator to apply a strict interpretation of ambiguous language—under the assumption that experienced negotiators knew what they were doing when they agreed to the language.

10. Specific prevails over general. When both general provisions and specific provisions concern the same thing, the specific provisions will generally prevail.

11. Newer language generally prevails over older language. If there is an irreconcilable difference between two contract provisions, the newer language will be given effect over the older language.

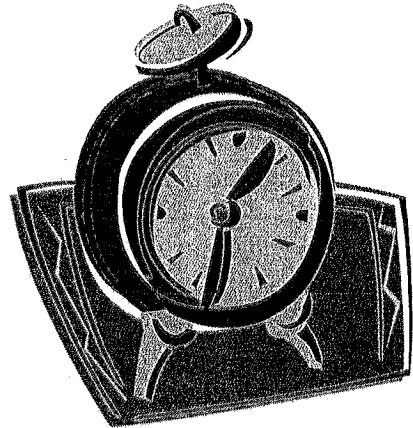
12. Avoidance of harsh, absurd or nonsensical results. If one interpretation makes sense and the other interpretation is ridiculous, the rational interpretation is preferred. Keep in mind, however, that what the arbitrator thinks is absurd may not be the same as your opinion.

ARBITRATION: PAST PRACTICE CASES

WHAT MAKES SOMETHING A BINDING PAST PRACTICE?

Many arbitrators believe that in order for a past practice to be binding, it must meet five criteria.

1) Longevity/Duration A past practice has to have existed for a significant amount of time, over years rather than days. Some arbitrators think that a past practice should have spanned at least two contracts, so that it's clear that it isn't something that either party has attempted to change in bargaining.



2) Repetition A single occurrence doesn't make a past practice. There must be a well-established pattern in order to show a binding past practice. How many repetitions are required? That depends on how often the situation arises.

3) Consistency If the situation is handled differently each time, there isn't a consistent pattern. It's only when a consistent treatment of the issue can be shown that you have a past practice. On the other hand, 100% consistency is not always required. Especially if there are many, many consistent repetitions, a single exception may not be enough to overcome the pattern.

4) Knowledge The essential idea of a past practice is that the parties have, through their actions, agreed to it. If either party is unaware of the practice, then it's hard to argue that they have agreed to it. If some workers have been leaving work 30 minutes early every Friday for the last 20 years, it's still not a binding past practice unless management knew about it. Similarly, even if management has consistently deducted \$50 from the paycheck of anyone who caused a lost-time injury, that past practice is not binding unless the union was aware of it.

5) Acceptance Again, the key element is a signal of agreement. If people have been leaving work early on Friday for 20 years but management has disciplined everyone that they've caught, then the company hasn't accepted the past practice. Similarly, if the union has grieved or otherwise objected to an ongoing practice, then the union hasn't accepted it. Attempts to try to change the practice during bargaining can also be signals of non-acceptance.

HOW IS PAST PRACTICE USED?

Past practice which clarifies contract language.

Past practice is most commonly used by arbitrators to give meaning to contract terms that are vague or unclear. For example, when the grievance procedure requires the grievance to be filed within ten days, does that mean working days or calendar days? If there is a clear and consistent pattern of only counting working days, then most arbitrators would accept that past practice as providing guidance as to the intent of the parties.

Past practice when the contract is silent.

Past practice is less frequently used to “create” new contract terms where the contract is silent on a particular issue. Is the company required to let a steward meet with a worker to discuss a potential grievance “on the clock”? Even if your contract is completely silent on that issue, the answer could be “yes” if you can show that this has been happening for many years and that management was aware of the practice and never objected to it. Keep in mind, though, that some arbitrators are very reluctant let unions create new “rights” through past practice, reasoning that if you want these rights, you should negotiate them in bargaining.

Past practice which contradicts the contract.

The rarest and most difficult use of past practice is to contradict existing contract language. There are a few cases where arbitrators have accepted the argument that a clear and consistent past practice is a silent agreement to “modify” the contract language. If the contract requires a grievance to be filed within 10 days, but management has never enforced that requirement in 30 years, even though the union has filed lots of “late” grievances, does that mean that there is no time limit? Don’t count on it! Most arbitrators will still enforce the contract as it is written. If “clear and unambiguous” language exists, they may not even want to hear any evidence about past practice. In such a situation, if past practice is your only argument, you could still argue it and hope for the right arbitrator, but the odds are against you.



ARBITRATION: DISCIPLINE CASES

JUST CAUSE: THE UNION ADVANTAGE

Without a union contract, most workers have very little job security. In Iowa, workers who are not covered by a contract are considered to be "at will" employees. That means they can be fired at any time for any reason or for no reason at all, unless their discharge violates some specific law (e.g., the Civil Rights Act or National Labor Relations Act).

"Just cause" is a concept that is unique to union contracts. The vast majority of union contracts include a clause requiring that management must have "just cause" to discipline an

"Management shall not discipline or discharge employees without just cause."

A typical contract provision.

employee. (Exceptions in Iowa are some public sector workers whose contracts don't include "just cause" language because it isn't a mandatory topic of bargaining under Iowa's Public Employment Relations Act.) There's nothing magical about these exact words. Arbitrators customarily treat terms such as, "sufficient cause," "proper cause," "justifiable cause" or "for cause" in the same manner as the term "just cause".

ARBITRATORS' STANDARDS FOR DISCIPLINE AND DISCHARGE

There is substantial agreement among arbitrators on how to interpret what "just cause" means. Most arbitrators have accepted the "Seven Tests of Just Cause," which come from a 1966 arbitration case called Enterprise Wire Co. In that decision, arbitrator Carroll R. Daugherty offered seven tests or questions for evaluating just cause. Daugherty's "seven tests" have since become the general guide used by most arbitrators in determining whether an employee was justly disciplined or discharged. (Of course, every arbitrator still uses his/her own interpretation of what these tests mean).

THE SEVEN TESTS OF JUST CAUSE

- 1) **Prior warning:** Did management adequately warn the worker (orally or in writing) of the consequences of the conduct?
- 2) **Reasonable rule:** Was management's rule reasonably related to safe or efficient workplace operations?
- 3) **Adequate investigation:** Did management conduct a complete investigation before issuing discipline?
- 4) **Fair investigation:** Was management's investigation fair and objective?
- 5) **Adequate proof of guilt:** Did management's investigation show substantial evidence or proof of guilt?
- 6) **Equal treatment:** Did management apply rules, orders, and discipline evenhandedly and without discrimination?
- 7) **Fair penalty:** Was the discipline reasonably related to the seriousness of the offense and the worker's past record?

ARBITRATION: DISCIPLINE CASES

USING THE SEVEN TESTS OF JUST CAUSE

In discipline grievances, the burden of proof is on the employer. It is not the union's responsibility to prove that the worker made no mistakes; instead the employer has to justify its action. The "Seven Tests" of just cause are common standards arbitrators use to judge whether the discipline violated the contract. The following worksheet can help you use the seven tests of just cause to plan your investigation and prepare arguments for a discipline or discharge grievance:

<p align="center">Seven Tests of Just Cause</p>	<p align="center">Can management prove it met each of these tests? What will you argue in this case?</p>
<p>1. PRIOR WARNING Did management adequately warn the employee of the disciplinary consequences of his or her conduct?</p>	
<p>2. REASONABLE RULE OR ORDER Was management's rule or policy reasonably related to the orderly, efficient, and safe operation of the workplace and reasonable expectations of an employee?</p>	
<p>3. ADEQUATE INVESTIGATION Before issuing discipline, did management investigate the incident?</p>	
<p>4. FAIR INVESTIGATION Was management's investigation complete, fair and objective?</p>	
<p>5. ADEQUATE PROOF OF GUILT Did management provide adequate proof or evidence of the employee's "guilt"?</p>	
<p>6. EQUAL TREATMENT In issuing discipline, did management apply rules in an even-handed, consistent manner, without discrimination?</p>	
<p>7. FAIR PENALTY Did the discipline "fit" the offense? Was it fair and reasonable in light of the employee's past record? (Was the discipline corrective rather than punitive?)</p>	

ARBITRATION: COMMON GRIEVANCE ISSUES

For most common grievance issues, there are no set standards that arbitrators consistently use to judge cases. However, the questions below include some of the factors that arbitrators are likely to consider. They can help stewards in interviewing the grievant and planning arguments to be used with management.

Several questions are drawn from "The Union Steward's Complete Guide, 2nd edition," edited by David Prosten.

ABSENTEEISM

- ◆ Has the grievant had a long history of absence problems, or have they emerged recently?
- ◆ What were the reasons for the absences in each case?
- ◆ Has the grievant notified management and furnished valid excuses?
- ◆ How much does the employer's business suffer when the worker is absent? Can the union show that his or her work can be adequately covered by others?
- ◆ Is the grievant's attendance markedly worse than that of other workers?
- ◆ Does the employer have a clear disciplinary policy on absenteeism, which is known to all workers? Has it been applied fairly and consistently? Can you find similar cases where lesser discipline was applied?
- ◆ Check the wording of the absence rules in your workplace. Do they make workers in the final step of discipline "subject to discharge" or is termination automatic?
- ◆ Was the worker adequately warned that discipline could result if his or her attendance failed to improve? Was discipline progressive (warnings—suspension—discharge)?
- ◆ Is the worker willing to make a sincere good faith effort to improve in the future? Can you show that something in the worker's life has changed, and there is good reason to believe that better attendance will result? (For example: an operation has solved a health problem, a counseling course has dealt with a personal problem, etc.)

WORK PERFORMANCE

- ◆ Did the worker's poor performance cause damage to employer property?
- ◆ Has management pursued other alternatives, such as retraining, or giving the worker an easier job?
- ◆ Meeting production standards: Was discipline progressive (warnings—suspension—discharge)? Was the worker adequately warned that discipline could result if his/her performance failed to improve?
- ◆ Did the discipline imposed fit the seriousness of the problem?
- ◆ How long has the problem existed? If poor performance is long-standing without discipline, management must show something has changed before taking major disciplinary action.
- ◆ What is the worker's production and discipline history? Did the worker understand the production standard? Did other workers achieve the standard? How far below the standard was the worker's production? Were health or other personal problems involved?
- ◆ How long has the grievant worked there?

ARBITRATION: COMMON GRIEVANCE ISSUES

RULE VIOLATIONS

- ◆ Is the rule applied evenly to all the workers it covers?
- ◆ Were there extenuating circumstances, such as family or health problems?
- ◆ Were workers notified of the rule and the penalties involved in violating the rule? Is there documentation of the notification?
- ◆ Was the rule clear and understandable?
- ◆ Does the rule cause undue hardship on some of the workers it covers? (for example, a 10-minute break for workers who have to walk a long distance to the break area)
- ◆ Did management discuss the rule or consult with the union before establishing or changing the rule?
- ◆ What kind of evidence did management use to establish that the worker violated the rule? Was it hearsay or circumstantial evidence?
- ◆ Does the rule serve a practical purpose to the employer? Does violation of the rule harm the employer or workers?

INSUBORDINATION

- ◆ Did the insubordination occur during an unusually tense situation (for example: a deadline that put unusual pressure on the supervisor, or a serious family problem for the worker)?
- ◆ Does the contract protect workers' refusal to obey, in any circumstances?
- ◆ Was guilt clearly established? What kind of evidence and/or witnesses have been used in this, and/or any previous acts management may be raising?
- ◆ Was the worker provoked into insubordinate behavior by a supervisor who had already decided to discipline the worker?
- ◆ Was the insubordination based on the worker's belief that following the order posed a risk of harm to the worker or someone else? When did the worker become aware of the risk?
- ◆ Was the order clear and understandable?
- ◆ If the worker considered the order an invasion of personal privacy (such as a locker search or drug test) was the order based on evidence of dishonesty, a long-standing policy, or a risk to management's operation?
- ◆ Was the punishment excessive?
- ◆ Does the worker appear to have been singled out for special punishment for refusing to follow orders? Has management consistently applied its standard?
- ◆ Did repeated failure of the workers to follow direction cause harm to others or interrupt production?

These are only a few examples of the factors arbitrators consider in common grievance issues. Contact your union to learn more about how arbitrators have ruled on the types of grievances you frequently encounter in your workplace.

