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Your Role as a Steward

You have been selected by your peers and your Business Representative to be the Shop Steward who will represent Federation members in grievance discussions with Management. This means many employees have confidence in your ability, good judgment and willingness to work on their behalf.

You are the on-site representative of the Federation in your department, as far as the local supervisors are concerned, **you are the union.**

It is no exaggeration to say that you are a key person in the Union structure. You can and must make the Federation come alive in your area, give it vitality. It is within your power to turn the Collective Bargaining Agreement from a collection of words on paper to a genuine instrument of protection for your fellow workers, since the effectiveness of our contract depends largely upon YOU. In fact, as the Steward, much of the responsibility of the Union success rests upon your shoulders.

This is a big and thankless job; do not think for one moment that it is all fun and games. However, both the Federation and your fellow workers believe you can do it - and do it very well. At all times use your integrity.

Responsibility of the Steward

The Stewards are members of the union, but they are also something more; they are part of a team of dedicated and responsible individuals who have been chosen to represent the members in their work area. On their shoulders rests the responsibility of defending the rights that the Federation has obtained for the employees with your Employer outlined in the Collective Bargaining Agreement. They represent the Federation and they look after the welfare of the employees. They are the bridge between the employees and the Federation.

To the employees, and to the members of the Management with whom they deal, the representative is the Union. They are organizer, educator, negotiator and leader. They must be equipped to deal with the grievances and the problems of the members they represent. They must be able to get the interest and involvement of the employees in the activities of the Union.

Encouraging 100% membership in the Federation is a goal for which all Stewards should strive in their areas.

The following pages present some helpful hints on building a strong Unit.

The Special Status of Union Stewards

The “Equality Principle”: When the union representatives or stewards are engaging in union business or acting in their official capacities, they have special legal status. Unlike normal restrictions on an employee, who is required to be “subordinate” to the boss, stewards are considered **equal** to their management counterpart.

This equality only applies when you are acting in your **official capacity**. It does not apply when you return to your normal duties. But it does allow you to do things employees ordinarily may not do.

Examples include:

- Raise your voice, somewhat rudely
- Use forceful language
- Threaten legal action

Nevertheless, it does not give you a blanket right to act in any manner at all. Your conduct cannot be “outrageous”, or “indefensible”. Examples of what is still not allowed are profanity, racial epithets, physical threats, etc. You can be disciplined if you disobey reasonable orders, and violate work rules. If you feel that things are getting out of hand, stop the meeting immediately and call the Federation. Tell the Business Representative that you’re getting nowhere and need their help. Do not say anything that you will regret.

Management cannot retaliate against a union representative for filing grievances, or otherwise strongly representing workers.

Examples of prohibited retaliation:

- Enforcing rules more strictly for union stewards than others
- Over-supervising a steward, compared to others
- Denying a steward overtime, but not others
- Ordering a steward to do harder work than others
- Segregating the steward from other workers

Management cannot demand higher standards of conduct from stewards. However, there may be language in your collective bargaining agreement that requires more of a steward, and this can be enforced. If there is no contract language, union stewards must not be held to higher standards, or punished more for violations.

Grievances

One of your most important jobs as a Steward is to handle the grievances of the members you represent. The Federation has achieved many rights for employees, but these rights are useless unless they are protected. The Steward is the “policeman” of the members’ rights, and the grievance procedure is the means used to protect these rights.

The grievance procedure is only as effective as the Steward who uses it is. They must be trusted by the members they represent, they must be a diplomat in handling Management and they must be firm in standing up for the Federation at all times.

Above all, the Steward must be able to recognize a reasonable grievance when it is brought to their attention. They must be able to distinguish a grievance from a mere gripe or from an employee’s problem that is handled in some way other than the grievance procedure.

The following will familiarize you with many types of complaints; some that are grievances, and some that are not. It will give you practice in distinguishing between grievances and mere gripes, and will suggest ways for you to find out whether an employee’s complaint is a grievance or not.

Section One

What is a Grievance?

Only complaints against the Employer or Employer Management can be true grievances. Usually the Grievance Procedure in your contract will define a grievance with your employer. In some cases, violation of a company rule or regulation may be handled through the grievance procedure.

The following are the grounds for grievances:

- a. Violation of the Agreement
- b. Violation of safety laws or other legislation
- c. Unjust treatment of employee

Complaints against other employees or Federation members do not come under the heading of grievances - they do require action if justified.

The most difficult grievances to implement are those related to “unjust treatment of employee”. When an employee complains that the Agreement has been violated, referring to the actual Article or clause in the agreement can easily back this up. However, when employee charges “unfair treatment” generally there are few documents employees can point to.

Most cases of unfair treatment fall into two categories:

a) Harsh or unfair discipline

Management has the right to discipline employees for breaking rules. However, the discipline must not be harsher than the offense deserves. The punishment should fit the offense. All discipline should be for “just cause”.

b) Unequal treatment

Management should treat everyone alike. Discipline should not be applied in some cases and not in others, depending on the supervisor’s whim.

Section Two

Protecting the Integrity of the Grievance Process

The Public Employees Relations Commission (PERC) protects the integrity of the grievance process. This is covered by the duty of the employer to bargain in good faith, since handling of grievances is considered part of bargaining.

An employee’s right to file grievances is completely protected. There must be no retaliation, harassment or threats for doing so.

Examples of what is illegal:

- Intimidating a grievant
- Threatening a grievant for filing a grievance
- Refusing to discuss a grievance
- Unreasonably delaying the scheduling of a grievance hearing**

** Some contracts contain a self-contained remedy if there is a delay of hearing the grievance that allows you to automatically advance the grievance to the next step.

Section Three

Handling Grievances

Handling grievances requires a lot of skill and knowledge. Sometimes you may not know exactly what to do in a situation involving a grievance. Just remember that we are a “**team**”...so just **ask**. The Business Representative will be very pleased to help you in any way.

- Know your membership.
- Encourage your members to submit all grievances to their representative.
- Discourage members from shopping around for a representative to file their grievance.
- If the member has a complaint, not a grievance, take the time to explain why it cannot be processed as a grievance.
- Do not make promises you cannot keep.
- Know your Collective Bargaining Agreement. Read it and re-read it.
- Get all the relevant facts about a grievance and record them.
- Make sure the grievant knows what the issues are.
- Be honest with the grievant.
- Separate personal vendettas from real grievances.
- Plan your case and prepare at every stage.
- Keep the grievant informed at every stage.
- Try to settle the grievance early on.
- Discourage the member from discussing the grievance with management.
- Try to retain your member’s confidence at all times.
- Discourage your members from processing their own grievance or settling them privately with management.
- Listen to the grievant- know when he/she is telling the truth.
- If a worker has an obvious grievance and won’t file it, find out why.
- Do not take bad grievances to arbitration.
- Keep written records of **all** conversations. You will need them.

Regardless of how ridiculous the question may appear to you, **ask**. We will never ridicule you. We are in this Union as a **team**. The only way to learn is **by asking**.

Section Four

Get the Facts!

No matter how just a grievance may be, you cannot settle it without facts. You need the facts on all aspects of a grievance in order to present it strongly. Make sure you speak with the employee ahead of the meeting, if possible. You need to know who is involved, what happened and why, when and where the grievance occurred.

You should not be prepared to discuss it with Management unless you can answer these questions.

You may stop the meeting at any point to talk privately with the grievant. You may take an active role in the hearing as necessary. You cannot be silenced. You may question any witness and cross-examine any witness.

Management cannot bar you from the meeting as long as the member requests your presence. This means you can request admission to a disciplinary meeting where a union member is present. Management must then inform the member a steward is present and if the member then requests your attendance, you can enter the meeting.

Members must know if they are denied representation, they should request the hearing to be postponed until proper representation is made available to them. Management cannot use the excuse that no union representative is available.

Once you master this skill of handling grievances successfully, you will be better equipped to maintain the rights of the employees you represent and to strengthen the Federation in your area.

Section Five

Facts to Obtain

When you are researching the facts about a grievance, find out:

Who is involved; get the names, titles and department of all people involved.

Whenever a supervisor's exact words or actions are important, and you think they may be denied later, try to get names of witnesses.

You need to know exactly **what** happened and **why**. You want clear facts. Sometimes you must question the employee and/or supervisor, other times you must check the employee's personnel record. We have releases available at the Federation offices to obtain permission to obtain the personnel files.

You will often have to check written records when you prepare a grievance. You will have to record the employee's previous complaints, written warnings and any other information that appears to be pertinent to the case.

Clear information on **when** an action took place is essential; month, day, hour. In some cases, you may need to know how often something happened, or how long a time is involved.

Often in a grievance, you must find out **where** something took place, its location, or its distance from something else.

Remember the five "W's": **Who! What! Where! Why! When!**

Section Six

Presenting the Grievance

In handling grievances, you may have many face-to-face discussions with the Supervisor and other members of Management. Your success as a negotiator during these discussions will be the key to your success as a Federation Steward. Your job is to defend the Agreement, the members' rights and the Federation's position. You can only do this effectively if you adopt and adhere to certain common sense rules.

- You must go into a grievance prepared with all the facts. You must present the grievance in a straightforward, calm and businesslike manner.
- You should attempt to reach an early settlement in order to solve problems as quickly as possible.

To the Supervisor or Management you are the Union. Be efficient, determined, fair and impersonal.

When you have the respect of the Supervisor, you will find it much easier to settle grievances quickly, efficiently and to the satisfaction of the members.

Presenting a grievance requires both tact and skill. If you handle grievances with the above in mind, you will be well on the way to becoming an effective and respected Steward.

Section Seven

Behavioral Points in Presenting a Grievance

- a) Be calm and businesslike
- b) Give respect and demand respect
- c) Do not bluff and bully
- d) Try not to get angry and curse
- e) Listen carefully to the other side and do not interrupt
- f) State the facts and stay to the point
- g) Refrain from stating “I think” or “I feel”
- h) Don’t let yourself be sidetracked
- i) If you are presenting the grievant or witness, ensure they have the same statements as you
- j) When temporarily adjourning a discussion, or the Supervisor states he “...will look into it”, ensure that you have a specific date to resume or specific time then to contact the Supervisor for a reply

There are no shortcuts to winning a grievance, you must be able to present a strong case and support it with facts.

Section Eight

It’s Your Move

Situations will arise where you will decide that the employee’s complaints are not a grievable. Your course of action if they do not have a grievance is to tell them --- and explain all the reasons why.

If you are unable to decide whether an employee’s complaint is a grievance -- hold off -- consult the Business Representative.

At all times keep the employees informed of what is happening.

Regardless of how good the case appears never, guarantee a win!

Upon being approached with a complaint by an employee, your first move is to:

- 1) Thoroughly investigate the complaint by taking notes and recording any information that may be pertinent to the complaint.
- 2) If the complaint is unjustified, approach the complainant's immediate Supervisor and attempt to resolve it verbally.
- 3) If you are unable to resolve the problem, then the complaint should be reduced to writing, citing section or sections of the Agreement that have been violated.
- 4) Phone the Federation office 797-7575 and relate the incident to the Business Representative who will advise you how to proceed to the next step.

The first step is now complete.

Notes:

Weingarten Rights

The Right to Union Representation During an Investigatory Hearing

1. Union members have a right to a union representative at an investigatory hearing if they reasonably believe that the investigation could lead to disciplinary action.
2. The member must request a representative; the employer has no obligation to inform the employee of this right.
3. Management does not have to call the representative. Instead, the employer can stop the meeting, or just issue discipline.
4. Once a union representative is called, he/she have the following rights:
 - a. To know the subject of the investigatory hearing
 - b. To confer with the member prior to the hearing
 - c. To speak/participate in the hearing

But, the representative cannot argue the case. This is not a grievance hearing.

Weingarten summary:

I. Representation must be requested.

- Silence can be an effective waiver.
- There is no voluntary waiver of the right when the employee is threatened with a harsher penalty if the matter goes to a high level.
- The employee does not have to remain adamant in their request for union representation.
- The employee may not leave the interview and seek out a union representative in violation of their supervisor's orders and established policy.
- A specific union representative need not be provided if he/she is unavailable due to personal or other reasons for which the employer is not responsible.
- The employee may consult with their representative before an investigatory meeting, and either the employee or the representative may request a pre-investigatory conference.

II. The employee must reasonably believe that the investigation will result in disciplinary action.

- The test is objective and may be stated as whether a reasonable person, in light of all external evidence, would conclude that disciplinary action might result from the interview.
- There exists no right to union representation when the employee is assured that disciplinary action will not be taken because of the meeting.
- The right to representation arises when the significant purpose of the investigatory meeting is to obtain facts to support disciplinary action that is probable or is being seriously considered.

III. The Exercise of the Right may not interfere with legitimate employer prerogatives.

- The employee cannot delay the meeting by calling for a representative who is not available.
- The union cannot urge employees to interfere with the management's investigative process by instructing its members not to cooperate with management.
- The employer does not have to postpone the interview because a particular representative is unavailable, nor does it have to secure or suggest and alternate.
- The employee may not refuse an offer to report to a supervisor's office.
- Weingarten rights do not apply to run-of-the-mill shop floor conversations.
- The right to representation becomes operative at the place where the investigatory interview takes place.

IV. The employer is not required to bargain with the union representative at the meeting.

- The union representative has the right to participate in the interview.
- The employee may consult with the representative before the investigatory meeting
- The employee has a right to a general statement of the charge before consultation with the union representative.
- The employer is free to hear the employee's explanation first and delay until conclusion of the interview the union representative's additions and clarifications.

V. Remedies for Employer Weingarten Violation

- Section 10 (c) of the National Labor Relations Act precludes make-whole remedy for Weingarten violations where the discipline of the employee is for cause.

- Discipline is “for cause” within the meaning of Section 10(c) if it imposed for some reason other than the employee assertion of his/her right to union representation during an investigatory interview.

The Right to Information From Management

The National Labor Management Relations Act gives unions a broad right to information relevant to the negotiations and administration of the collective bargaining agreement. This information must be relevant to the formulation of the union's case in contract administration. In other words, the union cannot go on a "fishing trip" for information. Finally, the union must request the information; the employer is not obligated to offer it.

The typical request should look like this. At the back of this booklet, there will be blank copies of this letter so you can just fill in the blanks when you need the information.

Dear (Supervisors name):

Re: Public Records Requests

Please allow this letter to serve as the Federation's official request for documents pursuant to Chapter 119 and Chapter 447, whereby the Federation requests the following information in order to properly police and administer the Collective Bargaining Agreement:

Any and all documents relating to

Please send the following information to the Federation within _____ day(s) of this request. The Federation will remunerate _____ for the actual duplication cost incurred in complying with this request. (City, School, County)

**Remember be as detailed as possible. Do not leave any room for their guessing. You also need to check with your business representative to whether or not it is ok for you to be requesting the documents. We may have the documents here at the Federation.

There are limits on the employer's obligation to provide information. The union might have to pay for administrative expenses (clerical and copying costs). The employer can make the union say why the requested information is relevant. The employer does not have to interpret the data for the union, just provide it.

What types of information must be furnished?

1. Information about wage rates.
2. Incentives, piece rates, time studies.
3. Job classifications, descriptions and job evaluation data.
4. Merit increases.
5. Pension and insurance information.
6. Seniority lists.
7. Subcontracting information.
8. Information about employees outside the bargaining unit.

The list is not exhaustive. The scope of the union's right to information is as broad as the union's need for information on any matter relevant to the bargaining process.

Note:

Consult your representative when in question or doubt.

Notes:

Just Cause

Just cause may be determined by answers to the following questions. A “no” answer to one or more normally signifies that just cause and proper cause did not exist.

1. Did the employer forewarn the employee of the possible consequences of conduct?
2. Was rule or order involved reasonably related to orderly, efficient and safe operation of business?
3. Before administering discipline, did employer make effort to discover whether the employee did in fact violate or disobey rule or order?
4. Was employer’s investigation conducted fairly and objectively?
5. In investigation, did employer obtain sufficient evidence that employee was guilty as charged?
6. Has employer applied its rules, orders and penalties evenhandedly and without discrimination?
7. Was degree of discipline reasonably related to the seriousness of offense and employer’s record of employees?

Notes:

Past Practice

A guide to deciding if past practice has been established.

When an arbitrator/hearing officer considers past practice in deciding a grievance, he/she will attempt to answer the following questions:

1) Is the practice the same in similar situations?

To show that a practice exists, the union must prove that management did approximately the same thing or accepted the same action of employees when the situation happened before. For example, if employees refuse to work outside in cold weather because they do not have adequate clothing, this may not be punished as refusal to work. The Union must prove that under similar weather conditions, supervision has permitted employees to refuse to work. Note the word “similar”. If management can show that past situations were different, a past practice may not be proven.

Also, the Union must prove that supervisors acted the same or permitted the same action by employees. If management sometimes permitted employees to refuse to work without adequate clothing, but at other times, insisted on compliance with the order to work, a practice may be proven. Or, to put in another way, the practice may establish that management decides when employees will work out side and in what weather conditions.

2) Has the situation happened often enough to establish a practice?

It is very difficult to answer this question because situations are so different. Generally, a union leader will not expect to prove past practice if a situation happened just once or twice. This may have been caused by an error or poor management but not intended to be practiced regularly. Union representatives must exercise their best judgment about that difficult line between a practice happening often enough and not happening often enough.

3) Has the situation happened over a substantial period?

A practice is easier to prove if it happens over a long period. If, for example, five minutes of wash up time at the end of the day was permitted over the last ten years, a sudden large number of people who take ten minutes in the past two months might not prove past practice. Management might only show that employees took extra time without management knowledge. This leads to the final guide to past practice, which may be most important.

Practices that add benefits to the contract are less secure than those that interpret the contract. However, administrators should not be allowed to cancel those desirable rights without mounting an Association effort to retain the rights. Individual employees and/or the Association should file grievances to protect the practices.

4) Past practice that conflict with the contract.

Example: A contract provides: “A teacher is to be in his (sic) assigned building continuously when school is in session unless excused by the principal”. In practice, the teachers have regularly left the school for purposes of escape as mentioned above.

A newly assigned principal decides to revert to the contract provision that requires continuous presence in the school building. Can the principal cancel this kind of practice?

Where practice conflicts with a contract provision, the practice can be cancelled. Contract language, consciously negotiated, takes precedence over unwritten practices.

No rights are guaranteed.

While rights are established by practice may be well protected in general, no specific grievance can be guaranteed. Many strongly established rights have been lost because an arbitrator unexpectedly ruled against the employee. Nevertheless, an association should make an effort to protect employees from loss of past practice rights wherever some chance exists for retaining those rights.

Notes:

-Sample-
Information Request Letter

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RE: Public Records Request

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Any and all documents relating to:

Please send the following information to the Federation within _____ day(s) of this request. The Federation will remunerate _____ for the actual duplication cost incurred in complying with this request. (City, School, County) Thank you.

Sincerely,

(Your name)
Shop Steward

A Federation Business Representative will be spending one day per week exclusively in the office. This will ensure that there is always a representative available to those members in need of emergency assistance. Our new office hours are Monday – Friday 8:00a.m. – 6:00 p.m. and Saturday 10:00a.m. – 4:00 p.m.

Notes: