

STEWARD TRAINING

Unions and the Grievance Procedure

Once unions are recognized as the representative of the workers and have successfully negotiated a collective bargaining agreement, they then have the responsibility to enforce the terms of that agreement. Over time, unions and employers have agreed in the contract to use a grievance procedure to settle disputes while the contract is in effect. Normally, this procedure involves several steps and ends in binding arbitration if the two sides are unable to resolve the problem at any of the steps in the grievance procedure.

Because the union is the *exclusive* representative, it alone controls the grievance procedure, and only the union decides which grievances will proceed to arbitration. With this right comes the responsibility to fairly represent everyone covered under the contract and to ensure that everyone is given equal access to the grievance procedure. Despite the fact that the union owns the grievance procedure, an individual worker may choose to represent him or herself in a grievance. However, even though a worker may decide to bypass the union in his or her grievance, the union has the sole right to decide if that grievance can proceed to arbitration.

The steward, as shop-floor representative of the union, plays an important role in the grievance procedure. Stewards are the representatives of workers in grievances and in grievance meetings with the company. Stewards also investigate grievances to collect the information necessary for the union to prepare its case. In addition, stewards are entitled to be present when management conducts investigatory interviews of workers.

In investigating grievances, it is important to ask some key questions:

- λ Who is involved in the grievance?
- λ What happened?
- λ When did the grievance occur?
- λ Where did the events take place?
- λ Why did the grievance happen?
- λ How did the grievance occur?

In conducting a thorough investigation, you should interview all witnesses, request all relevant information from management in regard to the case, review the contract to see what violations occurred, look to see if a past practice was violated, and examine to see if there are arbitration awards on similar situations. Additionally, it is crucial that you document your investigation, especially interviews with witnesses, because if a case goes to an arbitrator, the arbitrator will make his or her decision based on the evidence that you are uncovering.

When you are representing a grievant, you need to go into a meeting prepared to provide the best arguments for your case. That means that you should have done a preliminary investigation, understand what facts support your argument, anticipate what arguments management will make, and understand what it will take for you to settle the grievance. As the union steward, you have the right to speak for the

grievant and should exercise that right in most cases.

In presenting a grievance, you should remember that while you are seeking to resolve the problem, your primary responsibility is to represent the grievant. Present the facts and circumstances that led to the grievance, listen to management's response to see if there is any room to settle, and if not, end the meeting. You are under no obligation to agree with management at this meeting. If you cannot resolve the grievance at this step, take the necessary action to move the grievance to the next step.

[Back to Table of Contents](#)

Baker's Dozen: Rules for Handling Grievances

1. Contract administration, like contract negotiations is an extension of the right to bargain. And like bargaining, the ability to successfully handle grievances comes with practice and experience. And remember, just like in bargaining there are no rules to which there are not exceptions, this rule being the exception.
2. Every grievance that you get has the potential to go to arbitration. Therefore it is crucial that you do a complete and thorough investigation. This includes, among other things, interviewing the grievant and witnesses, obtaining all relevant records from management, and examining past arbitration awards and other sources of information that may be relevant to the case. Remember to answer the key questions: Who, What, Where, When, and Why. In addition, document your case! You need to keep good records of your investigation of the grievance. This includes writing down notes from interviews and/or meetings with the grievant, witnesses, and management.
3. As a steward, you should familiarize yourself with the contract. When you are approached by a potential grievant, review the agreement to find out if a provision was violated by management. If not, was there a violation of the law or a violation of an existing past practice? If none of these exist, what you have is a gripe and not a grievance. When discussing a grievance with a member, whether you believe that it is a good grievance or not, it is important that you are understanding to his or her situation. However, you must be careful not to promise to the grievant what you can't deliver. It is always better to say, "I think you have a legitimate grievance. Let me look into it," rather than "You have a sure winner here. I guarantee that management will have to pay this time."
4. Two easy ways that management uses to discipline and/or discharge people is through insubordination or admission of guilt. As a steward, it is easier to stave off problems by making sure that your members don't make these two mistakes. For insubordination, you can use your rights as a steward to intervene for the worker. To keep someone from making an admission, you can educate them about their "Weingarten Rights" and their rights under the contract.
5. Treat the grievant as you would like to be treated if it were your grievance. That means that you should keep the grievant informed on the progress of the grievance, sine grievances often take a long time to work their way through the procedure.

6. Before meeting with management on a grievance, you should prepare enough so that you can present your case with the evidence to back up your argument. In addition, you need to anticipate what management's position is on the grievance so that you can have counterpoints to its argument. In a grievance meeting, your objective is to get a settlement that is favorable to the grievant. You should know what it will take to resolve the grievance and be prepared to make arguments that support your position. If you can't get a satisfactory settlement, there is no reason to panic or to get angry with management. You can always appeal the ruling to higher levels of the grievance procedures.
7. In discipline cases, management must have cause and they have the burden of proof. You should understand what constitutes 'cause' for discipline and use that knowledge to aid in your investigation and representation of workers.
8. When in a grievance meeting, listen carefully to what management is saying. It may be telling you something that will help you settle the grievance either in that meeting or later on in the procedure. And remember to keep calm and reasonable. You're there to win a grievance, not to score debating points with the supervisor.
9. One of the easiest ways to lose a grievance is to miss a time limit. You must keep track of all of your grievances and make sure that they are submitted within the time allowed by your contract. Exhaust each step of the grievance procedure before advancing the grievance to the next level.
10. Most unions have a grievance form that is used to file grievances. When writing a grievance, you should not only cite the article of the contract that was violated but you should include the phrase "and all others" so that if your investigation uncovers additional violations, they will be covered in the grievance.
11. When writing the description of the incident that caused the grievance, make that description as brief as possible. You do not argue or present your case in writing the grievance. The more you write, the more you tell management about your case and the more you tie your hands at later stages of the grievance procedure.
12. Every person covered under the contract (members and non-members alike) is entitled to be fairly represented by the union. Even workers who refuse to pay dues to the union are entitled to receive the same representation as the most loyal member.
13. Being a good steward means that you actively enforce the contract. You should watch to see that management is not taking action that might weaken the union at some future time. In addition, you need to be prepared to file grievances for the union if you see that management is violating the contract and no one wants to take action.

[Back to Table of Contents](#)

Seven Tests for Just Cause

1. Was the employee adequately warned of the consequences of his or her conduct?
2. Was the company's rule or order reasonably related to efficient and safe operations?
3. Did management investigate before administering the discipline?
4. Was the investigation fair and impartial?
5. Did the investigation produce substantial evidence or proof of guilt?
6. Were the rules, orders, and penalties applied evenhandedly and without discrimination?
7. Does the penalty suit the crime?

[Back to Table of Contents](#)

Grievance Checklist

General Discipline

1. Was there sufficient proof or was management's action based on hearsay?
2. Did management investigate and verify the charge before taking action or did it "shoot from the hip" first and investigate after the fact?
3. Did management selectively "stack the deck" by overemphasizing certain facts and points while playing down those factors that would favor the grievant?
4. Did management overreact, that is react drastically and emotionally rather than objectively?
5. Was the discipline punitive and vindictive rather than corrective and remedial?
6. Was the discipline timely?
 - a. Did it follow the alleged commission or omission within a logical and reasonable time?
 - b. Did management wait until an incident occurred before suddenly clamping down?
7. Was the penalty consistent with the principle of progressive discipline?
8. Was the grievant adequately informed as to what level of performance or compliance would be expected of him or her?
9. Did the penalty violate any applicable and relevant provision of:
 - λ The contract
 - λ An addendum to the agreement
 - λ A side letter
 - λ A policy

- λ An administrative directive
- λ A past practice
- λ An applicable and relevant arbitration award
- λ An applicable law?

[Back to Table of Contents](#)

The Right to Information

In processing grievances, the employer is obligated to provide the union information that the union needs in order to process grievances. As a steward, you may request information from the company:

- λ When you are investigating a grievance
- λ When you are preparing for a grievance meeting
- λ When deciding whether to drop or advance a grievance
- λ When deciding whether to arbitrate a grievance
- λ When preparing for a grievance

The type of information that the company must provide is broad. It must provide documents, data, and factual information that you request. However, you are not permitted to be on a "fishing expedition". Rather you must make requests for specific types of information.

The types of company records that you are entitled to include:

- | | |
|------------------------|----------------------------|
| * accident records | * attendance records |
| * bargaining notes | * company memos |
| * contracts | * correspondence |
| * disciplinary records | * equipment specifications |
| * evaluations | * inspection records |
| * insurance policies | * interview notes |
| * job assignments | * job descriptions |
| * materials records | * payroll records |
| * performance reviews | * personnel files |
| * salary/bonus records | * security guard records |
| * seniority lists | * supervisors' notes |
| * time study records | * training manuals |
| * videotapes | |

Requests for information can be made orally. However, it is far better if they are made in writing. Be as specific as possible in identifying the documents or the data that you are requesting. By making the request in writing you are documenting what you asked for and when the request was made. The employer may refuse to grant your request based on the notion of confidentiality for employee records that are sensitive, such as medical reports and aptitude tests. To make this defense, the company must

have an established personal privacy policy that is:

- λ Consistently adhered to, and
- λ Not shown to supervisors or other management personnel.

[Back to Table of Contents](#)

Weingarten Rights

One very important right that workers have is the right to union representation during an investigatory interview. This right was established by the Supreme Court in 1975 and provides that a worker who is being interrogated by management may request that a union steward be present during the interrogation. The right belongs to the worker, not the union, and can be invoked only by the worker. Management is not obligated to inform a worker that her or she has a right to a union steward, so it is critical that the union educate workers to the existence of this Supreme Court ruling.

For Weingarten to apply there must be several conditions or tests to be met. The employer must be conducting an investigatory interview (or questioning a worker) to obtain information that could lead to discipline. If such an interview takes place, the following rules apply:

- λ The worker must make a clear request for union representation.
- λ Management then has the following options:
 1. Grant the request and delay questioning until a steward arrives and has an opportunity to talk privately with the worker,
 2. Deny the request and end the interview, or
 3. Give the worker the choice of having the interview without a steward present or ending the interview.

If a steward is called into an interview, he or she has the right to advise and counsel the worker. Case law has established the following rights for the union steward:

- λ The supervisor must inform the steward of the reason for the interrogation.
- λ The steward has the right to take the worker aside for a private meeting before questioning begins.
- λ The steward has the right to speak during the interview.
- λ The steward can ask for clarification of questions so that the worker can understand what he or she is being asked.
- λ The steward can give advice on how to answer a question.

- λ When the questioning is over, the steward can provide additional information to management.

However, stewards have no right to tell workers not to answer questions or to give false answers, and workers can be disciplined for not answering questions from management. Stewards can be helpful to workers in a number of ways in an investigatory interview. Besides being a witness for the worker, stewards can:

- λ Help the worker explain what happened.
- λ Raise extenuating circumstances.
- λ The steward can help a worker from making a fatal admission.
- λ The steward can prevent the worker from denying everything, thereby giving the appearance of dishonesty.
- λ The steward can help the worker from losing his or her temper and getting fired for insubordination.

Weingarten Rights Questionnaire

1. A worker is called into the boss' office in order to be informed that she has received a one-day suspension. She requests that she have a steward attend the meeting. Management refuses to have the steward attend the meeting. Is this a violation of her Weingarten rights?

Yes ____ No ____

2. John is called into the supervisor's office by his foreman for a discussion of his work record. John's steward is sick, so John asks that the interview be delayed until his steward returns. Must management delay the interview until John's steward returns to work?

Yes ____ No ____

3. You are a union steward and are called into the office to discuss your work record. Under Weingarten, are you entitled to a union representative?

Yes ____ No ____

4. A worker was given a written warning about poor attendance and told that she must participate in absence counseling sessions with a member of the human resources department. Can this worker demand the presence of a union steward at the counseling sessions?

Yes ____ No ____

5. You are a steward and notice that a worker is being interviewed in a supervisor's office. Can you request to attend the meeting?

Yes ____ No ____

6. A worker is called in for an interview regarding a recent accident. The worker requests that a union steward be present. The supervisor refuses to allow the steward to be called in, claiming that he is only trying to get the facts that led to the accident, and continues to question the worker. Can the worker refuse to answer the questions of the supervisor?

Yes ____ No ____

7. A foreman stops by Sheila in order to give her the work assignment for the day. Sheila hates all foremen and tells him that she isn't saying anything to him without her steward present. Must the foreman provide Sheila with a steward?

Yes ____ No ____

[Jump to Answers](#)

[Back to Table of Contents](#)

The Duty of Fair Representation

Unions are the *exclusive* representatives of the workers in the bargaining unit. This role of representative carries with it the responsibility to fairly represent all members of the bargaining unit, regardless of the race, color, sex, political views within the union, and even regardless of whether or not they belong to the union. Failure to fairly represent *all* workers can subject the union to a lawsuit from a worker who believes that he or she was discriminated against by the union. The Supreme Court has held that the union breaches its duty of fair representation when its actions are "arbitrary, discriminatory, or in bad faith".

To ensure that the union is fulfilling its obligation to fairly represent the workers, a local union should follow some guidelines. These include:

- λ When you are approached about a grievance, do a full investigation. Interview the grievant and all witnesses. Review the contract to see if there are any potential violations. Request all relevant information from management. Keep detailed records of your investigation.
- λ Do not refuse to file a grievance because of race, sex, religion, politics, personality, or membership status. You must represent all members of the bargaining unit regardless of your personal opinion of the worker involved in the grievance.
- λ Treat grievants as you would want to be treated if it were your grievance. Keep them up to date on the progress of their grievances. Don't disregard a grievance simply because the grievant has filed a number of frivolous grievances in the past.

- λ If you decide to drop a grievance, notify the worker prior to formally removing the grievance. Give the grievant a specified time to provide additional relevant information. Keep records of conversations and written material used to notify the grievant that his or her case is being dropped.
- λ Prepare thoroughly for all arbitrations. Simply taking a case to arbitration is not a defense against a DFR charge if the union does not prepare for the arbitration.

Duty of Fair Representation Questionnaire

1. We are grieving a one-day suspension. The grievant wants us to go to arbitration, but this could cost the union \$2,000 in legal expenses. It seems foolish to spend this much money for one day's pay, especially when the union is low on funds. Do we have to arbitrate?

Yes ____ No ____

2. A worker was suspended for two weeks because of absenteeism. At the third step of the grievance procedure, the company offered one week's back pay. We think this is a reasonable settlement, but the employee wants us to go to arbitration to get full back pay. If we accept the company's offer, can the employee sue us?

Yes ____ No ____

3. Several female employees have complained about sexual harassment from a supervisor. We have a non-discrimination clause in the contract and deferral of a grievance pending completion of an EEO complaint. I'd rather not file a grievance and just let them go through EEO, because I am afraid that the company will get its back up, and this will jeopardize several other important grievances that are currently pending a decision. Can we do this?

Yes ____ No ____

4. Our contract says that employees must serve a 90-day probationary period. Do we have to represent them during this time?

Yes ____ No ____

5. Two employees were suspended for one week for serious insubordination. At the first step of the grievance procedure, the company offered to reinstate one employee with back pay if we dropped the grievance of the second worker. Can we do this without risking a DFR suit?

Yes ____ No ____

6. We filed a grievance against a letter of warning. At the grievance meeting, the company presented good reasons for its actions. Do we have to make fools of ourselves by pursuing this grievance?

Yes ____ No ____

7. We filed a grievance for a member who now wants it withdrawn. The union thinks it is an important issue. Can we keep it alive without the grievant's permission?

Yes ____ No ____

8. We voted not to take an insubordination grievance to arbitration, because we were afraid of losing the case and setting a bad precedent. The worker says she is willing to pay the arbitration expenses herself and to hire her own attorney. Under these circumstances, can the union still refuse to allow the case to go to arbitration?

Yes ____ No ____

9. We lost an arbitration over a discharge. The worker wants us to appeal the arbitrator's decision to court. Our lawyer says this would be useless, but the employee is threatening to sue the union if we don't do it. Should we file the appeal?

Yes ____ No ____

10. If we decide not to arbitrate a grievance, how long does an employee have is she wants to file a DFR suit against the union?

6 months ____ One year ____ Two years ____ No limit ____

11. If a worker files a DFR suit, can she sue her steward along with the union?

Yes ____ No ____

12. Two members get into a fight. One is clearly at fault but both are suspended and want to file grievances. Can we refuse to take the grievance of the one who was at fault?

Yes ____ No ____

13. Fred Freeloader is not a union member. What's worse, he is constantly bad-mouthing the union. Yesterday he approached his steward saying that the company had awarded a job posting to someone with less seniority although Fred had the qualifications. Can we tell Fred that he must join the union before we'll represent him?

Yes ____ No ____

14. Last week I missed a time limit for appealing a grievance to the third step. The company will not let me file it now. I had a lot on my mind and just forgot even though I thought it was a legitimate grievance. Can the union be found guilty?

Yes ____ No ____

[Jump to Answers](#)
[Back to Table of Contents](#)

Stewards – How Far Can You Go

(Adapted from the Legal Rights of Union Stewards)

1. At a grievance meeting, you get upset and call the foreman a liar? As it turned out, you were wrong. Can you be disciplined for your actions?

Yes ____ No ____

2. After a grievance meeting with management, you receive a warning for "extremely load behavior". Can you be disciplined for raising your voice?

Yes ____ No ____

3. During a grievance meeting, the foreman makes a number of ridiculous statements. Infuriated, you call him a "jackass". Can management discipline you for what you said?

Yes ____ No ____

4. You get involved in a heated grievance meeting with the boss. In the middle of it, she says "This meeting is over. Go back to your work!" You continue to argue with her for several minutes. Are you subject to discipline for not immediately obeying her order?

Yes ____ No ____

5. Your contract permits stewards a reasonable amount of working time to conduct union business. Last week, while investigating a grievance, your foreman comes over and orders you to return to work. Can you refuse the order?

Yes ____ No ____

6. After a grievance meeting, you lose your temper, scream at the plant superintendent, tell him he should have his face bashed in and threaten to do just that. Several workers stop work to listen to the argument. When you dare the superintendent to fire you, he does just that. Were your actions protected through your rights as a steward?

Yes ____ No ____

7. Your boss often criticizes you, calling your grievances "nit-picking" and a "waste of time". Is your supervisor committing an Unfair Labor Practice by interfering with your rights as a steward?

Yes ____ No ____

8. Last week you presented a grievance. In response, your boss told you, "If you don't like conditions here, you can always quit!" Was your supervisor violating the law?

Yes ____ No ____

9. The company is investigating drug use in the plant. Can a steward tell workers not to answer questions from the company?

Yes ____ No ____

10. A foreman frequently makes workers do work outside of their job classification. As a steward, do you have a legal right to tell workers to refuse their assignments?

Yes ____ No ____

11. The plant manager frequently calls shop meetings to lecture workers. When he asks for questions, can a steward make a statement defending the workers?

Yes ____ No ____

12. Workers in your department walk out over a dispute with the supervisor. You did not lead the walkout, but you participated in it. The contract has a no-strike clause, so everyone was disciplined. The other workers received a three-day suspension, but you received ten days because you were the steward. Were you discriminated against illegally for your union activities?

Yes ____ No ____

[Jump to Answers](#)
[Back to Table of Contents](#)
[Top](#)

Weingarten Rights Answer Sheet

1. Not under Weingarten. In this case the worker is being called in to be given discipline. Therefore it is not an investigatory interview. However, your contract may require that a steward be present when discipline is imposed.
2. No. Management does not have to delay the investigation if other union representatives are available.
3. Yes. Just because you are a steward does not mean that you cannot have representation under Weingarten.
4. It depends on whether the worker has a reasonable fear that the counseling could result in further discipline. If notes from the sessions are kept in the worker's permanent record, or if other workers have been disciplined after counseling sessions, then the worker could reasonably fear that discipline might occur and Weingarten would apply.
5. Yes. A steward has a protected right to demand admission to a Weingarten interview. Once the request is made, however, the worker must agree to have you in the meeting. Of course, the meeting must meet the tests of Weingarten for the rule to apply.
6. Yes. According to the NLRB, when a worker is entitled to have a steward present and the employer refuses to allow a steward to be present, the worker can refuse to participate in the interview, even to the point of walking out of the interview.

7. No. In this case Weingarten doesn't apply, and Sheila is not entitled to any union representative. However, if she hates all foremen that much, perhaps the union should recruit Sheila to be a shop steward.

[Back to Table of Contents](#)

Duty of Fair Representation Answer Sheet

1. Not necessarily. Unions are entitled to consider the financial costs of arbitration. A union with a small treasury may not be able to arbitrate a case that a larger union could take on. The NLRA is not violated when a union, in good faith, declines to arbitrate for financial reasons. But, cost considerations carry less weight as the importance of the grievance increases. Discharge cases are the most important. Unless the case is hopeless, a union will be hard pressed to justify a decision not to arbitrate solely because of the expense.
2. Not successfully. A union is allowed to compromise a grievance, as long as it has good reasons and is not settling because of hostility toward the grievant.
3. No. File a grievance against the harassment. A union cannot refuse to file a grievance because it fears management's biased reactions. Failure to enforce the contract's prohibition against sex discrimination could subject the union to a DFR case at the NLRB, or even more damaging, a civil rights lawsuit in court.
4. Yes. Probationary employees are part of the bargaining unit. They may not be able to use the just-cause for discharge clause, but they are usually covered by other contract provisions, such as prohibitions against race or sex discrimination.
5. No. Swapping grievances is dangerous. The employee whose grievance is dropped may try to establish a DFR case on the grounds that the union represented him or her less vigorously than the other employee. Nevertheless, if the union is certain that the second grievant would have no chance of success at an arbitration, it cannot be faulted for making a tradeoff settlement to guarantee success on the first employee's grievance. (But it's politically dangerous.)
6. No. Although union representatives are expected to act as an employee's advocate and to present grievances in the best possible light, they do not have to take ridiculous positions. Prior to arbitration, unions retain considerable discretion and may at times openly admit that a grievance does not have merit.
7. Yes, if the union feels that the interests of the bargaining unit as a whole require it to continue the grievance.
8. Yes. The decision to arbitrate is the union's and the union's alone. Individuals cannot compel arbitration by offering to pay the expenses.
9. No. It is generally held that a union's obligation under the duty of fair representation extends only to contract procedures, such as filing grievances and going to arbitration. Unions do not have to file court appeals when they lose at arbitration.
10. He or she must file within six months. The six-month period begins the day the employee is notified that the union has decided not to continue the grievance. If the employee waits longer to file, the suit would be barred by the statute of limitations. This is an important reason why union representatives should inform employees when grievances are dropped and should record the date of the conversation.
11. No. DFR lawsuits may only be brought against unions. Stewards or union officers cannot be held personally liable.

12. No. You should always grieve a discharge case. Without a full investigation, you do not know for sure anyway who is at fault. However, you may have grounds not to take it to arbitration.
13. Absolutely not. The union is legally required to represent all employees in the bargaining unit whether or not they are members. No matter how distasteful Fred's behavior is, you must not discriminate against him because he's not in the union. Even "going through the motions" could land the union in trouble.
14. Possibly, but the courts generally need more than simple neglect to find them guilty. The standard used is that negligence must be gross, far short of the minimum standard of fairness.

[Back to Table of Contents](#)

How Far Can You Go Answer Sheet

1. No. Under the principle of equity, the steward, while acting in his or her official capacity as steward, has a right to accuse the foreman of lying – even if it turns out that he or she was wrong.
2. No, as long as it doesn't interfere with production. Shouting is a protected activity under the law.
3. No. Strong language during grievance meetings is protected.
4. No. The law provides for a short "cooling off" period immediately following a grievance meeting. Protection may be lost, however, if the steward ignores repeated orders to return to work.
5. The general rule is to "obey now, and grieve later". However, the NLRB has ruled in the steward's favor in cases where the supervisor is bent on preventing the steward from engaging in legitimate union business as long as it is permitted by contract or past practice, does not disrupt the work of others, and is not an attempt to avoid work.
6. No. In this case the steward went too far by threatening physical violence and by having the fight near other workers, interfering with their work.
7. No. The law permits employers to criticize union activities. They become illegal only when they reach the level of harassment or contain threats.
8. Yes. This is a veiled threat from the employer that implies that your union activity is incompatible with your job.
9. No. The union has the obligation to cooperate when management is conducting a legitimate investigation of misconduct. Instructing workers not to answer questions could lead to the steward being disciplined.
10. No. The rule to follow is "obey now; grieve later".
11. Yes. Union representatives have a protected right to speak up at shop meetings as long as the employer has not clearly forbidden employee comments.
12. It depends on your contract. If it requires the union to take prompt action to end all work stoppages, then the union representatives may have a special responsibility to stop the strike and may be liable for greater discipline for participating.

[Top](#)

[Next Section - Organizing](#)

[Back to Table of Contents](#)