

## Investigating Grievances Using the NLRA

A member has a grievance. We talk to co-workers, witnesses and anyone else who might have relevant information. But we sometimes overlook records and documents from our employer as another good source of information.

It happens to every steward. A member comes to you with a grievance that raises far more questions than it answers. Let's say they were passed over for a job in favor of a shorter service employee. The boss said it was a matter of qualifications. What now?

Obviously lots of things need to be checked out. Who got the job and what qualifications and seniority do they have? Do we have a copy of the posting or the job description? Who successfully bid to this job in the past and how qualified were they? Were there other applicants? Did everyone get interviewed and if so were notes kept? Does the supervisor have a history of favoritism? Is there some contract negotiating history that has some bearing on the case?

### GETTING INFORMATION

Having good and complete information is vital in fighting grievances. But where and how do we get it?

First we should look to ourselves. An informed steward not only knows the contract, but the past practices of the department. A wealth of knowledge exists among the members as well. And of course the local union should keep records. But sometimes that still isn't enough to be properly prepared.

Help can come from an unexpected source—the employer! It's not because they want to provide information. The union is *entitled* to it under the National Labor Relations Act (NLRA).

### INFORMATION AND THE LAW

In the 60 years since it was passed in 1935, anti-labor amendments and court decisions have greatly weakened the NLRA. Nevertheless the law still requires employers to provide information to the union that the employer has or can reasonably obtain, *provided* that the information requested is relevant or useful to the union in bargaining. Bargaining includes not only contract negotiations, but applies to grievances as well. Employers refusing to supply such information may be subject to unfair labor practice complaints.

The steward may request information:

- **Before** a grievance is filed to see if the contract may have been violated.
- **At or between any step** of the grievance procedure.
- **After the final step** to prepare for or consider a possible arbitration case.

It's best to be *specific* about what we want and, unless the information is immediately available, to put the request in writing.

Remember, the *information must bear some relevance to the actual or potential grievance*. The union is not allowed to use requests merely to conduct a "fishing expedition" through company records. Nevertheless all sorts of company documents data and factual information are fair game (*see list below*). There have even been cases where the boss has "thrown in the towel" on a grievance rather than go to the trouble of digging up the information requested.

## A WORD OF CAUTION

Even the best information doesn't mean the grievance will be won. The boss can, and often does, say no, particularly when the members are not involved and prepared to exert pressure. *The steward who neglects to involve the membership while waiting for the boss to supply information risks losing the best chance to settle a case satisfactorily.* Using our rights under the NLRA is a useful exercise if it helps us to get membership involvement. It is however no substitute for that involvement.

## Some Examples of Information the Union May Request

Accident records	Material safety data sheets
Attendance records	Names of witnesses
Bargaining notes	"Notes to file"
Company memos	(i.e. database source)
Contracts	Payroll records
Correspondence	Performance reviews
Disciplinary records	Personnel files
Equipment specifications	Photographs
Job evaluations	Reports and studies
Health and safety studies	Salary records
Inspection records	Security Guard records
Insurance policies	Seniority lists
Interview notes	Supervisor's notes
Job assignment records	Time study records
Job descriptions	Training manuals
	Videotypes

## Know Your Rights and Your Armor

### Issues:

- As a UPSEU Local 1222 steward, you have a lot of rights on the job in representing Local 1222 members; rights that most bosses would prefer you didn't know about. We've listed the most important ones, with links to related articles.
- A steward's job can mean confrontations with the boss — confrontations that could get you fired in your role as an employee. The NLRA (labor law) recognizes this fact and provides three specific protections for stewards involving:

Equal Standing  
No Reprisals  
Equal Treatment

## Know Your Rights... and Your Armor!

***UPSEU Local 1222 Stewards have special rights under the law and the union contract. They provide real protection for members and stewards ...but you've got to know them before you can use them!***

## STEWARD'S ARMOR

As a UPSEU Local 1222 Steward, you're elected to protect the rights of Local 1222 members and defend the contract. Our style is militant and aggressive. It's the best defense against bosses who try to undermine hard-won gains. To be effective, it's important to know the weapons and protections we have as stewards.

Most of us know our weapons: the contract, the grievance procedure, the Labor Board, and, most important, shop floor unity and organization. Less well-known, perhaps, are the protections we have under the law.

*(The rights described here are protected by the National Labor Relations Act (NLRA).)*

## THE EQUALITY RULE

Probably the most important protection is called "The Equality Rule." This rule acknowledges that your job is likely to involve confrontations with management—confrontations that could lead to discipline under the normal rules of employer-employee relations.

You can openly disagree and argue vigorously with management during grievance meetings; question management's authority; and, demand certain actions of management, all without risking disciplinary action.

The "Equality Rule" makes you a "legal equal" to the boss. But, it's in effect *only* when you are doing your job as a *steward* not when you're acting as an *individual* employee. You're acting officially when you investigate and argue grievances, request information and otherwise defend Local 1222 members.

There are limits to what you can do, though. Threats of violence and actual violence are prohibited, as are extreme profanity, name calling, and personal attacks. Actions barred by your contract are not protected, either. To prevent supervisors from claiming you "exceeded the limit," it's wise to have another steward or member with you during meetings with management.

## NO REPRISALS

The boss is not allowed to use discipline, either real or threatened, or any other form of intimidation to discourage you from doing your job. For example, you can't be denied overtime opportunities, promotions, job transfers, bumping rights, or any other entitlement as punishment for doing an aggressive job. Nor can management assign you to the most undesirable jobs or more closely supervise you than other workers.

## EQUAL STANDARDS

Some supervisors try to hold stewards to higher standards than others. "You, of all people, should know the rules," is often a statement heard when some rule has been broken. This is illegal, too. You're not a "super-worker" and you can't be singled out for unusual discipline to "set an example" or because you should "know better." The only exception: not carrying out responsibilities required of the union under the contract.

## WHAT TO DO

If the boss breaks these rules, there is most likely a contract grievance— and, an Unfair Labor Practice (ULP) charge can be filed with the Labor Board (NLRB). The time limit for filing a ULP charge is within six months of the violation. **Contact your UPSEU Local 1222 representative for assistance in filing an Unfair Labor Practice charge with the Labor Board.**

## WORKPLACE ORGANIZATION

As in the case of most other grievances, a workplace strategy for solving the problem is often much more effective than dealing with the NLRB, especially because the Board is often frustratingly slow to respond. But, if you feel that a ULP charge should be filed, talk with your UPSEU Local 1222 representative and local stewards about the best way to proceed.

## STEWARDS RIGHTS

### Don't let the boss con you!

As a UPSEU Local 1222 you've been elected to represent your members — a job that most bosses would like to keep you from doing. Here's a brief list of some of your rights and obligations.

- 1. You have the RIGHT to grieve about unfair treatment** — whether you saw it happen or someone calls it to your attention. Bosses may accuse you of "soliciting grievances," but don't be fooled! It's your duty to encourage workers to grieve about legitimate issues — or file them yourself.
- 2. You have the RIGHT to carry out investigations of grievances**, including interviews of grievants and witnesses. Most contracts provide for investigation on "company time." For those that don't, there is often a clear past practice that allows this. But, if not, every grievance must be investigated as thoroughly as necessary, even if it's on your own time.
- 3. You have the RIGHT to organize and encourage your fellow workers to take action** in support of an issue or grievance, so long as it doesn't take place on work time and interfere with production. The boss can't stop you from getting people to wear stickers, sign petitions, carry signs, or take similar actions on break or lunch time. (Of course, stickers, buttons and caps can be worn *all* the time, unless there's a special reason for a dress code.)
- 4. You have the RIGHT to request the information you need to process a grievance** from management. You should put these requests in writing. Management is obligated to respond, (*see: Using the NLRA*).
- 5. You have the RIGHT to be present in any meeting between the boss and an employee if it might lead to discipline** (*see: Know Your Members' Rights*)
- 6. You have the RIGHT to be present every time a grievance is being "adjusted" or settled.** Even if a worker has taken up the grievance on their own, the boss can't bypass the union when responding.
- 7. You have the RIGHT to stand toe-to-toe with your boss when you're conducting union business.** You can get loud, angry, forceful, and speak your mind during grievance meetings. This is the "Equality Principle" that says you and the boss are equals in grievance discussions.

**All of these rights are legally guaranteed, but they depend on how well you use them. When you do, your members will find *their* rights are protected, too.**

