

# UPSEU Local 1222 Shop Talk

United Professional and Service Employees Union  
Newsletter for Unit Officers and Stewards

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## Unfair Rules?



As a UPSEU Local 1222 Unit Officer or Steward, sooner or later you will be faced with grievances based on alleged violations of the employer's rules. While no one questions an employer's right to unilaterally establish reasonable workplace rules not inconsistent with law or your union contract, the right is not an absolute one and the way the rules are applied can be challenged by the union.

In general, a contract's management rights clause spells out the employer's right to establish rules. The key question is whether the rule is reasonable and just.

How do Unit Officers/ Stewards deal with such "rule violation" cases? Here are some principles that can help a worker who is victimized by an unfair rule.

**Is the rule applied evenhandedly to all the persons it covers?**

Sometimes rules are enforced more vigorously with women than with men, with unskilled workers than with skilled workers, or when help is hard to get as compared to periods when unemployment is high. Or, one person may be fired for a rule violation, while another person has only been suspended for the same thing. Women have successfully argued that their rights were violated by grooming standards, placing more pressure on them.

**Were there extenuating circumstances at the time the incident occurred?**

Even when a Unit Officer/ Steward might agree the worker violated a legitimate rule, should the employee's age, past record, years of service, or family problems be taken into account to reduce the penalty?

**Were workers notified when the rule was established, changed, or put back in force?**

Did the employer take special effort to let

susceptible workers know about the rule? Did the employer notify affected persons concerning penalties which might be imposed? Can the employer prove that employees were contacted?

**Was the rule understandable?**

The employer is obliged to make the rule crystal clear - exactly what behavior is unacceptable, and exactly what penalty will be imposed if the rule is violated? e.g. If extended absence may call for discipline, just exactly how long is extended? How many hours, days or weeks?

Different rules might be cited in the same incident, and the different rules may call for different penalties. It must be clear which rule applies to the case in question, and why. And complicated rules regarding issues like sexual harassment may require providing special training before they can be enforced.

**Does the rule impose an undue hardship on some of the workers it covers?**

A rule that allows a ten minute break every morning may be difficult for people to follow if they work far from the break room.

**Did management discuss the rule or consult with UPSEU Local 1222 prior to establishing or changing the rule?**

UPSEU Local 1222 is entitled to notification and/or an opportunity to discuss any changes in working conditions resulting from the application of rules before they are implemented.

**Was due process followed?**

Most contracts call for verbal warnings, then written warnings, then suspension, and finally, discharge, if the worker persists in his/her misbehavior. And currently, employers are responsible for counseling employees or offering retraining if they have a work performance problem.

**Was management able to really prove that an employee was guilty of a rule violation?**

Not only is circumstantial or hearsay evidence weak, it could also implicate someone else in addition to the accused person.

**Does the rule serve a practical purpose to the employer?**

If violation of the rule harms neither the employer nor fellow employees, then what is the rationale for it?

### September Issue Features

- Unfair Rules
- Negotiating Tips
- Member Steward Confidentialy
- Don't Let Conflict Rob Your Time

## Negotiating Tips

### The TOP TEN REASONS To Become a Better Negotiator



- Improve personal and professional profitability
- Achieve desired outcomes and create synergy while fostering relationships



- Maximize financial returns and value in negotiations
- Avoid being cheated



- Neutralize difficult negotiators and their tactics
- Enter into and conduct negotiations with confidence



- Know when and how to walk away from a negotiation
- Improve personal relationships with colleagues, clients and loved ones



- Build leadership and team building skills
- Turn cultural differences into assets rather than liabilities



### Prepare, Prepare, Prepare

Although most people will claim that they already know this and do not make such mistakes, what they say and what they do are two different things. Two of the most common mistakes for both the experienced, as well as the novice negotiator are :

- Failure to adequately prepare
- Assigning false motivations to representatives of management.

Adequate preparation means having the answers to the basic four negotiating questions, prior to beginning negotiations.

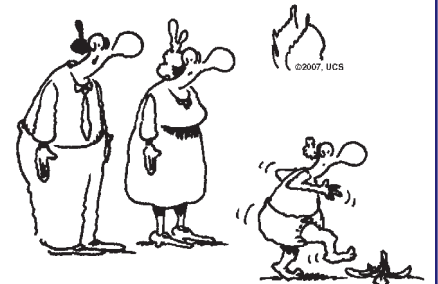
Question 1 - What do you want?

Question 2 - Why should you be given it?

Question 3 - What will it cost?

Question 4 - How will it be paid for?

Without the answers to all of the above questions, you are never really in the game. However, simply knowing the answers will not accomplish your goal of successful negotiating, but rather will allow you the chance to be in the game and to pursue that goal.



"I want his first steps to prepare him for life without a union."

## Member- Steward Confidentiality



Stewards/ Unit Officers, when they're defending members against an accusation by management, can almost feel like lawyers.

So here's the question:  
**Do stewards/ unit officers have the same confidentiality protections with members that lawyers have with their clients?**

**Can you legally refuse to tell your employer facts about a workplace situation that are disclosed to you by a member?**

Here's an example where confidentiality could become an issue.

Let's say one or both of the parties to a workplace shoving match comes to you for advice. The next day, the employer, investigating the scuffle in order to decide whether someone should be disciplined for it, maybe suspended or even fired, asks you what you know about it. Not only does he ask you, in fact, but he demands to know.

Can you refuse to reveal that information?

### Member/Steward Privilege

The answer is almost always "yes." Administrative agencies, labor boards, courts and arbitrators in both the United States and Canada give legal protection to this "member/ steward privilege," which is the confidentiality of conversations and other communications between members and their union officials.

Of course, this protection is not unique to the union world. A lawyer can't be compelled to reveal information given by a client in confidence. And disclosures to a physician are protected by confidentiality, as are those to a religious leader or a mental health professional.

These legal protections exist because there are good reasons to shield confidential communications. We want people with medical conditions to feel free to reveal everything to their health-care providers; public health will suffer if patients have to worry about disclosure of matters they might find embarrassing. This extends to mental health care, too, with the U.S. Supreme Court having recognized that a relationship of "trust and confidence" is needed if a patient is to be able to benefit from psychotherapy.

Similarly, we understand that in our adversary system of justice clients must be free to reveal all potentially relevant information to their lawyers, so that lawyers can then advise their clients properly and, if the case proceeds, present the most effective legal case. (Of course, there are common sense exceptions in all these instances, such as when a client reveals plans to commit a new crime. Society recognizes that there is a strong interest in preventing future crimes, and accordingly expects the lawyer to come forward with the information.)

Similar policy reasons apply for protecting the privacy of communications in the union world. While very few stewards are lawyers, in fact one critical function of being a steward/ unit officer is to provide the same kind of representation services that a lawyer provides

**The collective bargaining agreement is the law of the workplace, and the grievance process is the equivalent of a workplace court system.**

### Telling all without fear

So, just as a client wanting to get adequate advice and a proper defense must be able to fully and frankly present all the information at hand to the attorney providing legal representation, a union member facing a disciplinary action or seeking to enforce provisions of the union contract needs to be able to "tell all" to the union rep, without worrying about whether the steward/ unit officer will later be forced to betray those confidences.

And a union steward/ unit officer seeking to protect due process rights of members and to enforce the terms of the collective bargaining agreement must be in a position to assure members that they don't have to hold back on what information they provide.

That said, here are some words of caution: just as with attorneys and their clients and with doctors and their patients, there are limits on the confidentiality of communications between members and their union stewards. An arbitrator or a court may determine that a member's right to confidentiality has been given up, for example, if the communication took place in a setting that one ordinarily would not think was confidential.

For example, if a member tells you, and everybody else in the lunchroom, about having thrown the first punch, you won't be able to tell the prying employer that you won't reveal the contents of that conversation.

### Be sure it's confidential

Likewise, if you share confidential information from a member with union higher ups or a union attorney on a "need to know" basis, the confidentiality will be preserved. But if the member goes around talking to everyone under the sun, it won't be possible to argue that the information is still confidential.

#### So, some practical words of advice:

**First**, you can assure a member of the confidentiality of what you are told, but also make clear the limits;

**Second**, in whatever notes you make of conversations with a member, make sure to include any assurances you gave him or her that the matter would be kept confidential, or any requests made by the member to that effect.

This makes it clear that the expectation at the time was that the matter would remain confidential.



## UPSEU Local 1222 UPDATE

### Don't Let Conflict Rob Your Time

Little conflicts can turn into big time-wasters, conflict resolution experts say. Involved parties fritter away too much time mulling over or talking about the conflict, which translates into a loss of productivity.

Here's how to deal with a conflict:

- **Resolve a dispute as soon as it starts.**

Don't wait until the tension is so thick that neither of you has the will to slice through it. If you can't clear up the problem on your own, ask for mediation.

- **Reflect on why you can't get along with someone.**

Visualize a moment of the fighting, remembering it as it actually happened. That can help you analyze your part in the conflict.

- **Imagine how a simple reconciliation might play out.**

Act out your own and the other person's responses in your mind. Or ask a friend to role-play.

- **Assume the other person wants to resolve the conflict as much as you do.**

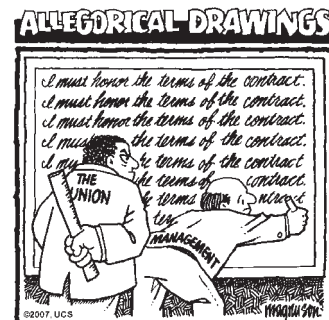
It's probably just as much of a psychological burden for the other person.

- **Avoid showing anger or other emotions when meeting with the other person.**

Focus on your goal of resolving the conflict rather than on anything offensive the other person might say.

**Watch for upcoming improvements on your UPSEU Local 1222 Website [www.upseu.org](http://www.upseu.org) including on-line forms.**

To access this feature, you must be registered as a UPSEU Local 1222 member. Go to Member Log in on the right side toolbar and "Click Here to sign up." You will receive a confirmation e-mail within 72 hours.



*"We're Making a Difference in the Workplace"*

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