

# Leveraging vs. Lawyering



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**W**hile the anti-union movement in this country often takes spectacular forms, like the ongoing assault against public employees in Wisconsin and elsewhere, a steward sees the same anti-union campaign from a unique viewpoint: in the trenches. Grievances that were once routinely resolved are now challenged and dragged out. Supervisors who once had the authority to settle departmental issues now bump grievances up to the next step, delaying the process and increasing the expenses for the union. For many stewards, the sense of lost power (and respect) is overwhelming and frustrating.

An inexperienced steward will simply either give up or will keep processing grievances in the same way, violating Einstein's Law of Insanity: doing the same thing over and over again and expecting different results. Sharp and experienced stewards, on the other hand, look for new ways to deal with this anti-unionism, but often end up at the crossroads of two methods: "lawyering" or "leverage."

## Lawyering: Not Always the Answer

Lawyering involves a focus on proper procedures, on logic, presentation and documentation, as if a grievance hearing were a debate. One union advertises a steward training as offering "Critical thinking in order to develop a winning grievance argument that legendary orator Clarence Darrow would be proud to make." Another asserts that dealing with a grievance "in a professional way" helps guarantee that the union will prevail.

Lawyering also includes resorting to outside laws—the National Labor Relations Act, provincial laws or one of the dwindling number of public sector bargaining laws—which seem so absolute: An employer cannot legally fire a steward. An employer cannot legally refuse to process a grievance. A steward must be treated as an equal. Stewards, after all, have legal rights, don't they? You know, the Equality Principle?

There is an extra attraction in lawyering for any steward who is involved in the servicing model of union: Someone else will do the work. Lawyers or agents of the respective labor boards will investigate, follow up on the charges and make sure that justice is speedily done while the steward goes on with life as usual. No muss, no fuss, no risk.

## It's a Question of Power

Not. In fact, grievances are not debates about legal issues between equals—they are a reflection of the constantly shifting power between the union and the employer. The stronger the union, the better the grievances go. One union officer I encountered was reluctant to give a simple Q & A about a steward's legal rights because he knew the realities of the National Labor Relations Board: While the law seems clear, its enforcement is chancy and, at best, can take years—all during which a steward who thought she was equal to her foreman when conducting union business is out on the street. So much for the Equality Principle.

Leverage, on the other hand, requires a steward to join the Union TEA (Time, Effort, Aggravation) Party because an organization has to be built up to support the fight on a particular issue. Many stewards simply do not comprehend leverage—the power to force the boss to do what he doesn't want to do, whether it is settling grievances or accepting an ambitious union contract, by the sheer strength and unity of the workers. In fact, a good union slogan could be "Get Leverage or Go Home."

Building leverage involves focusing all of the members on all of the grievances so that a member who feels untouched by a discipline, for example, can understand

that a discipline to one could be a discipline to all.



## Be Able to Get the Word Out

It is discouraging—in this age of instant communications—to find out how few stewards are able to quickly get The Word out to their members.

Communication is a fundamental part of developing leverage. A steward should diligently work on getting personal contact information from every co-worker, especially since the union's legal use of

the employer's equipment—computers and e-mail systems—is so uncertain today. Build this system well in advance of a crisis by sending out meeting notices, social activities, or birthday notices, but make sure that the structure—like a hurricane warning system—is up and running when you really need it.

Does this take Time? Yes, it does. But in the long run it is a worthwhile investment. Does it take Effort? Some, but a good steward will recruit helpers to gather the information, a process that not only reduces the time and trouble for the steward but draws new members into active union participation. Does it take Aggravation? Probably. Some members will grumble about giving out personal contact information, but you can bet they are the same folks with 5,000 friends on Facebook who know what the grumbler had for breakfast.

All of this is not to encourage a steward to ignore the laws. Legal support can be very helpful. But relying on the legal structure as the only method of enforcing your union contract is like fighting with one hand tied behind your back. Look at the history of your grievances over the past, say, six months to see if you have done as well as you want. If not, it's time for a change in approach.

—Bill Barry. The writer is director of the Labor Studies Program at the Community College of Baltimore County.

# Steward-Member Confidentiality

**S**tewards, when they're defending members against an accusation by management, can almost feel like lawyers. So here's the question: do stewards have with members the same confidentiality protections 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" Protected**

The answer is very often yes. Many administrative agencies, labor boards, courts and arbitrators in both the United States and Canada have given legal protection to this "member/steward privilege"—the confidentiality of conversations and other communications between members and their union officials. Often this has been done through case law, but it can be legislatively protected, too.

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 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 or a disciplinary proceeding 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 pro-

viding 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 will later be forced to betray those confidences.

And a union steward 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.

—Michael Maurer. The writer is the author of *The Union Member's Complete Guide*.

# Job Classification Issues: Individual and Collective

**J**ob classification issues are some of the most common causes of conflict on the job, and stewards encounter them in two ways: when an individual worker questions the classification or reclassification of work that they themselves are doing, and when the employer makes or proposes to make a change that will affect the whole job classification system.

## Individual Grievances

One common individual job classification grievance is when a member believes that a position should be reclassified upward because job duties have been added to it. Equally common is when a member's position is going to be reclassified, usually downward, because management claims that the basis for the former classification has changed. Yet another common cause is when workers are made to work outside of their classification but are not being paid for it. In any of these cases, file a grievance as soon as possible. Don't wait until a worker has been working out of class for a long time and then try to retroactively file one as a continuing grievance: The case may not be accepted by an arbitrator.

Start the process by gathering all the relevant written materials. Study the contract. Unfortunately, many contracts exclude the classification system from the grievance procedure, so you may have to grieve something else, such as the job description; the definition of the bargaining unit; the right of the union to retain certain jobs or duties; past practice, and language regarding the creation of new classifications, jobs or titles. Clauses about training, promotion, transfer, pay schedules, subcontracting, nondiscrimination, and the right of workers to see or challenge their own job descriptions may also apply.

Always compare the jobs at issue both as they are actually performed, as well as on paper. Remember that just one duty assigned to work that strays from a job description does not necessarily justify reclassification. Jobs always overlap somewhere. Some union contracts specify 20 percent as the trigger: If 20 percent of a person's time is being spent outside of their job, it's time to file a grievance.

Do not allow workers to accept management's stated promise that they'll make it right if you don't file a grievance.

## Collective Grievances

When the whole system is at issue, and not an individual member's job classification, the situation is more complex.

Job classification systems often predate the presence of the union in a workplace. In such cases the union inherits the system and may have bargained it into its first contract. It was inevitably designed to make life as easy as possible for management, including making it easy to hire persons to do a specific job and, when they are no longer needed, get rid of them. Employers may want everyone on a "team" to have the same skills, to get the flexibility to move workers from job to job depending on work flow, which will sooner or later require fewer workers. A job classification system, in other words, has a point of view. Legitimate job classification systems are based on skill required for the job, experience, responsibilities, the physical and mental demands of the job and its working conditions and hazards. From the union point of view, a job classification system should also express union values of fairness, protection of the

work of the bargaining unit and seniority.

Today, many employers are trying to compress job classification systems, turning, for example, fifty classes into three. This may arise during bargaining or an employer may simply implement changes and force the union to grieve or file an Unfair Labor Practice over failure to bargain. This applies not only in manufacturing but in office and service jobs as well.

Unfortunately, no job classification system is per-

fect. They all reflect to some degree improper factors such as historic discrimination, prejudiced perceptions by management, possibly even the culture of workers in the union. An extreme, common example demanded that firefighters be a certain height and able to perform specific acts of agility and strength. This usually was a way to keep women and Latinos and certain Asians out of the fire service. Obviously the standards were not really job related, because in parts of the world where the average person is a lot smaller, they still had fire service.

Probably the most famous job classification struggle ever was at the Ford plant in Dagenham, England, in 1968. Seamstresses sewing car upholstery demanded to be classified as skilled workers, equal to the male workers with comparable skills who were doing other work. This led eventually to a massive strike, national political intervention by the Minister of Labor, and ultimately one of the first major advances for the women's movement on the job and the whole question of comparable worth. The story is told in a wonderful 2010 movie called *"Made in Dagenham."* Give it a look.

—Helena Worthen and Joe Berry. The writers are veteran labor educators.

**Many classification systems were written without union input.**

**It's dangerous to wait too long to file a classification grievance.**

# A Steward's Toolkit

**A** soldier wouldn't be caught in battle unarmed, nor would a baseball player step onto the ballfield without a glove. Neither, then, should a steward be caught on the job without his or her own special tools of the trade.

Those tools vary, depending on the nature of the workplace and the steward's union itself, but a lot of tools are universal. Every steward alive, for example, should have a copy of the union contract near at hand, just as every steward should have a good, updated list of phone numbers and e-mail addresses to put inquiring members in touch with appropriate union, fund or other officials.

An effective steward's toolkit contains both material and information. Some components should literally be with the steward at all times—a pen and a pocket-sized notebook are examples—while others can be grabbed from a nearby desk, locker or vehicle on short notice.

## Available When Needed

In some situations you'll know in advance exactly what you'll need and you can have everything ready to go. For example, your copy of the contract while meeting with a member to discuss a complicated grievance, or a brochure about the



union and a copy of the newsletter or access to a union website when you know you're going to be meeting a new worker for the first time.

Some tools are not as portable as others, so they may have to reside out of immediate reach. One major tool, for example, is your employer's own employee records. Stewards have a right to have access to these records, at least in part, when handling a wide range of grievances, including disputes over absenteeism, assignment of overtime and the like.

Don't overlook outside resources. Everyone can get to a public library or the Internet, with their wealth of information. Between the two sources you can find detailed information on everything under the sun, including full texts of important laws that might affect your situation.

Don't forget the value of the best tool of all—although one you better not try to put into your locker at work. That's the experienced veteran—or veterans—who can counsel you on how issues have been handled in the past. This can be another steward or a union officer: someone who may be able to shed light on and offer advice about a tough issue you're trying to deal with.

The exact makeup of your toolkit will vary from some others, but the accompanying list gives a pretty good idea of some of the basics. Pick and choose as you believe appropriate in your situation,

but keep in mind that a big part of your job consists of answering questions and moving information back and forth between the union leadership and the membership. Arm yourself accordingly.

## Some tools for the toolkit:

- A notebook and a pen
- A watch and a calendar
- If affordable, a smartphone
- A copy of your union contract and any side agreements or supplements
- A copy of your employer's worker handbook, if any
- Your local union's by-laws and national union's constitution
- A copy of your union's steward handbook, if there is one
- Grievance forms
- Grievance fact sheets
- A list of union members
- Seniority lists as appropriate
- A list of nonmembers
- Union membership sign-up forms
- Copies of your local and/or national newsletter
- Sign-up cards for the union's political action fund
- Names and contact information for union officers
- Contact information for community resources
- Employee Assistance Program information
- Union Privilege-type program information (union credit cards, legal services, etc.)

You'll probably want to modify or add to this list, depending on your situation and circumstance, but it should give you a good start. Be sure to stand back and take a look at it every so often. New materials from your union, changes in benefits, new resources in your community all could cause you to give your toolbox a tuneup.

—David Prosten. The writer is editor and publisher of Steward Update.

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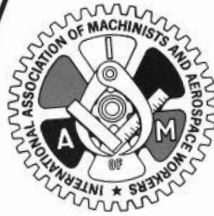
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OFFICE OF THE INTERNATIONAL PRESIDENT

Dear IAM Shop Steward,

As we hit the midpoint of 2012, preparations for our 38th Grand Lodge Convention in September 2012 in Toronto, Canada are in high gear. The presidential and Congressional elections in the United States are just over three months away. The work we do in the next few months will shape the future of both our union and our two great nations, the United States and Canada.

As the United States lingers in what should rightly be called a depression and the Canadian economy is stalled, we need strong leadership and bold action to get our economies back on track. Instead, government on both sides of the border turns a blind eye to the needs of working families and instead concentrates on helping corporations and the powerful.

In the United States, the Republican party has put making President Barack Obama a one-term president over the needs of a nation in crisis. And the steady stream of anti-worker, middle class destroying policies from the House of Representatives is only held back by a razor-thin Democratic majority in the Senate that is in danger of evaporating in November.

It is a shame beyond belief that millions of American and Canadian families are suffering economic distress. Meanwhile, the Conservative Harper government focuses on helping corporations and in the United States the meager help Democrats propose is constantly blocked by Republicans vying for political advantage.

The time to start supporting good pro-working family candidates is now. The U.S. election will be very close and every vote will count. As Stewards, you can begin by making sure every person you work with is registered to vote. Then, over the next three months, talk to your co-workers about issues that really matter: their ability to support their families, stopping bad trade deals and investing in our nation's infrastructure to produce jobs in the near-term and the foundation for a strong economy in the future.

The extremist legislation coming from the GOP majority in the U.S. House of Representatives, to radically cut defense spending, cripple America's unions, slash social programs, reduce Social Security and Medicare and reduce investment in our nation's infrastructure, is just the warm-up act if elections go their way in November.

So please, start now. Register to vote, make sure you're your co-workers are registered and start educating yourself on the real issues in this election. Ask every member you meet if they want to put people back to work or enrich the nation's most powerful at the expense of working families.

In Solidarity,

*R. Thomas Buffenbarger*

R. Thomas Buffenbarger  
International President

