

What
if?

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Answers to some
of a new steward's
most common
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Answers to some of a new steward's most common "What if?" questions

Internet users are familiar with the term "FAQ," which stands for Frequently Asked Questions: questions about a service, a product, a way of handling a computer task. Union stewards—especially new ones—have a lot of Frequently Asked Questions as well, especially when it comes to handling grievances. Those questions usually start with the old familiar "What if..." This article offers ten classic What ifs. Maybe the answers can make life a little easier for you.

What if

... the grievant reveals a fact in the grievance meeting that I didn't know about?

Call a caucus and find out what it's about. Good interviewing can help prevent this, but it happens to every steward at some point. When you meet with the worker before going into the grievance meeting, always ask, "Is there anything else I should know?"

... I can't make a full investigation within the time limits to determine if a complaint is a grievance?

File the grievance and continue your investigation. The union can always withdraw the grievance at any time if you find it shouldn't be pursued.

... I goof up at the first step?

You'll have another chance at the second step—and you'll have time to discuss the case with other stewards or union staff to help you do a better job.

... a worker's rights have been violated, but he or she does not want to file a grievance?

Fear is a very real feeling in the workplace today and a steward needs to assure members that the union—their co-workers—will support them. Remember, though, "an injury to one is an injury to all" and we have the responsibility to make sure the contract is enforced and workers' rights are not violated. If filing a grievance

is necessary, but a member is not willing to come forward, it can be filed as a "union grievance." Letting violations pass without some kind of union action weakens the union and encourages the employer to single out other fearful workers.

... a worker is violating the contract or otherwise doing something that will get him or her in trouble?

Consider talking with the worker privately, or ask a friend of the worker to discuss the issue with him or her. Your role is not to be a "police officer" but rather that of a union leader concerned that the worker will be disciplined and the union will be the weaker for it.

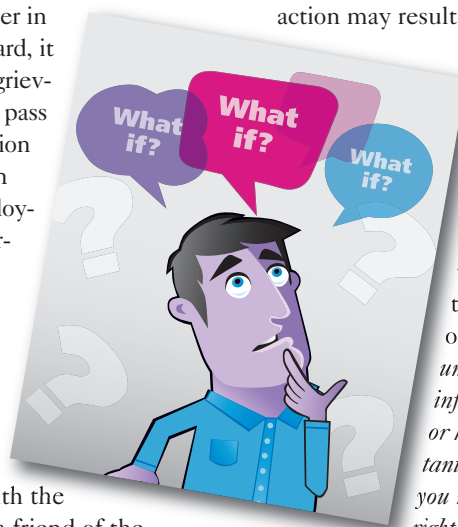
... a worker's complaint is not a valid grievance?

First, make sure it's not a grievance. Remember, valid grievances can include unfairnesses that are not contract violations. If it's really not valid, explain this honestly to the grievant, but it can be better to fight it anyway. It's often better to have the boss say "no" than the union. There are some grievances—complaints about other workers; grievances that, if won, would harm the general membership; or particularly outrageous claims—that should not be fought. Telling people honestly when they are simply wrong is part of the steward's job. This should rarely happen, but if there is any doubt, you must begin by assuming that our people are right and the boss is wrong!

... management interviews and disciplines a worker without the presence of a steward?

Under a 1975 U.S. Supreme Court decision, a worker has the right to request union representation when the worker reasonably believes that disciplinary

action may result from a meeting with management. This protection is known as "Weingarten Rights." It's the same in Canada. However, it is up to the worker to request the steward or union officer: *the employer is under no obligation to inform the worker of his or her rights. It is important for you to tell workers you represent about this right.* Your union officers can give you more information.



... a nonmember asks me to handle his or her grievance?

You must handle it just as you would handle a member's grievance. Under law, the union must represent everyone in the bargaining unit fairly, without discrimination or hostility. This is known as the "Duty of Fair Representation." It gives you an opportunity to show the nonmember rank-and-file unionism in action—and he or she may reconsider joining.

... there is a provision in the contract about scheduling that you are getting a lot of complaints about? You investigate, but there doesn't seem to be a violation of the agreement: management seems to be right on this one.

Put the boss on notice that this is a problem and figure out some ways for the members to let the boss know why they don't like it. He or she may be willing to work it out. If there's an element of unfair treatment involved, you may be able to pursue the problem under the contract's union recognition clause. Better yet, look at ways you can use the collective power of your co-workers to settle the grievance.

—Adapted with thanks from the Steward Handbook of the United Electrical, Radio & Machine Workers of America.

Contract Interpretation Grievances

Contract interpretation grievances are complex, challenging, and all too common. How a few “simple” words are interpreted can mean the difference between huge victory and crushing defeat, so it’s important for stewards to tune in to this never-ending cause of dispute.

Here’s an example.

Let’s say Christmas falls on a Monday. Everyone is off. Tuesday we come to work and there is a notice that says Saturday is a mandatory day, no exceptions.

We go to the union contract and see the sentence: “The regular work week is Monday through Friday, 8:00 am to 4:30 p.m. , with an unpaid 30-minute lunch.”

So, do we have a grievance?

On first blush, an arbitrator would likely rule, “If the parties put in the word *regular*, someone must have anticipated there would be an irregular situation. Clearly, only once in a while does Christmas fall on a Monday. This is clearly an irregular situation. It is clear there are business needs to be open five days. If the parties had intended to limit the week to Monday through Friday, period, they would have written the words **THE WORK WEEK IS M-F PERIOD.**”

The arbitrator has clearly read the sentence carefully and noted that the term work week is modified by the word *regular*.

Grabbing a dictionary, we see this:

Regular: Conforming to a rule; agreeable to a prescribed mode or customary form; normal; acting or going on by rule or rules; steady or uniform; orderly; methodical; unvarying.

Hmmm, could be a problem. Let’s go to Synonyms and Antonyms.

Synonyms: orderly, methodic, systematic, uniform, unvaried, customary, ordinary, stated, periodical.

Antonyms: Irregular, exceptional, abnormal, erratic, uncertain, rare, disorderly, confused.

Maybe helpful, maybe not. What next? Do the research.

Look at the last ten years’ experience with holidays and see if this is the first time your employer has ever done this. If so, you may have a chance at persuading the parties this is a new term and

condition subject to notice to the union and bargaining. If the employer has flip-flopped on the issue over the years, management will argue each year had a different business need. It further would

work against the union if the union had not protested before.

Check to see if the sentence in question was discussed in bargaining. Were examples given? Did the employer ever say during negotiations it was management’s intention to have more flexibility in the work week, or were they silent? Union notes taken during the bargaining may help. Dig them out.

Interviewing bargaining committee members may also provide insight as to the intent of the parties.

What the union would be arguing for is maintenance of standards and hopefully a clear practice on how things have been done in the past. There is no guarantee how much weight an arbitrator would give to a past practice.

Words to watch out for include: normal, usual, customary and periodic.

Wiggle Words

When looking at contract interpretation, the first thing to watch out for will be wiggle words. In this case *regular* is an adjective modifying the work week. Other words to watch out for would include: *normal*,

customary, usual, periodic, occasional, intermittent, understood, recognized practice. Each of these words create ambiguity, NOT clarity.

My own favorite word is *emergency*. In my union’s view, a list of clear emergencies would include things like floods, tornados, fires or power outages. An employer, on the other hand, thinks that a dispatching supervisor oversleeping is an emergency. The best words are *Act of God*.

Other interpretation headaches include “full-time employee,” but with no written definition of full-time. Along these same lines: “Part-time” employee, “eligible” employee, employee “on the seniority list.”

Yet another head-scratcher: conditional words, as in: An employee is allowed a two-year leave “provided” the union and employer sign off on the leave.

Some of the problems of contract interpretation are not material for the grievance procedure and arbitration, and are better left to be argued and corrected at the bargaining table.

In summary, remember this:

- Every word counts.
- “Wiggle” words cause ambiguity.
- Explore the intent of the parties who decided to use the word.
- See if past practice in your workplace will help your case.

—Richard de Vries. The writer is a veteran union representative with IBT Local 705.

When it comes down to the crunch, every word in the contract counts.



Handling Health and Safety Rule Violations

Does this scenario sound familiar to you? It does to a lot of stewards: A worker cuts corners in order to get the job done, and there's an accident, an injury or an illness because of the corner-cutting. The incident comes to the attention of a supervisor and the worker gets blamed for violating a health and safety rule. The worker gets disciplined, but the hazard that caused the problem is forgotten about.

The fact is, many jobs cannot get done safely until hazards are fixed. Many workplaces are understaffed today, lean by design and speeded up. Equipment and infrastructure are likely to be old, deteriorated and nonstandard, often repaired on the fly. Experienced senior workers work alongside casuals who are untrained. Some workers are doing the job of more than one person. In workplaces like this, when productivity trumps safety, rules are a weak way to keep people safe. Workers will bend rules to get their work done.

Because of all this, a steward's investigation of discipline for a health and safety rule violation must go beyond the "Did he or didn't he?" and examine the hazard that the rule was supposed to protect against.

The Hierarchy of Controls

The steward needs to understand what is sometimes called "the hierarchy of controls." This hierarchy is accepted by OSHA (the Occupational Safety and Health Administration, part of the Department of Labor), NIOSH (the National Institute of Occupational Safety and Health, also part of the Department of Labor) and every health and safety professional who is not in the pay of management.

The top of the hierarchy, the most preferred way to deal with hazards, is to redesign the job. This means fix the hazard; then there will be no need for a rule. The bottom of the hierarchy is to leave the hazard in place but have workers

wear personal protective equipment (PPE), such as gloves, masks, safety glasses, hard hats, respirators or hazmat suits. This puts all the responsibility on the worker to protect himself, despite the "general duty" clause of OSHA that says that management must furnish a workplace free of recognizable hazards.

In the middle of the hierarchy are rules: put up warning signs, hold trainings, or simply order the worker to do the job in a way that avoids the hazard. Rules are also supposed to be temporary while the hazard gets fixed.

One way to envision this hierarchy is to picture a busy traffic intersection. Imagine that there is no traffic signal. People depend on the brakes in their individual cars to not crash into each other. That's like PPE. Then imagine a traffic light. That's a rule: green means go, red means stop. But sometimes a vehicle—a fire engine or ambulance, or someone in a hurry who sees that no one is coming—runs the red light. That's a rule violation, and sometimes it makes sense. The best solution, of course, is to build an overpass so that the two streams of traffic never have to cross. That's the engineering solution.

What Can a Steward Do?

Ask questions. If a member is disciplined for violating a health and safety rule, the first question—the key question—a steward should ask is, "What was the hazard that the rule was intended to protect the worker from?" Then you ask, "Why did he violate the rule? Were there consequences? Did anyone get hurt? Did the rule violation cause damage to property? Did it interfere with the work of someone else? Did it put someone else at risk?" Arbitrators take all this into consideration. If the worker is disciplined for not properly using PPE, he may have had a plausible reason. If he violated the rule because he was impaired by lack of sleep, drink, drugs, or mental illness, the context still matters.

Union Health and Safety Committees

Unions without their own health and safety committees should consider initiating one. This is the case whether or not management has been issuing frequent safety rule violation charges. The union committee should meet separately from any labor-management meeting. Its first activity should be to engage in aggressive hazard documentation. This both to inform management and to inform workers. After informing comes follow-up. What steps were taken to remove hazards? If management proposes creating rules, remember that safety rules are a mandatory subject of bargaining. If the rule is that people should wear PPE, bargain that the employer should provide it, make sure it fits and train people in its use. You can also bargain for the time required for training and for putting on, taking off and storing the gear. There are two big advantages to having the committee and engaging in aggressive hazard checking and follow-up. It makes the union look serious about health and safety to management and all the members. Second, it will actually get some stuff fixed.

If All Else Fails, "Work Safe"

Tactically, one of the strongest things that can be done in a situation where an employer is pursuing a pattern of going after workers for safety violations is to work to the safety rule, sometimes known as "work safe." If the workers actually follow all health and safety rules to the letter, production will likely slump, because what is really happening on a daily basis is that workers are exercising their judgment to get the work done. In fact, in a truly dangerous workplace, "work safe" may be the most effective way to get hazards fixed for good.

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

Turning Negatives into Positives

A lot of employers these days are into “inspirational” slogans on teamwork and productivity, slogans that usually come down to “Work Harder, Work Cheaper, Be More Obedient.” But one promising slogan that is making the rounds is worth applying to steward activities: *Take a Negative and Make It a Positive.*

Here’s one real-life way to do it.

A group of stewards was commiserating with each other over the lack of support they got from the members. At issue was the deduction of union dues from a lump sum that their national union had negotiated in place of a wage increase as part of a new contract. The contract was ratified—by a large margin—by many of the same members who were now loudly complaining about the dues deduction.

The stewards were bewildered by the inability of their “inactive” members—those who pay union dues as required by the union contract but who otherwise pay no attention to the activities or importance of their union—to comprehend one apparently simple fact: the lump sum, like all of the other improvements and protections negotiated in the contract, was negotiated by them, by *their* union, which must have financial support if it’s going to succeed.

Sound familiar? Of course it does.

Questions over dues deductions reflect both a fundamental lack of understanding of the union, and an even more serious inability to understand one of Life’s Big Questions: what comes from where, and why?

Stewards who are besieged by unhappy members have to create an action plan, using these complaints to strengthen the union.

Keep in mind that while the case

we’re talking about here involved a dues deduction, the action plan can be applied to any number of situations in which members have a beef about the union’s work.

■ Improve communications

In many ways, the confusion about the dues deduction reflected an information vacuum in the workplace, an empty space that was quickly filled up by gossip, rumors and employer propaganda. To counteract this, once a new contract is

signed stewards should prepare a “talk sheet”—a list of points about the new contract. Each of them could use these points when

approached by a co-worker, in this case a disgruntled dues-payer. Having a consistent approach will help stifle rumors and management propaganda while the preparation of the sheets by a group of stewards will allow each of them to contribute unique responses to be shared by the group.

The talk sheet could summarize all the improvements won in negotiations, stressing the importance of membership involvement during bargaining. The sheet could point out that if an hourly raise had been gained instead of the lump sum, the dues would have been deducted throughout the year anyway, so the deduction from the lump sum is nothing unique.

■ Informal education

It became obvious that most of the union’s dues-payers had no idea of how the union functioned as a whole. Stewards

should consider conducting regular member educational sessions to cover various points about the contract and about the structure of the union.

■ New patterns of union meetings

Demographic shifts in the workforce, and expansion of union jurisdictions, frequently make it a challenge for even the most loyal and dedicated members to make it to regular union meetings. It might help boost participation by having meetings in the workplace, where appropriate—before work, during lunch or right after work. Another possibility is to send out e-mail messages to members on a regular basis.

■ Union appreciation

Many members covered by the union contract have forgotten just how cold the outside world really is. An excellent education activity is to produce comparisons between non-union jobs—particularly in the same industry—and the union jobs. Call it “*The job’s the same, the union’s the difference*” and keep telling the members about the value of their organization. Let your members vividly understand just how far ahead they are. In the same vein, if you have some members who were working before the union was organized, schedule regular times for them to recall the bad old days for the members who have always enjoyed the protection of the contract. Such memoirs are great additions to any new member kit.

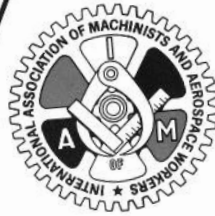
■ Consistent activity

Don’t allow the union to be seen as visible and active only when a new contract is to be negotiated. With long contract terms, long periods of apparent inactivity need to be filled by consistent—and persistent—union educational and organizational activities.

And always remember another of the inspirational slogans: *overcome obstacles.* The confusion of the members is an opportunity for the leadership, so look at their complaints as just one more mountain to move. Get yourselves together and make it happen!

—Bill Barry. The writer recently retired as director of labor studies at the Community College of Baltimore County, Maryland.

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OFFICE OF THE INTERNATIONAL PRESIDENT

Dear IAM Shop Steward,

As this edition of the *IAM Educator* was being prepared, our union was getting ready to participate August 28 in the 50th Anniversary of the March on Washington. While many remember that famous march as the setting for Dr. Martin Luther King's "I Have a Dream" speech, there is a deep connection between that historic day and the North American labor movement.

One of the principle organizers of the 1963 march was A. Philip Randolph, president of the legendary Brotherhood of Sleeping Car Porters and one of America's premier civil rights leaders. The Porters merged with our own Transportation Communications Union (TCU/IAM) in 1978.

The official name of the 1963 march was the "March on Washington for Jobs and Freedom." It drew 250,000 people to Washington D.C and remains one of the largest mass protests in American history.

At the event, Randolph declared that "The March on Washington is not the climax of our struggle, but a new beginning not only for the Negro but for all Americans who thirst for freedom and a better life."

Today that struggle continues — a struggle for civil rights, jobs and freedom. While we've made many gains since 1963, the struggle today is just as important as it was a half-century ago. Conservatives in both the United States and Canada are trying to roll back laws protecting civil rights, block efforts to keep jobs from being shipped overseas, and erode basic freedoms such as the right to join a union and retire with dignity.

A potent symbol of the struggle is the recent bankruptcy filing by the city of Detroit. Bad trade and tax policies have let millions of good manufacturing jobs go to Mexico and other countries, leaving a hollowed-out city and destroyed communities. But instead of trying to bring jobs back home, conservative politicians look to cut pensions and other benefits for workers.

Just as in 1963, the struggle today is for jobs and freedom. And as in 1963, union men and women will be leading that fight. Together, we must work every day to protect our jobs and defend our freedoms, just as A. Philip Randolph did in his day.

Thank you for being a Shop Steward.

In Solidarity,

R. Thomas Buffenbarger
International President

