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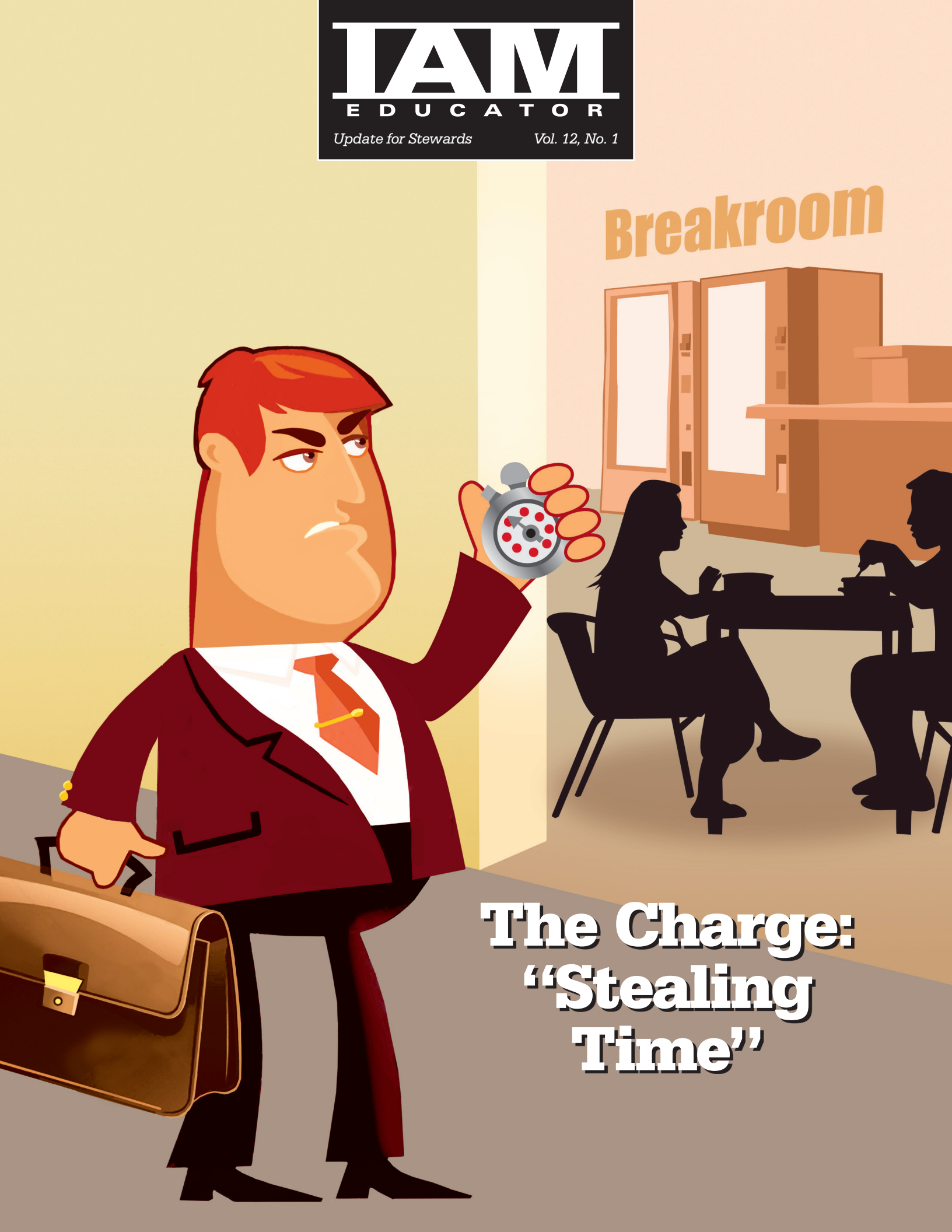

The Charge: "Stealing Time"

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From the point of view of employers, every minute of the boss's time should be committed to producing his goods, services and profits. To let even a second escape, in an employer's view, is "stealing time." As a steward you may be called upon to defend a worker who has been accused of this act. While a given case may cross over the line of what you can justify, to handle the case effectively it's important to question what is really going on.

Time can be considered "stolen" when a worker uses the Internet or phone to do personal business, lingers in the restroom, extends a break, comes in late or leaves early. Other examples are falsification of time sheets, clocking or swiping in and then leaving the workplace, working slowly in order to force overtime, sleeping on the job or even using the employer's facilities to run a side business. But employers may also accuse a worker of stealing time when what is really going on is that the worker is trying to organize his work to reduce stress, motivate himself or even help out another worker.

Stealing Time...and Stolen Wages

Management consultants say that on average, 4.5 hours per week per employee is "stolen" from the boss through "payroll inflation." The most hours are "stolen" by senior, white-collar office employees. However, while 4.5 hours out of 40 sounds like a lot, wage theft, in which employers fail to compensate for time worked and is thus the mirror image of stealing time, is estimated to add up to $35 billion per year. The entire question of the sale of labor in units of time is something that people have struggled with since ancient history.

The conflict over who controls time during work gets at the essence of the relationship between workers and owners.

The steward's best approach is to treat a charge of stealing time the same way you'd approach an attendance question. Check the facts and the evidence, check the contract and attendance policies, look for instances of disparate treatment, mitigating factors, evidence of progressive discipline and reasons on both sides about why this discipline is being imposed now. Even if it is a clear matter of sleeping on the job, there is a difference between someone nodding off at his desk and someone who has found a hiding place to curl up and take a nap.

The bigger issue: how much control we have over our lives.

The bigger issue is about how much control we have over our lives, including our lives at work. Employers face a complicated choice here. They want motivated, productive workers. More control over the work means higher motivation and productivity, but it also means that the employer has to trust the worker.

Labor historians who have studied the conditions of work during slavery days have compared work in the rice fields with work in cotton fields. Historic documents and interviews with ex-slaves show that even under the extreme conditions of slavery, people had a strong preference for one way to organize work over another. In the rice fields, work was organized by the task: slaves worked until the task was done. It was possible to hurry, finish, and have some time left to cultivate one's own kitchen garden or rest. In the cotton fields, though, it was gang labor, organized by the slave driver's whip. People worked until the overseer said stop. When production generally became organized by the assembly line, the speed of the line served the function of the whip. In a piece rate pay system, the ever-receding horizon of potential earnings takes the place of the assembly line and the whip.

Clashing View of Work

Employers who accuse someone of "stealing time" when they try to exercise control over their work are treating labor as if it were grades of a commodity, like corn, lumber or coal. This often angers workers who see labor, even routine labor, as an opportunity to express pride in their craft and human development. The concept of "stealing time" hits right in the pivot point of these two views. For the steward who hopes to educate and activate members, this contradiction creates an opportunity to push back against bad conditions, perhaps by everyone participating in a job action, such as all wearing "message" buttons, ribbons, or even T-shirts.

Unfortunately, the trends of both employer behavior and arbitrators' decisions are getting worse, not better. There was a recent Canadian decision upholding the GPS tracking of employees when they are working outside the employer's building. An entire new industry is growing, heavily advertised to employers as a strategy to control "payroll inflation," of new time control systems, often Internet-based, that automate requests for personal time, monitor hours of work and alert employers when a senior worker is about to incur overtime and can be replaced by a lower-wage worker.

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

Make the Most of Employment Law

Your union contract is the law of the workplace, but it's not the only law you can count on in your fight for fair and decent treatment on the job. You can also look to employment law—laws that govern workplace rights. These supplement the rights that a worker or group of workers also have as a result of being represented by a union.

Why is it important for unionists to understand employment law? There are many reasons, including:

■ First, all of the employment laws that apply to your workplace supplement whatever you've negotiated in your contract. So if you want to understand, for example, what health and safety standards you can hold your employer to, you need to consult both whatever contract language you may have, and also whatever statutes or regulations may apply.

Employment laws supplement whatever you've negotiated.

■ Second, knowing what the law already covers can shape what your bargaining agenda is in the first place. If some workplace right or protection already exists because of a statute, and can be enforced by a government agency that enforces that area of law, then you may want to save your bargaining chips for rights or protections that you'll only have if you can get them in your collective bargaining agreement.

■ Third, having a handle on employment law can be useful even early on in an organizing drive. Suppose you determine that a specific workplace protection already is legally guaranteed even though a particular workplace is unorganized. If you use that knowledge to enforce those rights on the workers' behalf, in so doing you demonstrate your union's effectiveness.

Pinning Down "The Law"

Determining which employment laws apply to a particular workplace and to particular workers can be tricky business. So the first step, as with labor law, is to pin down what "the law" may be.

■ Employment law comes from a combination of things: statutes passed by the legislature, regulations issued by agencies that enforce the statute, and court or agency rulings that have interpreted the meaning of the statute over the years. The applicable statutes can be at different levels (and sometimes even more than one): federal, state/provincial, county/city/local.

■ As with labor law, the question of "jurisdiction" comes up. For starters, sometimes it's the case that different laws are applicable in the private and public sectors. And just as with the National Labor Relations Act, some employment laws will cover, for example, only specified categories of businesses: those of a certain size (determined by whether the business has a certain minimum number of employees) or those engaged in "interstate commerce" (measured by volume of business conducted).

Look at both contract and statutory rights.

■ And to further complicate the scheme, some laws apply to only specified individuals in a covered workplace. So a particular law, like unemployment compensation or workers' compensation, may exclude those who are "independent contractors," for example, and grant its protection only to those defined as "employees." Wage and hour laws may not provide protections to certain salaried professionals, or other specific categories of workers. Or a discrimination law may provide legal protections against age discrimination, but only for workers age 40 or over.

■ In Canada, the scheme is a bit less complicated. About 10 percent of workers in certain specific industries (transportation, radio and TV, and some others) are covered by laws at the federal level. The other 90 percent are subject to whatever laws their province has enacted (which themselves can contain an assortment of exemptions and so on).

Don't Get Lost in the Weeds

Don't get completely lost in the technical legal weeds, though. To determine what the scope of legal protections are in a given situation, a beginning plan of action should generally look like this:

■ What rights might be found in your existing collective bargaining agreement?

■ What rights might be found in an applicable employment law at the federal, state/provincial or local level, or in agency regulations or court decisions interpreting and applying that law?

Why look at both contract and statutory rights? Because as a general rule (keeping in mind, of course, that rules always have exceptions…) we get to cherry pick. That is, if a contract contains stronger protections than what's laid out in a law, we can enforce those contract rights. But if, on the other hand, there's a statutory right covering a topic not addressed in the union contract, or containing stronger protections than what the union has been able to negotiate, we can use those statutory protections.

And one last pointer: keep in mind that employer handbooks or letters of employment that are issued to individual workers may also be legally enforceable workplace obligations.

—Michael Mauer. The writer is a labor lawyer and author of The Union Member's Complete Guide: Everything You Want—and Need—to Know About Working Union.

Dealing With Workplace Bullying

If a 6-foot 5-inch 320-pound millionaire professional football lineman can be bullied at work, as was widely reported in the case of Miami Dolphin linebacker Jonathan Martin last year, what are the chances that one of your members is enduring the same problem? The controversy over workplace behavior presents a steward with a complicated, and often divisive, situation but one that cannot be avoided. In fact, the possibility of bullying provides a shrewd steward with the opportunity to assert the power of the union and to make the workplace better.

What's the matter? Guy can't take a joke?

Bullying is just that—one person using various methods of intimidation, verbal or physical, against another worker. The potential for workplace bullying expands as the diversity of our workplaces increases. With different races, languages, nationalities, cultures, sexual orientations, all in the same workplace, the possibility for friction—and harassment—increases. Pressures at work, in the economy generally and even in workers' home lives, can become the basis for an eruption as workers turn against each other rather than against the boss. Add in the intensified media blasts about minorities, resentments against certain immigrants and differences over religion, and a steward may have to deal with an explosive—and potentially violent—situation.

Bullying is a Workplace Issue

Is workplace bullying a union issue? Absolutely! A steward has to be proactive if bullying is observed, even if it means speaking up about an unpopular issue—or an unpopular co-worker.

In the first place, it's the right thing to do: Unions were organized to block the biggest bully of all, The Boss, so many of whom routinely use humiliation and threats against employees. It is the union that demands respect and fair treatment for all workers from management in the workplace so we have to show the same respect for our co-workers that we demand from the boss.

Second, heading off a nasty situation can prevent an even uglier one. Often if bullying is going on, one worker will complain first to a supervisor about it and the alleged bully could get disciplined, then turn around and demand that the union protect his/her job security. Your members then start to choose up sides, both on the basis of their prejudices but also on the basis of what they consider to be "normal" workplace kidding. "What's the matter? Guy can't take a joke?" The membership then is divided and a clear resolution for the situation, or a possible grievance, becomes cloudy. The Dolphins teammate who allegedly bullied linebacker Jonathan Martin, for example, denied his remarks were racially motivated and was supported by some of the black players on the team.

When Things Get Physical

Even worse, bullying may provoke a physical response—a punch, for example, or worse—and then both members could be discharged for fighting. The boss may just figure that he can get rid of a troubled situation by firing everyone involved and let the poor steward worry about picking up the pieces. If co-workers come to blows, the underlying issue of bullying might never be brought up and a steward has to deal with what is a clear violation of the rules in most workplaces: no fighting on the job.

It is sometimes difficult to draw the line between the kinds of hazing that new workers can face and truly damaging harassment. On construction sites, for example, apprentices are often ordered to fetch a left-handed monkey wrench, or a "bucket of air," while the experienced journeymen howl with laughter. Medical students, especially women, complain about outlandish assignments during their residencies while experienced doctors claim that it's just a rite of passage.

Another problem is that casual workplace banter, which often jokingly refers to ethnic or racial characteristics, and which has frequently been tolerated, suddenly becomes bullying when a worker complains. Innocent fun can become, or can be perceived as, something more drastic.

Social Media Complicates Things

The availability of social media makes the situation even more complicated. What if a co-worker posts an observation, or insult, about another member on social media such as Facebook, or Twitter? In most workplaces, the dispute over off-duty conduct is a constant and ever-changing issue: To what extent should your personal behavior, or your personal opinions, impact your position at work, or even your job security? When a posting on social media is perceived as threatening, and possibly affecting the workplace, a personnel director may step in and start discipline.

A steward who becomes aware of possible bullying needs to speak to all of the members involved to clear up any misunderstanding so that all workers know how the others feel, and respond to, comments or images. See if there are deeper issues—off-duty relationships or possible addiction problems—that appear as a bullying dispute. If there is an employer-sponsored counseling program, make use of it. But above all, a steward should move quickly and decisively to keep a small problem from become a big one.

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

Witness for the Union

There are all kinds of unions and union contracts and ways that unions and employers deal with discipline cases. As varied as they may be, one of the things most of them have in common is using witnesses to get to the bottom of what happened and what should be done about it. How these witnesses perform can have a major impact on the outcome of your case, so you've got to be especially careful about selecting and using them.

In an informal setting, witnesses may be asked to tell what they know in a meeting with a supervisor at the early stages of the grievance process. In more formal settings, they may be called to participate in disciplinary hearings, fact findings, arbitrations, or even trials. Whatever the setting, consider three basic questions to ask yourself about your witnesses. It will help you do the best job possible for a co-worker in a jam.

1 Does the witness possess the factual information needed to make your case?

The best witness offers information that can be viewed in one way only. Even if that isn't the case, you need to encourage as much clarity as possible.

Certain words can be interpreted in more than one way. For example, a witness might say, "She came back to the gate a moment later." That isn't very clear. How much time is a moment? Wouldn't the statement be clearer if the witness said, "She came back to the gate 10 minutes later"? Other words have unclear meanings. What is "a bad attitude"? What is "an OK employee"? What does it mean when the employer says our member has "a poor work record"? Many of us have been trying to figure out those meanings for years.

You also want to establish facts, not opinions. Prior to calling on your witness to offer evidence, you should challenge him or her to give you the facts and no opinions. Make your witness understand the difference between "I think it was late" and "It was 8:30 p.m." One answer is opinion, the other fact.

2 Will the witness's testimony contribute to your case?

If the answer is no, why are you calling that witness? You need a presentation strategy and theory of what happened before you try to make your case. Don't count your witnesses: it's not the number of witnesses that's important, it's their credibility. If you have six witnesses, pick the best two. You can always ask them, for the record, if there were any other witnesses present.

The danger with too many witnesses is that someone may not do well under questioning. You may find that the additional witness you added is a poor one and under cross examination she ruined your case.

3 Will the witness testify in a credible and believable manner?

In most cases where you use a witness, the story will not be decided on who told the truth and who lied, but on who was more believable by a hearing officer, arbitrator or other third party. You must do all in your power to make your witness credible. Some of the credibility may come from establishing simple facts, such as could the witness see or hear what they *said* they could see or hear. You need to determine the physical layout of the place in question. Who sat where? Who stood where?

If you have the time, have your witnesses tell their stories to you two or three times before the meeting. Listen for clues that show weak recall or inconsistency.

The bottom line is you need to be as sure as possible about your choice of witnesses and what they will say. It is often the telling of the tale that may win your case.

—Robert Wechsler. The writer is a veteran labor educator.

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OFFICE OF THE INTERNATIONAL PRESIDENT

Dear IAM Shop Steward,

More than five years after the Great Recession of 2008, North America's middle class is still struggling. And as the recovery in both the U.S. and Canada sputters along, the world's transnational corporations are pushing for another job-killing trade deal that will further harm North America's working families.

The Trans-Pacific Partnership (TPP), similar to the disastrous NAFTA, will cover the United States, Canada and 10 other countries—Australia, Brunei, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam. As this edition of the *IAM Educator* was being prepared, the TPP was in the final stages of negotiations. The negotiations have been highly secretive but some details have leaked out— and they aren't good.

Without major changes, the proposed TPP would add to the exodus of manufacturing jobs from the U.S. and Canada, and would give corporations the right to sue the U.S. or Canadian government in "investor-state tribunals" if they feel a local, state/provincial or federal law interferes with their expected profits. Among other things, that means they could sue to limit "Buy American" or "Buy Canadian" laws.

Similar tribunals now operate under World Trade Organization and NAFTA trade pacts. Chevron used the system to avoid an $18 billion fine by a court in Ecuador after Chevron failed to clean up toxic oil waste that contaminated drinking water and caused other problems in an indigenous peoples' community. In 2012, an arbitration tribunal ordered the court in Ecuador to halt the enforcement of its own ruling.

Expanding the tribunal system and corporate rights in the TPP could also lead to less safe food and other imported goods, fewer environmental protections, higher medicine costs by extending patent rights for pharmaceutical companies, and fewer protections for workers in both developed and developing nations.

The IAM and the labor movement have fought hard for stronger labor standards and trade policies that create jobs and protect communities. As the TPP nears a final agreement, there is still time to demand better from these misguided trade deals.

As Stewards, urge your members to speak up and demand that the TPP and all future trade deals benefit workers and communities, not destroy them.

As always, thank you for being a Shop Steward and keeping our union strong.

In Solidarity,

R. Thomas Buffenbarger

R. Thomas Buffenbarger
International President

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