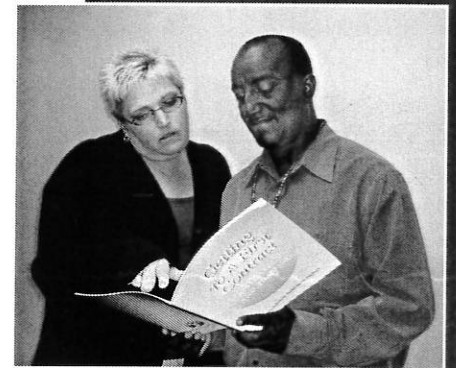


COMMUNICATIONS
WORKERS
OF AMERICA



Being a Steward

In a Workplace

Without a Union Contract

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Chapter 1

Being a Steward

BEING A STEWARD is a lot like being a member of the organizing committee; you need to stay close to your co-workers and keep them informed and united. In the transition period, after the union



election and before the first contract is ratified, it is essential to establish a steward structure, give the union visibility and act like a union workplace. Although we do not have a contract there is still plenty we can do to represent and engage workers and solve day-to-day workplace problems.

Stewards' Four Priorities

- I. Let co-workers know you are their steward and what stewards do.
- II. Make sure management knows you are the steward.
- III. Keep members informed.
- IV. Ask co-workers to sign up as members of CWA.

I Let co-workers know you are their steward and what stewards do.

Introduce yourself as a Union steward to co-workers and tell them they can come to you with workplace problems and questions about the Union.

1 How will you let co-workers know you are their steward?
Be specific.

2 How will you explain the role of Union stewards and why we need them?
(Review “Steward’s Role” in *Chapter 6–Resources*.)

II Make sure management knows you are the steward.

Introduce yourself to management as the steward. Inform management that when co-workers bring issues or concerns to you that you hope to work to resolve them quickly with management.

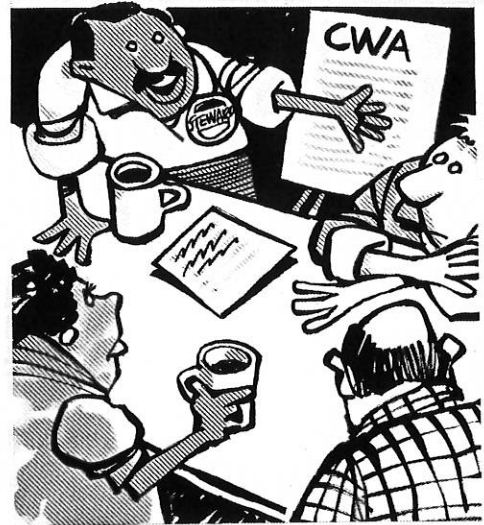
1 What are the major points you want to make with management? List them. Take into consideration how much management knows about unions and stewards.

2 When and how will you do this?
Time? Place?

III Keep members informed.

Keep co-workers informed about the Union, how collective bargaining works, and any workplace issues you are working to resolve.

1 How will you keep co-workers informed?



2 Where will you get information?

3 Who will you go to in the Union for assistance/direction?

IV Ask co-workers to sign up as members of CWA.

1 What 3-4 questions or objections do you think your co-workers will give you when you ask them to join the Union? List some possible responses.



Chapter 2

The Source of the Union's Power: Making a Difference in the Workplace

THE UNION IS A TOOL workers can use to gain a voice in the workplace, improve working conditions, negotiate protections, and obtain a better standard of living.



Agreement/Cooperation and Conflict/Resistance

The Union has to be able to cooperate with management on those things we agree on and resist on matters with which we disagree. For example, the Union and management might work together to get a large new order or to defeat regulatory policy that gives the advantage to a competitor. At the same time, we would resist an employer's attempt to outsource our work or deny members access to new jobs. Our relationship with management consists of both agreement/cooperation and conflict/resistance.

1 What do management and the Union agree on in your workplace?

2 What issues are likely to bring about conflict between the Union and management? Why?

Source of Power Exercise

Where does the Union get the power to make a difference in the workplace? Where does management get its power? *Read the following sources of the Union's and the Employer's power and in small groups decide which three are the most important to each, and why.*

<i>Sources of CWA Power</i>	<i>Sources of Management Power</i>
1 Skilled union negotiator	1 Skilled employer negotiator
2 Democratic structure— Power at membership level	2 Hierarchical structure— Power at the top
3 Good relationship with employer/management	3 Good relationship with the Union
4 Ability to impact employer's revenue/productivity	4 Ability to threaten loss of work, closing site, etc.
5 Percent of workers in the union at your employer	5 Percent of workers in the union at your employer
6 Percent of employer/ industry unionized	6 Percent of employer/ industry unionized
7 Strong stewards and mobilization structure in workplace	7 Supervisors' direct contact with employees in workplace
8 State of the economy (unemployment, etc.)	8 State of the economy (unemployment, etc.)
9 Financial health of employer	9 Financial resources to fight union if necessary (legal, etc.)
10 Political/community support	10 Political/community support
11 Labor laws	11 Labor laws
12 Percent of union members active in mobilization	12 Percent of union members active in mobilization

Differences Between a Union and a Non-Union Workplace

Union

Your wages, benefits and working conditions are protected by a legal contract.

The contract spells out how much everyone earns.

The union negotiates raises for everyone. The members vote on the settlement. If they think that it is not a fair settlement, they can vote it down.

If you are disciplined for something you didn't do, the union will defend you.

If you do a good job and are in line for a promotion, you will have a fair chance of getting it.

If you don't like something at work, you can work to change it.

Vacations, shifts, layoffs are based on seniority.

Non-Union

Management can change wages, benefits, and working conditions whenever they want.

No one knows how much anyone else earns.

If you want a raise, you have to beg for it or kiss up to the boss.

If you are disciplined for something you didn't do, you are on your own.

Promotions can be handed out on any basis—friendship, loyalty, or favoritism.

If you don't like something at work, you can quit.

Vacations, shifts, layoffs can be based on the bosses' desires.

Chapter 3

Collective Bargaining: Getting a First Contract

WORKERS who have voted for union representation do not automatically have a contract. An agreement about wages, benefits, and working conditions must still be negotiated with management. The role of the steward is especially important during first contract bargaining—to maintain support for the union, to help workers solve day-to-day problems on the job, and to develop solidarity for contract mobilization actions.



Collective Bargaining—Facts and Myths

Read through the following statements and decide if True or False. Refer to “What is Collective Bargaining?” in Chapter 6—Resources to help you answer these questions.

- | | TRUE | FALSE |
|--|--------------------------|--------------------------|
| 1. All workers in the United States have the right to collective bargaining. | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Both the Union and the Employer have a bargaining committee and bargaining chairs. | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Dates are set for bargaining sessions. During these sessions the Union and Employer bargaining committees sit across from one another and discuss bargaining demands. | <input type="checkbox"/> | <input type="checkbox"/> |

TRUE FALSE

- | | | |
|---|--------------------------|--------------------------|
| 4. Only the Union is allowed to present proposals or demands during bargaining. | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. The Employer cannot make any proposal or demand that would take anything away. Only proposals that improve on what workers already have are permitted. | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. The Employer is the one who proposes wage increases and benefit improvements. | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. The Employer is not affected by the mobilization actions of its employees. | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. Wages, benefits, and working conditions are mandatory subjects of bargaining. Employers are required to bargain over these issues. A refusal to bargain about a mandatory subject is an unfair labor practice. | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. The Employer wants to agree on a first contract as quickly as possible. | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. The CWA Constitution requires a contract settlement to be voted on by the members before it can go into effect. This is called membership contract ratification. | <input type="checkbox"/> | <input type="checkbox"/> |
| 11. In CWA members do not pay union dues until they have a ratified contract. | <input type="checkbox"/> | <input type="checkbox"/> |

Chapter 4

The Steward as Problem Solver

This chapter outlines steps to take when a co-worker comes to you with a workplace problem.

STEP

1 **Listen to the co-worker** without interrupting. Take notes.

STEP

2 **Ask clarifying questions.** (How many times has this happened? Who told you that was the policy? Did you ask for a copy of the policy? Did anyone else hear the supervisor? etc.)

STEP

3 **Repeat back to the co-worker,** in your own words, the situation or problem.

STEP

4 **Get the facts.** Do any necessary research or investigation. Ask the co-worker to help. Make sure you know answers to the 5 W's:

- ◆ *Who* is involved?
- ◆ *What* exactly happened?
- ◆ *When* did it happen?
- ◆ *Where* did it happen?
- ◆ *Why* did it happen?

Note: If it is a discipline problem, ask the worker to request a copy of his/her personnel record. Also, go through the "Just Cause" questions in Chapter 6 of this handbook.



STEP

5

Prepare for meeting with management. Prepare a brief summary of the situation and list the major points you want to make that support your case. Be prepared to offer ideas for a resolution or remedy. *Note:* Use the positive answers to “Just Cause” questions as major points to use with management.

STEP

6

Keep co-workers informed (if the problem is not confidential). It's important for workers to see the Union in action.

Workplace Situations for Stewards

Refer to "Laws You Can Use" in Chapter 6—Resources to assist you in answering these questions. Use extra sheets if necessary.


1 A co-worker tells you he keeps getting shorted on his paycheck. He is not getting paid for all the extra hours he works. He starts showing you pay stubs.

? If true, is this legal? Why? What law? What questions will you need answered by the worker? What documents will you need from the worker? When you meet with management, how will you present this situation and what will you recommend as the remedy?


2 A co-worker informs you that she has just been told (verbally) by a supervisor that her hourly wage is being reduced by 50 cents an hour. The manager told her it's because the work group voted for the Union.

? If true, is this legal? Why or why not? What law? What questions do you need answered by the worker? Will you talk with management about this? If yes, what will you say?

3 There is a cable running across the workplace floor and you have seen several workers trip over it. No one has complained to you about it.

 Should you do anything? If no, why not? If yes, what will you do?

4 Jessie has been absent several times lately. She has a chronic asthma condition and has had several bad episodes recently. This morning, Jessie's supervisor called her into his office and put her on a discipline level for unsatisfactory attendance. He warned her that if she is absent again she could be fired. Jessie is upset and comes to you for help.

 What do you say to Jessie (remember, she is upset)? What questions do you ask Jessie? What information do you need? What will you suggest to Jessie?

Just Cause

Refer to “Just Cause Guidelines” and “Is Discipline Too Harsh?” in Chapter 6–Resources to help you answer these questions.

5 A manager calls an employee of 5 years into his office and fires him for being tardy too many times. The employee has received good to excellent performance evaluations in the past.

? What information do you need? What will be your major arguments when discussing this with the manager? What remedy will you request?

6 An employee is suspended for two days for wearing a tank top to work. There is no dress code and no customer contact.

? What information do you need? What arguments will you make with management? What remedy will you seek?

Chapter 5

Meeting with Management: Problem Solving

OUR BEST CHANCE to resolve a workplace problem is at the workplace soon after it happens. The longer the problem lingers and the higher up it goes to get resolved, the more people get entrenched in their positions.



One of the steward's best tools for resolving problems is informal meetings with management. Stewards should prepare for these meetings, have the facts, and be able to summarize the problem clearly and concisely and offer a solution. Remember to listen carefully to management's response and identify areas of agreement and obstacles. Many workplace problems are solved every day by stewards through informal meetings with management.

Tips for Discussions with Management

- 1 A steward must act professional.** Approach our role as Union representatives in meetings with management as we would our jobs—professionally.
- 2 When acting as a steward, we are equal to management.** When representing our co-workers with management, we are on equal footing with the manager. Treat the manager with respect and as an equal.
- 3 Do not lose control or act out.** Abusive and or intimidating behavior does not win our arguments; it only complicates the working relationship with management and detracts from the problems we are trying to solve. A manager who feels attacked is going to be defensive and is not going to be listening to our facts and arguments. Don't let inappropriate behavior get in the way.
- 4 When we disagree with management, we do so with dignity.** Remember that we and the supervisor will have to settle other issues in the future.
- 5 Leave personalities/past history outside the discussion.** The steward's job is not about personal vendettas or getting even; it is about building the Union and problem-solving.

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The Steward's Role

What the Steward Does

- ◆ Solves workplace problems
- ◆ Keeps members informed
- ◆ Educates the members about the Union
- ◆ Signs co-workers into the Union
- ◆ Builds solidarity in mobilization activities
- ◆ Meets with management
- ◆ Keeps the Union visible

What the Steward Must Know

- ◆ Co-workers
- ◆ Workplace issues
- ◆ Management
- ◆ Basic rights
- ◆ Importance of membership engagement and mobilization
- ◆ (The contract once it's ratified)

How Stewards Do Their Jobs

- ◆ Listen to co-workers
- ◆ Get to know co-workers and supervisors
- ◆ Set standard for fairness—avoids favoritism
- ◆ Get the facts on issues/problems
- ◆ Meet with management to resolve issues
- ◆ Report back to co-workers on status of issues
- ◆ Orient new employees to the Union and workplace
- ◆ (Enforce the contract once it's ratified)

What Is Collective Bargaining and How Does It Work?

COLLECTIVE BARGAINING IS A PROCESS OF FORMAL NEGOTIATIONS between representatives of the employer and the elected representatives of the workers. During collective bargaining, the Union and management conduct discussions to determine wages, benefits, and working conditions. Agreements reached at the bargaining table are written in a legally binding contract or collective bargaining agreement. Every member is entitled to have a copy of the collective bargaining agreement.

Why Do We Have Collective Bargaining?

THE GOAL OF COLLECTIVE BARGAINING is to provide a process in which workers have equal power with management in order to influence their working conditions. The right to bargain collectively is found in the National Labor Relations Act (NLRA), passed by Congress in 1935, that covers many private sector employees. The Act recognizes that individually, workers have little power to obtain what is fair, but collectively, by acting together through our Union, we have the right and the power.

Do All Workers Have the Right to Collective Bargaining?

NO, 32 MILLION WORKERS IN THE UNITED STATES are not permitted to form unions and bargain collectively. For example, independent contractors, supervisors, farmworkers, domestic workers, and public employees in 21 states are denied the right to union representation. While many public sector workers won the legal right to unionize in the 1960s, millions of them in 21 states still lack the right to collective bargaining. (For example, in Texas, Oklahoma, Mississippi, and Missouri, public workers can form a union but cannot bargain collectively.)

How Can I Have Input Into Our Bargaining Demands?

THE UNION IS A DEMOCRATIC MEMBERSHIP ORGANIZATION (unlike our management counterparts), and so it is important for the Union Bargaining Committee to receive membership input and direction on bargaining issues. To obtain input from members, CWA Locals may distribute and collect bargaining surveys or set up some process whereby members can submit items for bargaining.

Who Is on the Union Bargaining Committee ?

MEMBERS OF THE CWA BARGAINING COMMITTEE are Union members who work at the employer. They are workers who understand the jobs, the work, and the needs of their co-workers. The Chair of the Union Bargaining Committee is appointed by CWA and is an experienced negotiator.

Who Is on the Management Committee?

MANAGEMENT HAS ITS OWN BARGAINING COMMITTEE AND CHAIR. Management committee members are assigned by top management and are usually Human Resource Department managers.

What Do Union Bargaining Committees Do?

THE COMMITTEE MEETS PRIOR TO BARGAINING and writes bargaining proposals based on surveys and priorities of the members. The committee researches workplace issues and demands in order to write up bargaining proposals. Once bargaining starts, the Union and employer committees meet until a settlement is reached. The Union committee presents its proposals and the company bargainers also present demands. The process can be grueling because of the give-and-take of negotiations, because of the difficulty of convincing an employer to change their position, and because the process often requires long days that extend into the night. Unfortunately, some employers purposely drag the process out in the hope that the workers will blame the Union for not having a contract.

What Is Mobilization?

MOBILIZATION IS HOW CWA MEMBERS SHARE INFORMATION about the issues in bargaining and demonstrate support for our bargaining proposals. Active and united membership support for the Union's demands is a critical factor in obtaining a good contract. Some mobilization activities are educational—like when we distribute leaflets about key issues—while others are designed to demonstrate Union solidarity—like when we all wear the same color t-shirt or a sticker at work. It is critical for management to know that their employees, not just the union representatives at the bargaining table, feel strongly about the issues being negotiated.

Who Has the Final Say on the Collective Bargaining Agreement?

WE, THE MEMBERS, DO! Once the Bargaining Committee reaches a tentative agreement with management, the agreement is put out to the membership for a vote. It is the duty of every Union member to vote on the contract. A majority vote means the contract is accepted. If the contract is rejected, the committee may go back to the bargaining table or a vote to reject can mean a vote to strike.

Usually, not everyone is happy with every element of the new agreement. That is the nature of bargaining. The elected Union Bargaining Committee tries to obtain everything it can for the membership, but the employer has its own agenda. Once we have a first contract, we can build on it in future negotiations.

Mandatory, Voluntary, and Illegal Subjects for Bargaining

Mandatory subjects must be discussed in bargaining if raised by either party, voluntary subjects may be discussed, and illegal subjects may not be discussed. Below are examples of each.

Mandatory Subjects

Wages, hours, work assignments, pensions, vacations, seniority, overtime, severance pay, breaks, transfers, promotions, no-strike clause, grievances, employee discharges, etc.

Voluntary Subjects

Decision to close facilities, selection of supervisors, retiree benefits (increases), neutrality clauses, general business practices, etc.

Illegal Subjects

Any issue that is inconsistent with the underlying policies of National Labor Relations Act.

CWA Dues and How They Are Used

THE DUES CWA MEMBERS PAY provide the resources that the Union needs to represent the 700,000 members who are covered by more than 2,000 collective bargaining agreements CWA holds with employers.

It takes money to run any organization. CWA, as a labor organization, exists only to serve its dues-paying members. The amount of dues members pay, when they start paying dues, and how their dues money is used is ultimately determined by CWA members as set forth in the CWA Constitution and By-Laws.

How each dues dollar is allocated



53 cents for programs and services for CWA members at the Local Union level in their communities: enforcing contracts, collective bargaining, handling grievances, training, etc.



36 cents to the CWA national office for national programs and services that support Local Union members: a field staff of 200 CWA representatives, collective bargaining support, legal assistance, education, safety training, etc.



11 cents for CWA Members Relief Fund. Provides financial support to members who are locked out or are forced out on strike by their employer.

Employers are quick to raise questions about Union dues in order to mislead employees. This is because they don't want their employees to get a union, which means sharing decisions about the workplace with them through collective bargaining. They don't want workers to get the right to negotiate with them over pay, benefits, working conditions, and company policies.

Dues Facts

How much are dues?

The amount of monthly Union dues most CWA members pay is 1.30% of base wages, excluding overtime or premium pay. The amount of CWA dues is set at a percentage basis so dues are affordable and only increase with income. Dues for workers who do not have the right to strike is 1.15% of base wages.

When do workers start paying dues?

Dues begin only after workers negotiate their first contract with their employer and approve it in a contract ratification vote.

Who decides how dues are spent?

CWA members elected by their co-workers—as Local Union officers and as CWA Convention delegates—decide how dues dollars are allocated.

What do dues pay for?

CWA dues are allocated to ensure that Union members have the kind of support they will need to have strong representation in their workplace, a voice for their concerns, and the means to improve their working conditions through contract negotiations.

Here is a brief summary of programs that CWA dues support:

- ◆ *Contract negotiations to improve members' wages, benefits, and terms and conditions of their workplace.* A field staff of 200 professional representatives supports Locals during negotiations.
- ◆ *Enforcing contracts and representing workers.* Making sure members' contracts are followed by employers, representing workers in grievances, covering legal fees and arbitration costs.
- ◆ *Safety and health programs.* Programs to ensure that workers are provided a safe workplace and are protected against on-the-job hazards (toxic substances, workplace design, and new technology).
- ◆ *Education programs.* A wide range of training programs for Local Union members and officers.
- ◆ *Mobilization support.* Strong support to help workers reach their bargaining goals during contract negotiations.

.....
BEING A STEWARD
IN A WORKPLACE
WITHOUT A
UNION CONTRACT
.....

Labor Laws You Can Use

Wages, Hours, and Working Conditions

The employer cannot change wages, hours, or terms or conditions of employment during negotiations with the Union over a first contract.

Source of Right:

Section 8(d) of the NLRA (National Labor Relations Act) creates the employer's duty to bargain with the union. Once a majority of workers vote for a union, that union is the "exclusive bargaining agent" of the workers. Once the duty to bargain has been created by a majority vote for the union, the employer cannot make unilateral changes in any terms and conditions of employment without first bargaining over those changes with the union. Failure or refusal to bargain with the union over wages, hours, or other terms or conditions of employment constitutes an unfair labor practice under Section 8(a)(5) of the NLRA.

Examples of Violations:

- ◆ Employer cancels a previously announced paid holiday.
- ◆ Employer institutes a bonus.
- ◆ Employer eliminates overtime pay previously given.
- ◆ Employer decides to stop giving employees free coffee.

Payment for Hours Worked

Employees must be paid for hours worked.

Source of Right:

Generally, the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201, and Portal-to-Portal Pay Act, 29 U.S.C. § 251, require that an employee be paid for any time spent that benefits the employer and is controlled or required by the employer. Certain activities which are preliminary or postliminary to the employee's principal work activity as well as time spent commuting to and from work are exempt from this rule.

Example:

An hourly employee's regular shift will be over in 15 minutes. The employee calls the supervisor and explains that he will not be able to finish the installation in 15 minutes. The employee asks the supervisor if he should leave it for tomorrow or continue working. The supervisor tells him to continue working. When the employee gets his paycheck it does not reflect the extra hour worked. This is a violation of the Act.

*Employee Right
to Union
Representation*

Employees have the right to have a union representative with them in meetings that may result in disciplinary action.

When an employee reasonably believes that a meeting with management may result in disciplinary action against her, she has a right to insist upon union representation at that meeting. This is often referred to as the *Weingarten Right*.

Employees must expressly ask for union representation. Employers do not have to offer it. Routine shop floor conversations about work techniques, for example, do not give rise to the Weingarten Right because such discussions do not raise reasonable fears of disciplinary action. Also, an employee has no right to union representation at meetings where management merely announces disciplinary action that has already been decided upon. Rather, the meeting must be investigatory in nature. A key factor in determining the investigatory nature of a meeting is whether the employer is seeking additional facts or information through the interview.



Although a union representative, once requested by the employee, has the right to be present at a meeting, the employer has no duty to bargain with the representative. A further limitation on the Weingarten rule is that once an employee requests representation

the employer has the option of (1) granting the request and interviewing the employee with a Union representative present; (2) not having any interview at all; or (3) giving the employee a choice between having an interview without representation or not having any interview at all. In other words, an investigatory interview need not take place at all, but, if one does, a union representative must be present if the employee requests one.

Source of Right:

NLRA Section 7 gives workers the right to act in concert for their mutual aid and protection. The Weingarten Right is a logical extension this right. One practical basis for this right is that the union steward may possess knowledge and skills that will be helpful in eliciting facts at the meeting which may save time during the meeting with management. The union steward may also later serve as a witness to the meeting.

Example:

An employer calls an employee into his office and starts asking the employee about a specific customer contact he had yesterday. The customer was incorrectly billed and is very upset.

The employer pulls the employee off to the side and starts reviewing her attendance record for the last six months. Prior to discussing her past attendance record, the employee requests Union representation and the employer grants her request.

Upon arriving, the steward should ask the manager what the subject of the interview is. The steward does not have the right to bargain over the purpose of the meeting. The steward should take notes. The steward is allowed to speak. The steward can ask the manager to clarify a question so that the worker knows what is being asked. Stewards do not have the right to tell workers not to answer questions or give false statements. Workers could be disciplined if they refuse to answer questions.

*Right to Safe
and Healthful
Working
Conditions*

Source of Right:

Occupational Safety and Health Act of 1970
Environmental Protection Act and the Railroad Safety Act.

The primary purpose of the Occupational Safety and Health Act is to “assure so far as possible every working man and woman in the nation safe and healthful working conditions....”

The Act further states that private sector employers are responsible to “furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.” These employers are obligated to comply with standards established by the Occupational Safety and Health Administration (OSHA).

*Right to
Collective
Bargaining
and Collective
Mobilization
Actions*

Union members have the right to collective actions and mobilization.

Source of Right:

NLRA Section 7 gives Union members the right to act in concert for their mutual aid. This means that workers can engage in collective activities. Concerted activity by employees is protected as long as it relates to “employees’ interests as employees,” and does not fall into one of the categories of unprotected activity.

Examples:

Protected activities include but are not limited to:

- ◆ mass grievance meetings
- ◆ distributing leaflets addressing employee grievances and criticizing management
- ◆ distributing a Union newsletter
- ◆ wearing or displaying Union insignia
- ◆ wearing T-shirts critical of management

- ◆ spontaneous walkouts to protest an abnormally dangerous working condition
- ◆ monitoring/reporting health and environmental violations to the appropriate government agencies
- ◆ appealing to the board of directors or shareholders about unfair labor practices committed by the employer
- ◆ wearing coordinated colored shirts into work on the same day to show unity for a contract, unless there is a workplace dress code that prohibits this
- ◆ signing a petition and presenting it to management en masse.
- ◆ having a rally at lunchtime on a safety and health issue, as long as the rally takes place on employees' nonworking time.

Stewards should be sure that the activities they plan to engage in do not fall into one of the following categories of unprotected concerted activity:

- ◆ sit-down strikes (refusing to work while continuing to occupy the premises)
- ◆ concerted refusals of overtime (even if the overtime is "voluntary")
- ◆ refusing to perform certain tasks while continuing to do others
- ◆ violence
- ◆ work slowdowns
- ◆ stopping and starting work repeatedly, if this is part of a plan to harass management

Family Medical Leave

An employer must allow eligible employees to take up to 12 weeks of unpaid leave in a 12-month period under certain circumstances.

An employee must have worked for the same employer for at least 12 months and must have worked at least 1,250 hours during the past 12 months to qualify for FMLA leave.

The FMLA (Family Medical Leave Act) covers any private employer that employs 50 or more employees during each working day for 20 or more weeks in the current or previous year.

This unpaid leave can be taken for:

- ◆ Birth or adoption of a child and care of that child (it must be taken within 12 months of birth or adoption);
- ◆ Foster placement of a child;
- ◆ Care of spouse, child, or parent with serious health condition;
or
- ◆ Employee's own serious health condition.

The employee is required to get certification from a medical provider to justify his or her medical leave. An employer may require the employee to get a second opinion if it is not satisfied with the certification.

Source of Right:

The Family and Medical Leave Act (FMLA).

Examples:

An employee needs to get time off to take care of her seriously ill mother. The employer must give the employee the time off under FMLA if the employee is eligible under the FMLA. In addition, this time cannot be charged as an absence, and the employee cannot be otherwise penalized for taking the time off.

An employee has a baby and requests 4 weeks off. The employer must give the employee the time off if he/she is eligible under the FMLA.

Is the Discipline Imposed Too Harsh?

These guidelines can help the steward analyze if an argument can be made that the discipline imposed was too severe.

1 How serious was the offense?

For example, punching a manager is much more serious than being tardy.

2 Was progressive discipline used?

For most offenses, management is expected to use progressive discipline. A common pattern is oral warning, written warning, disciplinary suspension, and discharge.

3 Double jeopardy

An employee should not be given two successive penalties for the same offense.

4 Employee's past record

Does the employee have a record of good/excellent performance evaluations?

5 Employee's length of service

The more years of service the more consideration the employee should be given on the offense.

6 Employer's lax enforcement of the rules

7 Unequal or discriminatory treatment of the employee

“Just Cause” Guidelines to Help a Co-worker Who Has Been Disciplined

A basic principle underlying most disciplinary procedures is that management must have “just cause” for imposing its discipline. This standard often is written into union contracts or is read into them by arbitrators.

While the definition of “just cause” necessarily varies from case to case, below are the standard questions that you need to ask to determine whether an employer had just cause for disciplining a worker.

1 Was the employee adequately warned of the consequences of his conduct?

The warning may be given orally or in writing. An exception may be made for certain conduct—such as insubordination, coming to work drunk, drinking on the job, or stealing company property—which is so serious that the employee is expected to know that such conduct will be punishable.

2 Was the employer’s rule or order reasonably related to its efficient and safe operations?

3 Did management investigate before administering the discipline? An investigation normally should be made before a decision to discipline is made.

4 Was the investigation fair and objective?

5 Did the investigation produce substantial evidence of proof or guilt?

6 Were the rules, orders, and penalties applied even-handedly and without discrimination?

If enforcement has been lax in the past, management can't suddenly reverse its course and begin to crack down without first warning employees of its intent.

7 Was the penalty reasonably related to the seriousness of the offense and the employee's past record?

If employee A's past record is significantly better than that of employee B, the employer may properly give A a lighter punishment than B.

Communications Workers of America

Education Department 2005

501 Third Street, NW • Washington, DC 20001
cwa-union.org