

# Stewards Guard the Home Front



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**A**s the U.S. military involvement continues in Afghanistan, and forces remain in Iraq, so does the need for a steward to be proactive and knowledgeable about conditions for any union member who goes out on military leave. A steward should always use the union's communications network—and not just bulletin boards—to make all of the members aware of both their responsibilities in case of a military call up, and of the union's support and assistance.

For a member involved in any military service, there are two areas of protection: the union contract and the federal law. In the United States, The Uniformed Services Employment and Reemployment Rights Act (USERRA) is administered by the Department of Labor. A steward can keep up with any changes in the law at <http://www.dol.gov/vets/programs/userra/>. Veterans Affairs Canada <http://www.veterans.gc.ca/eng/search> offers similar protections.

## Three Areas to Track

There are three areas for the steward to track for a member who goes into the service:

**1** Leaving the workplace, the member must give formal notification—"advance written or verbal notice," according to the law—to the employer and not just disappear, figuring that the boss will somehow get word of the reason. The member should provide a copy to the union, just to start a paper trail in case it is needed later on.

**2** While on military leave, a steward should be in contact with the member and with the member's family, so that the family knows whom to contact in case of issues like health insurance.

**3** Returning to the workplace also requires a formal notice, with periods stretching from one day up to 90 days, depending upon the length of enlistment. The returning member may, under the law, be required to provide documentation of the notice, so, once again, the member sending a written statement to

the employer should send a copy to the steward.

## Federal Law is the Baseline

While the federal law is clear, it should also serve as a kind of "minimum wage" for your members so the union should try to negotiate better benefits and protections for any member called into military service.

Some contracts provide that the employer will make up the difference in pay between the member's regular salary and any military pay, so a steward should make sure the member gets paid—on time and in full, including any piecework or bonuses. Most contracts limit this reimbursement to a short period, so the calculations should not be too complicated. A member who goes into the service for a longer enlistment may be able to collect earned vacation pay or personal leave.

If your contract is silent on any pay or benefit provision, you've got a great issue on which to build the union. What could be more supportive of our troops than demanding that your boss immediately implement a plan to make up the difference between military pay and the worker's normal wage for the complete period of enlistment? Create what the military calls "a surge"—go around your workplace and get group grievances or special petitions signed by every worker, demanding that full protection be provided to co-workers who are called up.

## Help with Health Insurance?

The law allows the worker to use COBRA to buy health insurance for the family, with a premium of up to 102 percent of the actual costs, but this is a huge expense for the member so the union should demand the boss cover the insurance—as a patriotic gesture!

Returning to the workplace, once again there is an overlap between the law and some union contracts to provide that the member will not lose anything. The law requires that the member be



returned to his/her previous position and "reasonable efforts" must be made, including training, for the worker to regain this previous position. One Steelworker contract even has a provision for disabled veterans, providing that any employee "who returns with a

service-connected disability which makes returning to his/her prior job onerous or impossible shall be assigned to a vacancy suitable to such impaired condition." One tricky issue for the steward is the potential displacement of a worker from a job to accommodate a returning veteran. The union should demand that both workers maintain their positions.

In a non-union workplace, the returning veteran is dependent upon the law, including extra protections against retaliation. In a union shop, however, the steward and the contract can be the first line of protection, using the Recognition Clause if no other clause specifically applies to returning veterans.

## Help Returnees with Issues

A very delicate issue is how your member responds to the workplace after returning. There is increasing evidence of Post Traumatic Stress Disorder (PTSD), for example, so a steward—as if you didn't have enough to worry about!—should look after the member and become familiar with whatever programs the local VA offers.

Facing negotiations this year? The enormous expenses to support all of the military action have created a hysteria among public employers, who claim to be facing bankruptcy and want wage cuts and benefit freezes. A shrewd steward will make the workplace a school for political education, clipping newspaper stories or sending online articles around electronically so that the home guard realizes that we, frequently more than some foreign countries, are under continuing, serious attack by fanatical tyrants: greedy and opportunistic employers.

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

# Qualifications, Seniority, and Promotions

**D**oes the following scenario sound familiar to you? It does to an awful lot of stewards, and it means a lot of headaches—and no small amount of heartache—to those involved.

Three workers all bid for the same open position. It will be awarded, according to the contract, by a balance of qualifications and seniority.

But what determines that balance? One worker clearly has the most seniority and has been a utility worker throughout the plant, doing many different jobs. The second worker has less seniority but actually did the job temporarily while the previous incumbent was on sick leave. The third worker has the least seniority but has paper qualifications that say he is qualified to do the job. Depending on how seniority and qualifications are balanced, any of these three workers could get the job.

Management wants to give the job to worker #3 and argues that the paper qualifications weigh the most. For workers #1 and #2, this is a problem.

What can the union steward do?

## Some General Rules

Qualifications are almost universally mandatory subjects of bargaining. They can mean skills, licenses, degrees earned, classes taken, references, evaluations, physical strength, the ability to sort or calculate at a certain speed, and many other things. Stewards should remember a few general rules about dealing with them:

- Ask if a qualification is truly job-related.
- Having a system for determining these cases is always better than taking them one by one.
- Seniority is not a perfect criterion but it is a system that can be measured fairly, and the value of the experiences created through seniority may be invisible to other approaches to measurement and therefore lost if seniority is not respected.
- The case at hand is never the only one of its kind. Its outcome is a sign of the power

of the union to improve conditions of fairness and job relatedness in future cases.

## Fairness, Not “Objectivity”

The union should not fall for the idea that “qualifications” is somehow an objective measure. Take a look, for example, at the way the job skills assessment system called WorkKeys ([www.act.org/workkeys](http://www.act.org/workkeys)) defines and measures skills. The perspective embedded in the questions and answers is clearly the employers’ perspective. While this is not surprising, it should not be mistaken for objectivity. Nor does the union want objectivity. The union has a perspective, too. The steward’s responsibility is to watchdog over the fairness of the system and its application.

## Finding the Balance

There are two approaches to balancing qualifications and seniority. One is to figure out everyone who is qualified to do the job, then see who has seniority. If this is what the contract says, then the steward will argue that worker #1 gets the job, pointing out that his broad experience in the plant is evidence that he can do this job as well.

The second approach is to take seniority as one factor along with qualifications and attempt to rank people. In this case, seniority only rules if people are otherwise relatively equal. If this is what the contract says, the steward can argue that worker #2, the one with less seniority than Worker #1 but who has actually done the job, gets the job over worker #3 on the basis of seniority in spite of not having paper qualifications.

What does “relatively equal” mean?

Many contracts use the term “relatively equal.” In one recent Canadian example, an arbitrator gave the grievant the job over the employer’s choice and noted that although the traditional arbitral standard is that the burden of proof of “relative equality” initially rests with the grievant, once the grievant has made the prima facie case, the onus shifts to the

employer to justify the selection. It is at this point that many decisions turn. This underscores the importance of contract language defining ability, qualifications, merit, and so on, and clarifying the relative weight to be given to each.

## Long-term Impacts of Hiring and Promotion Language

Here is a case from a large community college in the United States. A newly bargained contract stipulated that currently employed part-time temporary teachers (“inside applicants”) were to have “first consideration” to be hired for full-time, permanent jobs. The arbitrator in the first case brought under this new clause interpreted “first consideration” to mean that the burden of proof was on the employer to demonstrate that the outside applicant was superior, not just “relatively equal,” except in cases of demonstrated need for affirmative action.

These small differences in interpretation and language can make very large differences in the long run as patterns of promotion and hiring build up over the years, such that the character of the unionized workforce can be seriously affected, unified or disunified, based on the application of these decisions. In the case of the college, the decision has resulted in the vast majority of new hires being promotions from inside (people who were once part-time now hired full-time) and has resulted therefore in a much more unified union than is the case in colleges where most full-time hires are outside applicants, not current adjuncts.

At a time when layoffs, cutbacks and transfers are common, controversies around questions of qualifications are likely to come up. If possible, a steward should broach the issue of these general rules in a discussion among union members, without reference to any particular case, as a strategy to build capacity for dealing with controversy in advance.

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



# Fighting “Steward’s Stress”

**B**eing a steward is hard work. You’re in high demand because you are recognized as a dedicated leader who knows what’s going on in the union and the workplace. Your members depend on you for representation and information. Plus, of course, you have to do the work your employer pays you for—and you have important personal or family obligations just like everyone else.

Hard work is fine, but when it is not managed well it can lead to high levels of stress. While some stress is a part of living, extreme stress can be dangerous. This high level of stress is the helpless, tense feeling you get when your work or life feels out of control. It can be caused by problems at home, at work or in any part of your life in which you are feeling overwhelmed. And it can lead to illness and depression. Obviously, it is something to be controlled, if not avoided.

## The Causes

What causes high levels of stress for union stewards? A grievance caseload that seems too big or complicated, for starters. Then there are the many demands on your time for other union activities that can include such things as negotiations, organizing, picketing, and social, political or charitable events. There may be the feeling that the membership does not appreciate your work, or is even critical of it. And, of course, there’s the difficult task of trying to balance your union work with your paid job and the needs of your private life.

## How to Deal

Just about everyone experiences high levels of stress at some point in his or her life. But how can we manage our union work to keep stress from getting out of hand? Here are some practical tips used by many longtime union activists:

■ As much as possible, set aside specific times to do union work. Discuss with your local leaders how this would work under the official time or release time

provisions of your contract and/or the practice in your workplace.

■ You can’t do everything, so prioritize. If taking on more and more assignments is going to make you sick, it is not in your interest or the union’s interest for you to continue working at this pace. Think about what you really feel is important. Discuss and work out your activities with your local leaders.

■ Learn to say no. As union activists we are asked to do more and more work outside of our local unions. While stewards should participate in the larger labor movement, you don’t have to do *everything*. For instance, if you go to a picket line to help out another union during the week, maybe you can skip an award banquet on the weekend. If you are helping with voter registration, maybe you can miss the upcoming golf or bowling tournament. Keep in mind that if you try to do everything you may burn out—and end up doing nothing.

■ Pay attention to the people who are most important in your life. Except in emergencies, don’t let a personal event be destroyed by a union problem. Make sure that you attend your kids’ sporting events and piano recitals, keep appointments with friends, and don’t beg off celebrating birthdays or anniversaries because of the union.

■ Take time out for yourself. While it’s true, as the song says, that “the Union

makes us strong,” if we don’t get a break from it once in a while and do something completely different, it can also drive us crazy. Read a book, develop a hobby, see a movie, work in the garden, learn a new dance step, go fishing. And do whatever you enjoy on a regular basis. You will be more energized and better prepared for the rigors of union work by doing so.

■ Get physical. One of the best ways to deal with stress is through some form of exercise. It can be as simple as taking long walks. Or you can try running, playing sports, dancing, swimming or lifting weights. Physical activity causes chemical actions in the body that help to relieve stress, depression and generally put you in a better mood. Of course, check with your doctor before starting any strenuous exercise if you have been sedentary for a long time.

■ Finally, always remind yourself of the importance of your union work. Gain strength by knowing that you are fighting for justice, for what is right—even if your members forget to thank you for your hard work and sacrifice. Try to achieve a balance between your union work and other important parts of your life. And get some rest.

—Carl Goldman. The writer is executive director of AFSCME Council 26, Washington, D.C.

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# Double Jeopardy: A Neglected Defense

**M**illions of TV viewers became acquainted with double jeopardy through the O.J. Simpson saga. After being found innocent of killing his wife in the criminal system, Simpson was found responsible in a civil trial. Nevertheless, California could not re-prosecute him in the criminal system because of the double jeopardy rule.

The double jeopardy principle also plays a role in union workplaces in the United States and Canada. It is an important element of the just cause standard.

The just cause standard, as interpreted by arbitrators in numerous published and unpublished decisions, forbids an employer from increasing a penalty previously imposed on an employee *if it was reasonable for the employee to believe that the matter is settled*. The rule applies even if the original penalty was imposed by mistake or is inconsistent with the employer's progressive discipline system. As one arbitrator wrote: "In industrial relations, the doctrine of double jeopardy means that if an employee is punished for a specific act, he is entitled to regard such punishment as final for that particular misconduct."

## Failure to Review the Employee's Record

Consider a supervisor who issues a one-day suspension for a safety infraction. Two days later the action comes to the attention of the labor relations manager. The manager looks at the worker's disciplinary record and finds that this was his third safety offense in the past two years. Can the manager call the worker, explain that the supervisor made a mistake, and change the penalty to a termination?

The answer is no. The worker has already served the suspension and returned to work. From his vantage point,

he had a reasonable expectation that the matter was over and done with. It would violate double jeopardy if management was allowed to revisit its actions.

## Other Examples

In the following cases, unions that argued double jeopardy were able to convince labor arbitrators to nullify the second penalty:

- A bus driver was issued a written warning after a passenger was injured during an abrupt stop caused by the driver's inattention. One month later the passenger died of the injury. Aghast, a labor relations manager changed the penalty to a discharge.

- A supervisor reprimanded a worker and ordered him to stop sexually harassing a female co-worker. The co-worker complained that the penalty was too weak and threatened to sue. Fearing a potentially large Title VII judgment, the company fired the offender.

- A supervisor sent a worker home four hours early for failing to follow instructions. When the worker came in the next day, he was fired. An arbitrator found double jeopardy because the supervisor said nothing on the day of the incident to alert the worker that the company would continue its investigation.

## When the Rule Does Not Apply

The double jeopardy principle does not apply when a worker is suspended "pending the completion of an investigation." In this circumstance the worker is on notice that the discipline is temporary and a stronger penalty may follow.

The double jeopardy rule is also inapplicable when the employer increases a penalty after learning of evidence that

was "unavailable" when action was originally taken. Unavailable is a rigorous standard. It does not apply to evidence that the employer could have obtained by conducting a more thorough investigation.

## Oral Reprimand

One of most controversial applications of the double jeopardy principle concerns oral warnings. In one case, a supervisor discovered workers playing poker during a break—in direct violation of a company rule against gambling on premises. The supervisor told the workers they were breaking company rules and ordered them to put away the cards. The workers complied and went back to work. At the end of the day, the supervisor called the workers in and issued them three-day suspensions.

When the case was tried in arbitration, the suspensions were vacated. The arbitrator said the oral reprimands were the first level of discipline, which, under the double jeopardy rule, could not be increased simply because the supervisor later determined that a stronger penalty was appropriate.

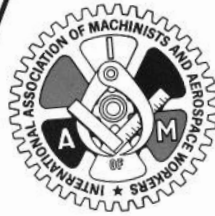
Union representatives should always take a detailed history from the grievant including any comments by supervisors when the alleged misconduct first became known. If a supervisor gave the employee a warning, reprimand, or rebuke, and the employee reasonably believed that this ended the matter, the union should argue that any further discipline would violate the double jeopardy rule.

—Robert M. Schwartz. The writer has been practicing labor law for 35 years for unions throughout New England. In addition to the newly published *Just Cause: A Union Guide to Winning Disciplinary Cases*, he is the author of *The Legal Rights of Union Stewards*, *The FMLA Handbook*, and *Strikes, Picketing and Inside Campaigns*. All of Schwartz's books are available at [www.laborbooks.com](http://www.laborbooks.com)

**An important element in the just cause standard.**

**Arbitrators reject employer attempts at more than one penalty.**

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OFFICE OF THE INTERNATIONAL PRESIDENT

Dear IAM Shop Steward,

Welcome to the New Year! Thank you for all your hard work in 2012. We have a lot to celebrate as we enter 2013. In May, we will mark a major milestone as our union celebrates its 125-year anniversary. As we look forward to the future, let us resolve to keep our union as vibrant and successful as generations of Machinists have done before.

In the United States, we will start 2013 with the inauguration of President Barack Obama for a second term. Common sense prevailed in the November election over the hundreds of millions of dollars spent by corporate-backed shadow groups. Working families weren't fooled, and they turned up at the polls to re-elect the president, keep the Senate in worker-friendly hands and win some important state races.

Our union can also be proud because we were one of the few voices to speak out for the nation's unemployed. Months before the November election, the Union of Unemployed (UCUbed), an IAM community service project, launched its BEE MAD @ THE GOP social media campaign. Using videos and daily postings to Facebook and other social media sites, the campaign urge unemployed workers to turn out the vote against those in the GOP who have blocked efforts to create jobs. By election night, the campaign videos had been downloaded more than four million times. In many close races, the turnout of unemployed workers was a critical factor.

As this edition of the *IAM Educator* was being prepared, Congress and President Obama were just starting negotiations over the looming "fiscal cliff" budget crisis. With the House of Representatives still in Republican control, the budget crisis and the other problems we'll face over the next four years will produce battles between those who want to strengthen our middle class and those who want to do away with or severely cut programs that help working families, such as Social Security and Medicare.

With the positive outcome in the November elections, those battles may be easier, but we must remain vigilant. We still need to keep pressure on both our friends and our foes to guarantee that America's working families and the unemployed are not forgotten or asked to bear an unfair burden to solve our nation's budget crisis.

Again, thank you for all your efforts in 2012. Let's continue our work together to ensure a successful 2013.

In Solidarity,

R. Thomas Buffenbarger  
International President

