

# TAMI

E D U C A T O R

Update for Stewards Vol. 11, No. 1

## Honesty?

Yes, It **IS**  
the Best  
Policy!



**UNION CONTRACT**

# Honesty? Yes, it IS the Best Policy!

**O**f all the ways to run into trouble as a steward, the failure to be straight with the people you deal with has got to be at—or very near—the top of the list. It makes no difference whether you're dealing with management, your union leadership or your co-workers: if you don't tell it like it is—rather than how you wish it were—you're digging yourself a hole from which you'll likely never be able to emerge.

Or, to put it as dear old mom likely told you over and over: Honesty is the best policy.

Honest stewards are respected by management, counted on by union leadership, and sought out by members.

## In Dealing with Management

With management, stewards should be fair but firm. A reputation for honesty can be a huge advantage when settling disputes: If the boss knows he's getting the straight story from you, he's more likely to lower his defenses a bit and consider what you're saying. But being upfront and honest doesn't mean always showing all your cards. Present the facts honestly, but that doesn't mean you have to volunteer what isn't asked for. If management's investigation is lacking, use it to your advantage. If they have a solid case, though, acknowledge it, then look for possible resolutions to mitigate the damage for the member while not compromising the union.

If management is dishonest—you find that paperwork has been backdated, perhaps, or an incident simply couldn't have happened as the employer is claiming, report that dishonesty to union leadership and warn other stewards as well. Document the specifics so they can be used, if necessary, to potentially discredit the individual in future cases. At the same time, though, remember that any management-discovered dishonesty by a steward will be likely be dealt with harshly, and

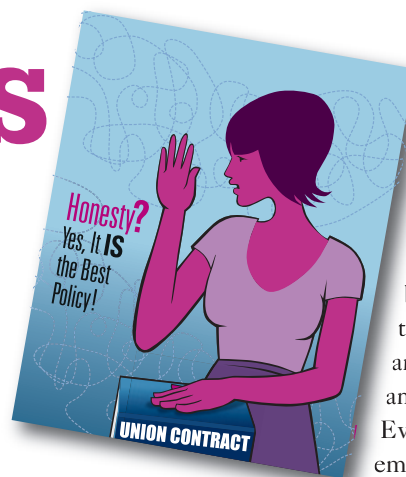
will certainly weaken the steward in future dealings.

## In Dealing with Union Leadership

When dealing with union leadership, give upfront and honest evaluations of grievances you handle and other problems you encounter on the job. Always provide factual evidence to support any grievance you move forward. Be sure you've got the facts to support any grievance you pursue. Giving union leadership sound and solid cases helps keep down the grievance backlog and it keeps the system running smoothly. Additionally, as their frontline eyes and ears, your honest opinions on policies, procedures, and programs in the workplace can provide invaluable insight to the union on improving day-to-day working conditions and for negotiations to improve the contract. Even honest criticism of union leadership can, at times, be helpful as well, so long as it is constructive in nature and done thoughtfully.

## In Dealing with Your Co-workers

A steward's honesty and integrity will be most tested by fellow members. Stewards will face daily situations where peer pressure will challenge them to compromise their integrity. Members are often angry and/or upset about their issues. They are seeking an ally in their fight, not a voice of reason. But hang tough. Give honest assessments on all grievances. Simply filing every grievance to avoid confrontation can be tempting. Filing bad grievances just because you're afraid to disappoint a co-worker never works. Not only do you lose, but you help create an unnecessary backlog and waste union resources. Reject bad grievances from the start, but provide the member with contract language or past precedent to support your action. To avoid possible dishonesty charges, be especially sure to investigate compensation and benefit grievances before filing.



Hearings and inquiries can prove to be the biggest test of a steward's honesty and integrity. Even the best employees have accidents or make

mistakes on the job. When it becomes time to explain what happened, most will be some combination of nervous, scared, embarrassed, or even angry. This can tempt them to be less than truthful, including trying to solicit witnesses and stewards to lie on their behalf. Take as much control of the situation as possible. Never allow yourself to knowingly participate in any attempted deception. This can ruin your credibility and that of your union. Remind any witnesses who might be tempted to lie of the serious consequences if caught.

Talking to everyone involved prior to hearings or inquiries is the best way to find the truth. Gather and assess all possible evidence in order to honestly advise the member. Remind the member to keep answers short and simple: It can help alleviate worry and avoid self-incrimination. If it's clear to you that management's case is solid, advise the member that attempts at deception will make things worse. If an employee begins testifying dishonestly, ask for an adjournment and reiterate the potential for serious consequences—likely more serious than the discipline the worker faces because of his or her behavior. Continuously seek mutually acceptable settlements to help eliminate the temptation of dishonesty. A member who understands that the consequences of being guilty have been lessened is more inclined to be truthful.

Just one act of dishonesty can erase a lifetime of honest ones. An honest steward is not always popular, but he should always be respected.

—David Bates. The writer is a former steward and president of a Transport Workers Union in Florida.

# Dealing With Rule Violation Charges

If something is in your contract, you can assume that it has been negotiated and the union has had a chance to critique and shape it. Not so with a rule, which may be established unilaterally by the employer. So what does a steward do when a member is accused of violating a rule? Especially, what do you do when the rule is a bad one—absurd, counterproductive, or in conflict with the contract, the law, or past practice?

Take for example, rules about behavior off the job: dating fellow workers, posting comments about a job on Facebook, gambling or drug use, smoking, drinking, and other “wellness” issues that are becoming increasingly common as employers face rising health insurance costs. Or how about a rule that says you must turn in other workers if they violate safety regulations? And what do you do if a job is accompanied by so many complicated rules that no one can possibly obey them all, and therefore everyone is always exposed to discipline for something? (This is known as “the penology principle,” because it is a [bad] strategy for managing people incarcerated in prisons.)

## The Importance of a Union Response

The union’s response to the implementation of a bad rule is very important, just as important as to a violation of the contract. Bad rules, which may go unnoticed until someone gets caught up in one, undermine the principle that in a workplace with a union, working conditions are negotiated. Even if the rule is reasonable, the union has the right to be notified and to bargain changes, including changes in enforcement.

**Responding to a bad rule is just as important as responding to a violation of the contract.**

## Questions to Ask

There are some fundamental questions to ask right away. The first set of questions is about legitimacy. Is this rule in the contract, or in the contract by reference? If not, is it written down anywhere?

Where—in a handbook or a policy manual? Was it ever publicized (or “promulgated,” a term often used to mean widely and purposefully distributed and discussed). Is it rational, coherent, and meaningfully explained? Is it so self-evidently reasonable that it goes without saying—like prohibitions against fighting, stealing or drinking on the job? Does this rule contradict the contract? Does it contradict the law? Does it contradict standard safety practices? Does it violate equal rights? Notice that these questions are similar to ones you ask when establishing whether something constitutes past practice or not.

Then there are the questions about this specific case. The union wants to defend due process. Therefore, you want to look at disparate treatment, consider any extenuating circumstances, and argue for progressive discipline that makes the punishment fit the crime, not exceed it in severity. For example, a woman who was discharged for not informing her employer that she would be gone for three days was returned to work when it was shown that she had been at the hospital with her child, who had a terminal illness.

## Criteria for Discharge

The State of California Employment Development Department offers a common-sense set of criteria for discharge under rules violations. These criteria should be applicable everywhere.

- The rule must be reasonable.
- The claimant (the person who is being accused) must know about the rule, or

should have known about the rule.

- The claimant must have been warned, and the violation must be willful or wanton (as compared to having good cause).
- The violation must be material or substantially injure the employer’s interests.

How do you interpret “material” and “employer’s interests”? Many of the cases described to illustrate the four rules above deal with a worker using the wrong tool, potentially damaging a product; failing to pay for food eaten during a break at a grocery store; using an employer’s phone for a long-distance call; damaging a vehicle belonging to the employer; or (in the case of a bank employee) showing bad judgment by bouncing checks. In some of these cases the amounts are trivial but the discharge is upheld because the injury to the employer can be identified specifically.

But in a case where an employee was a few minutes late to get to his workstation after clocking in, no material injury could be identified and the worker returned to his job. Similarly, a worker was returned to work after being dismissed for criticizing another employee and the employer on a Facebook post, especially directed to a few other workers she thought were also hurt by the situation. Here it was determined that this was protected by the National Labor Relations Act as “concerted activity for mutual aid and protection,” and that trumps the employer rule she supposedly violated, even in this non-union workplace.

## Tactics Beyond the Workplace

If a worker actually gets discharged for rule violation (employers call this “misconduct”), you may still be able to help him or her get unemployment benefits if you can make a case that the worker took a “constructive discharge”—meaning that under those adverse or hostile conditions, he or she was rendered unable to do the work required for the job. You may also be able to argue that the discharge was over a good faith error in judgment, not intentional misconduct.

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

# How to Probe for Settlements on Grievances

**G**rievance procedures were originally designed to help unions and management work out problems as close to the source of the issues as possible, and with a minimum of conflict.

But sometimes, management decides they want to frustrate the union, so they won't settle anything.

In those cases stewards may have to organize the members to pressure management into taking grievances seriously. There's an awful lot to be said for having a strong, committed membership putting its muscle into convincing management to do the right thing. There's nothing like having a determined group of workers standing outside a manager's door to make him sit up and take notice.

Another way lies in strengthening the contract, making things so airtight that management wouldn't dare to create problems for workers unless the employer has an unusually strong case.

However, in situations where management is willing to work things out, removing the obstacles to getting settlements might be the style stewards use in dealing with management. If all you do is press the reasons why your interpretation of the contract or version of the facts are the correct ones, you may not get to talking about possible settlements. At some point stewards need to question their management counterpart about what it would take to reach a fair resolution of the issue at hand. It might be the key to resolving more grievances.

Experienced stewards know that sometimes you have to ask management a lot of questions if you want to reach your goal. There may be a way for both sides to come out satisfied, but you have to know how to determine if that's possible, and you can only do that by posing the right questions.

**Sometimes stewards need to question their management counterpart about what it would take to resolve a problem.**

## More Than Just No

Here are a number of suggested questions that just might get management saying more than no to all your grievances.

■ *Do you understand the problem we are trying to solve with our remedy? How do you see that problem?*

Maybe the supervisor isn't clear on the real issue. Getting him to state it may open the door to a resolution.

■ *What about our proposed remedy do you have a problem with?*

Maybe the remedy's fine with him but one element sticks in his craw. You might be able to modify the one point, as

long as your basic issue is dealt with.

■ *Do you have other suggestions for how we can resolve this?*

Who knows, maybe he's got an approach that will be acceptable, or at least a place from which to start.

■ *What are you concerned would happen if you agreed to our proposed remedy?*

His answer may surprise you: It may be something you can assure him is not going to happen. He may be overestimating the impact. Or he may misunderstand the true nature of the remedy you're seeking.

■ *If we address your concern in that area, do you think we can reach agreement on the rest of our remedy?*

If you show him you can live with his concern, he'll be more prone to yield on yours.

■ *Why is that your position?*

Maybe he's locked into his position for a bad reason, one you can convince him is wrong, or which upper management wouldn't agree with.

■ *Can you explain how you arrived at that position?*

If you understand his logic you may be able to more successfully counter his

arguments. Or maybe he misunderstands or doesn't know about a basic fact in the case.

■ *This is very important to us. Are you saying you have no flexibility at all?*

If he indicates flexibility, you'll know you've got some room to operate. If he doesn't, at least you'll know you've hit a wall and can prepare for the next step.

■ *Make us a counterproposal on that.*

You may well not find his counterproposal acceptable, but it could open some new avenues leading to an acceptable deal.

■ *If we had some flexibility on X, would you have some flexibility on Y?*

You'll want to use this approach with caution, because once you hint that you might have flexibility on an issue, it's hard to take it back entirely. And be careful here that you don't get into trading grievances: The flexibility has to be within the case you're discussing.

■ *The grievance procedure is supposed to be a way for us to resolve problems. Why are you unwilling to look for a settlement?*

Put the onus on management to defend its unresponsiveness—that's a lot better than going around and around over the same facts. And maybe the answer to that question—if there is one—will open a window of opportunity. If he gives a specific reason for his unwillingness, it may be a reason you can get him to dismiss, or view differently in the light of suggestions or alternative approaches you may have.

## A Word of Caution Here

Before you probe management for a possible compromise, make sure you have discussed potential settlements with all the members involved in the case. Never make a final settlement offer without getting member approval and seriously considering, along with union officers, any precedents that might be set.

—Ken Margolies. The writer is a senior associate of the Worker Institute at Cornell University.

# A Fresh Look at Just Cause

**M**ost union contracts in the United States and Canada include a just cause clause to protect members against arbitrary and unfair discipline. Some contracts use equivalent terms, such as “proper” or “good” cause.

In many ways, just cause is the keystone of the union contract. Without it, many other provisions would be undermined as employers could easily fire workers to avoid pensions or higher wages or fire union leaders who insist on strict contract compliance.

On its face, the term “just cause” is open to many interpretations. Some managers view it as simply requiring a good faith reason for taking disciplinary action.

But years of forceful union advocacy have persuaded labor judges (arbitrators) that the concept includes multiple elements such as fair notice, due process, and equal treatment.

In 1965 arbitrator Carroll Daugherty identified seven necessary elements of just cause. His list of “tests” has been widely circulated, especially by unions, which have used it as a checklist in preparing and presenting grievances.

Unfortunately, Daugherty’s list has several failings. Inexplicably, it omits progressive discipline and mitigating circumstances—two principles that labor arbitrators widely apply. Moreover, two of his seven tests call for fair and objective investigations. While no one denies the need to investigate, few arbitrators will reverse a decision simply because an employer fails to review all relevant documents or allows a supervisor to conduct the investigation. Most arbitrators say that a perfunctory investigation weakens an employer’s case but that if it is nevertheless convincing, discipline should be upheld.

## Updating the Principles

My review of more than 20,000 awards reveals that most arbitrators in the United States and Canada expect employers to comply with the following basic principles in making disciplinary decisions:

### 1. Fair Notice

*An employer may not discipline an employee for violating a rule of standard whose nature and penalties have not been made known.*

An employee should not be punished for violating a rule or policy of which he or she is unaware. The employer must be able to prove that it publicized the rule in a handbook, a posting, or through announcements to the rank and file.

### 2. Consistency

*An employee may not be penalized for violating a rule or standard that the employer has failed to enforce for a prolonged period.*

Failure to enforce a rule for a protracted period of time lulls employees into believing that the rule is no longer in effect. In this context, punishment is equivalent to applying a rule of which the employee is unaware.

### 3. Due Process

*An employer must conduct an interview or a hearing before issuing discipline, must take action promptly, and must list charges precisely. Once assessed, discipline may not be increased.*

Just cause requires a minimum level of due process. Before it announces discipline, an employer must offer the employee an opportunity to dispute the charges, explain why he or she did what he did, and if appropriate, express remorse.

### 4. Substantial Proof

*Charges must be proven by substantial and credible evidence.*

Because workers’ livelihoods are at stake, just cause requires that employers base decisions on verifiable observations and records, not rumors, suspicion, or speculation. In arbitration, employers may not rely solely on hearsay evidence to prove an employee’s misconduct.

### 5. Equal Treatment

*Unless a valid distinction justifies a higher penalty, an employer may not assess a considerably stronger punishment against one employee than it assessed against another*

*known to have committed the same or a substantially similar offense.*

A fair disciplinary process is inconsistent with favoritism or discrimination. Employees who commit similar offenses must be treated similarly—unless there is a justifiable reason, such as a significant difference in seniority, record, or attitude, for doing otherwise.

### 6. Progressive Discipline

*When responding to misconduct that is short of egregious, the employer must issue at least one level of discipline that allows the employee an opportunity to improve.*

Unlike the criminal system, the primary purpose of industrial penalties is to correct wrongdoing, not to punish or humiliate the offender. If there is a chance that an employee can change or rehabilitate himself, the employer should apply a penalty that allows the employee to demonstrate improvement.

### 7. Mitigating and Extenuating Circumstances

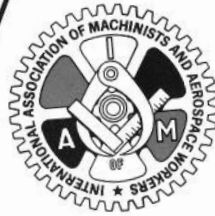
*Discipline must be proportional to the gravity of the offense, taking into account any mitigating, extenuating, or aggravating circumstances.*

When determining the proper penalty for misconduct, employers must consider all aspects of the matter. Employees with strong records have an incentive to reform and are likely to respond to intermediary penalties.

Of course, pointing out violations of the principles described above does not guarantee that an employer will settle a grievance. Many personnel managers refuse to recognize union arguments, no matter how well supported by precedent or authority. Nevertheless, stewards and other grievance representatives who base their presentations on well recognized just cause principles will put forward the strongest possible case. They will also lay a solid foundation if the union should decide to take the matter to arbitration.

—Robert M. Schwartz. *The writer’s new book, Just Cause: A Union Guide to Winning Discipline Cases, is available from [www.laborbooks.com](http://www.laborbooks.com).*

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OFFICE OF THE INTERNATIONAL PRESIDENT

Dear IAM Shop Steward,

As we approach our great union's 125th Anniversary on May 5, 2013, I would like to thank all of you who volunteer your time and effort to be a Shop Steward. We would not be celebrating 125 years in existence without you and all who have gone before you who stepped up and to be a frontline leader.

Shop Stewards are critical to our union's health and survival. The Shop Steward is literally the face of the union on the shop floor. Your interaction with your co-workers, solving their problems, educating them on workplace and political issues or representing them when dealing with management is the day-to-day work that keeps our union strong.

Being a Shop Steward is also a key training ground to be a future IAM leader. The experience you gain as a Shop Steward, coupled with the training available at the William W. Winpisinger Education and Technology Center, is invaluable if you go on to higher office in the union.

So as we celebrate our 125th Anniversary, let me be the first to say thank you to our Shop Stewards. All of you do a difficult job that is the foundation of all we do as a union. You are the voice on the job, the educator, the problem solver and the person who isn't content to just come to work and go home.

Your willingness to take on more responsibility and to do what is right is what makes our union successful. Thank you again for all you do and on May 5, 2013, congratulate yourself and your fellow Shop Stewards for a job well done.

In Solidarity,

*R. Thomas Buffenbarger*

R. Thomas Buffenbarger  
International President

