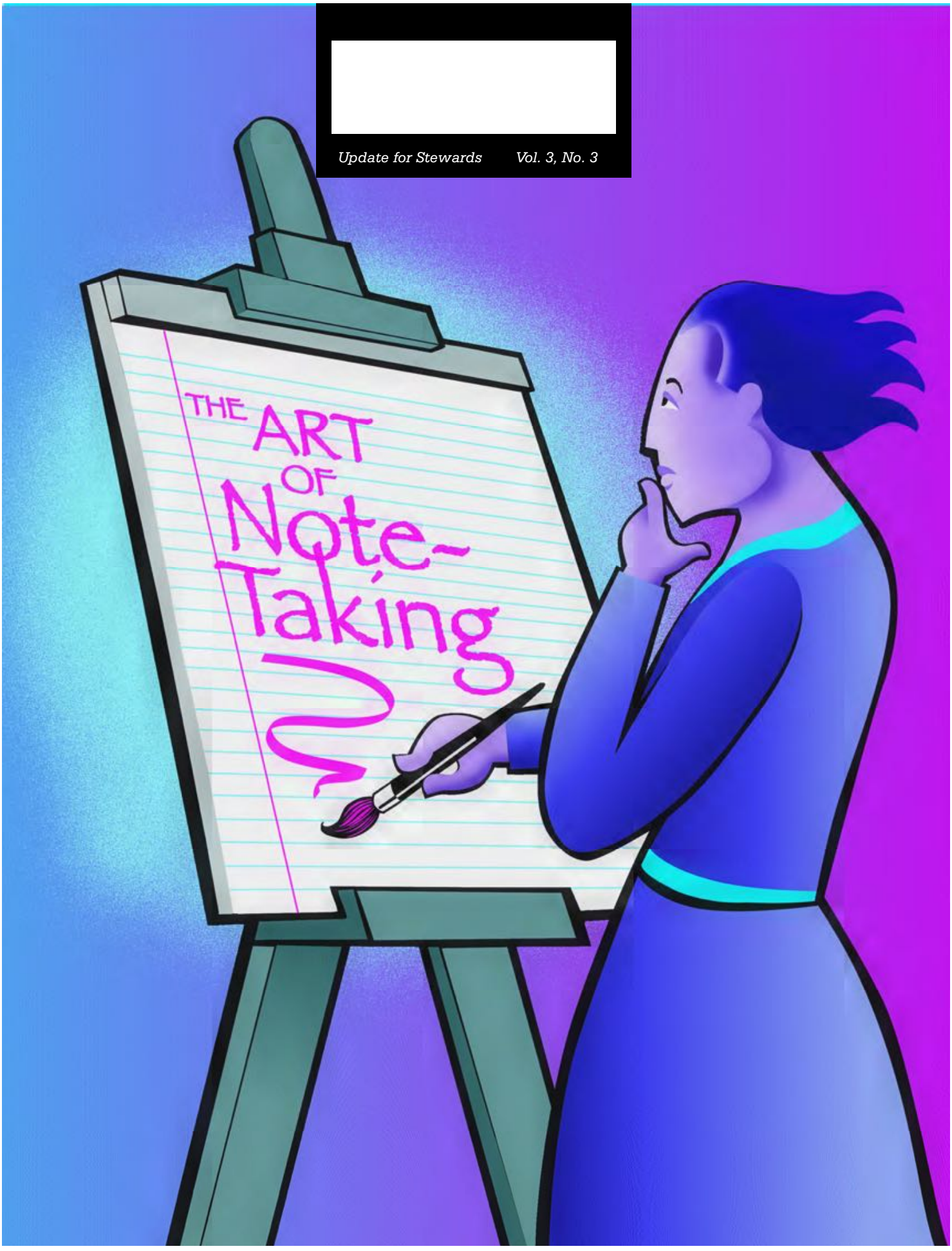
Update for Stewards *Vol. 3, No. 3*



The Art of Note-taking

There isn't a steward alive who hasn't had to take notes on a grievance and refer back to them later on: it's a basic part of the job. But it's the exceptional steward who really understands what a vital role note-taking can actually play, and how to make the most of notes in his or her work on behalf of the union.

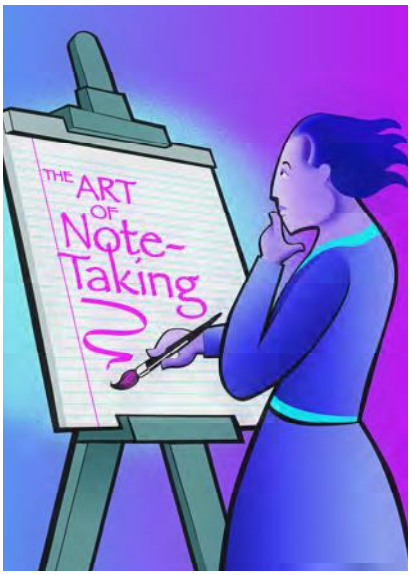
Your notes are more than just a list of facts and details — although those are critically important, to be sure. They're also an important tool for thinking through your case, examining your logic, and testing your assumptions. In fact, approaching note-taking as a critical tool of analysis removes the sense of drudgery and makes it easier to tackle the task.

Ultimately, whatever the source of the notes, your case will hang on them. So, from the beginning, even before you have filed a grievance, think of your notes as your key to victory.

The Art of Good Note-taking

The first challenge is to get the story from the grievant. The skill of taking good notes at this point may well conflict with your need to *listen*. So, separate the tasks: first, let the grievant tell the story so that she or he feels genuinely heard, *then* go back over the story, chronologically, writing it down and checking the details. Keep in mind that spoken language is less precise than written language. Ask for clarification. Review parts of the story that don't make sense to you. Before you finish, it's a good idea to have the grievant read over your notes. Be open to making changes, even if they do not seem too important to you. Later on, they may be.

Every experienced steward intends to review his notes as soon as possible after a meeting but it takes fierce determination to actually do it. Even spending a few minutes shortly after a meeting tidying up your notes and inserting bits that clarify the text can save you a lot of



grief later on. If you don't do a quick review you may well find later on that you have written something that no longer makes sense and cannot be checked — and it will be important.

It is a good idea to develop a system for writing out your notes. Wide margins and spaces between lines leave you room to add details and put reminders to yourself about what you need to do or check out. Colored pens or highlighters are extremely useful to mark important points or tasks to be done. Using abbreviations for common terms can make note-taking faster, but be careful that they are obvious: remember, these notes should be useable by someone else.

Think what you would need to successfully use someone *else's* notes, and make sure your own meet that standard. You want three major components to stand out in your notes:

1. The facts of the case

Rely on the five W's: the who, where, when, what, and why of the case. And then throw in a "how." But note that this information is the beginning, not the end point.

2. The whole story

If you cannot find in your own notes the weaknesses of your case, you aren't finished. Ask yourself, "What am I missing?" and "Who sees it differently?" "How will management spin the story?" Do your notes reveal the weaknesses of your case, the logic of the "other side"?

3. Analysis of the case

Make sure your notes distinguish between the facts of the case, the proof of those facts, and the opinions of all the parties involved. Further, make sure that your own thoughts are separated from the facts and from others' views. Your complete set of notes should allow anyone else picking up the file to handle the case. Another person should be able to see the following from your notes:

- what the case is about, in general;
- what proof exists (and where it is);
- who the witnesses are, how credible they are, and if they are willing to come forward;
- what action has been taken on the case; and
- your thoughts about the case.

Making sure that someone else can present your case from your notes means a lot more than having legible handwriting!

One final note: as a steward, you always need to always be mindful of confidentiality. As your notes become complete, they may contain sensitive points; for example, you may have information that alleges that an informant, management, or even the grievant has lied. Be careful with the storage of your notes, and be careful who reads them and how they are used.

— Corliss Olson. The writer is an assistant professor at the School for Workers, University of Wisconsin, Madison.

Family and Medical Leave Act

The Family and Medical Leave Act, signed into law by President Clinton in 1993, has wide application. It covers tens of millions of workers of all kinds, including employees in the manufacturing, service, education, government, and nonprofit sectors. The only employers excluded from the obligation to honor the FMLA's rules are those with fewer than fifty workers. Smart stewards have long recognized that this groundbreaking law guarantees a whole lot more than maternity leave; at the same time, they recognize that a lot of employers need some education when it comes to assuring workers their full rights under the law.

The FMLA gives employees the right to be absent from work for a total of twelve weeks a year for three specific purposes: medical disability, family medical care, and newborn care. Leave can be taken in consecutive days or weeks or on an intermittent basis. In the latter case, an employee who works five days per week could take as many as sixty separate days off each year because of his or her own medical problems or those of a family member.

During the employee's absence, medical insurance coverage must continue in the same manner as before. When the employee is able to return to his or her regular duties, there must be reinstatement to the original job or one that's equivalent. That means the same or equivalent pay, benefits, status, responsibilities, and duties.

It's important to remember that the FMLA guarantees no adverse action can be taken against a worker who is absent for an FMLA reason. This means:

- An FMLA absence cannot be counted as an absence under a company attendance policy.
- FMLA absences cannot be a consideration in determining whether an employee receives a promotion or a new assignment.
- Job evaluations may not label a worker as having attendance problems if all or a large number of the worker's absences are FMLA.

When it first became law, some unions largely ignored the FMLA, believing that it applied only to maternity leave. With experience, though, a realization has developed that the FMLA provides significant job protection to workers with chronic health conditions. Many unions now grieve under the FMLA whenever a worker is disciplined or denied a benefit in whole or in part because of attendance.

There are three specific areas of concern under FMLA that stewards would be wise to take note of: notice, medical certification, and vacation pay.

Stay on your toes: many employers just try to ignore the law

Notice

Perhaps the most common FMLA grievance issues relate to notice. Employers usually argue that a worker must cite the FMLA when requesting leave or calling in sick. Courts, however, have uniformly rejected this contention, ruling that a worker's only obligation is to inform his or her manager that the absence is caused by a serious health condition — as compared to a cold or an upset stomach, which generally does not require a doctor's care. Workers do not have to call in and declare they want FMLA leave, only that they will be absent because of a serious health condition.

Medical Certification

Employers are allowed to ask for medical certification to verify the need for an FMLA leave. They are also allowed to ask for second or third medical opinions (at their own expense) and periodic recertification and reports during FMLA leave regarding an employee's status and intent to return to work. But the U.S. Department of Labor, which oversees the law, has ruled that an employer may not ask a worker for medical records or to sign a release allowing the company to obtain such records.

Vacation Pay

A potentially troubling aspect of the FMLA concerns vacation pay. Some employers have adopted policies requiring workers who use leave under the law to use up their accrued vacation pay while taking FMLA time. Under a policy like this, a worker who planned a two-week family vacation in August might lose one or more of the weeks before the summer arrives.

Stewards should be aware that unions can challenge such a policy by filing a grievance contending that workers have a contractual right to select vacation dates and that nothing in the FMLA allows a company to overrule these rights. In at least two published decisions, arbitrators have ruled that when a contract or past practice establishes the right of workers to select vacations, a company cannot force workers to use vacation days during FMLA leave.

The FMLA is like most other laws that offer protections to working people. Unless workers and their unions stay on their toes, and vigorously pursue their rights, all too many employers can be expected to simply ignore them.

The FMLA is administered by U.S. Department of Labor's Wage and Hour Division. Complaints can be registered with that division, whose address on the web is www.dol.gov/esa/whd/. Follow the links to the FMLA for more information about the law and how to file a complaint.

— Robert M. Schwartz. The writer is author of The FMLA Handbook, *available from the Book Catalog section at www.unionist.com.*

The Steward's Protected Status

Are stewards who aggressively protect the rights of their members protected from retaliation or discipline? The answer is generally "yes," but be careful: that doesn't mean a steward has the freedom to shoot off his or her mouth to management or engage in extreme behavior on every issue. While handling contractual issues with management, stewards *are* considered equals, but that equality only applies to activities relating to their work on behalf of the union. There are limits to a steward's right to argue forcefully or otherwise emphasize the union's stand in vigorous ways. Some of these limits and rights will be discussed here. To set the stage, let's take a quick look at two key rules governing stewards' rights.

The Equality Rule

Under the law, when stewards are engaged in representational activities, they are considered equals with management. Vigorous advocacy is permitted, and what would not be allowable in the normal boss-employee relationship. The equality rule does *not* apply to their personal behavior or insubordination not related to their duties. The latter is what often gets a steward in trouble.

The Same Standards Rule

The employer may take the position that, because the steward should know the contract better than the members, the steward's standard of behavior should be better. Under the law, though, an employer must apply the same standards to stewards as other employees. And, stewards are subject to the same discipline as other workers if they violate the rules of conduct.

Since the line between acceptable and unacceptable behavior is not always clear, stewards who go to extremes can risk their jobs. While they are protected while functioning as union representatives, in their personal behavior they are judged by the same rules as other workers.

Here are some examples of protected and unprotected activities as found in recent arbitration decisions.

Political Buttons

A union officer was cited for "gross insubordination" for wearing a political button following issuance of a new policy prohibiting wearing of political emblems. The arbitrator disagreed with the decision and lifted the suspension because the officer removed the button as soon as the boss told him he was subject to discipline; he wore the button in an attempt to secure written evidence of the policy, which management wouldn't give him; and another manager's comments about the gravity of the infraction was inadequate notice to employees.

Working in the Rain

It was raining and management ordered a shop steward to work outdoors. He disagreed with a union bargaining concession that allowed working in the rain and left the job. He was fired and later claimed he left because he was was sick. The arbitrator upheld the discharge, saying he fabricated the illness excuse to cover going home when ordered to work.

Loud and Belligerent in Meeting

A union committeeman was disciplined when in a grievance meeting he responded to management in a "loud, belligerent, and vulgar manner." The arbitrator reversed the discipline, saying that the committeeman's language was not so outrageous that it crossed the line between vigorous advocacy and misconduct.

In another case a union activist was fired when he attended a meeting called by management to discuss the need to have employees work a full shift. He walked off the job and shouted obscenities after the meeting. The arbitrator upheld the discharge on grounds he had gone too far.

Checking Time Cards

A steward was fired after he was ordered to stop looking at other employees' time cards but had continued to do so. The arbitrator upheld the discharge, saying management had reasonable cause to require the steward to go through supervision before reviewing time cards. The arbitrator noted the steward should have followed the principle of "obey now, grieve later," when there was no immediate danger from health or safety hazards. Further, the union did not establish that the shop steward who was fired for insubordination was a victim of retaliation, even though he thought he was. The arbitrator said the steward's subjective feelings were not supported by the facts.

"One of These Days . . ."

During a heated encounter with a supervisor, the steward said "One of these days . . ." but never finished the sentence. The steward was fired for threatening his boss. The arbitrator said the steward should not have been fired and ruled that the statement in and of itself was not a threat; gentility is not characteristic of grievance processing; and, the evidence didn't prove that the grievant threatened the supervisor.

Two key things to remember when considering a steward's protected status:

- Union officers enjoy significant but not total protection while they are engaged in union business.
- Insubordination that occurs as a result of the steward's personal (as opposed to union) response to a situation is punishable under the contract and rules, the same as others in the workplace.

— George Hagglund is professor emeritus at the School for Workers, University of Wisconsin, Madison.

Electronic Organizing

The rapid spread of electronic communications in the workplace brings many new situations, tangling the employer, the union and its stewards in haphazardly evolving labor laws. Not only do millions of workers spend their entire workdays on a computer but millions more — in warehouses or manufacturing facilities, for example — use a terminal for at least part of the work day. A recent situation at a large unionized company, in which every employee uses a computer for work purposes, shows the difficulties involved in the electronic workplace.

A number of workers were late due to a breakdown in the public transportation rail system that they ride to work every day. A supervisor sent an e-mail message to the whole office of about 50 workers, including the union steward, to inform them that he was investigating the tardiness and was considering discipline. The union steward wrote back to the supervisor that she did not feel any discipline was necessary since the members were late only because of the breakdown in public transportation.

A typical conversation between a steward and a supervisor, wouldn't you say? Only, in this case, it was carried out electronically.

The Point of Contention

Here's what became the point of contention: when the steward questioned the supervisor's message electronically, she hit "REPLY ALL," so the message went out to all of the affected union members.

The supervisor then charged the steward with unauthorized use of company equipment, and a whole new issue was raised.

The company and the union, in this case, had not come to any clear agreement as to how the electronic workplace should function, a special problem since the law — at least in the private sector — regards company computers as another kind of gathering place on company premises.

In a presentation to a steward training class, Wayne Gold, director for National Labor Relations Board Region 5, stated that "a computer is actually a workplace," so electronic messages are really the "water cooler" of the modern workplace. The company should not be able to ban certain messages — like those pertaining to union activities — from the system any more than it can prohibit certain topics of discussion — like those pertaining to union activities around the water cooler.

Disparate Treatment?

The NLRB recognizes the illegality of "disparate treatment" — that is, a boss treating union activities differently from other activities. In this case, "disparate treatment" means allowing workers to use the company e-mail system for "personal" communications but prohibiting "union" communications. Many public sector labor laws, patterned after the National Labor Relations Act, have similar protections against discrimination for union activities.

A number of experts, for both management and union, blame the NLRB for failure to make clear what policy on electronic messages should be. In an article in the Bureau of National Affairs publication *Union Labor Report* (3/25/05), management lawyer Joan Canny claimed that the NLRB has made interpretations "not based in the virtual environment." Regional Director Gold stated in the same article that "more issues will arise as computers become more omnipresent in the workplace."

Rather than wait for the government to make such an important decision, especially with the current, conservative composition of the NLRB, alert stewards and their unions should proactively move to clear up this important area. For public sector unions, which are not directly affected by NLRB policy, the challenge is just as dramatic.

Here are some fundamental steps:

- Begin negotiations over a clear set of guidelines for union use of company equipment, remembering that a computer is no different than other employer facilities. Many unions use inter-office mail for distributing notices, or have bulletin boards throughout the workplace: an e-mail system offers the same potential for communication.
- Often employers will simply publish a set of shop rules concerning "personal" use of the computers without realizing that "union" use is both very different from "personal" and is legally protected. Unions should demand to bargain over any new policy, especially one that involves so many workers and so many potential violations.
- Make sure the restriction of "personal" use is applied evenly. Have you seen your supervisor playing computer golf? Maybe ordering concert tickets on-line? Keep track of these activities as a defense if a steward is threatened with discipline for union e-mails.
- Without giving up your legal rights to use the company e-mail system, consider setting up an e-mail distribution system to your members' home computers. Collecting the e-mail addresses is a great organizational activity as well, since a steward will have to talk one-on-one with all of the members to develop the list.

One of the biggest advantages in union representation is the ability to negotiate with your boss over any changes in the workplace. The electronic workshop is here, so get busy and bargain over it.

— Bill Barry. The writer is director of labor studies for the Community College of Baltimore County, Maryland. With thanks to the members of CWA Local 2101 in Parkville, Md., who helped with this article.

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OFFICE OF THE INTERNATIONAL PRESIDENT

Dear Sisters and Brothers,

There is not a day that goes by that I am not thankful for the Stewards we have in our great Union. You are the front line of defense; you are our eyes and ears for the day-to-day operations in the companies we work for. Words cannot express the debt of gratitude we owe for all the hard work you do.

Part of that work is understanding not only the contracts that have been negotiated but also the intricacies of state and federal laws that are there for our members' benefit.

In this edition of the *Steward Update Newsletter* we touch on one of those laws, the Family Medical Leave Act (FMLA) and the rights it makes available to our members. IAM stewards know this law well. And the current Administration's fight to take it away from us is one that we won't take lying down.

When Bill Clinton signed FMLA into law in 1993 it was after a long and difficult battle. While there have been bills drafted to increase the rights within the FMLA, there are many more bills aimed at destroying this family-friendly legislation.

This is our law and this is our fight. You know the individual members who have benefited from FMLA. As Union members we have our collective voice, our collective strength on our side, something that workers in nonunion shops cannot benefit from.

But the workers at those nonunion shops are still members of our community, their children go to the same school as ours, we attend the same churches and we shop at the same grocery stores, yet they face the battle against corporate greed alone.

Talk to your friends and neighbors and let them know the strength that is on your side because you belong to the Machinists Union. Tell them when they join the IAM they will never be alone; the care, compassion and the passion of the IAM will not let them down.

In Solidarity,

R. Thomas Buffenbarger

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International President

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