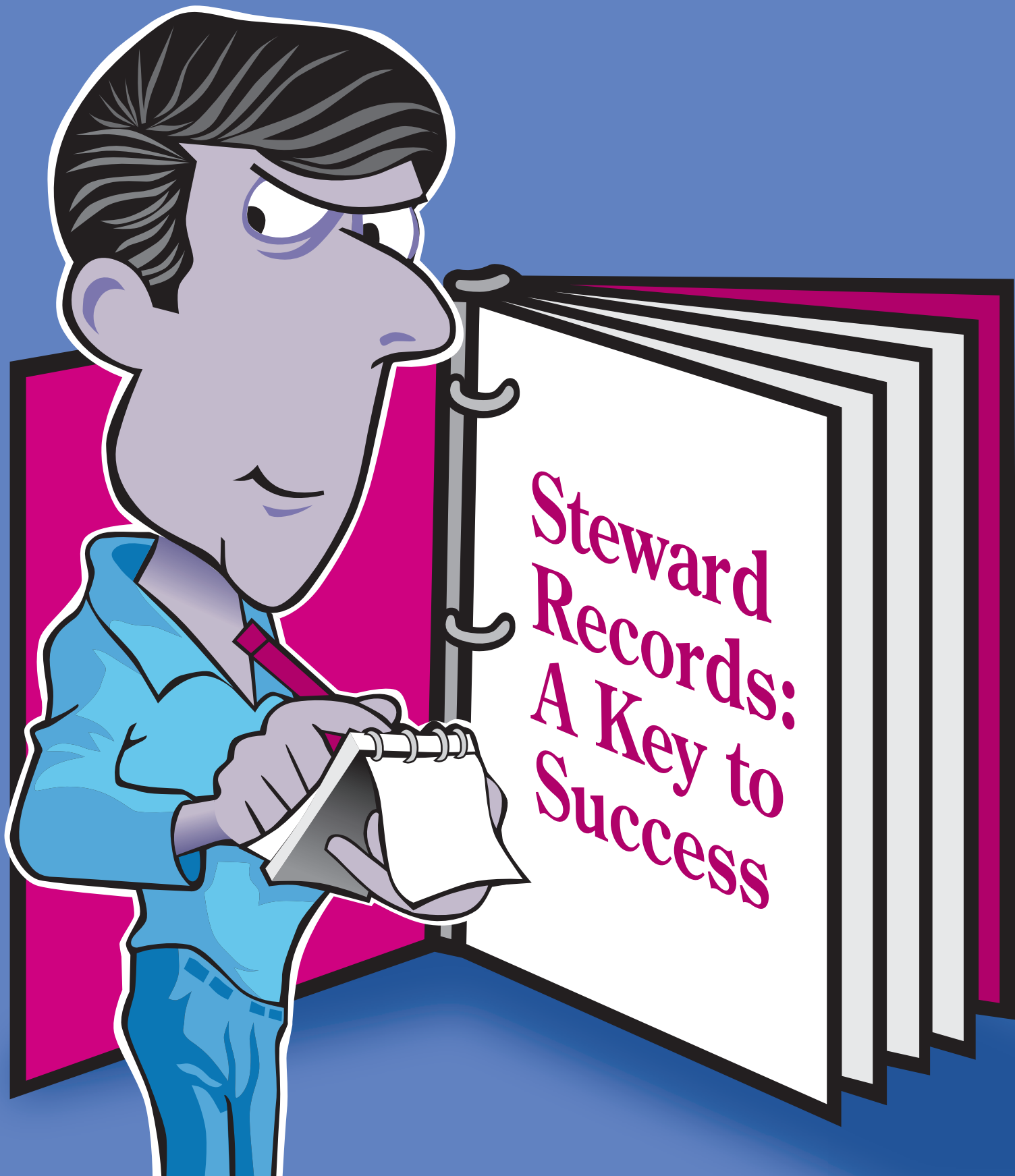


# TAMI

E D U C A T O R

Update for Stewards

Vol. 8, No. 1



# Steward Records: A Key to Success

**V**eteran stewards know the value of documenting events that occur in their departments.

Good records win cases.

For example: It is one thing to assert in a grievance meeting that Joe Member shouldn't be disciplined for failure to wear a hard hat because supervisors are always breaking the hard hat rule. It is quite another to have a contemporaneous record of when and where those infractions took place.

Stewards should keep records chronologically in a yearly notebook or diary. Matters that they should document include contract violations, grievance deadlines, and verbal agreements.

It also pays to keep records on the following areas of potential conflict.

## Selective Enforcement

An employer discriminates if it penalizes bargaining unit members for violating a rule while doing nothing against supervisors, engineers, or other non-bargaining unit members. Stewards should document instances in which supervisors and others arrive late, smoke indoors, come to work intoxicated, or engage in other prohibited conduct.

## Past Practices

Benefits and privileges that are not mentioned in the contract are called past practices. If they are long standing and consistent, they may warrant classification as silent agreements. Employers can hardly dispute some past practices, such as the availability of vending machines and water coolers. Others, however, such as leaving early or trading holidays, may require proof. Stewards should document favor-

able practices and should note if supervisors are aware of them. This data will be invaluable if the employer, perhaps following a change in ownership, attempts to change or eliminate the benefit.

## Equipment Malfunctions

Employees who are disciplined for accidents often defend themselves by asserting that an equipment malfunction caused the incident. Take, for example, a warning light that fails to come on.

Your argument will carry more weight if the union has a record of occasions on which such malfunctions occurred.

## Supervisors Doing Bargaining Work

Management can often find excuses for a single case of a supervisor doing bargaining unit work. But if the union can document several instances, it will have a stronger grievance. Write down the date, time, location, and nature of the work, the name of the supervisor, and the employees who should have been given the work.

## Health and Safety Violations

Unions in the U.S. can call OSHA (the Occupational Safety and Health Administration), and unions in Canada can call Provincial authorities, if employers engage in unsafe operations or if an accident causes injury or death. OSHA can impose fines as high as \$70,000 for repeat violations. A record of previous infractions may convince the authorities to impose an attention-getting fine.

## Verbal Warnings

Records of verbal warnings can prove useful. Under a concept called double jeopardy, if a supervisor warns an employee for poor work or violating a company rule and does not say that he or she will further



investigate the matter, the incident is considered closed. Higher management cannot review the case and impose a suspension or a discharge.

Verbal warnings are also valuable for proving disparate treatment. An employer violates just cause if it suspends or discharges employee A for conduct for which employee B was only given a verbal or written warning.

## Hostile Statements

Hostile statements by supervisors toward employees or the union can be cited in grievances. In a disciplinary case, the union may be able to show that the supervisor is pursuing a grudge. If the employer disciplines a steward or officer, anti-union comments can help build a discrimination case. The mere act of taking out a notebook and recording supervisory outbursts may derail a harassment campaign.



**B**esides a running notebook, stewards should keep a folder for each grievance they investigate or pursue. Include in it the grievance, employer answers, relevant correspondence, copies of rules and postings, interviews with witnesses, documents provided in response to information requests, and other records that bear on the case.

— Robert M. Schwartz. The writer is a Boston labor attorney and author.



# Insubordination Grievances

**A**s sure as night follows day, and as sure as CEO pay is sky high, workers will always have disagreements with the boss over the scope of their jobs and the reasonableness of their assignments. That's no big deal — until the disagreements rise to what management sees as insubordination. That's when it becomes messy and is likely to fall into the steward's lap.

Complaints over assignments can take many forms: grudging acceptance, griping to co-workers, voicing one's opinion — even refusing to perform the task. Grudging acceptance, griping and complaining may be seen as acceptable responses, but refusal to perform the task, with few exceptions, can be a big problem. In fact, in the vast majority of cases, it's seen as insubordination.

Arbitrators consistently uphold management's right to manage and supervise their workforces, and they generally won't tolerate worker actions that undermine a supervisor's authority or ability to manage. The everyday conflict between the prerogatives of managers and the asserted rights of workers is an area of contention that can lead to penalties ranging from verbal and written warnings to suspensions or termination. In fact, instances of alleged insubordination are considered such a serious offense that it is one of the few areas where arbitrators often uphold immediate dismissal.

When a worker doubts the legitimacy of a supervisor's order, he or she should follow the doctrine of “obey now and grieve later.” There are really only two narrowly proscribed instances where employees may have the right to refuse an order at work.

- If they have a “good faith fear” that the order would jeopardize their safety;
- If they believe that the order may be

illegal or violate established policy: for example, a supervisor's order to falsify company records.

## What Stewards Can Do

When investigating accusations of insubordination, a steward has several questions to consider. One is whether or not the alleged insubordination is the result of a miscommunication or a lack of understanding of what was said. If you're investigating a case like this, do what you can to find out not just a *sense* of what was

said, but the exact words used by both the supervisor and the accused. If there was no clear order given and no clear refusal, then there is no insubordination.

There are two ways to think about this.

- If the steward can show that the supervisor's order was not clear, it would be very hard for management to claim the order was intentionally disobeyed.

- If the steward can determine that an employee griped about an assignment, but didn't actually refuse to perform it, this could constitute an affirmative defense to reduce or overturn disciplinary action.

## Questions to Consider

The following questions are critical to consider in termination situations alleging insubordination. An answer of “no” to one or more will help your case.

1. Was a clear order expressed and was there a clear refusal?
2. Was the employee aware of the consequences of noncompliance?
3. Have the rules and penalties for insubordination been consistently applied?
4. Did the worker's action undermine the supervisor's authority?
5. Did management perform a full and fair investigation?

6. Was the alleged insubordination so serious as to warrant immediate dismissal?

Typically, discipline for insubordination must be progressive, starting with a warning. There are, however, documented cases of “gross insubordination” that arbitrators nearly always say warrant immediate dismissal. For example, if employees in refusing an assignment use abusive or profane language, or if they threaten a supervisor, they could be guilty of gross insubordination.

## Mitigate Discipline

If a member believes he or she has the need to question an order, it must be done without hostility, and without actually refusing to obey the order (“I'm not refusing to climb that ladder to change the bulb, I just ask that the top three rungs be repaired first”). Only if they fear for their safety, or believe the request to be illegal, might a worker have a right not to honor the doctrine of “obey now and grieve later.”

Be aware that a worker using words or language that might embarrass, ridicule, intimidate or “cut a supervisor down to size” could also be considered insubordinate. If the facts are not in the employee's favor, try to establish that the incident was actually a mere disagreement, that there was no attempt to undermine the supervisor, and supervisory authority has not been damaged.

At the same time, be alert to possible instances of baiting, where a supervisor may be attempting to instigate insubordination by “pressing a worker's button.” Keep in mind that a supervisor trying to create a charged atmosphere could be considered to have engaged in inappropriate behavior.

Remember that it is exceedingly difficult to get an arbitrator to overturn established workplace policy. A better line of defense would be to attempt to prove that management's enforcement of the policy in different instances has been inconsistent or arbitrary. Finally, if you feel that these kinds of charges are part of a management crackdown, you might want to consider some form of collective workplace action.

# Stewards and Part-Timers

**P**art-timers are a growing segment of the workforce, and it's the smart steward who understands the importance of making solid unionists out of these co-workers.

It would be great if the only people who worked part-time did so because they wanted to — and, of course, enjoyed the benefits that come with a full-time position. But the economy is in bad shape and most employers — even when the economy is healthy — enthusiastically look for ways to avoid extra costs associated with full-time workers, such as overtime and health and pension obligations.

Frequently, full-timers and part-timers can find themselves at odds as, ultimately, the existence of one category of worker can be seen as a threat to the work opportunities for the other. Or, full-timers treat part-timers as second-class citizens, or part-timers begrudge benefits enjoyed only by full-timers. This is the kind of worker-on-worker friction employers love — and it's up to the steward to not let everyone get sucked into it.

## The Steward's Crucial Role

Alone among all union officials, stewards can play the most crucial role by helping to build solidarity between the two types of workers. They work side-by-side with everyone and have the best access to all, whether long-time full-timer or just-started part-timer.

A great example of the value of bringing part-timers solidly into the union's ranks came about during the big Teamster strike against United Parcel Service in 1997. In an article about the strike, writers Matt Witt and Rand Wilson quoted one driver's view of what happened among different types of workers: "Feeder drivers would sit over here and have their own break room, and package car drivers would sit over there, and part-timers over there. But early on this year we were talking together and I learned about other people's issues. By the end, we had enough reasons that we could all stick together. The strike was successful,

in part, because of the unity between full- and part-time workers that was harnessed on the shop-floor."

That unity will never come about unless stewards make it their business to talk to new workers, no matter their part-time or full-time status. It's been long established that the most important way a union gains the support of a new member or a potential new member is by one-on-one contact with the steward. You need to build relationships and make everyone understand they're a part of the union, and that the union is working for everyone.

There are many ways that stewards can make part-time workers feel welcome and involved. The most obvious one is simply to talk to them and see what problems they face. Don't assume that part-time and full-time workers are confronted by the same challenges. Part-time workers usually have more than one job. They're concerned about the number of hours they can get. They're less likely to have health benefits and pensions. And, ultimately, they are probably in a real struggle to make ends meet. Simply by having stewards talk to them, the part-time workers will begin to feel that the union cares about their needs. Simply talking to them can give the union valuable insight into what part-time workers want, which in turn is crucial during collective bargaining negotiations.

## Encourage Involvement

Another strategy stewards should use to engage part-timers in the union is on a person's first day (or if that is not possible, first week) to provide them with informa-

tion about the union and union activities. Try to get the person involved. Someone athletic might be interested in union sports leagues; a really outgoing person might want to get involved in the social committee; someone else might be interested in working on the union's newsletter or website.

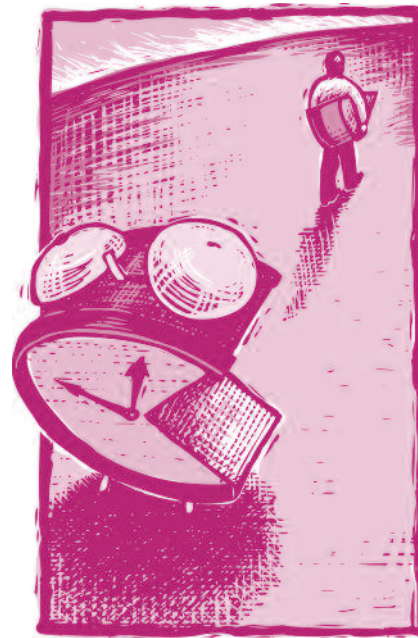
A successful steward is one who builds personal relationships with workers. So, make an extra effort to build some kind of relationship with part-timers: because of their schedules, you'll have fewer opportunities to interact.

Keep in mind as you carry on your duties as steward that it's important not to treat part-timers any different than full-timers. Thus, a grievance from a part-time worker is just as important as one from a full-timer. Avoid doing anything that could be

taken as minimizing the concerns of part-timers just because of their workplace status: divisions between part-timers and full-timers can only hurt the union and impair its ability to stand strong against employer injustices.

In the end, while part-time and full-time workers may have slightly different problems for a steward to deal with, you can help build solidarity by doing nothing more than make sure that part-timers feel they belong in the union. Part-time work may well be the wave of the future. At the same time, part-timers may eventually be full-timers. So rather than decrying the increase in the part-time workforce, stewards and their unions should be doing what they can to ensure part-timers are part of the labor movement.

— Michael Schiavone. The writer is visiting lecturer at the School of Labor and Employment Relations, University of Illinois at Urbana-Champaign. He is the author of *Unions in Crisis? The Future of Organized Labor in America*.





# Who “Owns” a Grievance?

**T**he grievance is the property of the union” is a phrase often tossed around in steward training, but it’s one of the trickiest areas for a steward.

Explaining this important distinction to a member, especially an irate member who is — or certainly *should* be — ready for the steward to tear the boss apart, can be very difficult.

The issue of ownership is often confusing to both stewards and members, who usually think that they — as individuals — are filing a grievance over some of the thousands of situations that could apply to them. Typically these range from a discharge to being overlooked for overtime to working out of classification.

## Collective: The Key Word

A grievance, in its specific definition, is only possible because of the collective bargaining agreement between your union and your employer. This contract, as the Recognition Clause indicates, is a written understanding between a collective organization (your union) and a collective “organization” on management’s side — a corporation, company or public agency.

Since the contract involves the union, not individual employees, only the union can file a grievance. Only an agent of the union — a steward, officer or staff rep — has the authority to file, or *not* file, in any situation. The steward (or other union official) decides what articles of the contract to file under and what remedies to demand.

There are some immediate areas for controversy. Even though a member may be irate, a steward can refuse to file a grievance if he or she doesn’t think there is a case: there’s no violation of the contract, for example, if the worker’s behavior was so blatant and outrageous that discipline may be warranted. In a private sector work situation, the union’s refusal to file a grievance could lead to the worker in question threatening to file — and maybe even going ahead and actually doing so — a Duty of Fair Representation charge with

the National Labor Relations Board. The NLRB, however, always recognizes the authority of a steward to refuse to file a grievance if, in the steward’s judgment, the case is not strong.

Another sensitive area of the ownership of a grievance is the ability — legally, at least — for a steward to file a grievance on behalf of even the most reluctant members. In some industries, such as the building trades, movie craft unions and newspapers, a worker who demands strict enforcement of the contract may be fearful of being branded a “troublemaker” or “not a team player,” and therefore feels at risk of not being

rehired or getting a desirable assignment. As a result, the individual workers may allow certain contractual protections to slide — on overtime or expenses, perhaps — lowering the conditions for everyone on the job.

## Strict Enforcement Needed

The enforcement of the contract — *all* clauses for *all* covered workers — is the principal responsibility of a steward. That means, for example, that a grievance should be filed for *any* unpaid overtime. A steward not only has the right to file such a grievance but the *duty*. Remember, the purpose is enforcing the union contract, not just getting some money for an individual member (or nonmember in an open shop situation). If a boss can avoid honoring the contract for one worker, he will soon get the idea that he can ignore the contract for *all* the workers — and then the union is headed into big, big trouble.

The question of control of the grievance is trickiest when the boss offers a settlement on a hot grievance. By definition, a settlement is less than the remedy the union demanded but may be acceptable. The key point is that a steward has the authority to accept the settlement offer, even if the grievant is not satisfied.

## The Decision-Maker

Often it’s a result of the grievant’s watching too many *Law and Order* episodes, in which justice is served in a fair and fast manner. In contrast, a “normal” grievance gives a steward several choices: drop it, settle it or push it on to arbitration. Many stewards, of course, expand the grievance handling to involve organized demonstra-

tions and other kinds of pressure on the employer, but the membership is not always ready to do major battle on an individual grievance, like a discharge. It is also normal for a grievant to lack any understanding of the grievance procedure — its drawn-out time

frame and the risk of putting it in the hands of an arbitrator. So a settlement can be a wise choice for the union even if the member wants to “go to the wall.”

The steward does have, then, the authority to accept a settlement even if the member wants to pursue the case further. Unlike a court case, in which a defendant hires a private attorney and can exert some control over the conduct of the defense, the ownership of the grievance — part of the union contract — shifts the control to the steward.

Stewards should use all of their skills in working out the settlement, which may be attractive for several reasons. First, and most obviously, the grievance may be a stinker but there can be many other complicating factors. The attitude of the grievant is also part of the decision: some members want vengeance, not justice, or may be angry at the boss and the union and figure the way to get back at both of them is by dragging the union through a long, expensive — and often risky — arbitration case.

— Bill Barry. The writer is director of labor studies at the Community College of Baltimore County and author of *Union Strategies for Hard Times: Helping Your Members and Building Your Union in the Great Recession*.

**The contract’s  
between the  
union and the  
employer, not  
a member and  
the employer.**

**International  
Association of  
Machinists and  
Aerospace Workers**



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OFFICE OF THE INTERNATIONAL PRESIDENT

Dear Stewards,

The old saying "if you want the job done right, do it yourself" could end up being the theme for the rest of 2010. For years, the Machinists union has said loud and clear that protecting jobs is the top issue for North American workers. We've also launched major campaigns to get politicians to recognize the need for more skills training for present and future workers, craft real health care reform and improve laws to protect the right to organize. And, we have propelled our JOBS Now! campaign to pull the economies of North America out of this Grave Recession into the national agenda.

To get the government in the U.S. to help working families, we worked hard in 2006 to elect large Democratic majorities in the U.S. Congress and again in 2008 to take back the White House. In Canada, we increased New Democratic Party seats in Parliament and kept pressure on the Government. We counted on politicians we supported to do what's right — to create jobs, and in the U.S., to reform health care the right way and pass the Employee Free Choice Act. But now, it looks like to get it done right, we're going to have to do it ourselves.

First, we are giving a voice to the millions of unemployed workers through a new community service project called Ur Union of Unemployed, or UCubed for short. It's a way for unemployed workers to network their skills and join together to start a powerful movement to demand action to create jobs. We launched the effort in January and it's been growing steadily. As stewards, you can help the effort by passing on information about UCubed ([www.unionofunemployed.com](http://www.unionofunemployed.com)) to your members to give to friends or family who are struggling with job loss.

Second, we're going to hold our elected leaders accountable. When they try to go back on their promises by taxing our health care in the U.S., we're going to speak out loud and clear against policies that are wrong.

Third, we're going to mobilize. Working families in North America are tired of waiting for politicians to realize there is a jobs crisis. Voters in Massachusetts sent that message in January — ignore the growing problem of people being thrown out of their jobs, and you risk being thrown out of yours! We must give politicians their own WARN notices that they must pay attention to the real issues in North America or they too, will join the ranks of the unemployed.

In Solidarity,

*R. Thomas Buffenbarger*

R. Thomas Buffenbarger  
International President

