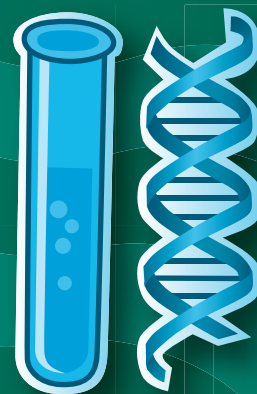
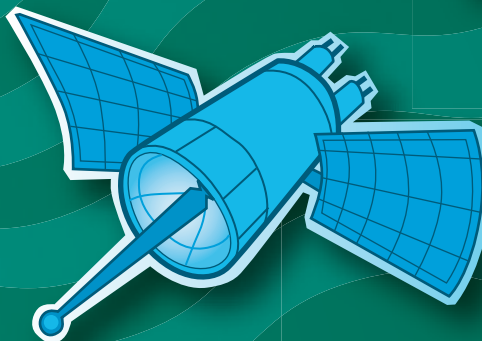
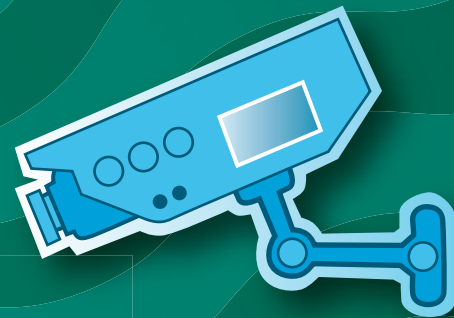


TAMI

E D U C A T O R

Update for Stewards

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BIG Brother AND Grievances

Big Brother and Grievances

Did not!

Did too!

Was too!

Was not!

If you ever attended a grievance meeting, this snappy repartee will sound familiar—the boss accuses your member of some violation of a work rule, your member denies the infraction, and an issue of proof and credibility is on the table. Both sides bring in witnesses, argue about accuracy, hearsay and second-hand information, and occasionally reach the “he said/she said” impasse.

As technology began creeping into our workplaces, there also began an element of increased control for the boss. Now technology brings a dimension of surveillance as well, because our every move on our daily jobs — and even off the job, in our personal lives — can be followed and documented. This new technology has dramatically changed the course of grievances, creating major problems for any steward who shows up at a grievance session unprepared, hoping to “wing it” with continued denials. New technology is a game-changer.

Check out these recent—and very real—incidents to demonstrate that the era of Big Brother in the workplace is creating some new challenges for union stewards.

■ A major unionized package delivery company has equipped its trucks with Global Positioning Systems (GPSs) so that drivers can be contacted and followed electronically. In the past, if a driver wandered off an assigned route, the company had to provide a witness as proof. Now technology does the dirty work: the GPS can prove if, where and for how long a driver stopped.

■ In a related case at another unionized company, a driver was caught at home on company time when the GPS “malfunctioned.” It turned out the GPS had been

unplugged so many times the power plug for the unit was broken. The driver was fired.

■ Workers who use computers are always at risk for surveillance. In one case, a worker filed sexual harassment charges against a co-worker, claiming his regular looks at pornographic websites in a large office created a “hostile environment.” An investigation of his computer was not only able to capture every site he had visited but also found that he had been involved in sexually oriented chat sessions during work hours. The worker was fired.

■ Even off-duty misconduct—always a sensitive grievance issue—can be affected by technology. In one unionized company, two workers who were staying at a hotel during a one-week training session were captured fighting with each other in the hotel game room by a hotel video camera. Both were fired.

■ A worker was accused of sexual harassment for licking a female co-worker. The member steadfastly denied the charge. But management announced it had taken a DNA sample off the saliva on the woman’s neck. The worker was fired.

What can unions do to protect workers during this Big Brother era?

First, demand negotiations over the adoption of any new technology. Insist upon the union’s unlimited access to all information that might affect a grievance. Avoiding excessive surveillance should be a critical element of these negotiations. Try to anticipate how new technology could be used in a “worst case scenario.”

The demand to bargain, justified by most union contracts’ recognition clause, is more important than ever because courts are generally all over the place in dealing with this emerging issue. In many cases, decisions support the right of employers to monitor work time and work equipment. Other decisions support a worker’s constitutional right to privacy. The U.S. Supreme Court will soon be



deciding the case of a police sergeant who was disciplined for sending explicit text messages over the department’s pager. The argument, supported by the Obama administration, is that the boss owns the pagers and has the right to peek at any messages.

For a steward in a grievance meeting, new technology puts still more emphasis on the importance of *preparation*. Before you go into a meeting, demand that the company show you their proof as part of your investigation—remember, you have a legal right to such information.

If the employer tries to introduce evidence generated by new technology—transcripts or videos, for example—demand to see *all* transcripts and videos. This demand will guarantee that the employer is not showing an edited version and can help the union determine if certain workers are being singled out for discipline while others—even managers—are unpunished.

A more frightening scenario is the emergence of companies that, for a small fee, will automatically monitor the off-duty postings to sites like Facebook or Twitter. According to an article in the *New York Times*, “employers are looking for better control.” The implementation of such a policy in a union workplace is clearly a subject for bargaining.

Members need to be informed about these negotiations and about the implications of the surveillance, so that they can anticipate disciplinary situations—and, hopefully, avoid them. It’s not smart to get caught disabling tracking devices, for example, but it is smart for workers to keep their own records—of delivery stops, say—with notes of any details that might have slowed down deliveries.

— Bill Barry. The writer is director of labor studies at the Community College of Baltimore County.

The Steward's Role in Bargaining

Bargaining a new contract offers stewards many opportunities to build a stronger organization by teaching members how bargaining really works.

Members often think the outcome of bargaining has little to do with them. Some members have very high and unrealistic expectations they challenge “the union” to meet. Others quietly tell the steward that almost any settlement would be okay because they want to avoid conflict. Still others ask why the union doesn't hire “a professional negotiator” like some of the high-profile lawyers they see on TV news.

The union has a problem if members don't understand that, in large part, it's what the members say and do, not who the union has sitting at the bargaining table, that forms management's decisions about what it will agree to during bargaining.

Stewards must educate members about bargaining so they appreciate what it takes to get the best agreement possible. Then, stewards have a crucial role in involving members in convincing management that they are unified and ready to fight for a fair agreement.

Seriously Engage and Educate Members

While mailed bargaining surveys are considered successful if 20 or 30 percent of members respond, when stewards hand-collect surveys from members the response can be greater than 90 percent. The one-to-one approach gives stewards the opportunity to answer questions, engage members in discussions and show management that people are involved.

Teach How Bargaining Works

Ask members to imagine they are part of the management team setting the employers' negotiating strategy. Have

them think about what management wants out of bargaining. Usually, they'll come up with a long list of priorities that add up to less for the workers. Then ask the members who have been role-playing as managers the big question: “What determines how much management agrees to in bargaining?” At this point it dawns on most that bargaining is not as much about reasonable arguments as it is about membership unity and the pressure they exert on management.

Anticipate and Counter Management Propaganda

Management frequently will communicate with members during bargaining through rumors and “off the record” comments from supervisors, through “sincere” letters and bulletins, or perhaps through statements to the media.

Their goal: lower member's expectations and convince them that they have no choice but to accept management's “fair” or “competitive” offer. Sometimes rumors circulate about “sell-outs” and secret deals, or other stories with the potential to divide the members and undermine the union's bargaining team.

That's why many unions hold regular briefings to help stewards stay up to date and informed about the progress of bargaining so they can pass on reliable information, get answers to members' questions, and clear up rumors and misinformation.

Lead and Mobilize

It's not enough to have members who are informed: they also have to demonstrate their determination to win a fair agreement and in some cases strike if neces-

sary. Working with the union's top leadership, stewards can lead their members in developing and carrying out actions.

These can be simple, like everyone wearing buttons or agreeing not to discuss bargaining with their supervisors. Or they can be more involved, like demonstrating at shareholder or elected officials' meetings or reaching out and speaking to community allies about how the issues in bargaining affect more than just the union's members.

Creative actions using new media can be effective. With one loaf of bread representing the pay of an average worker, a Seattle UFCW local made a video for YouTube that shows members piling on over 500 loaves to represent their CEO's salary. It ended by asking viewers to contact management and tell them to “share the success.”

It takes a lot of one-on-one discussions between stewards and members to

get enough participation to make actions successful.

Good stewards talk regularly to every member they represent and keep a chart with phone numbers and other relevant information to make sure they don't forget anyone. This kind of one-on-one contact and list-keeping also helps stewards recruit active members to help with the mobilization.

Member involvement is key to successful negotiations.

Follow Through After an Agreement is Reached

Once there is a new contract, make sure members understand the agreement and the role their actions played in getting it: this will help them vote on whether to ratify it. Become familiar with the new provisions of the agreement and channel the activism you generated during bargaining into enforcing it as well as taking actions to address injustices that might not be winnable through the grievance procedure alone. Not only will this make your members' work lives better, but you will be ready to fight for an even better agreement in the next round of negotiations.

— Ken Margolies. The writer is on the Labor Extension faculty of Cornell University.

Your Right to Information

A smart union steward uses every weapon available to prepare for the presentation of a grievance. One of the most powerful of these weapons, one seldom used to its full advantage, is the union's right to information.

The right to information is a broad right guaranteed to unions by law in most workplaces. Under the U.S. National Labor Relations Act, and most provincial and state laws as well, unions have a right to get all sorts of information from the employer if it is needed to enforce the contract and defend the members. The kind of information that must be provided — as long as it's relevant to the grievance — is sweeping.

If a worker is being disciplined for tardiness, for example, the union has the right to examine the records of every other employee disciplined for the same thing.

As another example, if testing is used as a basis for promotions, the union has a right to see the test, find out how else it has been used by the employer, and understand how the employees are graded.

In every case, what the steward is looking for is evidence that the grievant is not being treated differently and unfairly. If management wants to suspend Mark for a month because he's been late five times, but the record shows that Mike came away with only a written warning after being late the same number of times, the union is in a good position to lessen Mark's punishment.

Keep in mind that a request (or requests) must be relevant to the grievance. You can't use a request to "go fishing" for whatever you can find or to harass the employer.

Some Guidelines for Using Information Requests

Here are some rules of the road for using information requests.

- An employer must produce information requested in a manner that allows for due process and within the time limits specified for each step of the grievance procedure. If the employer claims more time is needed, then an agreement must be reached for extending the grievance time limits.
- The union may request information before filing a grievance. This is part of your right to make sure the contract is being enforced. But remember that the union must have some suspicion of a grievance. Again, you can't just "go fishing."
- Multiple information requests concerning a single grievance are allowed at any stage in the grievance process.
- The employer must pay for supplying the requested information unless he can show that "substantial costs" are involved. In this case, the union and employer must bargain over sharing the burden. If the costs are too high the union can request direct access to the information.
- The employer is not required to produce information in the precise form requested by the union (for example, a summary of the overtime hours worked by each employee). If it does exist, though, it must be produced.
- If it's necessary to your argument (demonstrating unequal treatment, for example), the union may also request information on employees not in the bargaining unit.
- Certain information is confidential, such as employee medical records and sensitive company data such as trade secrets, product research and profit and loss information.

Take full advantage of the union's right to see employer records.

Information that Can Be Requested

Here's a list of information that typically must be furnished if needed by the union.

- accident reports
- attendance records
- bargaining notes
- bonus records
- collective bargaining agreements for other bargaining units or other facilities
- company manuals and guidelines
- contracts with customers, suppliers and subcontractors
- correspondence
- customer complaints
- customer lists
- disciplinary records
- equipment specifications
- evaluations
- inspection records
- insurance policies
- interview notes
- investigative reports
- job assignment records
- job descriptions
- material safety data sheets (MSDSs)
- payroll records
- personnel files
- photographs
- piece-rate records
- reports and studies
- security guard records
- security reports
- seniority lists
- supervisors' notes
- time study records
- training manuals
- videotapes
- wage and salary records
- work rules

Handling Grievances Over Promotions

It's the rare steward who hasn't had an irate member storm up to him or her at some point and voice this complaint: "I should've got that promotion!"

Maybe, and maybe not. The question is, was the member treated fairly? A good contract can help a lot in guaranteeing fair treatment, but the rules are seldom spelled out well enough to make a clear-cut decision as to who should get any given promotion.

Where there are no unions, employers have the sole right to decide who is going to be promoted (unless the decision is based on discrimination because of race, sex or other illegal criteria). Unions have for the last half-century fought for a way to determine who gets the job, and employers have sought to give themselves as much advantage as they can get to make promotion decisions.

The bottom line is it's important to know what your contract says on seniority and promotion language.

Seniority as a Factor

Here are the basic approaches to how seniority can be a factor in considering promotions:

■ **Strict seniority.** Seniority is the sole basis for determining who gets the job. In some cases, the senior employee may be entitled to a trial period to prove he or she can handle the duties of the job. Generally management retains the right to take the worker off the job if performance is not up to par.

■ **Seniority if possessing relative ability.** Here, the senior employee gets the job if he or she has equal fitness or ability compared to the junior employee. This type of clause requires that both ability and seniority be taken into account. Ability doesn't have to be "exactly" the same, but approximately or

nearly equal. But if the junior employee is substantially superior, then he or she can be given preference.

■ **Sufficient ability.** This wording generally provides that the senior employee gets the job if he or she possesses "sufficient ability" to perform the job in question. Compared to the "relative ability" clauses, this gives the senior employee the advantage. In this case, a junior employee who may be head and shoulders superior to the senior bidder still won't get the job.

■ **Multiple considerations.** Here, the contract may require that length of service, aptitude and ability all be taken into account when making the promotion decision. This involves considerable judgment, which may be less easy to document, and the steward needs to be sure to investigate the basis on which aptitude and ability were measured. Of the various types of clauses, this one gives the least advantage to the most senior bidder.

The preceding approaches illustrate the weight given seniority in different contracts. Usually your agreement will contain a clause similar to one or the other of those listed above, but it won't be exactly the same.

Ability as a Factor

Who has to determine "ability to perform the job"? Determining that, of course, is a lot harder than figuring out seniority, which is simply how long someone has been on the job. In general, management makes the initial determination of ability, but arbitrators expect the decision not to be arbitrary, capricious, or discriminatory. In general, the union can ask for an explanation of the decision and for the evidence on which they measured ability. Some of the measures that management typically uses to determine ability include the following.

■ **Experience and education.** These measures look at the worker's specific experience or formal training that bear on specific aspects of the job to be performed. Seniority alone does not necessarily equal experience.

■ **Job testing.** Tests can be used to determine ability, but they must specifically relate to the requirements of the job, be fair and reasonable, administered in good faith and without discrimination, and properly applied. Arbitrators like to see the use of tests to determine ability, so it is up to the union to make sure those tests meet these criteria.

■ **Trial period.** Some contracts and past practices provide for a trial period to determine fitness for the job. Employers prefer to promote workers who are ready to perform the work without a trial period.

■ **Supervisors' ratings.** Supervisors' assessments of ability appear to be useful to arbitrators, but they must be objectively related to some aspect that affects the quality of performance, such as production records, recorded instances of failure to do the job correctly, or some characteristic that affects the goals of the employer.

■ **Performance reviews.** These bear some weight with arbitrators, but the more closely the ratings focus on measurable skills of particular jobs, the better, and these must provide specific examples of malfeasance or misfeasance.

■ **Production and attendance records.** These can be used to demonstrate that a person can handle the duties of the job in question, or at least indicate what future performance might be.

Each promotion case has to be judged on its merits, and "ability" is not necessarily the same for all jobs. Remember that the employer must prove that measures of ability relate to the essential performance of the specific employee on the specific job.

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OFFICE OF THE INTERNATIONAL PRESIDENT

Dear Stewards,

It has been almost two years since the momentous election of 2008. In just a few months, voters in the United States will go to the polls to elect 37 state governors, 435 members of the House of Representatives, 36 U.S. Senators and thousands of local officials across the nation.

The mood of U.S. voters in 2010 is markedly different. The hope for change that fueled the large turnout in 2008 has given way to the despair of long-term unemployment and an economy stuck in recession for too many working families.

Congress and the Obama administration have made some progress in the last two years, but the results are mixed. We now have worker-friendly appointees to many federal agencies, such as the Department of Labor, the National Mediation Board, the National Labor Relations Board and the Transportation Department. But we also have endured cancellation of important job-creating projects, such as the F-22 fighter and the Constellation program to succeed the Space Shuttle. We had a fair start with a stimulus bill to create jobs, but much more needs to be done.

In response, we launched a major JOBS Now! campaign and a new "Ur Union of Unemployed," or UCubed, (www.unionofunemployed.com) to bring together jobs activists across America to pressure legislators to create jobs. UCubed activists have sent more than 25,000 messages to Congress urging them to help the unemployed by extending unemployment benefits, lowering COBRA payments, increasing food stamp benefits and passing a second stimulus bill to create jobs faster. And UCubed activists showed up in early primaries with a clear WARN notice to incumbent candidates: if you don't do enough to create jobs, you will lose yours, too.

With many voters poised to stay home this November, our members can have a huge impact on this election. While we can't let anti-worker forces regain control of Congress, we also can't let those we put in office in 2008 get another term unless they do more to help America's working families, including our members who are unemployed or underemployed.

Our message to Congress and the Obama administration for 2010 is simple: Do more to create jobs or risk losing yours.

In Solidarity,

R. Thomas Buffenbarger
International President

