Dealing With "Dr. No"

What's a supervisor's favorite movie?
Dr. No.

What's a supervisor's favorite musical?
No, No, Nanette.

Did you hear the joke about the supervisor who couldn't spell NO without looking it up?

If you deal with a supervisor whose vocabulary consists of this single negative word, then you have plenty of company.

NO's, as you know, come in several different forms. As bosses — both private companies and public agencies — deal with tough economic times and with an anti-union atmosphere, the willingness of a supervisor to settle even a simple grievance on its merits has faded.

It is also common for a supervisor to "pull a Jackson," or stonewall, any demands for information that could help a steward evaluate a potential grievance or might support a grievance, if one is filed.

A supervisor who repeatedly says NO demoralizes both the stewards and the union membership, creating a destructive and downward force within your union.

What's a steward to do?

In the most unimaginative union, a steward could simply file the grievance, accept the NO and pass the grievance up the chain of appeals, looking ahead a year or so to a costly, dangerous and thoroughly unnecessary arbitration — if the union can afford to take each and every rejection to arbitration.

But a clever steward, who understands that the role of the steward is to build the union, will use the negativity of the boss as an opportunity for the union.

A steward must understand a basic mantra: *a steward is not one person, a steward is a group.* A boss is not an individual, but a representative of all the power and authority of a company or public agency, so a steward who tries to go one-on-one with this power will always lose, no matter how slick the steward is.

To even up the odds, then, a steward has to bring along the family: after all, Wyatt Earp didn't go by his lonesome to the OK Corral, did he?

In practical terms, what should a steward do?

First, try to make each and every grievance a group grievance, if there is any possible way to involve more than one person. Not only should every affected member sign on to the grievance, but each one should be willing to show up for the grievance hearing, disrupting production in a way that even the most negative supervisor can understand. Preparing this strategy requires the steward to get around and talk to each member in a way that might not happen with a "normal" grievance. Explain to each member the strategy of the grievance and the importance of turning around the negative boss.

Second, after the members have been convinced to participate in the grievance, set each of them loose looking for the necessary information to back up the union's claim. It is amazing how productive and motivated workers can become when their own self-interest is involved. Vital information suddenly appears, as if it had fallen off the back of a company truck or out of the sky or — to keep up to date — as if a computer suddenly started to speak. Many heads, after all, are better than one.

Here's an example. Let's suppose you think the boss has called in a subcontractor to perform bargaining unit work in a remote work area. The steward demands to see the information and is met with a resounding NO. The posse of possible grievants should be able to figure out how to find this information — check security records, even check the security cameras, if possible. Most important, they are participating in the grievance, not just watching it happen.

In the U.S. private sector, one reflex action is to trot on down to The National Labor Relations Board and file a charge against the employer for refusal to provide information.

Technically, it's called an 8(a)(5) charge. This strategy has diminishing value: In the best of times, Labor Board procedures are long and drawn out and, most important, do not directly involve the members, and so do not help build the union.

Another remedy for negative bosses is the union knowing the attitude of higher management to a heavy grievance load, and being sensitive to changes in policy. In a large public agency in the Baltimore area, for example, a new general manager looked with horror at the amount of public funds that were spent on higher level grievances and arbitrations, and sent out a directive to the supervisors to clean up most of the grievances. Smart stewards used this opportunity to resolve a backlog of problems.

At the US Postal Service, another sharp steward learned that a similar policy was in effect — a boss who generated a lot of written grievances was not going to move up. Guess what? Self-interest on the part of supervisors gave the union extra clout in getting grievances resolved early on.

Sometimes you won't be so lucky, but good organizing always produces stronger grievances. Stronger grievances make it more likely that you can make a boss eat the NO and build up the union.

— Bill Barry. The writer is director of labor studies for the Community College of Baltimore (MD) County.

A Steward's Toolkit

A soldier wouldn't be caught in battle unarmed, nor would a baseball player step onto the ballfield without a glove. Neither, then, should a steward be on the job without his or her own special tools of the trade.

Those tools vary, depending on the nature of the workplace and the steward's union itself, but a lot of tools are universal. Every steward alive, for example, should have a copy of the union contract near at hand, just as every steward should have a good, updated list of phone numbers to put inquiring members in touch with appropriate union, fund or other officials.

An effective steward's toolbox contains both material and information. Some components should literally be with the steward at all times — a pen and a pocket-sized notebook are examples — while others can be grabbed from a nearby desk, locker or vehicle on short notice.

Available When Needed

In some situations you'll know in advance exactly what you'll need and you can have everything ready to go. For example, your copy of the contract while meeting with a member to discuss a complicated grievance, or a brochure about the union and a copy of the newsletter when you know you're going to be meeting a new worker for the first time.

Some tools are not as portable as others, so they may have to reside out of immediate reach. One major tool, for example, is your employer's own employee records. Stewards have a right to have access to these records, at least in part, when handling a wide range of grievances, including disputes over absenteeism, assignment of overtime and the like.

Don't overlook outside resources. Everyone can get to a public library, with its wealth of information (and, these days, most likely an Internet connection). Between the library and the Internet you can find detailed information on everything under the sun, including full texts of important laws that might affect your situation.

Don't forget the value of the best tool of all — although one you better not try to put into your locker at work. That's the experienced veteran — or veterans — who can counsel you on how issues have been handled in the past. This can be another steward or a union officer: someone who may be able to shed light on and offer advice about a tough issue you're trying to deal with.

The exact makeup of your toolkit will vary from some others', but the accompanying list gives a pretty good idea of some of the basics. Pick and choose as you believe appropriate in your situation, but keep in mind that a big part of your job consists of answering questions and moving information back and forth between the union leadership and the membership. Arm yourself accordingly.

Some weapons in the steward's arsenal:

- A notebook and a pen
- A watch and a calendar
- A copy of your union contract and any side agreements or supplements
- A copy of your employer's worker handbook, if any
- Your local union's by-laws and national union's constitution
- A copy of your union's steward handbook, if there is one
- Grievance forms
- Grievance fact sheets
- A list of union members and contact information
- Seniority lists as appropriate
- A list of nonmembers
- Union membership sign-up forms
- Copies of your local and/or national newsletter
- Sign-up cards for the union's political action fund
- Names and contact information for union officers
- Contact information for community resources
- Employee Assistance Program information
- Union Privilege-type program information (union credit cards, legal services, etc.)

You'll probably want to modify or add to this list, depending on your situation and circumstance, but it should give you a good start. Be sure to stand back and take a look at it every so often: new materials from your union, changes in benefits, and new resources in your community all could cause you to give your toolbox a tuneup.

— David Prosten. The writer is editor and publisher of Steward Update.

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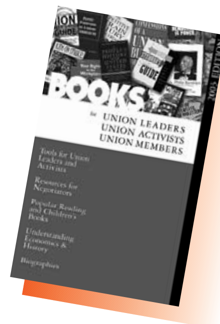

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Discipline for Off-Duty Conduct

What a worker does on his or her own time is none of the boss's business, right? Not necessarily. A good many arbitration decisions show that employers can legitimately discipline employees for situations they get into while away from work. At the same time, though, other decisions show that employers can go too far in handing out discipline for trouble that workers get into while off duty.

Here's a look at what arbitrators had to say about a number of disciplines for situations that developed off the job. They might give you a sense of what you can expect if similar circumstances arise among people you represent.

Domestic Violence Issues

In unrelated cases, two plant guards at two different sites got in trouble for fighting with their spouses — and the cases ended up with different results.

The first guard was fired because his wife, a fellow employee, had an order from the court that he was not to come within 300 yards of her: he had injured her when off-duty and the court wanted him to stay well away. The union protested the firing, declaring that the company should have found a way to keep both of them on the job. The arbitrator agreed with the company's action, however, saying that it was possible, at the very least, that they would run into each other at shift change or when working overtime.

The second guard was fired for "off-duty misconduct" after being accused of domestic violence. The guard pleaded not guilty and was placed on probation and the case never went to trial. The company said the court proceedings showed sufficient facts to justify the termination. The arbitrator put him back to work because the plant rule stated that the company had to determine the person's guilt. The arbitrator noted that the evidence showed the wife came at her husband "with claws flying," and he had pushed her away. The arbitrator said the worker had a right to defend himself.

The principles involved in these cases are threefold. First, an employer has to go only so far in accommodating employees with domestic problems. Second, the employer should pay attention to the other party's behavior that led to the altercation. Third, the wording of the employer's rule governing misconduct should support the discipline that's ultimately dispensed.

A key question: Was the employer affected?

Off-duty Driving Violations

A driver was suspended for an off-duty driving violation. The arbitrator reversed the suspension because the worker's driving license wasn't affected, and the conviction didn't affect his ability to drive for his employer. The arbitrator said the traffic violation was insufficient to put his job in danger and each driving offense should be reviewed on a case-by-case basis.

In another case, a truck driver was caught driving under the influence of alcohol when off duty and was fired. The arbitrator upheld the discharge because the company's insurance company refused him insurance and there were no other jobs to which he could be moved.

The lessons? In the first case, the company wasn't really hurt, so there was no cause to discipline the employee. In the second, the driver was no longer qualified to perform his job, so the employer's action was legitimate.

Criminal Record

When filling out an employment application, a worker answered "no" to the question of whether he had any prior convictions. The company caught the "lie" and fired him. In his defense, the worker said he thought a Driving While Intoxicated conviction as a youth had been washed out of his record. In reversing the firing, the arbitrator said the company was not able to prove that DWI convictions were criminal offenses under company rules and said there was no harmful relationship between the grievant's job and the remaining outstanding DWI conviction. The moral: check your employer's own rules, not just the union contract, and decide if the off-duty activity in question really has an impact on the employer.

Forgery Accusation

The telephone company discharged a worker for "dishonesty" when he was accused of depositing a forged and counterfeit check in his independently run credit union. The union argued that since the worker wasn't employed by the credit union, the company had no right to conduct an investigation in the first place. The company had a right to investigate, the arbitrator said, but it failed to prove that the grievant knew the check was forged. The arbitrator ordered the worker put back on the job, but withheld back pay because the employee refused to cooperate during the investigation.

What lessons can we draw from these cases? First, the company is obliged to conduct a proper investigation and prove the guilt of the accused. Second, if a worker is to be disciplined for off-duty conduct, then the misconduct rule should be worded in a way that includes misconduct off the job. Third, for an offense to warrent discipline it should in some way affect the employer's image or product. Fourth, if a law enforcement agency has an investigation in process at the time discipline is imposed, the action may be untimely. Off-the-job misconduct can become the basis for disciplinary action, but the employer has to prove that they are or will be in some way affected.

— George Hagglund. The writer is Professor Emeritus at the School for Workers, University of Wisconsin at Madison, and Visiting Professor, University of Otago in Dunedin, New Zealand.

What if...

Answers to some of a new steward's most common questions

Internet users are very familiar with the term "FAQ," which stands for Frequently Asked Questions: questions about a service, a product, a way of handling a computer task. Union stewards — especially new ones — have a lot of Frequently Asked Questions as well, especially when it comes to handling grievances. Those questions usually start with the old familiar What if... This article offers ten classic What Ifs. Maybe the answers can make life a little easier for you.

What if...
...in the grievance meeting the grievant reveals a fact that I didn't know about.

Call a caucus and find out what it's about. Good interviewing can help prevent this, but it happens to every steward at some point. When you meet with the worker before going into the grievance meeting, always ask, "Is there anything else that I should know?"

...I can't make a full investigation within the time limits to determine if a complaint is a grievance.

File the grievance and continue your investigation. The union can always withdraw the grievance at any time if you find it shouldn't be pursued.

...I goof up at the first step.

You'll have another chance at the second step — and you'll have time to discuss the case with other stewards or union staff to help you do a better job.

...a worker's rights have been violated, but he or she does not want to file a grievance.

Fear is a very real feeling in the workplace today and a steward needs to assure members that the union — their co-workers — will support them. Remember, though, "an injury to one is an injury to all" and we have the responsibility to make sure the contract is enforced and workers' rights are not violated. If filing a grievance is necessary, but a member is not willing to come forward, it can be filed as a "union grievance." Letting violations pass without some kind of union action weakens the union and encourages the singling out of other fearful workers.

...a worker is violating the contract or otherwise doing something that will get him or her in trouble.

Consider talking with the worker privately, or ask a friend of the worker to discuss the issue with him or her. Your role is not to be a "police officer" but rather that of a union leader concerned that the worker will be disciplined and the union will be the weaker for it.

...a worker's complaint is not a valid grievance.

First, make *sure* it's not a grievance. Remember, valid grievances can include unfairnesses that are not contract violations. If it's really not valid, explain this honestly to the grievant, but it can be better to fight it anyway. It's often better to have the boss say "no" than the union. There are some grievances — complaints about other workers; grievances that, if won, would harm the general membership; or particularly outrageous claims — that should not be fought. Telling people honestly when they are simply wrong is part of the steward's job.

...management interviews and disciplines a worker without the presence of a steward.

Under a 1975 U.S. Supreme Court decision, a worker has the right to request union representation when the worker reasonably believes that disciplinary action may result from a meeting with management. This protection is known as "Weingarten Rights." It's mostly the same for public sector workers, and in Canada. However, it is up to the worker to request the steward or union officer: *the employer is under no obligation to inform the worker of his or her rights*. It is important for you to tell the workers you represent about this right.

...a nonmember asks me to handle his or her grievance.

You must handle it just as you would handle a member's grievance. Under law, the union must represent everyone in the bargaining unit fairly, without discrimination or hostility. This is known as the "Duty of Fair Representation." It gives you an opportunity to show the nonmember rank-and-file unionism in action — and he or she may reconsider joining.

...there is a provision in the contract about scheduling that you are getting a lot of complaints about. You investigate, but there doesn't seem to be a violation of the agreement: management seems to be right on this one.

Put the boss on notice that this is a problem and figure out some ways for the members to let the boss know why they don't like it. He or she may be willing to work it out. If there's an element of unfair treatment involved, you may be able to pursue the problem under the contract's union recognition clause. Better yet, look at ways you can use the collective power of your co-workers to settle the grievance.

...a worker is told to operate a little-used piece of equipment that has a frayed cord and no safety guards. Can the worker be disciplined for refusing to do the work because it's unsafe? Could you be disciplined for advising the worker to refuse?

The worker shouldn't "refuse," but should say he or she will do the job if the equipment is made safe. And you would be within your rights to offer that counsel. However, legal protections for workers have been weakened over time. Under current law, the hazard must pose an immediate threat to life and limb.

— Adapted with thanks from the Steward Handbook of the United Electrical, Radio & Machine Workers of America.

ARBITRATION REPORT

Do you have a local arbitration worth sharing? Send a full summary of the arbitration, or a copy of the decision, to UCS Steward Update, 165 Conduit St, Annapolis, MD 21401. Include the name, address and phone number of a contact person.

Delay in reporting injury is not "lying"

It took several days on a new job before a worker reported a nagging pain in his neck. When the pain got significant he reported it as an "injury." He was thereupon discharged for both falsifying an injury report and for failing to report the injury promptly as required by company rules. An arbitrator overturned the discharge. He noted that the injury arose due to the nature of the work station and was not "dramatic," such as a broken leg, and that it doesn't become self-evident until time passes. The worker had reported his discomfort to a supervisor in the week before he reported it as a work injury, it was noted. The worker was awarded back pay for those periods in which he was cleared by doctors to work. *(Communication Workers and Oakland Press Democrat, reported in "Sector News" of CWA News, Sept. 2002)*

Talking to media no cause for firing

A custodian was illegally fired for speaking to a newspaper reporter on a matter "of public concern" involving the community agency for which he worked. An arbitrator reinstated him with full back pay, noting that talking to the media was "protected speech" as long as it did not involve disclosing confidential information about clients. The arbitrator ruled the agency's confidentiality agreement was too vague to be applied in the case. In addition, the custodian's previous disciplinary record was more than a year old and could not be raised by the employer, since the original cause for firing was "talking to the media," which he said was an improper action. *(SEIU District 1199 and Lorain County Community Action Agency, decision by Arbitrator Gerald B. Chattman, Nov. 2, 2002, supplied by the union)*

Offensive language may not bring discharge

A worker brought to work and left in view song lyrics he wrote that were described as "racist and misogynistic" and that also referred to his supervisor in violent terms. He was fired. An arbitrator ruled he should be returned to his job — but without back pay — since there was no indication the worker had ever behaved violently toward his co-workers or had been previously disciplined for such behavior. The company challenged the award in federal court, which subsequently ruled that the arbitrator did not exceed his authority in making the award. *(Teamsters Local 781 and Budget Rent A Car Systems, Inc., AN.D. Ill., No. 02 C 4108, 12/12/02)*

— Ken Germanson. The writer is a veteran labor journalist.

Note: Keep in mind that decisions cited here flow from interpretations of language in specific contracts. Every grievance must be weighed on its own merits and in its own context. The Editor.

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