

TAMM

E D U C A T O R

Update for Stewards

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**Handling
Disciplines
for “Poor
Performance”**

Handling Disciplines for “Poor Performance”

It's the rare steward who never has to handle a case in which the employer alleges poor job performance on the part of a worker. The charge may come up in a disciplinary action or in the denial of a wage increase, or of a promotion. Or maybe the boss just decides to “crack down” on what he sees as poor performance and takes adverse action against one of your people.

Issues of poor performance can come up in any number of ways, but one thing is for certain: It is during bad economic times — like today's — that employers ramp up the suspension or dismissal of what they see as problem workers, using allegations of poor performance as an excuse.

It's your job as steward to ensure that justice is properly carried out and the worker's right to a job is protected. There are millions of people across North America desperate to find a job these days, and the boss can pick and choose between a lot of applicants. You have to examine the facts of these cases closely to make sure that competent employees aren't thrown out.

Here are some tactics and issues to consider when defending a worker hit with the poor performance rap.

Get the Facts

If someone in your department is in trouble with the boss, make sure you check with the supervisor as to the reason(s) action was taken against him or her. Does it appear to be based on a grudge between supervisor and worker? Has the poor performance alleged by management been of a willful and continuing nature? Has the worker been warned pre-

viously that his or her performance wasn't up to the standard required by management? Was the worker properly trained for the job in the first place? And, most important, precisely what did the worker do that ticked off management and led to the discipline?



Review the Rating System

If your employer uses a rating system, check to see what the measurement factors are. “Productivity” is insufficient — there should be some target production measures against which you can compare the worker's performance. Don't let management get by with factors like “attitude” or “relations with others.”

They are too vague and impossible to verify. You need measures that make sense and relate to measurable qualities possessed by workers.

Make Sure that People are Rated Consistently

If management uses performance measures to regularly rate workers, make sure they are applied consistently, and check to see how other workers' performance compared with the disciplined employee. If performance is rated on a regularly basis, like quarterly or annually, check to see how he or she did in periods past.

Was Poor Performance Related to Outside Problems?

Sometimes workers have off-the-job problems such as family illnesses, divorce, or personal health problems, that can affect their performance. If that's the case, you should find out about any such issues before you meet with management. If the worker has some physical disability that is making it hard to meet the work standard, determine whether he or she is entitled to move to another job under the Americans

with Disabilities Act or receive additional training.

Has the Workload Changed in a Significant Way?

Have the production standards been increased without taking into account the abilities of the worker? Look for an actual expected number of pieces that are supposed to be created by the worker, or actions that the worker is supposed to take, before the worker is judged to lack necessary productivity.

Was Prejudice Involved?

Sometimes personal likes and dislikes can affect the way someone's performance is judged. Is there evidence in the past that suggests the decision in the present case was affected by the way the worker was treated previously?

Ultimately, these are the points that must be considered:

- 1 Check rules carefully to ensure the penalty fits the crime.
- 2 A single example of poor performance doesn't justify immediate discharge, even if the error resulted in expense to the employer.
- 3 Make sure management followed due process, investigated carefully, and proved the employee's performance was linked to the problem.
- 4 Remember that in discipline cases, the burden of proof always resides with the employer.
- 5 Check to determine whether the employee was notified that his or her performance was inadequate.
- 6 Look for extenuating circumstances that might justify giving the worker another chance.
- 7 Check the worker's past performance reviews to see how he or she was rated earlier.

— George Hagglund. The writer is Professor Emeritus at the School for Workers, University of Wisconsin - Madison.

Stewards and Workplace Rage

The workplace can be a violent place, and angry and frustrated workers are providing a whole new set of problems for a union steward.

In August 2010, JetBlue flight attendant Steve Slater became an instant working-class folk hero when he grabbed two beers, cursed out an offensive passenger, and took the plane's emergency exit slide into instant fame. The phrase "pull a Slater" jumped into popular usage, generating pages of "last straw" stories about bad working conditions.

If Slater was comedy, Connecticut beer warehouse worker Omar Thornton was tragedy. Thornton was called to a disciplinary hearing for allegedly stealing beer. He killed eight people, including his local union president, and then committed suicide.

The cases are hugely different, of course, but for a union steward, they can serve as a reminder that you can never predict when the next episode of workplace rage will take place.

Workplace violence, of course, is nothing new and more often than not it starts with the boss. It has always been a basic function of the union to defend workers against management violence — by defending safety conditions, for example, or blocking harassment — but sometimes the emotions of our co-workers become a potential threat as well.

Our terrible economy and the relentless pressures working people are facing are increasing stress that can lead to destructive actions by workers.

What can a steward do?

1 First of all, check your own stress levels. The pressures that are driving some of your co-workers over the edge can affect you as well. Plus, you have a whole group of people to worry about. Be alert to signs of your own anger. Some of the remedies for workplace violence may

involve challenging your own members and friends about their behavior — obviously, a stressful activity.

2 Live by the steward's slogan Prevention and Proactivity. In the Thornton episode, the support for the company's discharge action was videotapes of Thornton allegedly stealing cases of beer. The union can bargain over an employer's use of video cameras and warn its members about surveillance.

3 More important, in Thornton's case there appear to have been serious race issues and incidents at the warehouse, making a bad situation worse. "This all could have been avoided," Thornton's uncle Will Holliday told CBS News. "He went to the union a couple of times with issues concerning what was going on, and it was not dealt with appropriately." Not only did Thornton use his cell phone to document and transmit racist conversations among some of his co-workers but he felt that his rights under the contract were being abused by his work assignments. It's essential that unions enforce the contract impartially for every member and make sure that workers know the limits of its protection.

4 Clearly, if workers are harassing their co-workers, by hanging nooses or by sexual harassment, a steward needs to step up and speak both to the offending members and to management, which is legally responsible for providing "a safe and healthy workplace." There is no place for a bashful steward if basic relations among co-workers are not maintained. After all, a steward would not — or should not — allow a supervisor to harass a member in any way, so the same standards must be maintained among our co-workers.

5 Does your employer have an Employee Assistance Program (EAP)? If so, a steward should know the procedures and thoughtfully encourage troubled co-workers to make use of it. Often a

steward is reluctant to "rat out" a co-worker about troublesome behavior but the protection of *all* workers is the steward's first responsibility. A worker who has personal problems that seem to be deeply unsettling could be the next violent offender.

6 Listen carefully to casual conversations. Do any of your co-workers repeatedly muse about ways to bully or torture a co-worker? While it might seem like workplace horseplay, the joking threats might be a reflection of a more serious problem.

7 Do any of your co-workers have serious problems off the job — romantic or financial, for example — that might provoke them to resort to violence? Once again, if you have an EAP program, urge your co-worker to set up an appointment. Be thoughtful in your approach.

8 Demand that management take immediate action. Should a steward recommend that a co-worker be suspended? This is obviously an ethical dilemma that will raise the blood pressure of any steward but, once again, you're responsible for the safety of all members and may need to act.

9 Do any of your co-workers have weapons, either in the workplace or in their nearby vehicles? While there may be some constitutional issues about banning weapons from all work premises (including parking lots), and it's a cultural issue among hunters, having weapons nearby can be a problem.

Most important, the solution to a bad boss, or to bad working conditions, is not to quit as Slater did, or to start shooting. The whole point of unionism is an organized effort by workers to make conditions on the job better and safer. While many in the non-union blogosphere cheered for flight attendant Steve Slater and wished they had the same nerve to quit a lousy job, unionism tries to make a lousy job better so that workers are not faced with the no-win choice: submit to a bad job and a bad boss, or quit.

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

The Steward as Investigator

The “facts” have been having an identity crisis lately, particularly in the political arena. We’ve all witnessed the “facts” being spun, twisted, manipulated, and distorted for voters beyond all reason. Getting down to the real, unvarnished truths during an election season can be a real challenge.

Getting the facts can be just as hard for a union steward conducting a grievance investigation, but it’s an essential part of the job and has to be done. Because people have different points of view, however, they can experience the same event very differently, making drilling down to the true facts a difficult task.

Consider this familiar scenario: Supervisor confronts worker. Supervisor claims he offered “guidance” to the worker. But what the worker heard was “discriminatory and insulting.” One co-worker who overheard the exchange remembers it as a “screaming match,” another remembers it as a “tense discussion,” and yet another doesn’t remember anything unusual about it at all.

How do you arrive at the facts of what really happened? You investigate.

Setting the Tone

Consider your approach carefully. Some stewards are such eager investigators that they launch right into a barrage of questions without explaining what they’re doing. That’s the wrong way to go about it. Start by explaining to the person you want to talk to what you are going to do in your role as the union steward, and what information you expect from him or her.

Handle it this way: “As the union steward, I am investigating what happened between Jensen and Marshall on Thursday, and I would like to ask you some questions about *what you saw* and *what you heard*.” This approach sets out the correct definition of the facts and the scope of your investigation. You’re not labeling anything a “grievance” at this point.

Cooling Down

Workplace problems fuel emotions. When emotions run high, your first interview might be long on “venting” and short on “fact gathering.” Listening is critical to good union work so try your best to redirect to the *facts* — *what happened*. Just be mindful that the “facts” you learn from this first encounter should be re-checked with those people in a second interview, after they have had time to calm down.

Beyond the Five W’s

Who, What, When, Where, Why. Every steward knows that asking questions with these key words is critical to doing investigative work. Here are some techniques that will help you dig a little deeper, particularly if you are getting vague or conflicting answers.

■ After you have run through your initial “W” questions, explain that you want to clarify again to check your notes (you are taking notes, right?), and run through the W’s a second time. “And who, again, saw this confrontation?” “And what exactly, again, did the supervisor say?” “And where, again, did this happen?” Your second run-through could well yield additional or corrected information.

■ Asking clarifying questions is also key — questions that yield more than a yes or no answer. For example, “What made you think that Jensen was acting in a threatening way?”

■ You may encounter an uncooperative participant — a co-worker witness, a supervisor, even the worker with the initial complaint. Early in your interview, you may get insufficient or vague information. You could get a lot of “I don’t know,” or “I don’t remember.” Or you may get outright stonewalling — “I’m not saying!!!”

There’s clearly a “why” you need to dig out. Is the person scared? Is the person more deeply involved?

Acknowledging the situation sometimes loosens the floodgates for those who are intimidated. For example, you might

say, “You seem reluctant to talk — is something scaring you about this situation?” Reassure the worker that as a union, we have a right and a responsibility to investigate these matters so we can take the appropriate action to protect people. With someone who is reluctant to talk, you may have to start with questions that just have yes or no answers until you establish some trust so the worker will open up.

The stonewaller may want to cover up something. Play the reassurance card again, but also be confident in asserting, in a reasonable tone, the union’s right and responsibility to investigate. For example, “Look, whatever happened might be troubling, but as a union, we need to get the information to resolve these matters.” If you suspect that the stonewaller might have participated in the incident, try, “Look, I’m not investigating to hurt anyone, but the union needs information so we can resolve these matters.”

Pinning Down the Busy Person

Sometimes this is a management person just trying to duck you or stall, but it can also be a union representative or officer, people who really are busy. They may schedule appointments with you and repeatedly break them. They may sit down with you, but then cut you short. Figure out exactly what you need from them and frame it to them succinctly. For instance, “I need to ask you three questions about the Jensen-Marshall incident last week” is more precise than “I need to talk to you about the Jensen-Marshall incident.” Some “busy” people do respond more promptly in writing, especially if they have access to e-mail. Again, be specific with your request and with your deadline. “Please e-mail me back the answers to these three questions by noon tomorrow.”

If you can’t schedule an appointment, catch them where you can.

It’s Not All About Facts

Doing great investigative work is an important task, but far more important is how you use the information to resolve problems, get respect for workers, and build the union.

— Patricia Thomas. The writer is on staff of the SEIU – United Healthcare Workers West.

Signing Up New Members

There are few things more frustrating for a steward than having to represent a co-worker who isn't a member of the union.

Most every union has one or more such people, and stewards in "right-to-work" states can be surrounded by them. It can take every ounce of a steward's skill, patience and dedication to the union's mission to carry on and do his or her job.

In the end, the wise steward knows, it's not just the force of law that's making the steward offer the best representation possible to the worker — the Duty of Fair Representation requires it, after all. No, the experienced steward knows that quality representation today can very well lead to a union membership tomorrow.

A steward in such situations has only two choices, after all:

1 Go only as far as the law requires, handling the nonmember's grievance or issue in a workmanlike but aloof manner, doing what you have to do but no more...and let the nonmember know what a jerk he is for not helping to support the union's work.

2 Do the smart thing, perform at your best, and take advantage of the opportunity to win the worker over to the union cause.

If you don't go with Plan B you're only hurting yourself and the union. You've got absolutely nothing to gain — maybe a little grim satisfaction, but nothing more — by giving short shrift to the nonmember. But you've got a whole lot to gain by doing your absolute best and being sure the nonmember knows it.

Don't Wait for Opportunity

You shouldn't wait for the nonmember to come to you with a problem: some people are so determinedly anti-union (or, more likely, anti-dues) that may never happen.

There are a million ways to get your foot in the door and start a conversation about the union and the benefits of membership, and a million points of dis-

cussion once you're there. Here are some approaches and tactics that have worked for other unionists in your situation, and worked so well that there are thousands of workplaces in right-to-work states where there's virtually 100 percent union membership. It can be done!

First off, try not to think of nonmembers as "scabs" or "freeloaders" but as potential members or future members. You certainly don't want to use those negative terms in front of them, because it'll just make them defensive and harden their resolve to stay clear of the union. The more you approach from the negative side, the more they'll withdraw.

Instead, pick a good opportunity to speak with the potential member — there's nothing better than after you've helped them with a grievance, or when a negotiated raise or benefit kicks in.

Be positive. Communicate your belief that the union is a good thing that helps everyone at the workplace. List some of the benefits that wouldn't be there if it were not for the union contract.

Try to hold your conversation when there are other union people around. Ask the potential member to explain his or her concerns about the union. Really listen. Then respond, trying to address each concern. Be honest and be persistent.

You're likely to get responses like "I can stick up for myself. I'm an independent person. I don't need help" and so forth. You can respond by asking them to imagine how much better and stronger they would be if everyone stuck together. Remind them that police and firefighters are union, and they're hardly people who don't know how to handle themselves in tough situations. Yet they see the wisdom of standing together and increasing their strength.

With Unity Comes Strength

Point out that by becoming part of the union they make it even stronger than it is. The stronger the union, the more your employer has to listen when it comes time to negotiate a new contract or respond to a grievance. Personalize the value of the union. Point to how the union may have helped them personally, perhaps in the value of overtime, or union-won vacations and holidays, or even a grievance.

Remember that young people, especially, simply may not understand what a union is and how it operates. When someone tells you, "I don't

know much about the union," it's a wide open door to explain what it does. New workers especially tend to think that whatever good comes from the employer comes because the employer unilaterally decided to offer what it does. Point out the difference between the minimum wage and the pay rate your members are getting, and let the worker know that the union's responsible for the difference.

Be sure you listen to the worker's concerns and arguments. It's important to know when to be quiet. This way, you'll be more likely to hear what's really on the worker's mind, what's really holding him or her back from membership. Once you know what the real problems and concerns are, the better you'll be able to answer them. If you don't have an answer right away, tell the worker you'll get the answer. Then, do.

In summary, you want to listen to the potential member, respect his or her concerns, explain what the union can do to address those concerns, and explain what the union has already done. Let the worker know that his or her membership will help make things better for everyone. And don't give up. If you don't win a convert today, you may well tomorrow.

— David Prosten. The writer is editor of Steward Update. With thanks again to Morty Miller, activists and staff at HEREIU Local 362.

Try to talk to new workers when there are other union people around.

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OFFICE OF THE INTERNATIONAL PRESIDENT

Dear Sisters and Brothers,

Another year has passed already, and 2011 holds many promises and challenges. In the United States, the 2010 midterm elections have dramatically changed the political landscape. If ever there was a time that the famous words "there's a direct relation between the bread box and the ballot box" rang true, this year is it for millions of unemployed workers.

With anti-worker forces in control of the House of Representatives, millions of families will literally see less in their bread boxes because of the ballot box results in 2010. Unemployment extensions, reduced rates for health care coverage under COBRA, food stamp benefits and other help for the jobless will be scaled back or eliminated entirely. And less money in the economy from those benefits, coupled with spending cuts on projects to create jobs, will mean new rounds of layoffs and prolonged pain for those hoping to return to work.

But with every challenge comes the chance to educate and mobilize fellow workers to fight injustice and make North America work for working families once again. If we redouble our efforts to protect our members on the job and organize new members across North America, we can prevail.

And, as in every challenge in our history, your job as a voice for the IAM on the shop floor, day in and day out, is the foundation for everything we achieve in this union. It will be a long road back to full employment and making governments in the United States and Canada protectors of middle-class jobs, instead of exporters. But with your help and support, we will make a good start on that journey in 2011.

In Solidarity,

R. Thomas Buffenbarger

R. Thomas Buffenbarger
International President

