

THE STEWARD GUIDE II

I.U.O.E. REGION XI – CANADA

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STEWARD ROLE & RESPONSIBILITIES

What a Steward Should Know

As an experienced Steward you should be familiar with your constitution and by-laws. If you have not already done so, you should obtain a current copy of your Constitution and Local Union By-laws. These will help you understand the duties and responsibilities of membership and the structure of your organization. In fact it is the Constitution that allows you to fulfill the role as Steward in the first place. Article XXIV – subdivision 1 Section (a) states:

“The Business Manager shall be the chief executive officer of a local union. He shall appoint any and all *representatives*, agents, and assistants, whose wages and allowances shall be determined as provided in the local union’s by-laws. They shall work directly under his supervision. He may terminate them at any time.”

Shop Stewards are included in the definition of *representatives*. While some workplaces may elect shop stewards, they are really recommending to the Business Manager who should fill the role as Steward. Clearly the Business Manager in all cases must either directly appoint or approve the member’s recommendation before a Steward can officially act on behalf of the Local.

Now that you are a properly appointed *representative* of the Local Union, one of your key responsibilities will be getting to know your Collective Agreement. Get to know all of the provisions and limitations. This will come with experience as you handle various inquiries and complaints. You don't have to memorize your contract word for word, but you should know where to look for articles that apply to a particular type of grievance.

Unions fight hard for written collective agreements to govern the working conditions, wages and benefits for their members. The collective agreement is a set of rules that says "this is the way things should be". Like traffic laws, the collective agreement isn't always followed. **The point is that the collective agreement doesn't enforce itself. It requires people to make sure that it is followed - and to take the proper steps when it is not followed.**

It is important to remember that collective agreements are not simply copied out of some textbook and signed after a casual reading. They are hammered out at a bargaining table usually after weeks and months of negotiation. The appointed union committee is helped by union staff experts who know how to negotiate and know current bargaining trends. Likewise, employers use a whole battery of experts to negotiate on their behalf.

We must always remember that most collective agreements are a compromise agreement between the employer and the union. The union wants to have restrictions placed on the employer to protect the integrity of the bargaining unit and to provide security for their members. The employer however, wants flexibility in how they manage their workforce. Many bitter disputes and strikes have been fought to force employers to sign collective agreements. Once the collective agreement is signed, it's only a piece of paper unless the union polices it.

One thing that cannot be said too often: **There are no unimportant clauses in the collective agreement. If there were, unions wouldn't bother to fight so hard to put them in.** Allowing the employer to break at will even minor aspects of your collective agreement, could suggest that you may not put up much of a fight for the more important issues. An issue that may seem unimportant to us could be viewed as critical to a rank and file member. That is why it is important to treat all issues equally. That's where the steward comes in.

It's your job to watch for violations of the collective agreement and to speak on behalf of the members who are affected by those violations. If you don't enforce the provisions of the collective agreement, then it is worthless. **The means by which you enforce your collective agreement is called the grievance procedure.**

Enforcing the collective agreement provisions through the grievance procedure is important because the rights and interests of the union member are then protected and guaranteed. Grievances grow out of the problems, the dissatisfactions, complaints and hopes of the membership. **By handling these problems correctly you bring the union in closer touch with the membership.** There are going to be grievances you won't know how to tackle. When this happens, don't be afraid to ask for advice. Get the facts - then see the chief steward or Business Representative of the union. When they have told you how to handle the case, go back and take it up with the supervisor yourself.

In addition to the collective agreement, the steward should keep handy any booklets or memos referring to the employer's policies and workplace rules and be reasonably familiar with them, especially those sections dealing with disciplinary action. Watch the bulletin boards and read all the notices. **Should you discover that an Employer's policy or rule contravenes the Collective Agreement you should consider filing a grievance on the matter. Speak with your Business Agent first however to ensure that this is the proper thing to do.**

You don't have to be an expert but it will make your job much easier if you have at least a general working knowledge of labour laws affecting your workplace. Canadian workers are covered by either the Federal Labour Code or a Provincial Labour Act. The Federal Code covers things like transportation, telecommunications, industries governed by federal regulation and other work that is done inter-provincially (see www.hrsdc.gc.ca). The Yukon and Northwest Territories are governed by the Canada Labour Code until such time as the Territories exercise their legislative powers to enact their own labour legislation. All other unionized employees are governed by provincial labour legislation, usually entitled the Labour Relations Act or Trade Union Act.

You will quickly learn that Labour legislation in Canada is not perfect. Certain jurisdictions have better provisions than others. What this tells us is that we still have a lot of work to do in educating and lobbying our governments. Our central labour bodies must continue their efforts in this regard and all of us have a role to play in this very important area.

It is helpful to keep all material regarding seniority lists, past grievances, rates and any other information in a folder or notebook and keep the file handy. Put it somewhere that is not

accessible by management. Remember, the more you know about the employer's operations, the easier it will be for you to handle grievances.

You should get to know all the Supervisors. The more you study their personalities and supervisory skills, the easier it will be to deal with them when processing grievances or complaints. This doesn't mean that you have to be a graduate in psychology.

You should get to know all the members you represent. People are not all alike; therefore different people need to be handled differently. For example, some people will give you the full story on a grievance, others won't. Some members have a good steady work record that you can use as an argument when talking to a supervisor; others don't. Some employees have home problems that affect their work; others don't. If you get to know the people you represent, you can take these differences into account. Also, the better you know your people - and the better they get to know you - the easier it will be for you to "talk up" the union.

Learning about people will come to you gradually and quite unconsciously in your day-to-day relationships with the employees you represent and the supervisors with which you regularly meet. If the members in your department feel that you are a friend, they will let you know when they have "gripes" against the union. Being a friend is important because stewards first have to know about complaints before they can take steps to correct them. Furthermore, if the people in your department have confidence in you, you will be able to help the union in overcoming some of the 'gripes'. With a little practice you will soon learn which members tend to present legitimate complaints, and which members are always "beefing".

One of your key jobs is to support the union. To do this, you have got to Know Your Union - what it's all about, what it's doing and why. To do this effectively, you have to be informed. Know your constitution, your local by-laws and dues breakdown. Read your union paper. Attend union meetings!

Know Yourself - your strengths and limitations. No one expects you to learn all this information today, or even tomorrow. A basic understanding of the issues at hand and with it a growing expertise as you perform your job is what is required. If you don't know – ask!! Even seasoned Labour Representatives will tell you that they learn something new every day!

Steward's Role & Responsibilities

Remember the union is not a slot machine where the worker puts in his dues and hits the jackpot in the form of higher pay, shorter hours, better sick benefits, longer vacation----, it all takes work! But it's worth it. As steward, you have to do a lot of the day to day work. If you are a good leader, you'll get cooperation from your fellow workers, your union as well as from management and this helps make the job easier.

The Steward has two very important jobs. Obviously, the first one is to monitor workplace conditions as set out in the collective agreement. Without you, the collective agreement is just a piece of paper. You are there to deal with complaints, investigate and settle grievances, and ensure that management abides by all of the clauses that were negotiated by your union. The skills you will need to do this part of your job will eventually become second nature to you, just like walking and talking.

The second and equally important role of the steward is serving as the union's link to the membership. You are in the workplace and have direct contact with members who, for whatever reason, may not attend local meetings or read union publications. For these people, you might be the only contact they have with their union local and the labour movement in general. Therefore the more active contact you make with your membership and the more you educate them about unions and issues, the more involved they will become in their union.

To do this job effectively, you will have to be a good organizer and educator and, most importantly, a good communicator. We are all different and have different strengths and weaknesses, so while there is really no right or wrong way to display these qualities, there are some common attributes or skills which will ensure your success:

- **BE ASSERTIVE** and prepared. Deal with members' perception of "union myths". Remember, most members get their information by reading, watching or listening to media, which is controlled by big business. The best way to combat these myths is by logically pointing out how they are not true.
- **REMEMBER WHO YOU ARE EDUCATING:** Your members are adults and you should treat them as equals, with the same respect that you expect. Your goal is to share information. Education is a two-way process. Unless you learn from your members -- from their knowledge, experience and moral strengths -- you cannot be a good educator yourself. Besides, not respecting and appreciating the qualities in someone else is the quickest way to alienate them.
- **MOTIVATION:** What motivates your membership? Is it job security, better wages, harassment from the boss, or improved benefits and working conditions? If you do your job and communicate with members on a regular basis, it will be easy for you to recognize common motivators or goals.

- **PARTICIPATION:** Everyone has different levels of participation at which they are willing to involve themselves. While not everyone would feel comfortable being on the front line in a demonstration, there are many other important jobs that need doing. Mailing lists, telephone lists, day care, photo-copying, are just a few of the necessary tasks that need to be filled. By involving everyone according to their own limitations and showing them that these jobs are just as important as front line participation, all members will take ownership of the chosen action. In another vein, it is also very important to recognize the difference between participation and support. Just because a member may not physically attend a meeting doesn't mean that they don't support your efforts or goals. Don't alienate this support by condemning their lack of participation.
- **DEMOCRACY:** Work as a team, ask for input and look for the other natural leaders who can head up committees. Don't try to do everything yourself. First of all, you can't possibly do it all and secondly, union actions should be collective actions.
- **OBJECTIVITY:** Stewards sometimes fall into the trap of taking lack of membership participation personally. It is easy to get frustrated by members who do not attend meetings but then ask a bunch of questions about what happened at the meeting. Allowing your frustration to get the better of you could turn that member off the union for life. Remember that the lack of participation at local membership meetings doesn't necessarily mean that the member does not believe in the union or that you are not respected as a Steward. Perhaps there are other factors that prevent the member from participating.
- **BE A LEADER:** A steward is the front line leader in the local. Your actions and conduct will be viewed by the member as a reflection of the elected officers and the local union. Remember, people form opinions very quickly and we want that opinion to be a positive one!
- **SET AN EXAMPLE:** By your actions, show your membership that you believe in the union's policy for an equitable and just society and workplace. Stop offending behaviour. If you are consistent in rejecting harassment, bullying, jokes or slurs, it will soon become public knowledge that this type of behaviour is unacceptable and will not be tolerated.
- **WORK TO DISPEL FEAR OF THE BOSS:** Treat your supervisor as an equal and show that you expect to be treated as an equal too. Don't be afraid to speak up in defense of your members or the collective agreement.
- **WORK WITH ALL OF THE PEOPLE IN YOUR DEPARTMENT:** Speak for them; act promptly and decisively; service all members fairly and equally, regardless of race, politics, religion, sex or sexual orientation; and keep your word.
- **KEEP IN CLOSE CONTACT WITH YOUR MEMBERSHIP:** Make sure they know how to reach you or where to leave a message. Encourage members to come to you with their problems rather than to the supervisor.

- REFER: Union members' out-of-work problems, such as unemployment, medical coverage, legal problems, etc. to a Local Union Business Representative or Business Manager. This includes things like jurisdictional disputes and human rights complaints.
- IF YOU DON'T KNOW THE ANSWER - Don't make it up! Tell the member that although you don't have the answer right now, you will find out and get back to them as soon as possible. Make sure you follow-up. The union movement is full of the resources you need to get the answer.
- BE POLITICALLY AWARE: Know the provincial and federal labour laws that affect you, your members and the union. Remember, anti-union/anti-worker labour legislation can restrict our organizing activity, our bargaining rights and the protection that we can give our members.

Steward's Rights

As a **Steward**, you have now been appointed or elected to represent your members in your workplace — a job that most employers would like to keep you from doing. Here's a brief list of some of your rights and obligations.

1. **You have the RIGHT to grieve unfair treatment** — whether you saw it happen or someone calls it to your attention. Employers may accuse you of "soliciting grievances," but don't be fooled! It's your duty to advise employees to grieve legitimate issues — or file them yourself.
2. **You have the RIGHT to carry out investigation of grievances**, including interviews of grievors and witnesses. Most contracts provide for investigation on "company time." For those that don't, there is often a clear past practice that allows this. Even so, every grievance must be investigated as thoroughly as possible, even if it's on your own time. Your investigation should be done sooner rather than later!
3. **You have the RIGHT to organize and encourage your fellow workers to take action** in support of an issue or grievance, so long as it doesn't take place on work time and interfere with production. Wearing stickers, signing petitions, information picketing, or similar actions on break or lunch time may be permissible. However, you should check with your Local Union Business Agent or Representative before doing so.
4. **You have the RIGHT to request the information you need to process a grievance** from management. You should put these requests in writing. Management will likely provide the information unless there is legal justification to deny the request.
5. **You may have the RIGHT pursuant to the Collective Agreement, to be present** in any meeting between the employer and an employee, if it involves disciplinary action or could lead to any sort of disciplinary action. In the event the employee does not want your participation, advise him or her that they may choose to have another Steward or Local Union Representative in attendance. *Finally, in the event your collective agreement is silent in this regard, you should check with your union representative before proceeding.*
6. **You have the RIGHT to be present** every time a grievance is being "adjusted" or settled. *Unless there is language in your collective agreement, or in a relevant statute to the contrary the grievance becomes the property of the Local Union once it is filed with the employer.* Therefore the employer must respond to the union, or its Representative, when attempting to adjust or settle a grievance.
7. **You have the RIGHT to be treated** as an equal when dealing with your employer on union issues. One Arbitrator has stated that "When acting in his representative capacity, a union steward stands in a position of equality with management."

The “Equality” Rule

Arbitrators generally accord shop stewards some latitude in the manner in which they carry out their union duties. There is a recognition that a union representative’s job will involve challenges to management— challenges that could lead to discipline under the normal rules of employer-employee relations.

This protection is in effect only when you are doing your job as a steward, not when you're acting as an individual employee. You're acting officially when you investigate and argue grievances, request information and otherwise defend your members.

There are limits to what you can do, though. Threats of violence and actual violence are prohibited, as are the use of extreme profanity, name calling, and personal attacks. Actions barred by your contract are not protected, either. To prevent supervisors from claiming you "exceeded the limit," it's wise to have another steward or member with you during meetings with management.

With regard to acts of insubordination, an Arbitrator may find that a union representative is not guilty of any wrong doing for failing to obey an employer’s instructions if that decision was made as a legitimate exercise of his or her authority as a union representative. *However, to invoke this exception to the ‘work now, grieve later’ rule, the Steward must establish that there was a necessity or urgency to the union matters!*

In a recent April 2013 arbitration award in the Province of Saskatchewan, a Union Steward was suspended for three days without pay after she challenged her supervisor in an argumentative and heated debate at a meeting in front of other employees. The Arbitrator concurred with the union that; “a committeeman (steward) is while attempting to resolve grievances between employees and company personnel, always functioning on the border line of insubordination. His role is to challenge company decisions, to argue out company decisions and if in the discharge of that role he is to be exposed to the threat of discipline for insubordination, his ability to carry out his role will be substantially compromised. This is not to say that a committeeman has a carte blanche to ignore at will management instructions and to instruct others not to carry them out. His immunity, if it may be called that, is limited to acts or omissions committed in the discharge of his functions and to acts or omissions which may reasonably be regarded as a legitimate exercise of that function.” In this case the Arbitrator ruled the employer did not have just cause to discipline her. The Board ordered that the grievor be made whole for any loss of pay, benefits and seniority resulting from the suspension.

No Reprisals

The employer is not allowed to use discipline, either real or threatened, or any other form of intimidation to discourage you from doing your job. For example, you can't be denied overtime opportunities, promotions, job transfers, bumping rights, or any other entitlement as punishment for doing an effective job. Nor can management assign you to the most undesirable jobs or more closely supervise you than other workers.

What to Do

If the employer violates these rules, you should advise your Local Union Representative immediately.

All of these rights are legally guaranteed, but they depend on how well you use them. When you do, your members will find that *their* rights are being protected, too.

Member's Role & Responsibilities

All too often our members expect everything from the Union but forget that they have certain obligations and responsibilities. For example, under **Article XVI of the International Constitution**, a member may not circulate or publish literature that may be defamatory in nature to the International Union or engage in conduct that would interfere with the performance by the International Union or any of its subordinate bodies of their legal or contractual obligations. This is a pretty broad statement. Any member can be tried by the International General Executive Board and if found guilty, can face fines or expulsion from the union.

If a member made a misrepresentation or misstatement in their application for membership, or attempts to hold membership in more than one local union, he/she can be expelled from the International Union. This means they are also expelled from the local union.

Any member found guilty of advocating or supporting the overthrow of the established order (local union) by force, violence or subversive tactics can be expelled from membership.

Under Article XXIV – Subdivision 3 a member must also observe and abide by a number of other rules and regulations.

: Members shall conform to and abide by the Constitution, Laws, Rules and Ritual of the International.

: This shall include any authority empowered by the Constitution (local union).

: **Members shall keep the Recording-Secretary properly and promptly notified of his/her residence and any changes thereof.**

: Members will not violate the trade rules of the locality in which he/she works.

As well members who may wish to seek office in the local union have an obligation to keep their membership “in good standing” and to attend local union meetings. Depending on the office, the member must be in good standing for a minimum of one year and in case of Business Manager, two years.

People Skills

One characteristic that Lead Hands have in common with Stewards is good people skills. Lead hands have to listen to the demands of the company and then motivate their team to fulfill these demands. Stewards have to listen to the concerns and complaints of their fellow employees and bring these concerns to the attention of Management.

You both have two sets of expectations to deal with on a daily basis. Knowing how to handle each requires something of a balancing act and good communication skills. Listed below are some tips which will assist you as you perform the delicate task.

1. Listen. It is a skill. You cannot hear what a person is saying if you are talking. Don't interrupt.
2. Identify with the other person - try to put yourself in his place so that you can see what he is trying to get at.
3. Ask questions, when you don't understand or when you need further clarification.
4. Try to avoid questions that will embarrass the other person.
5. Concentrate on what is said – actively focus your attention on the words, ideas and feelings being communicated.
6. Look at the person who is speaking to you. This helps you concentrate on what point of view they may have and also shows the person you are giving them your attention and respect.
7. Control your anger. Try not to get angry at what is being said; your anger may prevent you from understanding what is said.
8. Get rid of distractions, put down any papers, radios in your hand; they will distract your attention.
9. React to ideas and not to the person – don't allow your reaction to the person influence your interpretation of what is said. The ideas may be good even if you don't like the person.
10. Listen to *how* something is said. We frequently concentrate so hard on what is said that we miss the importance of the emotional overtones and attitudes related to what is said. Attitudes and emotional reactions may be more important.
11. Avoid jumping to conclusions and making hasty judgements-both can get you into hot water. Don't assume that the speaker uses words the same way you do; that he didn't

say what he meant but you understand what he was trying to say; that he is telling a lie because he won't look you in the eye; that he is distorting the truth because what he says doesn't agree with what you are thinking; that he may be unethical because he is trying to win you over to his point of view. Assumptions like these could turn out to be true but more often they just get in the way of your understanding and your ability to reach an agreement or compromise. Wait until you have all the facts before making any judgments.

12. Identify the type of reasoning-frequently it is difficult to sort out good and faulty reasoning when you are listening. Nevertheless, it is so important a job that a listener should make every effort to learn to spot faulty reasoning when he hears it.
13. Listen to what is **not** said-sometimes you can learn just as much by determining what the other person leaves out in his discussion as you can by listening to what he says.
14. Get to know the employees. People are not all alike; therefore different people need to be handled differently. For example some people will give you a full story on a problem, others won't. Some have good steady work habits, others don't. Some you can trust to complete work with minimal supervision, others need your guidance. Some employees have home problems that affect their work, others don't. If you get to know the people you work with, you can take these differences into account. Also the better you know your people and the better they get to know you – the easier it will be for you to have a good working relationship.
15. Know yourself – your strengths and limitations. No one expects you to know it all, but you are a Lead Hand based on your experience on the job. If you don't know – ask! Even Supervisors will tell you that they learn something new every day!

Communications

Communicating Clearly

Making sure the person you are talking to understands what you are saying is critical. A conversation that leaves an unclear or wrong message can have a very negative effect on the outcome of your effort. There are several ways of measuring whether or not your conversations and directions are clear. If you are speaking clearly and concisely, your listeners will:

- a) Give you more eye contact
- b) Follow your directions more accurately
- c) Ask you fewer questions for clarification.
- d) Appear more relaxed, smiling, shoulders down and hands relaxed

Avoid vague words

Another way to speak clearly is to avoid unclear words including: it, that, this, there, later, maybe, usually, they, he, she, them and we. Unfortunately you may use these words while feeling assured that your listeners know what you are talking about, talking as if you and your listeners are looking at the same picture. The solution is easy. For at least a few weeks, you should avoid the words above in your speech. For example:

He is always coming in late and nobody does anything about it.

Instead: Joe came in late three times this week and the day shift supervisor never said a word to him.

One thought in each sentence

Research shows that the average adult listener can hold only sixteen words in short term memory. So, you should not be surprised when your listeners do not remember your 30 word sentences. Try this: say only one idea per sentence, then end the sentence and start a new one.

Stay on track

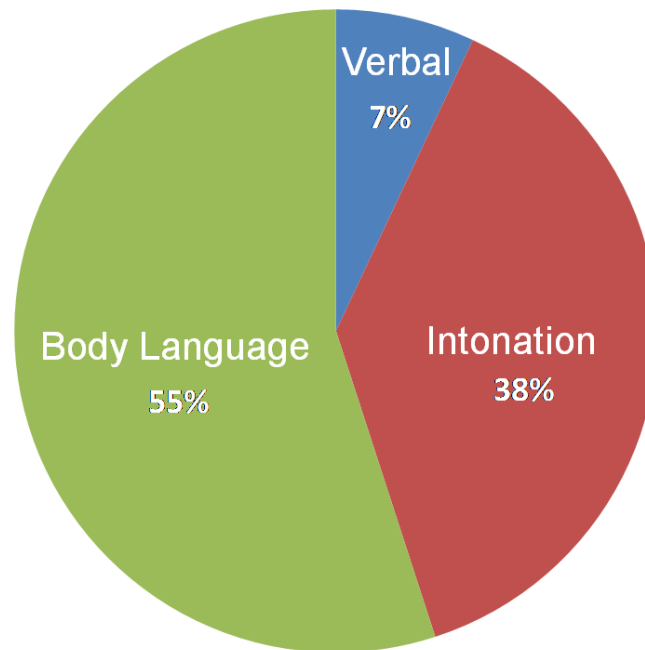
You may start too far ahead of either what your listeners remember about the subject or how much your listeners know. You may waste time providing excessive background information and off- topic comments. You need to remember to provide brief introductions to your topics to orient your listeners. 'Brief' means two to five minutes for a discussion and a short phrase for an e-mail or voice-mail message.

Ask for clarification

If you are not sure you have understood the speaker correctly, ask questions. Questions are an important means of clarifying the speaker's intent. Try this phrase: "Just so that I understand what you are saying, are you telling me" This will give you a last chance to ensure that you both understand what is being said before the person walks away.

The Nature of Good Communication

Statistics show that communication can be broken down into 3 areas:



Verbal

If you deal with someone face to face you have a good chance of understanding their message. If you talk on the telephone you immediately **lose half** of the message. If you send e-mail there's **less than a tenth** of the message getting across!

Tone

Your tone of voice also affects the way people receive the message. If you talk quickly, the listener's heart rate and adrenalin flow increase. Speaking loudly increases the listener's blood pressure and adrenalin flow. Speaking calmly, smoothly and softly will help to soothe the listener. In most situations, you will want to speak smoothly and calmly to get your message across. In an emergency though, you will want to speak loudly and quickly to get people moving.

Body Language

Eye contact – is an important part of conveying your message. Staring may be seen as threatening; not looking at someone can suggest either you're too important to look at them or that you're bored. You should try to maintain eye contact, without staring, and smile. This makes it appear that you are interested and approachable.

Height – is another part of body language. It is usually perceived that the person with the highest eye-level is the most in control of the situation. If you are dealing with a person that

is on a lower eye-level (such as seated, or children) it sends out a powerful message if you move to their eye-level that you don't feel bigger than them.

Personal Space – Everyone has personal space needs. You need to be aware that what you find comfortable may not be the same for someone else. Typically at arm's reach is a comfortable range for people to communicate without feeling threatened.

Written communication

Like verbal communication, your written words must not be ambiguous or misleading, as this can lead to negative consequences. Some people are more comfortable with verbal communication, others with written. Verbal communication is generally more informal, flexible and timely. Written communication provides the writer with more time to think about what to say and how to say it; the reader also has more time to review and interpret it.

When it is necessary to record specific data or to pass on a request or information in writing, it is important that the message be understood by the receiver. There should be little or no opportunity for misinterpretation. The message must be **Clear, Legible and Concise**.

Electronic Devices

It seems like every day now we are hearing about members getting into hot water over inappropriate use of social media. Cell phones, Ipads, emails, texting, Facebook activities and even blogs have been front and center in many disciplinary matters.

Members have to realize that what they do and say on social media is now open to review and reaction by employers. Often members tell us that they only meant the message or picture to be shared with a friend. Or, what they do and say on their own time is their business and not that of the employer.

Well, like technology, attitudes have changed. Arbitrators do not have sympathy for employees who bash their employer, threaten supervisors or harass co-workers via emails or Facebook and certainly not when the guilty party is using the employer's network to do such things.

The workplace today has changed significantly from what it was twenty years ago and even five years ago. As technology changes so does society's attitude towards such things. However, Arbitrators and courts will continue to protect employers.

Re Bell Technical Solutions and CEP

In the Bell case, three technicians in Peterborough were discharged for postings made on Facebook. One was a part-time employee with 18 months' service who made postings derogatory to the company and the manager (who happened to be his uncle). Some of his postings talked about how bored he was at work and that the company didn't manage his time well. The second employee was a technician with 9.5 years' service who made remarks only about the manager. The third technician, who had 7.5 years' service, made far fewer postings, and his were not as offensive as those of the other two. When confronted with the postings, the first technician denied all knowledge of what some of the references meant,

refused to answer some questions, was defiant and showed no remorse. The second technician also refused to answer some questions, accused management of fabrication, and showed no remorse. The third technician said that he had taken down his postings when it was apparent that they were causing an issue and indicated some insight into the problem. The first two technicians were discharged for their actions and the third received a five-day suspension.

The award shows that in the period of two years between the Bell case and Wasaya Airlines, arbitrators had grown to accept the principle that comments made on social media that could hurt the employer would merit discipline. The arbitrator reviewed much of the social media case law, including Wasaya Airways, and stated:

"It is well-established that inappropriate Facebook postings can result in discipline or discharge, depending on the severity of the postings. The nature and frequency of the comments must be carefully considered to determine how insolent, insulting, insubordinate and/or damaging they were to the individual(s) or the company. In some cases, the issue is whether the comments were so damaging or have so poisoned the workplace that it would no longer be possible for the employee to work harmoniously and productively with the other employees or for the company." The arbitrator went on to consider principles established in the case law that affected the outcome. These included whether the employee was cooperative, dishonest or defiant during the course of the investigation, whether the employee took responsibility for the misconduct and was genuinely remorseful, and whether the employee's behaviour was provoked.

Weighing these factors, the arbitrator upheld the discharge of the first employee. His postings were the most serious and they were sent to at least 140 Facebook friends. Even after he was warned, he continued to post. His attitude was defiant and he showed no insight or genuine remorse. The arbitrator found that the second technician's behaviour was also very serious and that he too was defiant and lacked insight. However, the arbitrator decided that the penalty should be mitigated on three bases: the second technician was a longer-service employee, his comments dealt only with the manager and not the company, and he had been provoked by the manager, who was in fact abusive to the employees. As a result, the arbitrator substituted a one- year disciplinary suspension for the discharge. He upheld the five-day suspension for the third employee as appropriate.

As shown in the cases noted above, inappropriate comments made on social media that reflect badly on an employer or its employees will merit discipline. Some of the accepted principles arising out of the social media cases appear to be:

1. Internet communication is presumed to be public.
2. Ignorance of the public nature of internet communication will not exonerate the employee.
3. Lack of intent to harm or have postings seen by persons who are not friends or followers will not assist an employee.
4. The potential breadth of distribution of the comments is a factor to consider.
5. The number and frequency of postings is a factor to consider.
6. Postings contrary to company values or derogatory to the company are relatively more serious than postings about individuals.
7. Honesty and cooperation in the investigation, insight into the nature of the offence, and remorse are factors with respect to the appropriate discipline.

1. Re Saskatchewan Ministry of Corrections and S.G.E.U.3 : closed Facebook group of employees posted offensive remarks regarding First Nations - first time offence - as peace officers, held to higher standard - discharge upheld.
2. Re Loughheed Imports Ltd. v. UFCW, Local 1518 4: offensive, insulting comments made on Facebook regarding managers and supervisors - apology not credible - discharge upheld.
3. Re Wasaya Airways LP and A.L.P.A 5: offensive comments made on Facebook regarding First Nations peoples- poisoned workplace -resignation ordered.
4. Re Sheridan College and O.P.S.E.U. 6: improper use of computer network, offensive picture of supervisor on Facebook - discharge upheld.
5. Re Saskatchewan Liquor and Gaming Authority and S.G.E.U. 7: use of cell phone to take mocking pictures of customers -discharge upheld.
6. Re Alberta Health Services and A.U.P.E.8: harassment, inappropriate Facebook exchange with co-worker, possibility of rehabilitation - discharge changed to reinstatement and transfer without back pay.

Ten Mistakes A Steward Should Never Make:

1. **Miss your deadline.** You know what the contract says, but somehow you forget to file the grievance within the specified time. This may be fatal to your case. Two pieces of advice: Keep a calendar diary with dates marked in red so you won't miss deadlines; and if you need more time, ask for an extension from management and get it in writing.
2. **Never get back to the grievor.** This usually happens when the steward determines that the member has no grievance. Rather than be the bearer of bad tidings, the steward disappears. This is irresponsible. If the issue is not grievable under the contract, see if it can be resolved in another manner. If not, tell the member that the issue cannot be written up as a grievance, and give him/her the reasons.
3. **Bad mouth the union.** If you have a problem with the way things are getting done or with your leadership, discuss the issue(s) with your Business Manager or Executive Board. There's plenty of room for discussion and disagreement, but when it spills out on the shop floor or at a meeting where management is present, such disagreements can permanently weaken the union. A house divided will fail.
4. **Drop the routine fly ball.** You are the steward with responsibilities and people will be watching how you handle issues at the workplace. You should not make basic mistakes. Grievances should be written correctly. Information should be shared. You should know your rights. If you are unsure or don't know the answer, ask.
5. **Being non-vocal at meetings with management.** In your role as a steward you are the union advocate. This role is an active one. You are the equal of management. You may ask questions or request records or other documentation to process grievances.
6. **Lose control.** A major no-no. You or a member may be baited at a grievance meeting so that you will get angry. A steward who argues out of anger and not facts will find themselves on the losing end of the argument.
7. **Write lengthy grievances.** Grievances should be short and concise. Your grievances should identify the grievor; outline the problem in a sentence or two, state what article(s) of the contract is being violated, and what remedy you are seeking to make the grievor whole. Save your arguments for the meeting. A good poker player never tips his/her hand.
8. **Meet the grievor for the first time at the grievance meeting.** If this is the first time you've met the member, you are inviting trouble. Big time. You should talk to the grievant face to face when you investigate a grievance and when you write it up. You should also talk to the grievor prior to a grievance meeting to familiarize him/her with the process. Attempt to make the grievor feel as comfortable as possible. The grievor should know that a simple yes, no, or I don't know are acceptable answers.

9. **Failing to resolve workplace issues before they become formal grievances.** You will gain greater respect of the membership and management if you attempt to resolve issues before they evolve into grievances. This may not always be possible but with experience and good communication, you will be able to address many of the issues in your workplace at an early stage.

10. **Forget to notify Local Union office if you are laid off.** It is the individual's responsibility to let the Local know. As a Steward remind members especially if this happens infrequently.

Exercise: Stewards - How Far Can You Go?

1. When attending a grievance meeting, the discussion gets a little heated and you make some statements that you realize later weren't exactly true. Should you be concerned about this? **Yes**
No
2. During the evening shift you discover that the employer has placed video surveillance cameras in the employee's lunch room. You go to the supervisor and tell him that you want the cameras removed immediately. Is this the right thing to do? **Yes** **No**
3. At a meeting with your supervisor he suddenly declares that the meeting is over and directs you to go back to work. You tell the supervisor that you are not going anywhere until you get this matter resolved. Do you have that right? **Yes** **No**
4. There has been a lot of tension recently between you and the foreman. When you report to work you discover that the foreman has assigned you to one of the worst jobs in the plant. You remind him that you have seniority and that you have no intention of doing that work. Will the 'equality rule' protect you? **Yes** **No**
5. Your boss has been openly critical of you and often calls your grievances a 'waste of everyone's time'. Can you advise your boss that he is interfering with your rights as a Steward and if he doesn't stop you will file a grievance against him? **Yes** **No**
6. The company is performing a legitimate investigation into an incident that has occurred at the workplace. Some members are complaining that they are intimidated by this. Can you advise those members that they do not have to participate? **Yes** **No**
7. Your company hires a new foreman who repeatedly assigns work to members outside of their job classifications. You discuss this with him but he ignores your advice. You tell the foreman that if he doesn't stop this you will direct the members affected not to perform the work. Can you do this? **Yes** **No**
8. A supervisor has been using staff meetings as an opportunity to verbally attack employees. Members are becoming quite upset by this. Can you tell the supervisor that if doesn't change his behavior you will initiate a formal grievance against him? **Yes** **No**
9. Your Business Manager contacts you and asks that you meet with a member after work. You tell him that the member is always complaining about something and that you have better things to do after work. Is this the right thing to do? **Yes** **No**
10. You get tipped off that one of your members is being disciplined by his supervisor and you haven't been told of the meeting. You go to the supervisor's office and insist that you be allowed to participate in the meeting. Can you do this? **Yes** **No**

11. Your employer advises you that a member's disciplinary meeting has just been scheduled for tomorrow which is your scheduled day off. You go to a coworker and ask him to attend in your place. Is this appropriate? **Yes No**
12. You meet with the employer to discuss an employee's grievance and before leaving you tell the employer not to worry, you will withdraw the grievance. The grievor was not in attendance at this meeting. Is this appropriate? **Yes No**
13. While at lunch break, two members get into a verbal confrontation that gets quite loud and aggressive. You go to the members and tell them to settle down before they get suspended. Good idea? **Yes No**
14. During an evening shift you are returning to your work station when you observe another employee putting some boxes into his car. You find this strange and report the observation to your supervisor. Is this the best thing to do? **Yes No**
15. While working an overtime shift an employee comes to you and states that she is not feeling well and is going home. You tell her that you will let the supervisor know what happened. After you get home you realize that you forgot to tell the supervisor. Will the employee get in trouble for this? Will you? **Yes No**
16. A new member approaches you at work and tells you that he is being picked on by some of his coworkers. You tell him to grow up and to get back to work. Is this the right thing to do? **Yes No**
17. A known complainer in the bargaining unit comes to you with an issue and wants to file a grievance. You write it up but after he leaves you throw the grievance in the garbage can? Can you do this? **Yes No**
18. Things have gotten so bad in your department that the members decide to walk off the job. Though you didn't lead the walkout, you did participate. Everyone receives a three day suspension except for you. The Company gives you a five day suspension. Can this happen? **Yes No**
19. The head of H.R. comes to you and states that he will settle the overtime grievance by paying all the guys their money if you drop the harassment grievance filed against one of the supervisors. Can you do this? **Yes No**
20. A member tells you that he is holding a membership card with two different local unions. Should you report this to your union office? **Yes No**

GRIEVANCE INVESTIGATION

What Is A Grievance?

As a Steward, you are likely to get complaints on every aspect of working conditions in your workplace. But they may be just that - complaints. **For a legitimate grievance to have occurred there must have been a violation of the collective agreement or an employee's rights on the job.**

It is your job as a Steward to decide which rights have been violated and to determine whether a grievance exists. There are plenty of times when there's a real problem, but it's not with the Employer or the collective agreement – it is with the member! Most Stewards say the toughest task is dealing with members who believe they have a legitimate grievance, but investigation shows they really don't.

Because most employees' rights are contained in the collective agreement, this is the first place you look to see if there is a real grievance against the employer. If the grievance is a clear-cut violation of the contract, it will be easy to prove, provided you stick to your guns. If it involves an interpretation of the contract, it will be a little harder to prove.

Thus, a complaint involving a dispute or difference of opinion or interpretation between the employer and the union, involving the collective agreement, is a grievance. This is one area in which understanding the jurisprudence (or arbitration decisions) that has evolved from previous grievances will help you prepare your case.

Violation of a federal or provincial law

Depending upon the language in the Collective Agreement you may have the option of filing a grievance or going to the appropriate government agency to get redress. In certain situations you may do both. For example, a decision by a worker to refuse to do unsafe work is supported in some provinces by health and safety laws. Similarly, a complaint of racial or sexual harassment by management may be addressed by a Human Rights Commission. In these types of cases the Steward is advised to consult with your Union Representative to determine the best approach. Most unions duplicate the provincial law in their collective agreements - using the language as the minimum base and expanding and strengthening it in negotiations. At least by referencing the applicable laws, it opens the door to filing a grievance and utilizing the grievance procedures.

Violation of employee's rights

Like other issues, the union must have a clear-cut, well-documented case. These kinds of grievances arise when management treats workers unfairly or unequally. These grievances are hard to fight and win so the local union should try to ensure that any problems concerning employees' rights are safeguarded in writing - in the collective agreement.

When a member comes to you with a complaint, the first thing to do is get the facts. Listen to their story. Ask yourself; does it violate the contract? The law? A past practice? Their rights? If the answer is yes, chances are the complaint you have **is a legitimate grievance.**

Remember - whether the complaint is a legitimate grievance or not, the employee is concerned enough to come to you with a problem. This concern demands action on your part to clarify or correct the situation. If you answered "no" to whether the problem violated the collective agreement, past practice, a law or the employee's rights, then you have a complaint.

Complaints must be dealt with

If a member believes that there has been a violation of the collective agreement, you should carefully explain why it is not. A member may think they have a grievance because they don't fully understand the contract. They may claim that they are entitled to vacation pay, for example, when a careful reading of the contract shows that they haven't enough service to qualify. Remember that a grievance is a complaint against the employer. So, it's not a grievance if two workers have a purely personal disagreement. If Jane and Bob can't agree whether the window should be open or shut -that's not a grievance. The exception to this rule is HARASSMENT.

Do not disregard a member's complaint. There may be other avenues to resolve the member's complaint such as referring the members to a labour-management committee, occupational health & safety committee or by simply setting up a meeting with the Employer to discuss the particular issues with the member. Just a tip: to make sure labour-management meetings are productive ask for a time frame on decisions and if you get a decision, ask for signatures so that there is accountability.

The grievance process is not meant to be used by one member against another member. Grievances are meant to protest an employer's action or lack of action. If there is a problem between members, refer the member to your union representative. There may be provisions in your Constitution or By-laws to deal with these types of problems.

Types of Grievances

A Steward can classify grievances according to where they come from and how they arise. We also classify grievances according to who is affected.

Individual Grievance

An individual grievance is a complaint that an action by management has violated the rights of an individual member as set out in the collective agreement, law or some other form of unfair practice. Examples of this type of grievance include: discipline, demotion, harassment, classification disputes, denial of benefits, etc.

The steward should file the grievance, not the employee on their own, as it is in the interest of everyone in the union that the grievance is handled properly. **Unless there is a specific provision in a statute or collective bargaining agreement that provides an individual worker with the right to arbitrate, the union has the right to settle the grievance on the worker's behalf.**

When an individual's rights have been violated and that person refuses or is afraid to file a grievance, you should file the grievance on behalf of the union. In this way, you will defend the collective agreement and protect the rights of all employees covered by it. Management's argument that you cannot file an individual grievance on behalf of the union is false.

Group Grievance

A group grievance is a complaint by a group of individuals, for example, a department or a shift, that has been affected the same way and at the same time by an action taken by management. An example of a group grievance would be where the employer refuses to pay a shift premium to the employees who work an afternoon shift when the contract entitles them to it. Difficulties can arise in disposing of group grievances if one of the individuals has interests that conflict with the others in the group. Therefore, it may be preferable to deal with the grievances separately.

If the grievance is asking for monetary compensation, make sure that all those involved sign the grievance. Arbitrators have been known to "award" the grievance yet only give compensation to those who have signed.

Policy Grievance

A policy grievance is a complaint by the union that an action of management (or its failure or refusal to act) is a violation of the agreement that could affect all who are covered by the agreement.

Group grievances can be treated as policy grievances, but strictly speaking they should be considered separately. **A policy grievance normally relates to the interpretation of the contract rather than the complaint of an individual.**

However, a policy grievance may arise out of circumstances that could also prompt an individual grievance, insofar as the union claims the action taken by management implies an interpretation of the collective agreement that will work to the detriment of all employees. For example, management assigns a steady day-shift employee to work on an off-shift without regard to seniority. The union might grieve in an effort to establish that seniority

must be considered in such an assignment, even though the individual involved may not have a complaint against the shift change. The point is that the outcome or the precedence of the grievance may have a detrimental effect on the local union at some point in the future and the union must change it. Normally you would not deal directly with this type of grievance other than to provide the necessary investigation. **Policy grievances are normally filed by the local union.**

Union Grievance

A union grievance may involve a dispute arising directly between the parties to the collective agreement. For example, the union would grieve on its own behalf if management failed to deduct union dues as specified by the collective agreement. In these cases, the union grievance is one in which the union alleges that its rights have been violated and not just the rights of an individual.

Management Grievance

A management grievance is a complaint by management that the union has violated the collective agreement. A common example of this type of grievance arises out of "wild cat" strikes, where the employer complains that the union authorized, condoned or instigated a strike. Such grievances have been successful not only in finding the union involved culpable in some instances, but also in collecting damages for losses claimed as a result of the strike. The union could also be faced with a management grievance for utilizing employer time for union business if this was contrary to the provisions of the collective agreement.

Investigating the Facts

Record Answers to All Seven “Success Questions”

- 1. WHO:** **is involved in the grievance?** Name(s), department, seniority, date, job classification, shift, etc.
- 2. WHAT:** **happened?** Only facts; no opinions.
- 3. WHEN:** **did the grievance occur?** On what date, at what time?
- 4. WHERE:** **did the infraction take place,** exact location, department or area, city and province.
- 5. WITNESSES:** **were there any?**
- 6. WHY?** **is it a violation of the agreement?**
- 7. HOW:** **can this grievance be resolved: what adjustment is necessary?**

Is It A Grievance?

Ask Yourself These Questions:

1. Is it a violation of the collective bargaining agreement (including past arbitration awards)?
2. Is it a violation of past practice?
3. Is it a violation of management's own rules?
4. Is it an inherent area of employer responsibility, such as health or safety?
5. Is it discriminatory treatment compared to the way other employees are treated?

How to Investigate a Grievance

Whether a grievance is won or lost is often determined by how carefully the steward investigates the problem. Therefore, the steward must be prepared to do the following:

1. **Conduct an interview.** Listen carefully to the worker's statement, writing down such things as dates, production records and other relevant information.
2. **Ask questions** for clarification or additional information.
3. **Examine relevant company records.**
4. **Distinguish between fact and opinion.**
5. **Determine which facts are relevant to the matter** under discussion.

Earlier in this manual, you learned about various types of grievances and the fact that sometimes the workers complaint is not a grievance. To process a grievance properly, you will need to know all the facts concerning the grievance.

Interviewing

The grievor has the right to discuss the grievance with you in private. If the grievor approaches you at the coffee break and wants to see you about a problem, suggest that you meet later in the day unless the worker indicates that the matter is urgent. If you are approached by a worker when there are other people present, don't start talking about the grievance right away. Sometimes the details of a grievance are not very pretty and may be personally embarrassing to the grievor. In such cases, the grievor has the right to expect confidentiality and discretion from the steward up to the point of the grievance going to arbitration.

Try to find a place where you and the grievor will be reasonably comfortable during the interview and where there will be few interruptions. The middle of a busy plant floor is not the proper place to get the facts on whether a worker has a grievance or not.

Ask the grievor to tell you the whole story from beginning to end while you record the relevant information. Ask questions for clarification or additional information while creating a supportive environment for the grievor.

It may be necessary for the grievor to repeat parts of the story several times before you get the complete picture. You may have to guide the grievor with comments like:

". . . and what happened after that?" "Did you say anything before that?"

"What exactly did the foreman say . . .?"

"Is that the only reason. . .?"

"Has there been any disagreement between the two of you before this?"

Once you're satisfied that you have heard the whole story, ask the grievor to repeat it in chronological order because it is possible that, in the original telling, the grievor will have jumped back and forth in time as the incidents which seemed important were recalled.

During the interview, you must make careful notes of the story in chronological order, being extremely careful with dates and times even where it is not immediately apparent that such times and dates are material to the grievance itself.

We suggest that it is an excellent practice to ask the grievor to write out their story in their own handwriting. This serves a twofold purpose. First, the effort required by the grievor to chronicle the incident will aid in the recollection of all the relevant details in their proper order. Second, you will have the grievor's written record of the evidence on file so that, if the story doesn't stand up either at the grievance hearings or eventually at arbitration, the grievor will not be able to complain that you lost the case by misinterpreting what was told to you.

You should carefully cross examine the worker on any points that appear doubtful or that might possibly be challenged by the representatives of management. In all probability, you will find that the grievor will resent having the story dissected in this manner and wonder whether you are working for him/her or for the employer. Don't be deterred by this reaction. Simply explain to the grievor that, if the story cannot stand up to your screening, the flaws in it will certainly be exposed by management at the hearing and this is not good for the grievor or the union. This is the time to detect flaws and to correct errors and inaccuracies which could ruin your case if they were exposed by the management cross-examination. Now you have some of the facts.

To get more facts you must conduct a similar examination of any witnesses and, if they are prepared to discuss the case with you, management's witnesses as well. And you must interview each witness separately and privately to be sure that your witnesses will corroborate the grievor and each other and will not tell conflicting stories which will damage the credibility of your case.

Let's insert a note of caution at this point! Never accept the word of the grievor or someone else as to the testimony that a witness will give. Regardless of the time factor involved, you can never forego the examination of a witness on the assumption that you already know what will be said when called upon. Such assumptions will usually get you in trouble at a critical moment.

By now, you have most of the facts but not necessarily all of them. Remember that there are two sides to every story, and sometimes three. It may be a good idea at this time to talk to the immediate supervisor concerned and get the other side of the story. Ask for their version of the facts and then have the courtesy to listen. Don't argue the case, simply hear their version of the facts and then relate it to the other side of the story that has been given to you by the grievor and by your witnesses. By now, you will have a pretty good idea of whether or not there is any substance to the grievance.

Sources of Information

Various people can supply information that will be beneficial to your case. The member who has the grievance, fellow workers, other witnesses to the grievance, fellow union stewards and officers. The latter can also supply ideas about similar grievances in the past.

Sources of information: Foremen/Supervisor - in some cases, it may be necessary to speak to management about a grievance before you actually present it. This should only be done to get the facts and obtain a clear picture of what happened.

Other sources of information include: member's records, seniority lists, personnel file, sick leave records, union records — union contract and past grievance file.

Just how involved you will become in each case will depend on the staff of your Local union. If they are busy they may appreciate the extra mile you are going to determine what actually happened. Many other times the Union Representative will take over once you have the basic information put together.

Investigating Grievances

1. Before raising the grievance formally, the steward should: establish whether or not a grievance (as opposed to a complaint) exists. Gather all of the related information; consult all sources as necessary:

- the collective agreement
- company records (e.g. in discipline cases)
- union records (e.g. records of past grievances)
- other stewards and union officials
- supplementary agreements
- precedents or past practice
- federal and provincial laws
- witnesses

2. Before you see the supervisor, ask yourself the following questions:

- Do I have all the facts from the grievor?
- Is there other information that I need? (e.g. from witnesses)
- Have I verified all the facts?
- Have I carefully checked the contract and labour legislation?
- Have I made a clear record of all the facts gathered?
- Have I explained the case to the grievor?

A Few Suggestions for Handling Grievances

1. Prevent grievances by meeting problems in your department before they cause grievances.
2. Be a good listener. Listen with patient interest even when you think the aggrieved employee is wrong. Do not reject anyone's statement until it has been examined.
3. Know your facts. Check your contract. Know how previous grievances of the same kind were settled.
4. Use a positive friendly approach. A timid or defensive attitude is a confession of weakness.
5. Be calm. Shouting and pounding the desk rarely settles anything.
6. Avoid personalities. It is not who is right, it is what is right that counts. Stay focused on the issue at hand.
7. When you must disagree with what the supervisor says, do so with dignity. Remember that you and the supervisor are going to have to work together and settle other issues in the future. Remember, you are seeking agreement - not conquest.
8. Keep an open mind. You may not know all the facts.
9. Don't get upset or make empty threats that both you and the supervisor know you can't carry out. If you and the supervisor can't come to an agreement, there are further steps to be followed, including arbitration.
10. Appeal to management's self-interest. You are asking for justice — not favours; you are expected to be fair, as you expect management to be.
11. Don't horse-trade on grievances. Don't give up one grievance case in order to get a favourable decision on another.
12. Stick to the point in your discussion with the supervisor and don't be side tracked.
13. Remember that management has rights too, and that both the employees and management must live up to the terms of the agreement. As a Steward:
 - a) Keep written records of all grievances.
 - b) Keep the aggrieved employee constantly informed as to what is being done about the grievance.
 - c) After the grievance has been settled, check to see that the decision has been carried out. **Be sure to let the grievor know what happened to his grievance.**

Past Practice

A short definition of a “Past Practice” is any long-standing practice that:

- Occurred openly over a lengthy period
- Both Union and Management have accepted and not challenged
- Does not violate the contract or any written company rule.

Past practices usually cover situations where the contract is silent or ambiguous. A past practice grievance usually arises when management unilaterally, and without notice to the union, changes an established procedure or disciplines a worker for following a past practice.

For example, "wash-up time" was once a common past practice. A company allowed workers to leave their work areas fifteen minutes before the end of the shift to wash-up before clocking out. When the company changes the practice without notice to the employees or union, then the union may, in certain circumstances, file a grievance based on a violation of past practice.

The following guidelines will help you determine if a past practice violation has occurred:

- ❖ **Uniformity** - Was the policy consistently applied over a period of time? A limited number of instances are normally insufficient to constitute a past practice.
- ❖ **Longevity** - The longer the period of time a policy has been in effect, the stronger the case for it being considered a past practice. Has the past practice existed under more than one collective agreement?
- ❖ **Acceptance** - Both the union and management know that the practice has been in effect and neither party has objected.
- ❖ **No Clear Written Language** - The practice cannot conflict with clear language in the collective agreement.

Past practices are often difficult to establish. Past practice grievances have become less common in recent years, as there are fewer practices not covered by work rules or contract language. For example: Employer gifts such as a Christmas bonus or a Thanksgiving turkey are gratuities and cannot be considered past practices. Management's right to direct its work force and change operating procedures if it does not conflict with contract language has been upheld in numerous arbitrations. Furthermore, lax enforcement of a rule does not create an enforceable past practice. Finally, even if a past practice meets all of the criteria listed above, an arbitrator still may refuse to uphold the grievance.

Steward Fact Sheet (For Union Purpose Only)

The information below should apply to the person making the grievance or complaint:

Name: _____ Telephone (H & W): _____

Department: _____

Job & Classification: _____

Employment Status (PFT/PPT/Casual/Temp) _____

Rate: _____ Location: _____

Supervisor's Name: _____

Seniority Date: _____

What is the nature of the grievance or complaint? _____

If this involves a specific incident, obtain particulars (ie where & when): _____

Names of Witnesses: _____

If this is a grievance, indicate article in the Collective Agreement violated, or state the violation of

Employee's Rights, Past Practice, Provincial or Federal Law. _____

Remedy Requested? _____

(Remedy should place the grievor in exactly the same position he/she would have been had the incident not occurred)

Additional information:

Signed: _____

Dated: _____

Continue on reverse
if necessary

The Disciplinary Interview

When any local union examines the number of grievances filed in a year, they usually report that most of the paperwork deals with the issue of discipline.

While we don't often challenge the right of management to issue rules, we are more likely to challenge the manner in which management enforces the rules.

In most cases of discipline, members have a right to a fair investigation and a hearing on the alleged infraction.

While details and procedures may differ in certain contracts, there are some basic rules which apply to all disciplinary hearings.

1. The member should always ask for union representation.

This is a right that a local union must make clear to its members. Contracts and bargaining laws may differ as to how that right should be exercised, but the bottom line is that no member should go into this kind of meeting without union representation.

- Few members are well-versed in their contractual rights, work rules, and limitations on managements' rights as a union officer. A steward has protected rights at any labor-management meeting when acting as a union representative. A member does not.
- That means a steward can say things and act in the kind of advocacy role that a member cannot. And that role is protected usually by law and/or contract.

2. What should the member do if the meeting is not a formal one?

Unfortunately, many meetings which result in discipline do not appear to be formal hearings when they start. A member might be pulled aside by a supervisor who asks, "Would you mind stepping into my office for a minute?"

- A member should always question the nature of the meeting. "What's up?" is the usual response. A better answer might be, "I will comply with your request if you tell me what is the nature of the meeting?" or "Sure, just tell me what's this all about."
- If the supervisor's answer in any way indicates that the supervisor may be investigating an incident, reviewing a record, or if you feel that the meeting or its outcome in any way will take the direction of discipline, the member should ask to have a union representative present.
- If the member is unsure of the content of the meeting, he or she should still ask for a union representative to be present. Denial of that request under certain laws and contracts is grievable and can (although not always) mitigate the discipline assessed over the alleged offense.

3. What should the steward do if the meeting has already started?

There will be times when the member does not exercise his or her right to representation at a disciplinary meeting. If the shop steward finds out and sees the supervisor's door closed, the steward should knock at the door and request that the supervisor inform the member that a union officer is outside waiting to sit in at the meeting.

If the request is denied, document the denial in writing and ask the supervisor to sign it. What you are doing is creating a record that the supervisor is denying the member his or her rights to representation.

Progressive Discipline

The principle of "Progressive Discipline" is uniformly accepted by arbitrators in situations involving violations of rules other than so-called "Cardinal Offenses" (such as theft, drunkenness, etc.). This principle requires that, absent an unusual situation, an employee should first receive lesser forms of discipline for the rule infractions.

The accepted levels of Progressive Discipline are:

1. **Oral Warning***
2. **Written Warning**
3. **Short Suspension**
4. **Longer Suspension**
5. **Discharge**

*There is a problem with oral warnings. **Oral is oral and is subject to interpretation or denial.** Oral warnings are usually problematic, and do not form part of an employee's record.

Some collective bargaining agreements expressly incorporate the principle of "Progressive Discipline," at least in some form. For example, a collective bargaining agreement may provide, something to the effect that, "an employee may not be suspended or discharged for an offense unless he/she has received at least one written warning for the conduct in the prior 9 months."

However, even if a collective bargaining agreement does not contain progressive discipline language, most arbitrators will require that an employer apply some form of "Progressive Discipline."

While an arbitrator, in the absence of specific contract language, may not require all six levels of "Progressive Discipline," most arbitrators will support and enforce at least a three step progressive discipline system:

- ❖ **Written warning**
- ❖ **Suspension**
- ❖ **Discharge**

Insubordination

Two forms of *insubordination* are generally recognized.

The **first** and most serious is **the willful refusal or failure to carry out a direct order.**

Arbitrators have generally held that in such cases that:

- ❖ Supervisor must be **clearly state the order** – it must be clearly communicated to the employee by someone with authority to give the order, and
- ❖ the employee must actually **refuse to comply.**

Exceptions are provided where such orders constitute perceived threats to employee safety or health or that of his/her coworkers.

If these conditions are met, cases of this type fall under one of the most firmly established principles of labour relations, that is, **employees must obey orders even when they disagree with them. Failure to "work now, grieve later" may be grounds for termination.**

A **second** or lesser form of insubordination generates from **a personal altercation between the employee and his or her supervisor.**

During such an altercation an employee might:

- ❖ shout
- ❖ use profane or abusive language
- ❖ engage in disrespectful actions including obscene gestures
- ❖ be excessively argumentative
- ❖ engage in minor name calling, etc.

In such cases the employee may also be charged with insubordination and if the charge is proven, disciplined.

The discipline imposed in such cases is less than the major penalty of discharge, as in the first type of insubordination, because the degree or severity of insubordination is less.

Insubordination: A Dozen Questions to Ask:

One of the most troubling and difficult issues for the shop steward is the issue of insubordination. Many contracts say in clear language that an employee can be disciplined and discharged for insubordination.

For employers, insubordination is considered one of the deadly sins, right up there with theft and violence. They will be hard-nosed and unforgiving on the issue. That is why for almost every discipline case involving insubordination arbitrators hold to the rule "obey now, grieve later." But in the heat of an argument or in situations where a member may be provoked beyond all common sense, the thought of filing a grievance over the issue may be furthest from their mind.

Let's go over some of the basics here. First, **insubordination is usually defined as the failure by an employee to perform a task or comply with an order given to him or her by a supervisor.** An arbitrator will usually look at an employee's compliance with a reasonable order as basic to the conduct of the employer's business. Arbitrators take the issue of insubordination very seriously and consider it a major infraction beyond the rules of progressive discipline.

Simply put, **refuse a reasonable order and you can be discharged.**

Life, however, is never that simple. There are a number of issues which must be taken into consideration in any insubordination case.

1. **Was the employee given a direct order?** Mere instructions, suggestions, and/or advice are not the same as a direct order. A smart supervisor will say in no uncertain terms, "I am giving you a direct order to complete that job."
2. **Was the member aware that he or she was given a direct order?** A member may not have understood that the language used by the supervisor was meant to be a direct order.
3. **Was the order clearly given?** For example, a member might be told that, "you can't smoke here!" As part of their job, they may go to another location in the facility and light up another cigarette. Caught smoking a second time, the supervisor might discipline them for disobeying an order. But how clear was the original order? The employee might have thought that he had to stop smoking at his original work location only.
4. **Was the order audible?** Many of our members work in very noisy locations.
5. **Was the member given forewarning of the consequence of a refusal to follow the order?** A smart supervisor will use words that clearly indicate a disciplinary consequence will follow the refusal to obey the order: "If you do not comply with my order, you will be disciplined."
6. **Did the employee willfully disobey or disregard the order?** Most cases demand that the refusal to follow an order be willful. A member may say that she was provoked by a supervisor, by abusive language for example. If a member comes to you with that kind of defense, you must dig down deep to find out why. In most cases, provocation is viewed by an arbitrator as a way of lessening the discipline, but not overturning it. An exception to this might be if the order was an affront to the basic dignity of the member. Racist or anti-union comments in the form of an order, for example, should not be tolerated in the workplace and should be reported immediately to the union for action.
7. **Was there an ongoing dispute between supervisor and member?** If this can be documented over a period of time, the issue may be harassment. But to prove harassment, you will need clear documentation from the member of instances where he or she was picked on.

8. **Was the supervisor being unreasonable?** The supervisor may have had a tough deadline to meet for production and a small incident set him or her off. The likely target becomes the member who just happens to be in the wrong place at the wrong time.
9. **Was the order reasonable and necessary to the safe, orderly and efficient operation of the business?** Did the order violate the contract, work rules, past practice, past arbitration decisions, or the law? Review all of these. A 'no' to the first question or a 'yes' to the second question may provide grounds for a grievance.
10. **Did the member feel that complying with the order would endanger himself or herself and his/her coworkers?** The right to refuse dangerous work is upheld by most jurisdictions. If the work is unsafe, a member must report it and ask that it be made safe. Rather than an outright refusal, safer language might be, "I will comply with your request when the unsafe condition is corrected."
11. **Was the member set up?** This has happened often enough to make us suspicious of employer motives. If you are suspicious of the situation, conduct a thorough investigation. Check for witnesses and motive. Recreate the incident as accurately as possible.
12. **Did the charge of insubordination arise out of the member executing his/her role as a union officer?** If the member is a shop steward and got into a shouting match with the supervisor at a grievance meeting, the steward's conduct may be treated differently as the steward or officer is an equal of management in labor-management issues.

As a shop steward, you need to thoroughly investigate all charges of insubordination. In certain cases, you may be able to lessen the punishment, particularly if the employer is inconsistent in applying standards of behavior to your unit. But that means your local needs to keep excellent records. Also, a good work record may mitigate punishment in borderline insubordination cases.

The bottom line is that as a communicator, you must tell all members never to refuse a properly worded direct order unless there is a direct and immediate impact on their safety or health. Even then, such matter should be immediately reported to the Union. Remember, a member can safely obey most orders and grieve later.

When the Member Doesn't Have a Grievance:

For most shop stewards, the process of handling grievances is pretty routine. We are out there on the property, every day making sure that management holds to the agreement. And when the member comes to us with a problem, we check it out. We do the proper grievance investigation to determine whether the issue is really grievable under our agreement.

But what happens when we do all we can but the problem is not a real live grievance? It's happened to all of us. Your co-worker— someone you've worked with for ten years asks you to file the grievance that just isn't a grievance.

What do you do?

Let's start with what you shouldn't do. Don't file the complaint or issue if you know it isn't really a grievance. If you do, you are transmitting the wrong message.

Wrong Message:

First, the member thinks you can actually achieve something with the grievance procedure that it isn't designed to do. The member gets the impression that the grievance is a lottery and every entry has equal weight. That simply isn't true and it isn't fair to the member or to other members. Besides you raise expectations which you can't fulfill.

Second, it damages your credibility with management. Part of the goal of grievance handling is to resolve problems; and grievance resolution needs the cooperation of both sides. If you go to management with lousy grievances, you will quickly lose the agency's respect. Your judgment will be called into question when you present other issues which might be very legitimate grievances.

Lastly, filing frivolous or poor grievances can make management retaliate and poison the relationship with the union on even larger issues.

What should you do?

Tell the member straight out that the problem isn't grievable under the contract. Explain, why. Don't take for granted that members understand the union's role in handling grievance and what the repercussions are for filing frivolous ones. Explain what the process can achieve and what it can't. Talk about the bottom line issue of justice for all members.

Don't procrastinate:

Don't procrastinate but deliver the news directly and sympathetically. Expect some emotional heat at this discussion, but listen sympathetically so long as you personally don't have to bear the brunt of any outburst.

Also keep good notes as to your decision and if there is a stewards' meeting at the local, make it part of your report so that the member does not go shopping around for another steward to file the grievance.

Try to resolve the issue:

See in what other ways you can resolve the issue. There is no reason why you can't go with the member to discuss the issue with supervision. If the issue is serious enough, discuss it with your officers to come up with a strategy to deal with it.

If the problem is a personal one, direct the member to a union counselor or other appropriate services that are available to the members. Saying no to the member about filing a grievance is one of the toughest responsibilities you have as a shop steward. Some members will never be satisfied with the answer. But for most members, some demonstration of concern and possible resolution will go a long way in building the local union.

WHEN WRITING A DISCIPLINARY GRIEVANCE UNDER THE "NATURE OF THE GRIEVANCE", WRITE IN THE FOLLOWING: **"THE GRIEVOR HAS BEEN UNJUSTLY DISCIPLINED" OR "THE GRIEVOR HAS BEEN UNJUSTLY TERMINATED."**

Remember to always request "FULL REDRESS"

What A Steward Should Look For:

1. Was the Grievor actually given a **DIRECT ORDER** (or merely instructions, suggestions, or advice)?
2. Was the Grievor **AWARE** that he or she was given a direct order?
3. If so, was the order **CLEAR AND UNAMBIGUOUS**?
4. Was the Grievor's alleged failure to comply **INTENTIONAL**?
5. Was the Grievor given adequate **FOREWARNING** of the possible consequences of his or her alleged refusal to carry out the order?
6. Was the order reasonable and necessary to the **SAFE, ORDERLY AND EFFICIENT** operation of the organization?
 - a. Did it violate:
 - The Agreement ("Contract")
 - An Addendum to the Agreement?
 - A Supplementary Letter of Understanding? ("Side Letter")
 - Policy?
 - An Administrative Directive?
 - An Applicable and Relevant Arbitration Award?
 - A Past Practice?
 - An Applicable Law?
 - b. Did the order threaten to cause undue hardship or irreparable harm?
 - c. Did the order threaten to endanger the health or safety of the Grievor?
 - d. Would the order force the Grievor to violate a law?
 - e. Was the order arbitrary? capricious? unjust? unfair? inequitable? unreasonable?
 - f. Did the order otherwise adversely affect the welfare of the Grievor or the Union?

Disciplinary Meeting Form

(for Steward use only)

Members Name: _____ Dept: _____

Supervisor: _____ Date: _____

Steward: _____

Present at the meeting: _____

Type Of discipline: (Please attach copy of discipline notice.)

Written Reprimand _____ Suspension with pay _____ Without pay _____

Were other members involved in this incident? If yes, list the other members involved. _____

Has this discipline been applied to all members equally? (If not, why not?)

Are you aware of any extenuating circumstances relating to this matter?

Has the grievor suffered any previous discipline? _____

When? _____ Type? _____

Has the company met its obligations regarding this incident regarding the seven key questions for “just cause.”

(please attach to Steward Fact Sheet and place in members file)

Just Cause Considerations

Most labor-management agreements contain a "just cause" or "proper cause" provision. But very few, if any, define what the employer's ability to discipline for "just" or "proper cause" means.

One arbitrator defined just cause as: "*A reasonable person, taking into account all relevant circumstances, would find sufficient justification in the conduct of the employee to warrant discharge.*"

Arbitrators were forced to come up with definitions for just cause - not employers or unions!

STANDARDS WHICH MAY BE UTILIZED BY AN ARBITRATOR IN DISCIPLINARY CASES

The issue before the arbitrator frequently requires findings in respect to the existence or non-existence of "just cause" for discipline, including discharge. Few union-management agreements contain a definition of "just cause". Nevertheless, over the years the opinions of arbitrators in numerable discipline cases have developed a sort of "common law" definition. This definition consists of a set of guidelines or criteria that are to be applied to the facts of any one case, and said criteria are set forth below in the form of questions.

A "**no**" answer to any one or more of the following seven questions normally signifies that just and proper cause did not exist. In other words, such "no" means that the employer's disciplinary decision contained one or more elements of arbitrary, capricious, unreasonable, or discriminatory action to such an extent that said decision constituted an abuse of managerial discretion warranting the arbitrator to substitute his/her judgment for that of the employer.

The answers to the questions in any particular case are to be found in the evidence presented to the arbitrator at the hearing. Frequently, of course, the facts are such that the guidelines cannot be applied with precision. Sometimes an arbitrator may find one or more "no" answers so weak and the other "yes" answers so strong that he/she may properly, without any "political" or spineless intent to "split the difference" between the opposing positions of the parties, find that the correct decision is to "reprimand" both the company and the disciplined employee by decreasing but not nullifying the degree of discipline imposed by the company -- e.g., by reinstating a discharged employee without back pay.

The Seven Questions:

1. **Did the Employer give to the employee forewarning or foreknowledge of the possible or probable disciplinary consequences of the employee's conduct?**

a. Such a forewarning or foreknowledge may properly have been given orally by management or in writing through the medium of typed or printed sheets or books of shop rules and of penalties for violation thereof.

b. There must have been actual oral or written communication of the rules and penalties to the employee.

c. A finding of such communication does not in all cases require a "no" answer to Question No. 1. This is because certain offenses such as insubordination, coming to work under the influence of alcohol or drugs, drinking intoxicating beverages or taking drugs on the job, or theft of company property or that of fellow employees are so serious that any employee in the industrial society may properly be expected to know already that such conduct is offensive and heavily punishable.

d. Absent of any contractual prohibition or restriction, the company has the right to unilaterally establish reasonable rules and give reasonable orders; and this need not have been negotiated with the union.

Management has an inherent obligation to manage. The Notice test requires that an employer communicate clearly and unambiguously to employees, first, what kind of conduct will lead to discipline; and second, what the penalty will be for any particular act of misconduct. Warnings must be clear and timely.

Along with this comes the responsibility of the employer to inform employees of the meaning and application of the rules. (The employer cannot count on the union as an agent to communicate new rules to employees, nor may the employer use the disciplinary process to introduce new rules.)

2. **Was the employer's rule or managerial order reasonably related to the orderly, efficient, and safe operation of the Company's business?**

a. If an employee believes that said rule or order is unreasonable, he/she must nevertheless obey same (in which case he/she may file a grievance), unless he/she sincerely feels that to obey the rule or order would immediately or seriously jeopardize his/her or coworkers personal safety.

3. **Did the employer, before administering discipline to an employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?**

a. This is the employees "day in court" principle. An employee has the right to know with reasonable precision the offense with which he/she is being charged and to defend his/her behavior.

b. The employer investigation must normally be made before its disciplinary decision is made. If the employer fails to do so, its failure may not be excused on the ground that the employee will get his/her "day in court" through the grievance procedure after the exaction of discipline. By then there has usually been too much hardening of positions.

c. There may of course be circumstances under which management must react immediately to the employee's behavior. In such cases the proper action may be to suspend the employee with or without pay pending investigation. If upon investigation, the employee is found innocent, he/she will be restored to their former position with no loss of pay or benefits.

d. The employer's investigation must include an inquiry into possible justification for the alleged rule violation.

Whenever discipline for any reason is contemplated, a **timely** and **thorough** investigation of the suspected misconduct is critical to management for two obvious reasons: First, if the employer makes an inadequate effort to uncover all of the facts, it may easily end up without enough evidence to prove that misconduct was committed. Second, due process requires that an employee (a) be informed promptly, and with reasonable precision with what offense he/she is being charged, and (b) be given an opportunity to tell his/her own side of the story.

4. At the investigation did the employer obtain substantial evidence or proof that the employee was guilty as charged?

a. It is not required that the evidence be preponderant, conclusive or "beyond reasonable doubt." However, the evidence must be truly substantial and not flimsy.

b. The employer should actively search out witnesses and evidence, not just passively take what participants or "volunteer" witnesses tell him/her.

Did the employer improperly gather its evidence after the disciplinary action had already taken place? It goes without saying that in every situation involving discipline and discharge, proof is basic and indispensable and, other things being equal, of all the just cause tests, this is the one most frequently in contention. Moreover, if no misconduct is proved, no penalty can be just.

Many arbitrators believe that a witness should not be discredited merely because he has a bias or interest in the matter about which he/she testified. Conversely, a witness should not be considered truthful merely because he/she has no bias or interest in the matter about which he/she testified. In other words, self-interest does not impeach a witness's credibility by and of itself, and an interest in the outcome does not raise any presumption that a disciplined or discharged employee is lying.

(See B.C. Court of Appeals in *Faryna vs Chorny* (1952) 2 D.L.R. 354)

5. **Has the employer applied its rules, orders, and penalties evenhandedly and without discrimination to all employees?**

- a. A "no" answer to this question requires a finding of discrimination and warrants negating or modifying the discipline imposed.
- b. If the employer has been lax in enforcing its rules and orders and decides henceforth to apply them rigorously, the employer may avoid a finding of discrimination by telling all employees beforehand of its intent to enforce hereafter all rules as written.

Management has an obligation to make known and to enforce its rules, orders, penalties and other expectations uniformly, consistently and predictably. Failure to do so could result in a grievance being upheld at an Arbitration Hearing.

There is also the principle of **SHARED GUILT**. Has management or management personnel violated their own rules or principles? Has management engaged in the kind of behavior [gambling, foul language, etc.] they are trying to discipline in the bargaining unit?

6. **Was the degree of discipline administered by the employer in a particular case reasonably related to (a) the seriousness of the employee's proven offense and (b) the record of the employee in his/her service with the employer?**

- a. A trivial proven offense does not merit harsh discipline unless the employee has properly been found guilty of the same or other offense a number of times in the past. (There is no rule as to what number of previous offenses constitutes a "good", "fair", or a "bad" record. Reasonable judgment must be used.
- b. An employee's record of previous offenses may never be used to discover whether he/she was guilty of the immediate or latest one. The only proper use of an employee's past record is to help determine the severity of discipline once he/she has properly been found guilty of the immediate offense.
- c. Give the same proven offense for two or more employees, their respective records provide the only proper basis for "discriminating" among them in the administration of discipline for said offense. Thus, if employee A's record is significantly better than those of employees B, C and D, the company may properly give a lighter punishment than it gives the others for the same offense; and this does not constitute a true discrimination.

Mitigating circumstances: are factors which serve to explain or excuse otherwise prohibited activity. The parties should scrutinize closely any indirect or external factors that may have contributed to the employee's conduct. This is the "Human" side of the adversary process.

Other factors must be taken into consideration. If no misconduct has been proven then no disciplinary action can be imposed. If prior offenders have received disciplinary action of a lesser nature under similar circumstances then in accordance with the Equal Treatment Test

the same penalty would be in order. In all cases, it should be viewed in the context that "did the penalty fit the crime."

Years of satisfactory service by an employee to his/her Company should be taken into consideration in any disciplinary matter. A longer term employee will be given greater latitude than a short term or probationary employee.

Discipline and Discharge

In nearly all union contracts, an employee can only be discharged (fired) or disciplined for what is termed "just cause." Determining whether or not the employer has, in fact, established just cause for the discharge or discipline of an employee can be a complicated matter.

In evaluating the immediate discharge of an individual employee, the arbitrator would take into account the employee's length of service and any other factors respecting his employment record with the Company in deciding whether to sustain or interfere with the Company's action.

The following is an oft-quoted, but still not exhaustive, canvass of the factors which may legitimately be considered (Steel Equipment Co. Ltd. (1964) 14 L.A.C. 356 at pp.357-358):

1. The previous good record of the grievor.
2. The long service of the grievor.
3. Whether or not the offence was an isolated incident in the employment history of the grievor.
4. Provocation.
5. Whether the offence was committed on the spur of the moment as a result of a momentary aberration due to strong emotional impulses or whether the offence was premeditated.
6. Whether the penalty imposed has created a special economic hardship for the grievor in the light of his particular circumstances.
7. Evidence that the company rules of conduct either unwritten or posted have not been uniformly enforced, thus constituting a form of discrimination.
8. Circumstances negating intent, e.g. likelihood that the grievor misunderstood the nature or intent of an order given to him and as a result disobeyed it.
9. The seriousness of the offence in terms of company policy and company obligations.
10. Any other circumstances which the board should properly take into consideration. e.g. **(a)** failure of the grievor to apologize and settle the matter after being given an opportunity to do so; **(b)** where a grievor was discharged for improper driving of company equipment and the company, for the first time, issued rules governing the conduct of drivers after the discharge, this was held to be a mitigating circumstance; **(c)** failure of the company to permit the grievor to explain or deny the alleged offence.

In Steel Equipment Company Ltd., the board further stated that it, "does not wish it to be understood that "the above catalogue or circumstances which it believes the board should take into consideration in determining whether disciplinary action taken by the company should be mitigated and varied, is either exhaustive or conclusive. Every case must be

determined on its own merits and every case is different, bringing to light in its evidence differing considerations which a board of arbitration must consider.”

Credibility Tests

Discipline and discharge cases often deal with questions of credibility. The question which faces the panel is who to believe. In order to make certain your case is well prepared, you should interview all witnesses vigorously to fully understand what happened. The grievor sometimes "sees" the situation differently than it actually happened. A grievor is emotionally involved and therefore sometimes misjudges the facts. Occasionally there are lies to cover up mistakes. To avoid embarrassment at the hearing you should take the following steps:

Records Test:

1. **Go over your story thoroughly.** Check every aspect of it. When you don't trust, its credibility, challenge it.
2. Any part of the story which "**stretches**" the rational imagination should be double checked.
3. Try to find other **credible witnesses** who support your story. Different witnesses see the same event differently. Do not be surprised at this.
4. Use questions and techniques which you anticipate in cross-examination. In other words, **play the devil's advocate**.
5. Check personnel (or medical records if they are involved). **Make certain the records are accurate.**
6. **Talk to the foreman or the opposing side's witnesses beforehand.** Check out their story -- they could have erred as well.

Remember, if you set up a more vigorous test of your story than the opposing side and it is passed, there is a better chance of being believed by the panel.

Consistency Tests

Compare the grievor's action with others. Make certain he/she did not do things any different or worse than others who were less severely disciplined or who were not disciplined at all. In this respect, the employer may have acted in a "discriminatory" or inconsistent manner and thus may stand a good chance of losing the case.

Check the Contract, Rules, etc.

Often the grievor may have been wrong, but should not be disciplined because there was no violation of a rule or the agreement. In this regard you should make certain that even if there was a rule violation; it must have been a reasonable rule and well advertised. While ignorance of a rule per se is no excuse, ignorance because of bad or improper communication may be defensible. Also, if the rules are unreasonable or not related to the work, safety of others, or employer's image, the grievor may not be held responsible.

Grounds for Discipline

Sometimes the reason for the disciplinary action or discharge was predicated on a specific act. If the employer later tries to base its action on other more broad charges, they may be prohibited from doing so. Arbitrators are loathed to allow the expansion of a claim after the fact.

Moreover, the rule of reason based on time should be considered. In other words, past charges which are "stale" may not be used against the grievor. (Be careful on this point. For example, if the union wanted to introduce evidence to show the grievor has been a good worker for 5 years, they may open a *Pandora's box* to allow the company to introduce evidence which shows the bad aspects of the grievor's work history.)

Look for Motive

Where fights or insubordination, profanity, etc., are involved, check to see if the grievor was provoked or trying to defend him/herself. An employee who acts in self defense will be treated much differently than one who initiates aggressive conduct.”

Exercise: Grievance or Complaint?

Analyze the following situations and indicate whether or not the situation is a grievance or a complaint by circling "YES" if you think it is a grievance or "NO" if you think it is a complaint.

Be prepared to discuss the reasons for your choice. If no clear cut determination can be made, be prepared to discuss the relevant factors.

- | | | |
|--|-----|----|
| 1. The Company has announced that beginning next month they will be conducting random drug and alcohol testing for all employees working in safety sensitive areas. | Yes | No |
| 2. While investigating a disciplinary matter, the company denies you access to the employee's personal file. | Yes | No |
| 3. The employer has scheduled a two hour department safety meeting on your day off and will pay you for time attended. You have plans and don't want to attend. The employer has advised everyone that all affected employees must attend. | Yes | No |
| 4. A worker, with a history of being late has been reprimanded for being fifteen minutes late when three others who came in after her were not. | Yes | No |
| 5. You have been instructed to perform work in an area that has a number of safety hazards and you are concerned about your personal safety. You have been told to do the work or go home. | Yes | No |
| 6. You have suffered a workplace injury that has caused a permanent disability. Upon your return to work, you have been reclassified and assigned a new position with a 20% pay cut. | Yes | No |
| 7. Time off to attend the birth of a child is not provided for in the contract but it has always been allowed. Your spouse is having a baby and you request the day off but the Employer says no. | Yes | No |
| 8. You have just learned that some members are being paid at a rate higher than that provided for in the collective agreement. | Yes | No |
| 9. A member tells you that she has repeatedly been denied proper operating instructions from her supervisor. This is affecting her ability to do her job properly. | Yes | No |

- | | | |
|---|-----|----|
| 10. An employee requests to take an afternoon off next week to attend her son's school concert. The employer said ok but on the day of the concert the employee is told that because of an unexpected delivery she cannot leave. | Yes | No |
| 11. Even though you are the senior person in your department the company chooses another employee to fill in for the Department Supervisor who is off sick. | Yes | No |
| 12. After work an employee stops at a local bar to have a beer with some co-workers. He did not bother to change from his work uniform before leaving. The next day he is called in to the supervisor's office and is reprimanded. | Yes | No |
| 13. You recently get an arbitration award that upholds the union's grievance against the employer. Within a week the employer, does the same thing. | Yes | No |
| 14. Your current spouse has a stepdaughter who is getting married. You put in for time off but it is denied. | Yes | No |
| 15. The employer has given a productivity bonus to all employees in the fabrication department and nothing to the other employees in assembly and finishing shop. | Yes | No |
| 16. The supervisor has instructed all employees to wear safety glasses and ear protection at all times in the bottling area of the plant. A member uses the bottling area as a short cut to get to the employee lounge for his break. He did not wear his safety glasses or ear plugs as he was not working in the bottling area but simply passing through. He has been reprimanded for his conduct. | Yes | No |
| 17. The employer has advised a long time employee that she is being reassigned to a new work site that will require her to work all night shifts. The employee has a medical condition that will be affected by this change. | Yes | No |

Actual Workplace Grievance

Practical Exercise:

The following page is a blank grievance form provided by your Local. With the person you are teamed up with; decide which of you will play the role of a **grievor** and who will be the **Steward**.

As the **grievor**, think about one of your own experiences at your workplace. This may be a disciplinary issue, a denial of overtime, unsuccessful job competition or an improper work assignment, just to name a few.

As the **Steward**, you will be given 15 minutes to interview the grievor about this matter and then prepare a grievance form as though you are actually submitting it to your Employer.

We will then randomly select a few of these to discuss with the class.

As the **Steward**, be prepared to discuss the issue, why you are grieving it and what it is you are seeking to settle the grievance.

As the **grievor**, you will comment on what the Steward had to say; did the Steward represent the issue properly, did he/she request the right adjustment to settle the grievance?

After reviewing a few of these, you will then switch roles and be given another 15 minutes to perform the same exercise.



Grievance Report

INTERNATIONAL UNION OF OPERATING ENGINEERS
LOCAL NO. _____

Name of Employee	Name of Employer
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Dept.	Shift	Name of Manager
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Nature of Grievance _____

Request for Adjustment _____

Clause(s) of contract violated _____

Date _____

Grievor's Signature

Disposition of grievance _____

Date _____ Signature of Company Rep _____

Steward _____

ARBITRATION

Traditional Arbitration

In most collective bargaining agreements the final step in the grievance process is arbitration. When labour and management can't work out the problem through use of the grievance machinery, it's agreed that they will submit the dispute to an impartial outsider—an arbitrator.

There are a number of positive things about being able to take unresolved disputes to arbitration, and a number of negatives as well. First, the good things:

The Upside

For starters, the decision as to what rights the union has under its contract is made by a neutral third party. Unlike the steps of the grievance procedure in which a series of closed-minded management representatives can just say no, an arbitration results in a decision being issued by someone who isn't connected financially or organizationally to either side.

Second, arbitration awards are final and binding. For all practical purposes, there's usually no appeal of an arbitration award although a Court of appropriate jurisdiction can review a decision.

Finally, after a hard-fought legal battle, a formal outside finding that the employer has violated your contract rights packs a punch that a grievance settlement lacks. But it's important to recognize the limitations of arbitrating cases, as well.

The Down Side

There's no need to quarrel with the fact that it's better to win an arbitration case than to lose one. But just the same, the focus of a steward's efforts should be on resolving disputes at the lowest level, in the shortest time possible. Except for a rare situation where tactical considerations come into play, it's a mistake to hold back when you argue a grievance, thinking you'd rather win the Big One at arbitration. In the eyes of your members, the faster you can deliver the goods, the better their union looks to them. Justice delayed is justice denied.

Keep in mind that you've got a responsibility as steward to use the union's resources carefully. While an arbitration case may be cheaper than litigating a court case, it's incredibly more expensive than settling the dispute at the grievance level. Remember that when a case goes to arbitration, you—and the union—lose control in a number of ways.

An arbitration award can also be a big surprise—for both sides. When you settle a grievance, it's on terms the union and the employer understand and find acceptable. Sometimes an arbitrator looking for a way to 'split the difference' will issue an award that doesn't really give either side what they want. Worse yet, an arbitrator who doesn't understand the day-to-day realities of your workplace can make an award that leaves both sides scratching their heads, while the issue that triggered the grievance remains unresolved.

What Can Be Arbitrated or Settled Through the Grievance Process?

In general, labour-management grievance resolution is divided into two fields: contract negotiation disputes, sometimes called resolution of interests; and contract interpretation disputes, sometimes called resolution of rights. The latter is much more prevalent. The issues that arise under the latter are called grievances. Grievances and other disputes that cannot be resolved through the grievance process can be referred to Arbitration.

Who Pays for Arbitrators?

Arbitration costs are usually borne jointly. The parties (employer and union) must pay for all expenses including stenographic transcripts should they be necessary. The Federal Mediation and Conciliation Service (FMCS) have found that the average arbitration case in private industry took about three days of the arbitrator's time. This includes hearing, travel and study time. Some contracts have a provision stating that the "loser pays." If this provision is contained in your agreement then your costs may go up significantly. A typical arbitration case in Canada today costs somewhere between \$5,000 and \$8,000 (without lawyers) and cases exceeding \$100,000 are not unheard of.

What Happens During a Dispute Settlement Hearing?

Many questions arise when considering the resolution of grievances, especially if you have never witnessed or been involved in a hearing. For example, you may ask:

- Where do the hearings take place?
- Who is present?
- Who presents their case first?
- What is evidence?
- Who has the burden of proof?
- Does the grievor need a lawyer?
- What research is necessary?

The following is a general analysis of these questions, but, by no means covers all of the possibilities:

Where do hearings take place?

Unlike court cases, grievance cases can take place in offices, classrooms, plants or other places convenient to employees, union officials, management or the arbitrator. The hearing is usually informal. Usually though, most arbitrations are held in local hotel meeting rooms.

Who is present?

At a typical arbitration hearing you will have an arbitration board or a single arbitrator, the grievor, the shop steward and the union representative along with the human resource person of the company, the supervisor or foreman. If additional witnesses are necessary they will be present at the start of the hearing but maybe required to step out until they are called upon to give evidence.

What is evidence?

Evidence is that which tends to prove or disprove something. It is information in the form of testimony from witnesses or of documents or other objects such as photographs, etc., identified by witnesses and offered in support of the facts in the issue.

Types of evidence—there are basically **three** types of evidence. There is best evidence or **direct evidence** which deals directly with either documents or direct testimony with the issues at hand. In addition, there is **secondary evidence** which could include reproduction of documents, hearsay, opinion, etc., and lastly, there is **circumstantial evidence**—evidence that would indicate that a sequence of actions or circumstances could in fact, have lead to the act in question.

Who has the burden of proof?

The burden of proof rests with the grievor, except where the agreement provides otherwise or unless the action was disciplinary in nature. The grievor must show by a preponderance of the evidence the validity of his/her position. This means the heaviest task falls to the union.

In a disciplinary action the burden of proof rests with the employer. However, it is possible for the burden to shift. Example: An employee is disciplined for consistently damaging stock in a warehouse. To establish guilt the burden of proof lies with the employer. However, if, after the employer makes his case upon its facts, the union contends that the damages were due to faulty equipment, the burden of proof is then transferred to the union. If strong evidence supporting the union's contention is shown, the burden of proof again appears to be on the employer.

Who presents the case first?

Whether management or the union presents their case first depends on who has the burden of proof. For example, if the grievance is regarding discipline then the onus is on the employer to prove why they disciplined the employee, therefore the employer would present their case first.

Does the member need a lawyer as a representative at an arbitration hearing?

In the vast majority of cases the answer is **no**. In some matters where the issue is strictly a legal argument based on legislative rights, or if there is some concern about conflict of interest or potential legal fall out, the Local may choose to have their lawyer present.

How long does an arbitrator have to render a decision?

Most collective agreements will specify a time period within which an Arbitrator must render his decision. Normally, the Arbitrator will request that the parties waive this requirement with the understanding that the decision will be forthcoming as soon as possible. Since neither party wants to offend the Arbitrator, this is usually agreed upon. In a Federal Mediation and Conciliation service study it was found that on average, it took 52 days from the date of hearing for an Arbitrator to render a decision.

What takes place after an arbitration hearing?

Provision is made in some cases and some agreements for the filing of post hearing briefs although most arbitrators try to discourage this. Only after these have been submitted is the hearing declared closed. The arbitrator or board will then review all of the facts and the collective agreement and issue an award.

How can an arbitrator's award be overturned?

Arbitration awards can be challenged by applying for judicial review before a Court of competent jurisdiction. The Court may rule that the arbitrator exceeded his jurisdiction, the decision was patently unreasonable or that there was a denial of natural justice. The Courts today are becoming more reluctant to get involved in these types of matters. The Courts are also becoming more liberal in their interpretation of what constitutes unreasonableness.

What are some of the common mistakes made about arbitration?

1. Using arbitration and arbitration costs as a harassing technique.
2. Overemphasis of the grievance by the union or exaggeration of an employee's fault by management.
3. Reliance on a minimum of facts and a maximum of arguments.
4. Concealing essential facts; distorting the truth.
5. Holding back books, records and other supporting documents.
6. Tying up proceedings with legal technicalities.
7. Introducing witnesses who have not been properly instructed on their conduct during the hearing and on the place of their testimony in the entire case.
8. Withholding full cooperation from the arbitrator.
9. Disregarding the ordinary rules of courtesy and decorum.
10. Becoming involved in arguments with the other side. The time to try to convince the other party is before arbitration, during grievance processing particularly when the Steward is involved. At the arbitration hearing all efforts should be concentrated on convincing the arbitrator.

The Steward as a Witness

Being a witness in a grievance panel hearing and especially at traditional arbitration hearing can be a stressful experience. It is normal for witnesses to worry about giving evidence. You want to leave a favorable impression. You naturally are concerned that during cross-examination the opposing presenter will attempt to discredit your testimony, to cause you to contradict yourself, and thereby sound inconsistent and untruthful.

It is important to be as comfortable as possible. Your comfort level will improve considerably if you are aware of how panel proceedings are conducted, if you know what to expect and if you know how to compose yourself. Equally as important, you should be able to give your testimony in a manner that the panel finds understandable and believable. The following should help you.

- 1) **Sit comfortably and erect.** Try not to slouch, change position frequently, fidget, or wave your arms about. Your objective is to appear calm, confident, and self-assured.
- 2) **Tell the truth.** When on the witness stand you should tell the truth, keep your answers short and to the point and only answer what is asked of you. When meeting with your representative (H.R. or Union) to prepare the case make sure he/she has all relevant information that you are aware of. Don't hold things back! Remember all of the rules outlined in this section.
- 3) **Don't volunteer information.** Answer the opposing presenter's questions honestly and directly but answer only what is asked. If you can answer with a yes or no, do so and stop. If there is something you have left untold which could be helpful to your case, it is the responsibility of your presenter to bring it out during re-direct examination. Remember, you are not on the witness stand to try the case. You are there only to answer the questions asked of you.
- 4) **Answer all questions asked of you, no matter by whom, in a courteous and forthright manner.** You will be asked questions by your presenter, the opposing side, and often by the board or the panel. Answer them all in the same tone, in the same manner, with the same demeanor - honestly, forthrightly and courteously.
- 5) **Don't argue with the opposing presenter or members of the panel.** It is the job of the other party's presenter to try to upset you, get you angry or irritated, attempt to discredit you, and cause you to contradict yourself. The opposing presenter may use harsh tactics or an aggressive manner. Don't get angry, sarcastic, snide or emotional.

- 6) **Be alert and attentive.** If you are in the hearing room during other testimony, pay attention to what's going on. If other evidence reminds you of something relevant you forgot to mention to your presenter, quietly pass a note telling them about it.

- 7) **Watch the members of the board or panel.** The body language of these members may communicate an attitude. Watch when they pick up a pencil to make a note. Has something significant just happened? Was it something helpful or damaging to your case? **Don't patronize the board or panel.** If you treat the members in an exceptionally friendly manner and the other side observes it, the chair may be placed in an awkward position. The chair may feel the need to compensate for your manner by demonstrating to the other side that he/she has not been prejudiced by your actions or words.

- 8) **Consider each question before answering.** Questions should be answered without hesitation, long pauses or undue reflection. Don't let the cross-examiner set the pace for your answers. **Think before you answer.** If you give an answer which is incorrect or unclear, correct or clarify it promptly.

- 9) **Don't repeat questions before answering them.** This gives the appearance of stalling or delaying. Try to answer questions with reasonable promptness to avoid casting suspicions on your credibility.

- 10) **Don't answer a question you don't understand.** If a question is ambiguous or unclear to you, ask the questioner to repeat the question, or rephrase it. Do this as many times as necessary for you to clearly comprehend the question. If you answer without being certain of what is being asked, you run the risk that the panel may misunderstand your answer.

- 11) **Don't deny that you have reviewed your testimony with your presenter.** Occasionally, the opposing side may ask you if you've gone over your testimony with your presenter prior to the hearing, implying that this is wrong. **Tell the truth.** If the answer is yes, simply say so.

- 12) **Don't be afraid to say, "I don't know."** No witness is expected to know all there is to know about any given subject. If you have answered questions asked of you in a straightforward manner you may actually enhance your credibility when you say "I don't know" to other questions.

- 13) **Don't mumble; speak clearly.** Your testimony is of value only if it is heard and understood by the panel. Keep your hands away from your face. Hold your hands still or fold them comfortably on your lap. Covering your mouth conveys an impression of nervousness, tension or evasiveness, all of which reflect poorly on your credibility.
- 14) **Don't answer a question if your presenter raises an objection.** The reasons for your presenter's objection may not always be clear to you, but you can be sure it is intended to be in your best interest. If this happens, take a deep breath and relax. Don't continue testifying until the panel chair tells you to.
- 15) **Don't look to your presenter for answers to a question.** The answers to questions asked of you must come only from you. If the panel sees you getting signs or nods or head shakes from someone else, it may discredit your testimony.
- 16) **Realize that witnesses may be excluded from the hearing when not testifying.** One of the traditional methods of preserving the "purity of testimony" is the rule that excludes, or sequesters, witnesses from the hearing during the testimony of others. When either party requests it, it is invariably granted. This is to guard against the possibility that one witness may be influenced by what he/she has heard someone else say. It also highlights the importance of each witness telling the truth.
- 17) **Understand that the board or panel may also ask you questions.** The board or the panel has the right to ask questions of witnesses to clarify a point, and to obtain information. Just as in direct and cross-examination, you should be courteous, honest, and forthright in the answers you provide.
- 18) **Be prepared for the cross-examiner to use harsh or aggressive tactics.** The objectives of cross-examination may be classified as: discrediting the testimony of the witness; using the testimony of other witnesses; using the testimony of this witness to contribute independently to the favorable development of one's own case. Different tactics are used to accomplish different goals. It is not uncommon for the cross-examiner to use an aggressive manner or even harsh tactics. Be calm, cool, and self-assured. The board or panel members are carefully evaluating you, your behavior and your remarks, so be sure to keep yourself under control.
- 19) **Study carefully any contract provisions applicable to the case.** You are not expected to be an expert on the contract. However, it is beneficial for you to have at least a working knowledge of the relevant provision(s) if you were interpreting or applying them in connection with some decisions made or actions taken.

How Stewards Can Help At a Hearing

Until the other side presents its case, your case, no matter how well prepared, is strictly tentative, having been prepared on a foundation of anticipation. Therefore, while the other side's case is in actual progress, you must mold the kind of final defense that will disprove most convincingly what the opposition has presented.

In order to analyze and digest their case, it is most important to take careful notes. It is essential that the next three phases of the hearing be kept constantly in mind. They are:

1. The cross-examination of the opposition's witnesses.
2. The presentation of any necessary rebuttal witnesses.
3. The closing statement.

While opposing witnesses are testifying, you can assist your Union Representative by taking notes and looking ahead to cross-examination. Therefore, in taking notes, it is good to underline any testimony which in your opinion should be considered when you conduct your cross-examination. Here are some examples of testimony you should look for and underline for later handling:

1. Testimony that is not clear. A witness may be vague on an important aspect of the case, and this could be interpreted several different ways. You may want to point this vagueness to your Union Representative. On the other hand, testimony that isn't clear may serve to your advantage and can be addressed by your Business Representative for the closing statement.
2. Testimony that is not complete. When an opposing witness is drawing near the end of his or her direct examination, you may realize that their testimony is incomplete. The obvious question becomes why was the testimony left out? You may want to pass a note to your Business Rep or lawyer suggesting a quick caucus to review these points.
3. Testimony that is contradictory. There will be times when you will hear testimony of a witness that contradicts that of previous witnesses. Make note of these points and pass them along to your Union Representative or lawyer before cross-examination.
4. Testimony that is Hearsay or Opinion. You should understand that arbitration hearings are less formal than courtrooms. Hearsay or opinion evidence is fairly common in an arbitration hearing. The arbitrators or panel members are experienced enough to give the appropriate weight or value to such testimony.
5. Testimony that brings in new evidence. If new evidence arises at the hearing that you may have personal knowledge about, it is a good idea to ask for a quick caucus and convey what you know to your Union Representative or lawyer. This may assist your Representative in determining an appropriate cross-examination or asking for an adjournment.

The Canadian Joint Grievance Panel

“AN ALTERNATIVE TO TRADITIONAL ARBITRATION”

The Canadian Joint Grievance Panel Inc. (hereinafter referred to as the C.J.G.P.) was established in 1998 as an alternative dispute resolution procedure for unions and employers across Canada. Karen Sasko is the President and Coordinator. The C.J.G.P. is recognized by the Canada Labour Board, the Ontario Labour Board and the British Columbia Labour Board. Two of the main features of the Canadian Joint Grievance Panel are time efficiency and cost effectiveness. In today's industrial relations environment, grievance arbitrations are becoming a burdensome and cost restrictive process. The C.J.G.P. offers a solution to both of these issues.

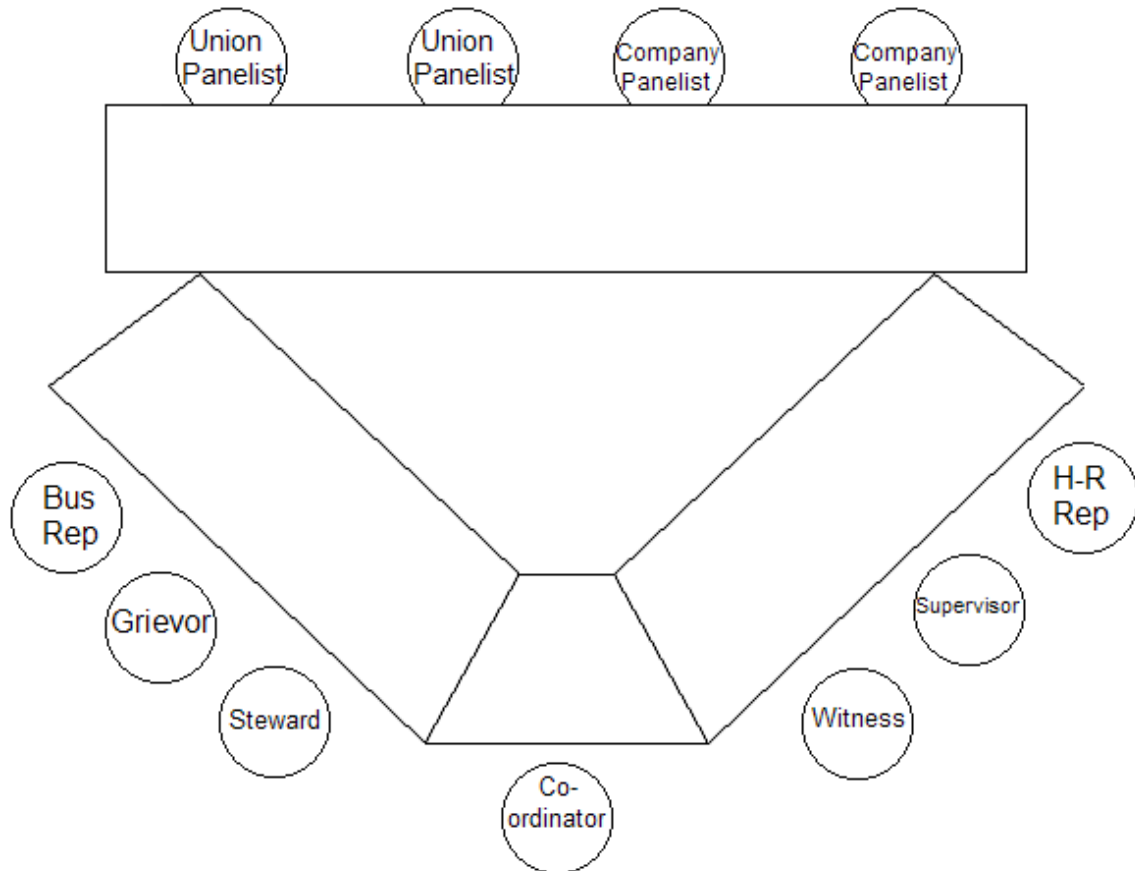
There are two procedures under the C.J.G.P. known as Schedule 1 and Schedule 2 described below:

Schedule 1

- ❖ The Panel is composed of 4 panelists, 2 union representatives and 2 employer representatives. Panelists cannot be related to the company or local union who has the grievance before the Panel.
- ❖ No arbitrator is used. The decision is made by the panelists in an executive session.
- ❖ Lawyers are not involved and case law is not permitted.
- ❖ Labour & employer representatives present their cases.
- ❖ Grievor, union steward and employer representatives attend.
- ❖ The number of grievances heard in a one day hearing depends on the complexity of the case; typically 4 to 8 grievances can be resolved.
- ❖ The decisions rendered are final and binding, but not precedent setting.
- ❖ All decisions are rendered that same day and provided to the parties within 48 hours.

Schedule 1 Hearing

Seating Chart



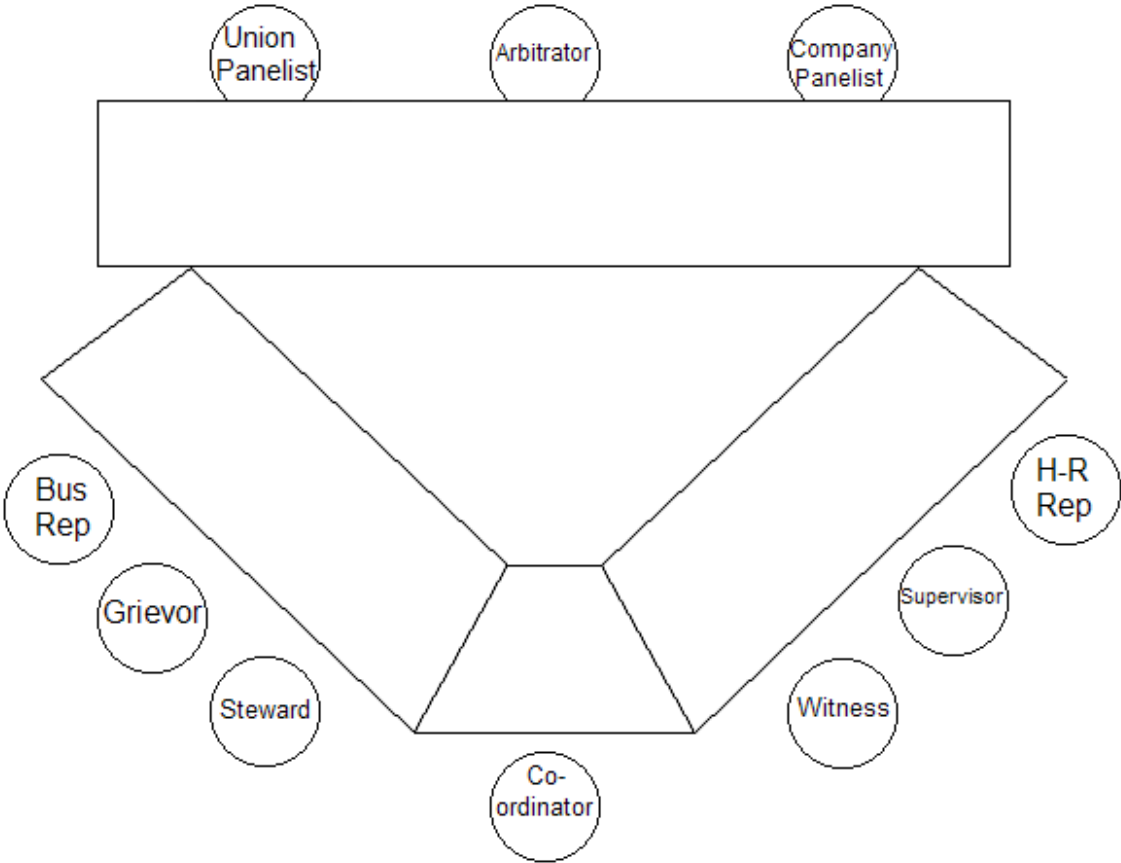
Focus your attention on the Panel,
rather than the opposing party!

Schedule 2 – Overview

- ❖ An arbitrator is selected from an agreed upon list established by the parties. They are assigned on a rotation basis.
- ❖ Only two panelists are used, 1 employer and 1 union. The employer panelist can be someone who is not involved with the grievance on the work site from where the grievance is generated.
- ❖ Lawyers and case law are not permitted.
- ❖ Typically 2-3 grievances can be heard in one day.
- ❖ A one-page decision is given that day by the arbitrator, typed by the coordinator and provided to the parties within 48 hours.
- ❖ Examples of grievances heard: deadlocked cases from Schedule 1, contract language interpretation, serious disciplinary grievances or any issues that the parties may want an arbitrator's decision on.

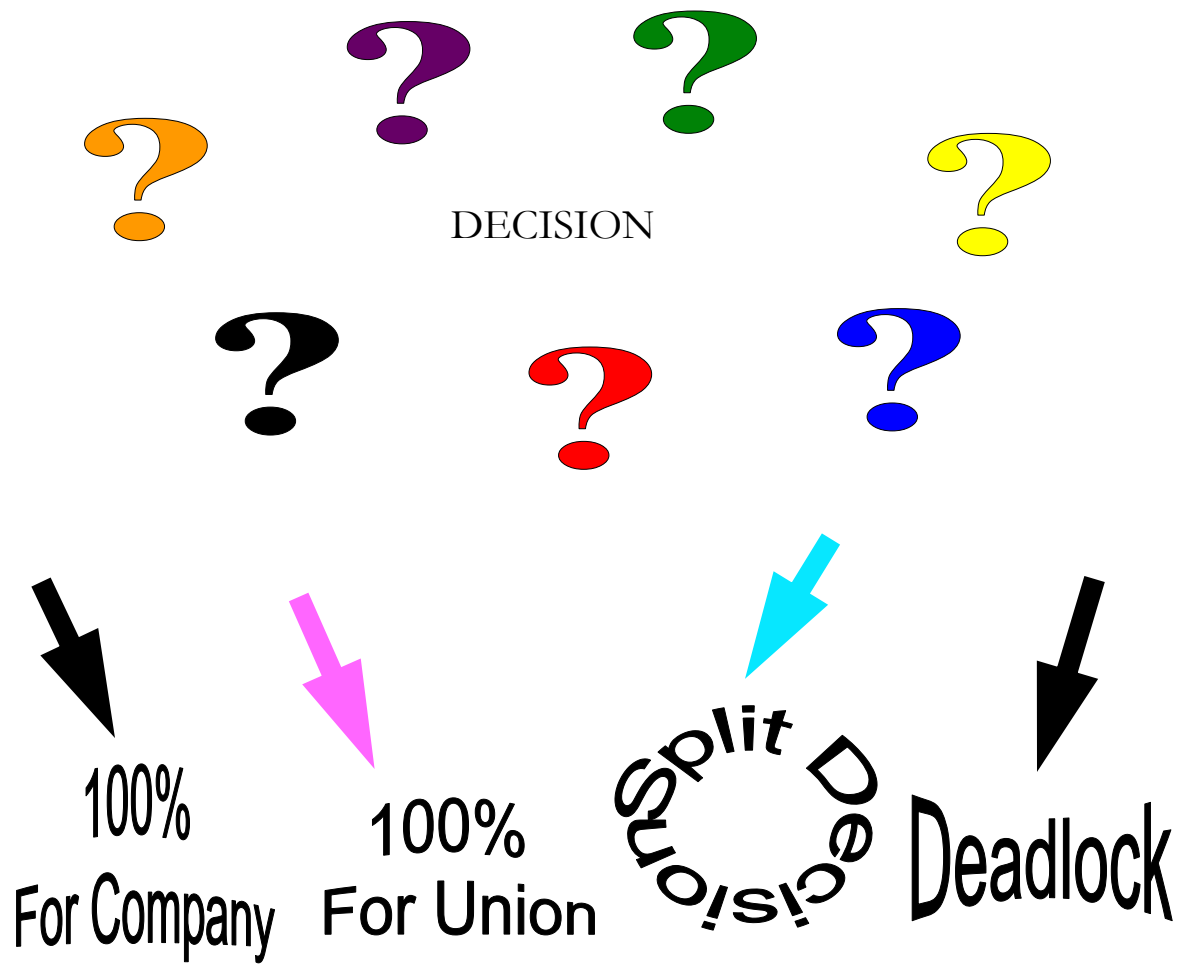
Schedule 2 Hearing

Seating Chart



Focus your attention on the Panel,
rather than the opposing party!

How Is A Decision Reached?



A Majority of Panel Members are required for a decision.

The Decision is Final and Binding but **Not** Precedent setting.

Deadlock Indicates That A Majority Decision Could Not Be Reached.

How Is The Award Written?

When a majority of Panelists have reached a consensus, the Chairman will draft the Award.

Typically, the Award will be a few short sentences. Since these Awards are non-precedent setting, there is no need for a lengthy dissertation on the facts and reasons for reaching the decision. Panels in this process will simply state that, "The grievance is upheld, or denied."

If the grievance is upheld, and the grievance form has clearly stated the requested remedy, then nothing further need be added. In the event the remedy is not clearly stated or the Panel decides to award something different, the draft award will include a brief outline as to what action must be taken by the Employer.

Remember, the Panel can always render a decision that it believes to be fair and reasonable under the circumstances as long as it does not change or amend contract language.

An Award sheet will be provided at the beginning of each case by the Coordinator. The Chairperson will write up the decision on the Award sheet and all Panelists will sign off, either supporting the award or dissenting. If there is a deadlock, the Award will state this and all Panelists will simply sign off. Even if a Panelist wishes to abstain he/she should still sign off on the Award sheet as abstaining from the decision.

The Award sheet is then given to the Coordinator. The Coordinator will type up the award and distribute to the parties, usually within 48 hours. The award is not given to the parties the day of Hearing to allow for a cooling off period.

The Coordinator will keep the 'original' (signed) copy of the award on file in case it is needed for some purpose later on.

AWARD SHEET

DATE OF HEARING _____ DOCKET NO. _____

COMPANY NAME _____

AGGRIEVED EMPLOYEE - NAME _____

GRIEVANCE NO. _____

DATE OF GRIEVANCE _____

LOCAL UNION NO. _____ UNION REP. _____

- AWARD -

THE PANEL AWARD

(for the Union)

(for the Employer)

The Benefits to Using the CJGP to Traditional Arbitration:

- ❖ A mutually acceptable alternative dispute resolution process.
- ❖ Grievor/supervisor are involved at Hearing
- ❖ Grievances are heard, based on their own merit.
- ❖ The parties themselves control the agenda and schedule of hearings.
- ❖ Experienced labour and management representatives acting as panelists.
- ❖ A final and binding decision is given.
- ❖ Case law and lawyers are not involved.
- ❖ A time efficient and cost effective procedure.

Listed below are a few examples of grievances taken to the C.J.G.P. process:

In British Columbia, a grievance was brought to a Schedule 1 Panel which was identical to a grievance already settled through traditional arbitration. The C.J.G.P. heard the matter within days and rendered the exact same decision as the traditional arbitration. The difference, other than time efficiency (4 weeks from notification to day of hearing), was the bill to the parties: under traditional arbitration - \$3,783 and the cost to the parties under the C.J.G.P. - \$738.

In Prince Edward Island a Schedule II hearing was used in a dismissal case. A well known arbitrator from Halifax was used and his fees were \$1,500 plus travel.

In New Brunswick, another well known Arbitrator heard two dismissal cases in one day at the same fee schedule. Had the parties used traditional arbitration, the costs for these cases would easily have exceeded \$10,000.

When you take into account the time spent with lawyers and the extra costs involved with traditional arbitration, there is little doubt that the C.J.G.P. is a viable and attractive alternative for contract dispute resolution!

LEGISLATIVE & WORKPLACE ISSUES

Canadian Human Rights

The Canadian Human Rights Act prohibits discrimination on the basis of disability and perceived disability. Disability **includes** those with a previous or existing dependence on alcohol or a drug. Perceived disability may include an employer's perception that a person's use of alcohol or drugs makes him or her unfit to work.

The Commission will accept complaints from employees and applicants for employment who believe they have been dismissed, disciplined or treated negatively as a result of testing positive on a drug or alcohol test. Workplace alcohol- or drug-testing policies that contain discriminatory elements may also be the subject of complaints.

Because they cannot be established as bona fide occupational requirements, the following types of testing are **not acceptable**:

- Pre-employment drug testing
- Pre-employment alcohol testing
- Random drug testing
- Random alcohol testing of employees in non-safety-sensitive positions.
- The following types of testing **may be included** in a workplace drug- and alcohol-testing program, but only if an employer can demonstrate that they are **bona fide occupational requirements**:
- Random alcohol testing of employees in **safety sensitive positions**. Alcohol testing has been found to be a reasonable requirement because alcohol testing can indicate actual impairment of ability to perform or fulfill the essential duties or requirements of the job. Random drug testing is prohibited because, given its technical limitations, drug testing can only detect the presence of drugs and not if or when an employee may have been impaired by drug use.
- Drug or alcohol testing for "**reasonable cause**" or "**post-accident**" e.g. where there are reasonable grounds to believe there is an underlying problem of substance abuse or where an accident has occurred due to impairment from drugs or alcohol, provided that testing is a part of a broader program of medical assessment, monitoring and support.
- **Periodic** or random testing following disclosure of a current drug or alcohol dependency or abuse problem may be acceptable if tailored to individual circumstances and as part of a broader program of monitoring and support. Usually, a designated rehabilitation provider will determine whether follow-up testing is necessary for a particular individual.
- Mandatory disclosure of present or **past drug or alcohol dependency** or abuse may be permissible for employees holding safety-sensitive positions, within certain limits,

and in concert with accommodation measures. Generally, employees not in safety-sensitive positions should not be required to disclose past alcohol or drug problems.

In the limited circumstances where testing is justified, employees who test positive must be accommodated to the point of undue hardship. The Canadian Human Rights Act requires individualized or personalized accommodation measures. **Policies that result in the employee's automatic loss of employment, reassignment, or that impose inflexible reinstatement conditions without regard for personal circumstances are unlikely to meet this requirement.** Accommodation should include the necessary support to permit the employee to undergo treatment or a rehabilitation program, and consideration of sanctions less severe than dismissal.

The employer will be relieved of the duty to accommodate the individual needs of the alcohol or drug-dependent employee only if the employer can show that:

- 1. the cost of accommodation would alter the nature or affect the viability of the enterprise, OR**
- 2. notwithstanding the accommodation efforts, health or safety risks to workers or members of the public are so serious that they outweigh the benefits of providing individualized accommodation or consideration to a worker with an addiction or dependency problem.**

The Commission supports the use of methods other than drug and alcohol testing for dealing with employee impairment. Awareness, education, rehabilitation, and effective interventions such as enhanced supervision and peer monitoring are the most effective ways of ensuring that performance issues associated with alcohol and drug use are detected and resolved.

Introduction

The Commission recognizes that inappropriate use of alcohol or drugs can have serious adverse effects on a person's health, safety and job performance. Safety is a prime consideration for employees and employers; however the need to ensure safety must be balanced against the requirement that employees not be discriminated against on the basis of a prohibited ground of discrimination. Workplace rules and standards that have no demonstrable relationship to job safety and performance have been found to be in violation of an employee's human rights.

In the Commission's view, drug testing is generally not acceptable, because it does not assess the effect of drug use on performance. Available drug tests do not measure impairment, how much was used or when it was used. They can only accurately determine past drug exposure. Therefore, a drug test is not a reliable means of determining whether a person is — or is not capable of performing the essential requirements or duties of their position. That being said, alcohol testing may be acceptable in some cases because a properly administered breathalyzer is a minimally intrusive and accurate measure of both consumption of alcohol and actual impairment.

If impairment is a concern in the workplace, whether from stress and anxiety, fatigue or substance abuse, an employer should focus on ways of identifying potential safety risks and remedying them, rather than taking a punitive approach to this issue. Awareness, education, effective interventions and rehabilitation are the most effective ways of ensuring that performance issues associated with alcohol and drug use are detected and resolved. An employer should consider adopting comprehensive workplace health policies that may include employee assistance programs, drug education and health promotion programs, off-site counselling and referral services, peer or supervisor monitoring.

Policy Objective

The object of this policy is to set out the Commission's interpretation of the human rights limits on drug- and alcohol-testing programs, as well as provide practical guidance on compliance with the Canadian Human Rights Act. This policy was developed following a public consultation and after studying Canadian human rights law. The Commission will apply its policies in the enforcement and interpretation of the Act.

This policy is not a substitute for legal advice and any employer considering a drug- and alcohol-testing policy should seek legal guidance on this issue.

General Policy Statement

Requiring an employee or applicant of employment to undergo a drug test as a condition of employment will, in most cases, be considered a discriminatory practice on the ground of disability. Individuals who believe they have been treated unfavourably, lose or are denied employment as a result of testing positively for past drug use, may file a complaint under the Canadian Human Rights Act.

Given that alcohol testing can measure impairment, alcohol testing of employees in safety-sensitive positions may be acceptable, although the employer must accommodate the needs of those who test positive.

Guiding Principles

Legal Framework

Recent decisions of the Supreme Court of Canada and the Ontario Court of Appeal have put into question whether drug testing, such as pre-employment and random testing, even for employees in safety-sensitive positions, can ever be justified. These decisions were, in part, the impetus for the Commission's decision to update its policy on drug testing and to provide a framework for the issue of alcohol testing in the workplace.

The Canadian Human Rights Act prohibits discrimination on the basis of disability and perceived disability. **Disability includes those with a previous or existing dependence on alcohol or a drug.** Perceived disability may include an employer's perception that a person's use of alcohol or drugs makes him or her unfit to work.

In accordance with current case law on the issue of drug and alcohol testing, and consistent with the Act's prohibition of discrimination on the ground of real or perceived disability, drug- and alcohol-testing policies are prima facie discriminatory — not only against drug- and alcohol-dependent persons, but also against all drug and alcohol users who are subject to

adverse consequences as a result of detection of such use. Under the Canadian Human Rights Act, the issue is not whether an individual is a dependent or casual drug or alcohol user, but rather how such a person is treated by the employer. For example, testing programs may be used to deny employment to those who test positive, label a person as drug- or alcohol-dependent and impose employment conditions on those persons. Even when programs are rehabilitative in nature, such programs negatively affect employment opportunities, thus triggering the protection of the Act.

The Bona Fide Occupational Requirement (**BFOR**) is the most common defense raised by employers against allegations of employment discrimination. In the Meiorin (BC forest fire fighter) case, the Supreme Court of Canada set out a new test for determining whether an employer has established a BFOR and satisfied the duty of accommodation short of undue hardship. Under the test, the following questions must be asked:

1. **Did the employer adopt the policy or standard for a purpose rationally connected to the performance of the job?**
2. **Did the employer adopt the particular policy or standard in an honest and good faith belief that it was necessary to the fulfillment of that legitimate, work-related purpose?**
3. **Is the policy or standard reasonably necessary to the accomplishment of that legitimate, work-related purpose?**

This last element requires the employer to show that the policy or standard adopted is the least discriminatory way to achieve the purpose or goal in relation to the particular jobs to which the policy or standard applies. It includes the requirement for the employer to demonstrate that it is impossible to accommodate individual employees without imposing undue hardship.

As a result of the Meiorin decision, the Commission has modified its approach to the investigation of complaints related to employment standards. All allegedly discriminatory standards and policies must be justified as **rationally connected to the work or service, made in good faith, and reasonably necessary**. Investigations now also consider whether the standard has the effect of excluding on impressionistic assumptions members of a particular group, or treating one or more groups more harshly than others without apparent justification. The onus is on the respondent (i.e. the employer) to provide evidence of each of the elements of the test set out by the Court.

Legal Decisions on Alcohol and Drug Testing

In **Entrop v. Imperial Oil**, the Ontario Court of Appeal had an opportunity to apply the Meiorin test (see pg. 81) to the issue of drug and alcohol testing. The case involved an employee of Imperial Oil who was compelled under company policy to reveal a past drinking problem. The employee, Martin Entrop, was subsequently **removed from his position in a "safety-sensitive" area, despite the fact that he had been alcohol-free for several years**. Mr. Entrop then filed a complaint with the Ontario Human Rights Commission. His complaint triggered an analysis of drug- and alcohol-testing policies in the workplace that went all the way to the Ontario Court of Appeal.

First, the Court of Appeal concluded that alcohol and drug testing is prima facie discriminatory. It then applied the test developed by the Supreme Court in Meiorin to determine whether, and in what circumstances, drug and alcohol tests may be justified as bona fide occupational requirements. The Court concluded that Imperial Oil had satisfied the first two steps of the test set out by the Supreme Court: rational connection and honest and good faith belief.

In considering the third branch of the test, the Court first noted a **critical difference** between alcohol and drug tests. Alcohol tests, i.e. a breathalyzer, can test whether a person is actually impaired at the moment the test is administered. That is, an alcohol test, if applied to a person on the job, can tell whether that person is fit to do his or her job. On the other hand, the Court noted drug tests, such as urinalysis, cannot measure whether a person is under the effect of a drug at the time the test is administered. A drug test can only detect past drug use.

An employer who administers a drug test cannot tell whether that person is impaired at the moment, or whether they are likely to be impaired while on the job.

With this distinction established, the Court considered alcohol or drug tests in various circumstances. For example, the Court concluded that random alcohol testing of employees was permissible for employees in safety-sensitive positions. **In the opinion of the Court, employers can legitimately take steps to detect alcohol impairment among its employees in safety-sensitive positions, where supervision is limited or non-existent.**

In his comments on drug testing, Justice Laskin reasoned that, **because drug testing cannot measure present impairment, future impairment or likely impairment on the job**, Imperial Oil could not justify pre-employment testing or random drug testing for employees in safety-sensitive (or other) positions as reasonably necessary to accomplish Imperial Oil's legitimate goal of a safe workplace, free from impairment (the third branch of the Supreme Court test). Further, the Ontario Court of Appeal found drug-testing programs had not been shown to be effective in reducing drug use, work accidents or work performance problems.

The Court held that drug testing for "reasonable cause" or "post-accident" and post-reinstatement, may be acceptable if "...necessary as one facet of a larger process of assessment of drug abuse." Neither the tribunal nor the courts elaborated on what larger process of assessment is required.

The Court also concluded that Imperial Oil's sanction for a positive test by an employee in a safe-sensitive position — dismissal — was not sufficiently sensitive to individual capabilities. Based on this decision, it would appear that if an employer seeks to introduce random drug testing into the workplace, it will only be successful if there is drug-testing technology that can demonstrate a current state of impairment, as a breathalyzer can demonstrate alcohol impairment.

The Entrop decision is final and will not be appealed. It will bind arbitrators and tribunals in Ontario in the future, and will be highly persuasive in proceedings in other provinces and territories.

Application

Pre-employment Drug and Alcohol Testing

Testing for alcohol or drugs is a form of medical examination. **Any employment related medical examination or inquiry must be limited to determining an individual's ability to perform the essential duties of the job.** An employer must therefore demonstrate that pre-employment drug and alcohol testing provides an effective assessment of an applicant's ability to discharge their employment responsibilities. Since a positive pre-employment drug or alcohol test will in no way predict whether the individual will be impaired at any time while on the job, pre-employment testing cannot be shown to be reasonably necessary to accomplish the legitimate goal of hiring non-impaired workers. Pre-employment drug and alcohol testing fails the "reasonable necessity" arm of the Meiorin test and is contrary to the Act.

It is also the Commission's position that conducting automatic drug and alcohol tests as part of a medical assessment for certification contravenes the spirit of the Canadian Human Rights Act. Testing as a pre-condition or certification for employment in a safety-sensitive position should only occur in limited circumstances, such as where the individual has disclosed an existing or past drug abuse problem or where a general medical exam provides reasonable cause to believe that an individual may become impaired while on the job.

Random Testing for Drugs and Alcohol

Random drug testing, whether an employee holds a safety-sensitive position or not, is contrary to the Canadian Human Rights Act, because it fails the "reasonable necessity" test. Since a positive drug test cannot measure present impairment and can only confirm that a person has been exposed to drugs at some point in the past (sometimes as much as several weeks in the past), it cannot identify whether a person was impaired while on the job. Random drug tests therefore cannot be shown to be reasonably necessary to accomplish the goal of ensuring that workers are not impaired by drugs.

Where employees are **notified that alcohol testing is a condition of employment**, random alcohol testing of employees in safety-sensitive positions may be permissible. The employer must meet the duty to accommodate the needs of those who test positive. Random alcohol testing can pass the Meiorin test, where random drug testing does not, because a breathalyzer reading can identify whether or not a person is impaired while on the job.

Random alcohol testing of an employee in a non-safety-sensitive position is not acceptable. Unless an employer has reasonable cause to believe the employee is unfit to do his or her job as a result of alcohol use (addressed below), an employer cannot demonstrate that it is reasonably necessary to administer breathalyzer tests to ensure effective job performance. Given that the focus is on testing for impairment of one's ability to perform the essential duties of a position, zero tolerance for alcohol no matter when consumed will generally be considered unnecessarily strict.

"Reasonable Cause" and "Post-Incident" Drug and Alcohol Testing

"Reasonable cause" or "post-incident" testing for either alcohol or drugs, in a safety-sensitive environment may be acceptable in specific circumstances. **For example, where an employee reports to work in an unfit condition and there are reasonable grounds to believe there is an underlying problem of substance abuse, or following an accident, a near miss or report of dangerous behaviour, an employer will have a legitimate interest in assessing whether an employee has used substances that may have contributed to the incident.** An employer can generally establish that "reasonable cause" and "post-incident" testing is reasonably necessary to ensure the heightened safety standard that is necessary in risk-sensitive environments, if testing is part of a broader program of medical assessment, monitoring and support.

"Reasonable cause" and "post-incident" testing, if justified, should be conducted as soon as reasonably practical, but not where there is evidence that the act or omission of the employee could not have been a contributing factor to the accident (e.g. structural or mechanical failure).

In rare cases, dismissal or permanent re-assignment will be warranted for a positive test result but, in reaching such a decision, employers must bear in mind the general rule of individualized consideration to the point of undue hardship

"Reasonable cause" and "post-incident" drug and alcohol testing of employees in non-safety-sensitive positions have not been an issue that has come before the courts. It may be that an employer could establish such testing was a BFOR, if it were successful in meeting the "reasonable necessity" arm of the Meiorin test. That is, an employer would have to show that, in a particular employee's case, the circumstances were such that no other means were possible, short of undue hardship to the employer, to ensure the accomplishment of a legitimate objective such as workplace safety. For office workers in regular contact with co-workers and supervisors, proving such a case would be difficult, but not inconceivable. Testing should only be considered if an employee's on-the-job behaviour provides reasonable grounds to believe he or she is impaired by drugs or alcohol.

Mandatory Disclosure

In *Entrop*, the Ontario Court of Appeal accepted that an employer **could impose** a work rule that requires employees working in a safety-sensitive position to disclose current substance abuse problems, as well past problems with alcohol or drugs (within the last 5 or 6 years for alcohol dependency and 6 years for drug dependency, the point where the risk of relapse is "no greater than the risk a member of the general population will suffer a substance abuse problem.")

Automatic dismissal or refusal to employ an individual based on a disclosure of past or present dependency on drugs or alcohol is not in keeping with the requirement by the employer under the Canadian Human Rights Act to provide accommodation to the point of undue hardship. Failure to disclose an alcohol or drug problem should also not be grounds for dismissal as denial is a symptom of addiction. Generally, employees in non-safety-sensitive positions need not disclose past dependency on alcohol or drugs unless an

employer can establish that such a disclosure is a BFOR. The duty to accommodate, including individualized assistance and consideration, will apply.

Follow-Up Testing

Unannounced periodic or random testing may be permissible, following disclosure of a current drug or alcohol dependency or abuse problem, as long as it is tailored to individual circumstances and is part of a broader program of monitoring, rehabilitation and support. Usually, the designated rehabilitation provider will determine whether follow-up testing is necessary for a particular individual.

Fitness-for-Duty Testing

The Commission supports the use of functional performance testing, where such methods exist, to assess impairment. When minimally intrusive, reliable tests of impairment capable of giving an accurate and meaningful result generally become available, it might be feasible and acceptable to test safety sensitive employees for impairment — whether from drugs, alcohol, anxiety, and stress or fatigue. If standardized tests are employed, care must be taken to ensure that testing methods do not have any inherent biases, for example against women or visible minorities.

Policy Requirements

Accommodation

In the limited a circumstance in which testing is justified, **employees who test positive must be accommodated by the employer to the point of undue hardship.** The Act requires individualized or personalized accommodation measures. Policies that result in automatic loss of employment, reassignment, or that impose inflexible reinstatement conditions without regard for personal circumstances are unlikely to meet this requirement. Accommodation should include referring the employee to a substance abuse professional to determine if in fact he or she is drug-dependent, providing the necessary support to permit the employee to undergo treatment or a rehabilitation program, and considering sanctions less severe than dismissal.

An employer may be justified in temporarily removing an employee with an active or recently active substance abuse problem from a safety-sensitive position. Automatic reassignment is not acceptable.

Once rehabilitation has been successfully completed, the employee should be returned to his or her position. Follow-up testing may be a condition of continued employment where safety continues to be of fundamental importance. Usually, the designated rehabilitation provider will determine whether follow-up testing is necessary for a particular individual. **If follow-up testing reveals continuing drug or alcohol use, further employer action, up to dismissal, may be justified.** If the employee is determined not to be substance-dependent, the employee should be returned to his or her position and appropriate disciplinary action may be taken. Appropriate consequences for a breach of an employer's drug or alcohol testing policy depend on the facts of the case, including: the nature of the violation, the existence of prior infractions, the response to prior corrective programs, and the seriousness of the violation. **An employee that requests assistance for an alcohol or drug problem cannot be disciplined for seeking help.**

Undue Hardship

The employer will be relieved of the duty to accommodate the individual needs of the alcohol or drug dependent employee if the employer can show that:

1. the cost of accommodation would alter the nature or affect the viability of the enterprise, OR
2. notwithstanding the accommodation efforts, health or safety risks to workers or members of the public are so serious that they outweigh the benefits of providing equal treatment to the worker with an addiction or dependency.

If an employee has a problem with drugs or alcohol, and it is interfering with that person's ability to perform the essential duties of the job, the employer must provide the support necessary to enable that person to undertake a rehabilitation program, unless the employer can demonstrate that such accommodation would cause undue hardship.

If an employer has reasonable cause to believe an employee is abusing drugs or alcohol or an employee tests positive and refuses treatment, this does not in and of itself constitute undue hardship or justify immediate dismissal of the individual. The employer must demonstrate through progressive discipline that the employee has been warned and is unable to perform the essential requirements of his or her position.

Ensuring Compliance

In addition to the many factors discussed in this policy, the Commission may also consider some of the following elements when reviewing a drug- or alcohol-testing policy.

In the limited circumstances where drug or alcohol testing may be considered a valid requirement of the job:

- Does the employer **notify applicants** of this requirement at the time that an offer of employment is made? The circumstances under which testing may be required should be made clear to employees and applicants.
- Are drug- or alcohol-testing samples collected by **accredited individuals** and are the results analyzed by a certified laboratory?
- Are procedures in place to ensure that a **health care professional** reviews the test results with the employee or applicant concerned? All confirmed positive results should be evaluated to determine if there is an explanation for the positive result other than substance abuse. An affected individual or employee should have the right to submit a request to have their sample re-tested by an accredited laboratory should the original results be in dispute.
- Are procedures in place to ensure **confidentiality of test results**? Any records concerning drug and alcohol tests should be kept in a separate confidential file away from other employee records.

There are many causes of employee impairment besides alcohol and drug use that jeopardize workplace safety, such as fatigue, stress, anxiety and personal problems. The Commission encourages employers to adopt programs and policies that focus on methods of detection of

impairment and safety risks, and that are remedial rather than punitive in nature. These would include employee assistance programs, enhanced supervision and observation, and positive peer reporting systems, which focus on rehabilitation rather than punishment. Testing should be limited to determining actual impairment of an employee's ability to perform or fulfill the essential duties or requirements of the job.

This policy has been approved by the Commission and came into effect on June 11, 2002.

Recent Arbitration Update:

In a case from the Greater Toronto Airport Authority (2008), Arbitrator Devlin confirmed that A & D testing is permissible in safety sensitive positions where the employer has reasonable cause to require the employee to submit to such testing or where an accident or incident justifying such as measure has occurred.

The reasonable cause in this case was that an alcohol problem existed in the workplace. The employer was able to establish that indeed a problem did exist. In these situations, the burden on the employer is a heavy one! They must also perform periodic reviews to ensure the need for such testing is ongoing. Devlin also stated that random testing was permissible as a part of post-treatment monitoring program or after an A & D policy violation.

Just this year (2013), in the Province of New Brunswick the Courts upheld a union's grievance against random testing at an Irving Pulp and Paper Mill. Irving was unable to prove that there was an alcohol problem in the workplace. Thus the necessity of random testing was unfounded.

N & L Case Law:

In 2010 a Human Rights Tribunal made an interesting ruling on two fronts. The case evolved after a "roach" was found in the reception area of the Heliport for the Hibernia platform. The employer ordered that everyone present at the time be tested.

An employee of Noble Drilling tested positive for marijuana and was terminated. The employee denied any knowledge of how the roach got there. He stated he was not a recreational or chronic user of marijuana. In fact he underwent another test which he passed. HE USED THIS TEST TO PROVE HE WAS NOT A CHRONIC USER. (This would later come back to haunt him.)

The employee then filed a Human Rights complaint alleging that he was discriminated against on the basis of disability. At the Hearing the employer argued that their former employee was not a drug addict nor was he perceived to be one. In order to be protected by Human Rights the employee would have to prove he had a disability, i.e. a dependency. His tests proved otherwise. His complaint was rejected.

In 2010 at the Iron Ore Company, the employer introduced a new 'Substance Abuse Policy'. The policy provided for alcohol and drug testing of all employees. Their union filed a grievance and it went to Arbitration.

The union argued that unless the Company could prove a substance abuse problem existed at the workplace, the Policy was an unreasonable exercise of management rights and that it unreasonably intruded on the employee's privacy. (This same argument was applied at the Irving Refinery in Saint John and won by the union - 2013.)

As in other cases, the Arbitrator ruled that the three elements which have been developed as the Canadian Model, i.e. no random testing unless part of an agreed rehabilitative program; employer has reasonable cause; and following a significant incident, accident or near miss would be reviewed. He then went on to conclude that in the three circumstances described, the company does have the right to require substance abuse testing. However, he went on to say that the IOC would have to clarify (1) their testing objectives and methodology; (2) the nature of and level of training to be provided to team leaders and supervisors; and (3) the circumstances, conditions and observations which would lead to reasonable cause testing.

So, what have we learned from this? The employee must prove dependency and the employer must prove reasonable cause. Each case will be reviewed on its' own merit.

Helping Drug and Alcohol Abusers

Union stewards wear a lot of hats. Not only do you ride herd on the contract to make sure that the members' basic rights are protected, but you frequently find yourself as the workplace sage who knows a lot, who even plays a parental role in watching out for your workmates. Rarely does that role take on more importance than when a co-worker has a substance abuse problem. This is **serious stuff**: it can destroy the worker's life. In some settings, it can even put at risk the jobs or lives of people around them.

Because confrontation is hard, many of us find ourselves denying that the people around us may be in trouble with alcohol or drugs. Also, some of us may feel that substance abusers should take responsibility for their own problems, and their problems should not involve us. Since substance abusers themselves generally deny the problem, unless stewards and co-workers face it, the odds are it will eventually be dealt with by management—perhaps by termination.

How Can You Tell When Someone's In Trouble With Alcohol Or Drugs?

Unless a substance abuser reports to work grossly intoxicated or high—which is not the usual scenario—there are other signs to look for. **These signs are most valid when observed over an extended period of time.**

- 1) Performance Deteriorates and Absenteeism Increases
- 2) Inconsistent quality of work and overall lowered productivity. Increased mistakes, carelessness and errors in judgment. Absenteeism and lateness accelerate, particularly before and after weekends. Excuses are often vague and confusing.
- 3) Unexplained disappearances from the job occur more often.
- 4) Attitude and Physical Appearance Changes
- 5) Work details are neglected and assignments are handled sloppily. There's a lack of willingness to take responsibility—others are blamed for the individual's shortcomings. Personal appearance and ability to get along with others deteriorate. Co-workers often show signs of poor morale, usually as a result of frustration from covering up for the substance abuser.
- 6) Health and Safety Hazards Increase
- 7) A higher-than-average accident rate becomes apparent.

Special Issues

- ❖ Needless risks are taken in order to raise productivity following periods of low achievement.
- ❖ Safety of co-workers is often disregarded.

How Can You Talk With A Troubled Co-Worker?

Although substance abusing employees may be very angry and defensive on the issue, it's possible for stewards and co-workers to address the problem of substance abuse directly with them. The key: **take a stand that is assertive, but not angry, and absolutely honest.** Directly state the facts as you have observed them by describing the person's behavior while at work. Be very honest about your feelings, especially in how their abuse has affected you. Assure them that you will no longer get caught up in **covering up for them**, because this approach has done little to help them, and has not alleviated the problem. In fact, in many ways, it has enabled the problem to continue.

If an Employee Assistance Program is available, strongly urge the individual to make an appointment with a counselor. Tell the worker you will accompany him if he wants. If there is no EAP, we would strongly encourage you to **contact your local union** office to seek direction on where to go for professional assistance.

Duty to Accommodate

The Duty to Accommodate issue usually arises when an employee has suffered an **injury or illness and is unable to perform some or perhaps all of their regular duties**. There is now considerable arbitral jurisprudence and legislation protecting employees caught in these situations.

The intent here is to provide the injured employee with some meaningful employment opportunity rather than simply sending them home. Worker Compensation Boards have introduced **'Ease Back Programs' that are essentially the same concept**.

In duty to accommodate situations even the **union may have to bend some of their rules**, i.e. job posting rights or seniority rights to accommodate the affected employee. While this may seem heavily weighted in the injured worker's favour, it does not mean that the employer has to create a new position or that other members will have their rights totally ignored.

If you encounter this type of issue you will want to pay very close attention to all of the facts. It is also critical that you have a good understanding of the workplace, job classifications, vacancies, and work schedules. It is highly unlikely that you will be handling this matter alone but the more ground work you do up front the greater assistance you will be able to provide to your Business Agent or Representative.

Each case will be different and care should be taken to ensure that the rights of other employees are not overly affected in trying to accommodate the affected worker. Under normal trade union principles we are there to try and help whenever we can but we must also protect our other members as well.

This is an area where you should **consult** your full time Business Representative and **never** try to deal with such issues alone. These matters can become entwined with 'Duty of Fair Representation' concerns and that can make things even more complicated.

Workers Accommodate

Workers have been accommodating co-workers since long before human rights codes made it a legal requirement. We often make allowances for someone who has a bad back, is upset by family problems or is the worse for wear after a night out, and we expect our colleagues to do the same for us. But, accommodation also developed as a legal obligation, based on federal and provincial human rights legislation and Supreme Court of Canada decisions from the mid 1980s on. This legal workplace duty to accommodate requires the elimination of employment standards, rules, practices or other requirements that discriminate on prohibited grounds.

There are approximately a dozen prohibited grounds for discrimination under human rights legislation; the number varies with jurisdiction. But accommodation is usually associated with cases of discrimination on the grounds of disability, (including physical and mental disability, and drug or alcohol addiction,) religion, sex (including pregnancy), race and family

status. As accommodation law has developed, tensions have emerged for unionists and other workers. This examination of accommodation cases clarifies some of these tensions.

Who Is Normal?

Two 1999 Supreme Court of Canada cases, *Meiorin* (gender discrimination at the workplace) and *Grismer* (service discrimination to a person with a disability) radically changed our understanding of the legal duty to accommodate, and of who is to be considered normal. *Meiorin* and *Grismer* established that accommodation is to be the norm. **Equality and accommodation must be integral parts of all workplace rules and practices.** This is in line with affirmative action and employment equity work that unions have been promoting for years.

The *Meiorin* decision requires employers to design workplace standards that do not discriminate: By enacting human rights statutes and providing they are applicable to the workplace, the legislatures have determined that the standards governing the performance of work should be designed to reflect all members of society, in so far as is reasonably possible. This touches tensions around workplaces where only men, or the able-bodied, or certain religious beliefs are considered the norm. ***Meiorin* deals with a woman in a traditionally male job. Tawney Meiorin had been a forest fire fighter for three years when the BC government introduced new fitness tests. She failed one of the four tests; she took 11:49.4 minutes to complete a 2.5 kilometer run, 49.4 seconds too slow, and was dismissed.**

An arbitrator found that the aerobic capacity the run supposedly measured discriminated against women; there was no evidence this aerobic capacity was necessary for firefighters of either sex to work safely and effectively. He ordered reinstatement. The case wound its way to the Supreme Court of Canada. The court developed the three-step Meiorin Test to determine if the employer has established a standard that is a *bona fide* occupational requirement. (The term *bona fide* occupational qualification and the abbreviations BFOR and BFOQ are also used.)

The employer must:

- 1) **Demonstrate the standard was adopted for a purpose rationally connected to the performance of the job;**
- 2) **Honestly believe the standard is necessary to fulfill the legitimate, work related purpose;**
- 3) **Show the standard is reasonably necessary to the accomplishment of the legitimate, work-related purpose, so must demonstrate it is impossible to accommodate workers without undue hardship to the employer.**

To deal with step 3, the following questions should be asked:

- a) Have alternatives been considered?
- b) If so, and they meet the employer's needs, why were these alternatives not adopted?

- c) Must all workers meet a single standard, or could different standards be adopted?
- d) Does the standard treat some more harshly than others?
- e) If so, was the standard designed to minimize this differential treatment?
- f) What steps were taken to find accommodations?
- g) Is there evidence of undue hardship if accommodation were to be provided?
- h) Have all parties who are required to accommodate played their roles?

The Meiorin Test was applied in *Grismer*. **Terry Grismer developed homonymous hemianopia. It eliminated his left-side peripheral vision. He constructed a system of mirrors to compensate for his vision loss when driving, but had his driver's license cancelled anyway because he did not have 120° vision when given the standard examination.**

The Supreme Court applied the Meiorin Test. They found Grismer was discriminated against because he was not allowed to take an individual assessment, using his mirrors, to show he could drive safely. The court in *Meiorin* did say accommodation would be the norm “in so far as is reasonably possible”. Accommodation is not required if it causes undue hardship.

How Hard Is “Undue Hardship”?

The degree of hardship in undue hardship is high. MacNeill says: “overall, the balance of case law characterizes undue hardship as an onerous standard”. The federal *Canadian Human Rights Act* identifies only cost and health and safety. To be considered undue hardship, financial costs must be so great as to alter the essential nature of the enterprise or affect its viability. And, the availability of outside funding, (e.g., government programs or retrofitting buildings,) must be considered. In practice most workplace accommodations are not very expensive. The Ontario Human Rights Commission says: **“Over two-thirds of job accommodations cost under \$500; many cost nothing at all”.**

Undue Hardship and Health & Safety

Health and safety includes the health and safety of the worker, the public and co-workers. Considerations include: the degree of risk that will exist after accommodation has been made, the magnitude of the risk, who bears the risk and whether the risk outweighs the benefits of the accommodation.

In *Pannu*, the recaust operator in a mill had to shut down the plant during gas leaks. The employer's regulations required the operator to be clean-shaven, because of the requirement to wear a mask during this procedure. Mr. Pannu, a Sikh, could not comply for religious reasons, so lost his position. The employer had tested Mr. Pannu to see if he could wear the mask with his beard, but expert advice indicated this was unsafe. The tribunal considered training a replacement, but found it an undue hardship because it would be costly and potentially confusing in an emergency.

5 Types of Accommodations that Constitute Undue Hardship

1. Throwing Good Resources After Bad

There's no set rule on how long the accommodation process must last or how many attempts it must involve. But there does come a point at which employers can decide they've done enough to accommodate and end the process. The more the employer has done to try and accommodate the employee, the more likely a court is to rule that the enough-is-enough point has been reached and that there's no reasonable hope of finding a reasonable accommodation.

2. Inventing a Job

Although it's not an official rule, many courts draw a line between altering an existing position and inventing an entirely new one to match the employee's capabilities. All things being equal, the former is likely to be considered reasonable and the latter an undue hardship. The employer is not required to create a new job position with new duties that never existed before or that don't suit the company's need.

3. Accommodations that Harms Other Employees

The duty to accommodate one employee doesn't require you to fire, reassign or unfavourably treat another. According to the Supreme Court of Canada: "Any significant interference with the rights of others will amount to an undue hardship"¹. The accommodation needs to cause more than just a "minor inconvenience" to other employees; it has to interfere with substantial rights of those employees.

4. Accommodations that Endanger Health and Safety

Just as you don't have to sacrifice other employees' rights for the sake of accommodating one employee, accommodations that would put the health and safety of other employees, the general public or the employee himself at risk would likely constitute undue hardship.

5. Accommodating Uncooperative Employees

While the employer has the duty to accommodate an employee, the **employee has obligations, too. The employee must cooperate with the employer's attempts to accommodate his needs and situation.** Failure to obtain such cooperation ends the employer's duty to accommodate and turns the accommodation process into an undue hardship.

¹ Board of School Trustees, School District No.23 (Central Okanagan) and the Canadian Union of Public Employees v. Renaud (Renaud)

Air Canada – Canadian Human Rights

In 2011, the Canadian Human Rights Tribunal finally ruled on a 2007 case filed by two Air Canada pilots. The pilots were alleging that the airline's mandatory retirement policy was age-based discrimination under the Human Rights Code.

The International Civil Aviation Organization implemented a rule that a pilot over 60 cannot fly on international routes unless another pilot on the flight is under 60. This would require the assignment of additional crew members on every flight.

Air Canada argued that this would impose extra staffing requirements, scheduling problems and costs that would cause undue hardship.

As in the Meiorin Case in B.C. the Tribunal required Air Canada to establish that 1) the mandatory retirement age was adopted for a purpose rationally connected to the job; 2) the employer had an honest and good faith belief that mandatory retirement was necessary to fulfill that purpose; and 3) mandatory retirement was reasonably necessary, i.e. accommodation was impossible without imposing undue hardship on the employer.

The Tribunal ruled that requiring the pilots to retire at age 60 was a *bona fide occupational requirement*. Therefore, the complaint was dismissed.

Are There Other Types of Undue Hardships?

In jurisdictions where undue hardship is not defined in the legislation (e.g. British Columbia, Manitoba, Quebec,) the courts may accept more factors than those specified in the *Canadian Human Rights Act*. Following *Central Alberta Dairy Pool*, they may include: financial cost, health and safety, impact on the collective agreement, interference with other workers' rights, employee morale, the size of the operation and the adaptability of the workforce and facilities. **World Wide Church of God member Jim Christie's religious beliefs prevented him from working certain holy days.**

In 1983 he requested an unpaid leave of absence for Easter Monday. He had been granted this in the past. This time his request was denied. He took the day off anyway, and was fired. The Supreme Court of Canada agreed with Christie's employer, the Central Alberta Dairy Pool, that the rule about being at work on Mondays was a *bona fide* occupational requirement. **Even so, the employer was guilty of adverse affect discrimination because the rule indirectly infringed on Mr. Christie's religious beliefs and the court felt that accommodating him would not have constituted undue hardship.**

Tensions can arise when workers seeking accommodation are not required to perform certain parts of a job or are able to avoid less desirable shifts and fellow workers have to pick up the slack. This can be especially difficult if the duties are considered unpleasant or onerous. *O'Malley* provides another example. Theresa O'Malley was a full time sales clerk at Simpson Sears. **When she became a Seventh Day Adventist her need to observe the Sabbath, which involved no work from sundown Friday to sundown Saturday, conflicted with the store's requirement that she work Saturday shifts.**

The Supreme Court of Canada decided that an employment rule, even if made in good faith for sensible business reasons, could result in adverse affect discrimination. They decided the employer could have accommodated Ms. O'Malley without undue hardship by changing her shift schedule, so ruled in her favour, and stated:

“An employment rule honestly made for sound economic or business reasons, equally applicable to all to whom it is intended to apply, may yet be discriminatory if it affects a person or group of persons differently from others to whom it may apply.”

The court established three rules for these situations:

1. In adverse affect discrimination cases, the employer must make reasonable efforts to accommodate, up to undue hardship.
2. The employer cannot be expected to do more, if the problem is not resolved after these reasonable efforts have been made.
3. Complainants must show they are experiencing discrimination because of a rule. If this *prima facie* case is made, the employer must show that reasonable attempts were made to accommodate up to undue hardship.

Can Accommodation Override Collective Agreement Provisions?

Naturally, unionists are keen to protect collective agreement provisions. But human rights legislation is “not quite constitutional but certainly more than the ordinary” (*O'Malley*) and can trump the collective agreement. Larry Renaud, a Seventh Day Adventist, was an Okanagan School Board custodian. His religious beliefs prevented him from working from sundown Friday evening to sundown Saturday. But, the collective agreement between CUPE local 523 and the board required that he work Friday from 3 pm to 11 pm. Because no agreement could be reached to accommodate him, Mr. Renaud was let go.

The Supreme Court of Canada ruled that the school board and union both had a duty to accommodate Mr. Renaud. The school board said it had not accommodated Mr. Renaud because it wanted to avoid violating the collective agreement and having a grievance filed against it. The court said it is relevant to review a collective agreement, to see what hardship might be involved in violating its terms. But, a grievance in this case would not constitute undue hardship. Anyway, such a grievance would not be successful because unions and employers cannot contract out of human rights law. The court also said that objections to an accommodation from other workers could be considered when determining hardship.

The union argued an employer should exhaust all reasonable accommodations that do not contravene the collective agreement, before adopting accommodation measures that violate it. **The court disagreed. They said the most reasonable accommodation might be one that required union approval for a change in the collective agreement, as in *Renaud*.** The court decided unanimously that the employer and the union discriminated against Larry Renaud by failing to accommodate his religious beliefs. The violation of a collective agreement, might, but does not necessarily, constitute undue hardship. In this case, the fact that other workers would have to work Saturday slightly more often, to accommodate Mr.

Renaud, was not deemed undue hardship. But, worker objections could constitute undue hardship. “The objection of employees based on well-grounded concerns that their rights will be affected must be considered. On the other hand, objections based on attitudes inconsistent with human rights are an irrelevant consideration” (*CUPW v. Canada Post Corporation*).

Accommodation and Seniority

Seniority and job security provisions are, in part, traditional ways that unions accommodate. As workers age they tend to lose their strength and health, but in unionized workplaces they accumulate seniority. So, it is not the young, healthy and strong who get first chance at a job. Senior workers get first refusal on the “good” jobs, often the ones that are less physically demanding or taxing in other ways. **But, “where seniority acts as a wall rather than an equity enhancement – such as in cases of separate seniority lists within the same collective agreement – then it may very well be found to be a discriminating barrier” (Lynk).** The few cases on seniority and accommodation that have been heard indicate that accommodation requirements can trump seniority provisions. Lise Goyette and Nicole Tourville were telephone agents in a primarily female department. The departmental seniority system prevented them from moving into male-dominated ticket office jobs, because they could not accumulate enough hours in the other department. Following a Human Rights Commission employee’s recommendation, a straight seniority system was adopted. This caused problems because workers could be bumped by people from other departments. Lay-offs were announced. Tensions mounted. The union members voted to readopt the original departmental system. This meant male workers with less straight seniority qualified for ticket office jobs over female telephone agents with more straight seniority.

A tribunal ruled the union had committed systemic discrimination against the female-dominated operators. They assessed damages for hurt feelings and loss of salary and benefits. The seniority system was modified to comply with the statute in the next round of negotiations. In *Greater Niagara Regional Hospital* a **registered practical nurse with back problems was accommodated in the clerical bargaining unit.** The clerical union did not object to the appointment, but challenged the fact she brought over her full nursing seniority. This was especially problematic because lay-offs were in the wind. The arbitration board, based on *Renaud*, found this was “significant interference” in the rights of clerical bargaining unit members and **ruled in favour of the clerical union.**

Case law suggests **it is acceptable for a junior worker seeking accommodation to jump ahead of more senior workers when a vacancy is posted, provided no alternative accommodation possibilities exist.** But, incumbents cannot be removed from their current job to accommodate someone. For example, disabled workers returning to work after an absence cannot bump other employees out of their jobs.

Return to Work

However, one of the most common sources of tension around accommodation is the return to work of a worker with a disability. Up to four possibilities must be considered:

Can the worker perform:

- the existing job without modification?
- the existing job with modification?
- another job without modification?
- another job with modification?

Workers must be able to perform the essential duties of the positions they are assigned, but the employer must be willing to adjust the workplace, unless it causes undue hardship, to make this possible. Adjustments include: physical adaptation of the workplace, elimination of non-essential duties, obtaining help from other workers and changing schedules. Unions often have to press the employer to be diligent in accommodating a returning employee. Tensions also arise when unions have to balance the interests of a returning worker against those of other members who may have to adjust to facilitate the accommodation. An accommodated worker must perform useful, productive work. But, when a worker is returning to work with modified duties, it is acceptable, during the first stages of the “work hardening process”, if that person is not of much short-term economic benefit.

Does The Union Have A Responsibility To Ensure Accommodation?

The employer is primarily responsible for ensuring accommodation, but unions sometimes share the responsibility. In *Renaud* the Supreme Court said a union could become liable for discrimination in two ways – causing or contributing to discrimination in the first place or impeding the employer’s efforts to accommodate. **If a union fails to correct a discriminatory collective agreement it becomes liable for the effects of discrimination and may have to pay damages.** *Gohm* was one of several cases where the collective agreement failed to accommodate a Seventh Day Adventist’s need to observe the Sabbath. The union would not agree to modify the collective agreement, and was found jointly liable with the employer.

However, a union may be exonerated if it has tried to amend a discriminatory clause. In *Thompson v. Fleetwood Ambulance* the collective agreement reduced vacation entitlement for every full month a worker was absent. This discriminated against workers with disabilities. The union showed that over several rounds of negotiations it had tried to have the provision changed, so was cleared of liability.

The union has a duty to represent the best interests of all its members. **It may question proposed accommodations that help one or more members, but could hurt the rights of others. It can propose alternative accommodation solutions that are less hard for the membership, but it cannot contract out of human rights law.** Even individual union officers may be liable if they support discriminatory provisions during bargaining. In *O’Sullivan v. Amcon* an Ontario Board of Inquiry said a union officer who supports a discriminatory clause during negotiations may be personally in breach of the statute.

How Can We Reduce Tensions Around Accommodation?

Unions may use complementary approaches to reduce tensions and minimize problems around accommodation.

A) Audit the Collective Agreement

An audit of the collective agreement reduces the likelihood of difficulties arising in the first place. The agreement should explicitly prohibit discrimination. It should deal specifically with accommodation and specify that workers with a disability may perform available bargaining unit work. It should be clear what collective agreement rights workers retain if available work is broader than work in their original bargaining unit. The agreement should include adequate definitions. For example, “disability” should be defined broadly enough to include temporary disability.

To correct any problems unions need to negotiate contract provisions that foster inclusive and barrier-free workplaces. This reduces the need to regulate specific problems, reduces the likelihood that any individual who requires an accommodation will be treated as a scapegoat, and reduces the chance of other workers resenting the “special treatment” extended to people who require accommodation.

In 2007 **the Supreme Court of Canada** ruled that automatic termination provisions of a collective agreement are not necessarily binding on employees and employers, but that they may still be relevant as a pre-estimate of what length of absence constitutes undue hardship. Typically these clauses are punitive in the sense they result in automatic termination of employment, and so are generally unenforceable under human rights legislation. However, if the clause is a genuine pre-estimate of the point at which an employer will suffer undue hardship then they are relevant and may be enforceable.

Many contracts contain provision for automatic termination after a period of absence. If the employer uses this as the sole grounds to get rid of a member we can challenge them before an arbitrator even though we agreed to put the words in the contract! Each case must be reviewed in terms of what other factors were considered, the medical condition of the member at the time and the prognosis of his or her return to work.

B) Review Accommodation Procedures

Unions should check the procedures used to solve accommodation problems at the workplace. If it is employer policy, does it meet all members’ needs? Are union leaders, stewards and the general membership familiar with its provisions?

If accommodation provisions are in the collective agreement and if union and management run some procedures jointly, are the rights of members to grieve and go to arbitration fully protected?

Does the procedure:

- Identify clearly what accommodation is required?
- Identify positions that could be used for accommodation?
- Include the possibility of training as part of accommodation?
- Provide for permanent accommodation, temporary accommodation and work-hardening measures?

- Provide for adequate severance provisions if accommodation cannot be provided short of undue hardship?
- Many tensions centre on the provision of medical information. Unions should ensure that it is clear:
- Under what circumstances medical information is required;
 - whose doctor (the worker's or the employer's) will provide the information;
 - who pays for medical opinions;
 - if the employer can require medical examinations; and whether the worker has access to all results.

Education

Finally, many of the tensions that arise around accommodation result from a **lack of information and understanding. Unions must educate their leaders, stewards and grass roots members on accommodation: What is the union position? What does the law say? How should different accommodation issues be handled? Why it is important to protect the rights of workers who need accommodation? How can other workers facilitate accommodation?** Workers realize that a misfortune which has visited a colleague might one day visit them. This is the starting point for developing a firm union position on the duty to accommodate.

Duty of Fair Representation

Many jurisdictions across Canada provide **legislative rights** to union members to ensure that they receive **fair representation** from their union. This is becoming more of an issue for many unions as certain members have viewed this legislative right as an opportunity to obtain an unearned benefit.

While lawsuits are not common in Canada we must always be aware of the negative impact they can have on a local union. Therefore, it is essential that we investigate all grievances and complaints in a fair and impartial manner. If at any time you believe that you could be in a 'conflict of interest' position regarding a matter brought to you either due to the subject content or the people involved, you should contact your union representative immediately! The union will then assign someone else to take over the matter on your behalf.

What Happens if a Conflict Arises Between Two Union Members?

These can always be difficult but so long as you follow the basic guidelines we have provided in this manual, you should be equipped to handle the situation. You may be approached by one of the members demanding that the union hire a lawyer to represent them. In most situations this will not be necessary but occasionally it may be in the Local's best interests to do just that. Always seek the advice of your full time Business Representative on these matters before responding to the member making the request.

What Are Labour Boards Doing?

Most recently, Boards across the country have taken different points of view on this issue. Where the applicable Labour Laws clearly provide for 'Duty of Fair Representation' Boards are hearing allegations made by individual union members. In one jurisdiction more than 98% of these applications have been denied by the Board. In some other jurisdictions, Boards are either rejecting the claims through a preliminary objection based on jurisdiction to hear the matter or allowing the matter to proceed and then ruling that they have no 'supervisory authority' over internal union affairs. **This is another area you would want to confer with legal counsel before rendering a final decision on how to proceed.**

At least in the private sector, the relevant labour relations legislation across Canada recognizes the Union's right to retain control of the grievance process. Unless the collective agreement provides otherwise, the Union has the authority to which grievances will be processed through to arbitration. However, in doing so, the Union must act fairly, in good faith and without discrimination towards any member of the bargaining unit regardless of whether or not they are a union member.

The duty of fair representation has been recognized both at common law; Fisher vs Pemberton (1969), 8 D.L.R. (3rd) 521, 70 C.L.L.C. 14,027 (B.C.S.C.) and by most Legislatures across Canada.

For example, **The Ontario Labour Relations Act** in sections 74 and 75 provide that:

A trade union or council of trade unions, so as it continues to be entitled to represent employees in a bargaining unit, shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit, whether or not members of the trade union or of any constituent union of the council of trade unions, as the case may be.

Where, pursuant to a collective agreement, a trade union is engaged in the selection, referral, assignment, designation or scheduling of persons to employment, it shall not act in a manner that is arbitrary, discriminatory or in bad faith.

Exercise: Duty of Fair Representation

1. The Local has grieved a one day unjust suspension. The grievor wants to go to arbitration on this issue but a Hearing could easily cost the Local up to ten thousand dollars. The Local is experiencing some hard times financially and is reluctant to spend this much money on one day's pay. Does the Local have to go to arbitration?
Yes No
2. A member has been suspended for two weeks because of absenteeism. At the final step of the grievance process, the employer offers to settle the matter by reducing the suspension to one week. We think this is fair but the member feels he shouldn't get anything more than a written reprimand. Is it appropriate for the Local to accept the employer's offer? **Yes No**
3. Two female members are alleging sexual harassment against a supervisor. There is a harassment policy in the workplace. A Human Rights complaint has been filed. The Local doesn't want to file a grievance on the matter because they are afraid that other important grievances might be jeopardized. Can they refuse to file? **Yes No**
4. The contract states that a new employee must serve a 90 day probationary period. Does the Local have to represent the employee during this period? **Yes No**
5. Two members have been suspended for one week for insubordination. The company offers to reinstate one member with pay if the Local drops the grievance of the other employee? Can the Local do this? **Yes No**
6. A member complains about a letter of reprimand. A grievance is filed and at the grievance meeting the company presents a legitimate argument to support their position. Should the Local withdraw the grievance? **Yes No**
7. The Local filed a grievance for a member who now wants to withdraw his grievance. It could prove to be an important issue. Can the Local keep it alive without the member's support or permission? **Yes No**
8. The Local decides not to pursue a grievance to arbitration because they believe it cannot be won and will set a dangerous precedent for the future. The member is offering to pay all costs for the hearing and will hire her own lawyer. Can the Local still refuse to go arbitration? **Yes No**

9. A recent discharge case was lost at arbitration. The member wants the Local to appeal the arbitrator's decision in court and is threatening a lawsuit against the Local. A lawyer has advised the Local that an appeal would be useless. Should the appeal be filed anyway? **Yes No**
10. Two members get into a physical altercation at lunch break. It is clear from witnesses you have interviewed that one member was the instigator. Both are suspended by the employer. Can the Local refuse to file a grievance on behalf of the member who started the fight? **Yes No**
11. Fred Freeloader refused to join the union although he does have dues deducted from his pay cheque. He is notorious for bad mouthing the union. Last week he found out that the employer awarded a job he had applied for to a junior candidate. Fred has all the necessary qualifications. He now wants to file a grievance. Can the Local force him to become a union member before they file a grievance? **Yes No**
12. The plant Steward missed the time limit for moving a grievance to the third step. The employer is now refusing to allow the grievance stating that it has been abandoned due to the missed time limit. The Steward was going through some serious family problems at the time. Can the union be held responsible? **Yes No**
13. The employer has awarded a job to a junior employee. The senior employee has filed a grievance. When advised the grievance is proceeding to arbitration, the junior employee demands that the Local hire a lawyer to represent her at the Hearing. Does the Local have to do this? **Yes No**
14. A member is claiming that he is being discriminated against by the Business Manager. He states that he has been passed over on a number of occasions for work opportunities. He intends to file a complaint with the Labour Board unless he gets compensated for the lost work. Should the Local offer to pay him? **Yes No**
15. Two members get into a shouting match at the workplace. As a result of this incident one of the members wants to file a grievance against the other member for harassment. The Steward does not believe this is a grievable offence. The member is now claiming he was not properly represented. Does he have a case? **Yes No**

Workplace Violence Risk Assessment Questionnaire

Name: _____

Occupation: _____

Date Completed: _____

1. Have you experienced verbal abuse (swearing, insults, teasing, or bullying) while an employee of this company? yes no
If yes, did you report the incident(s)? yes no
If yes, did you report the incident(s) orally? in writing?

What was the relationship of the abuser to you?

co-worker client/customer member of the public other
(describe)

2. Have you experienced verbal or written threats (e.g., “If you don’t get off my back, you’ll regret it.”) while an employee of this company? yes no
If yes, did you report the incident(s)? yes no
If yes, did you report the incident(s) orally? in writing?

What was the relationship of the abuser to you?

co-worker client/customer member of the public other
(describe)

3. Have you been threatened with physical harm (e.g., someone shaking a fist, throwing objects, committing vandalism) while an employee of this company? yes no
 yes no
If yes, did you report the incident(s)?
If yes, did you report the incident(s) orally? in writing?

What was the relationship of the abuser to you?

co-worker client/customer member of the public other
(describe)

4. Have you experienced a physical assault or attack while an employee of this company? yes no
 yes no
If yes, did you report the incident(s)? yes no
If yes, did you report the incident(s) orally? in writing?

What was the relationship of the abuser to you?

co-worker client/customer member of the public other
(describe)

5. Do you ever:
- Work alone or with a small number of co-workers? yes no
 - Work in a community-based setting? yes no
 - Work late at night or early in the morning? yes no
6. Are you concerned about violence on the job?
What is the source of your concern? yes no
7. Do you believe that violence in your workplace is a high risk medium risk low risk?
8. Do you consider that all reasonable steps have been taken to prevent or reduce the risk of violence? NO, YES
9. What further steps would you recommend?

What Is Harassment?

Harassment is an expression of perceived power and superiority by the harasser over another person or group, usually for reasons of sex, race, ethnicity, age, sexual orientation, disability, family or marital status, social or economic class, political or religious affiliation, or language.

Harassment is unwelcome, unwanted and uninvited; it may be expressed verbally or physically; it is usually coercive, and it can occur as a single incident or on a repeated basis. It comprises actions, attitudes, language or gestures which the harasser knows or reasonably ought to know are abusive, unwelcome and wrong.

Racial harassment includes unwanted comments, racist statements, slurs, jokes, racist graffiti and literature, including articles, pictures and posters. Sexual harassment is a particularly vicious form of harassment and is almost always directed at women. Included are remarks, jokes, innuendo and taunts of a sexual nature, insulting gestures and practical jokes of a sexual nature, the display of pornographic material, leering, demands for sexual favours, unnecessary physical conduct and physical assault.

What Is Employment Harassment Including Sexual Harassment?

Prohibited harassment in general consists of verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of race, color, religion, gender or sex, national origin, age, or disability. Such conduct includes epithets, slurs, negative stereotyping, or threatening, intimidating, or hostile acts that relate to race, color, religion, gender, national origin, age, or disability; and written or graphic material that denigrates or shows hostility or aversion toward an individual or group because of race, color, religion, gender, national origin, age, or disability and that is placed on walls, bulletin boards, e-mail, or elsewhere on the employer's premises, or circulated in the workplace.

In addition, sexual harassment also includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature such as jokes when:

- 1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;**
- 2. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or**
- 3. such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or of creating an intimidating, hostile, or offensive working environment.**

Issues

As a union, our job is to protect the rights and working conditions of the people in our workplaces. Sexual harassment is illegal and a violation of the contract as well — and it's our job to respond when we see it happening.

Stopping Sexual Harassment

Sexual harassment is a violation of most union contracts and is illegal. Sexual harassment is one of the leading forms of discrimination that women workers face. One survey of women workers showed that 56% had faced some sort of sexual harassment at work during their lives. Sexual harassment and discrimination are a violation of an employee's rights under most union contracts, and it is illegal. In guidelines defining sexual harassment, it is defined as:

(1) unwelcome sexual advances; or (2) requests for sexual favors; or (3) any other verbal or physical conduct of a sexual nature. Sexual harassment can occur through looks, touches, jokes, innuendoes, gestures, or direct propositions.

Such conduct constitutes sexual harassment when (a) submission is made a term or condition of employment; or (b) submission is used as a basis for employment decisions; or most broadly (c) the conduct has the purpose or effect of unreasonably interfering with an individual's work performance, or creating an intimidating, hostile, or offensive work environment.

Under the law, men as well as women can be victims of sexual harassment, but in reality it is women who are affected 98% of the time. So, in short, sexual harassment is any unwelcome sexual advance or a hostile work atmosphere based upon sex. The key to all this is, if a woman says "no" or "stop it", then actions that occur after that probably are sexual harassment. The "no" does not have to be verbal either. If a boss keeps demanding that a woman worker go out with him, and she walks away from him each time he does it, then that should be taken for "no". For him to keep bothering her is sexual harassment.

What Makes the Boss Guilty?

The employer is liable for the actions of its employees involving sexual harassment under certain conditions. These include the following:

- 1) The sexual conduct was unsolicited and unwelcome. People can still talk about sex or make jokes with each other as long as both parties don't mind it and they keep it to themselves. A hostile work environment can be created by the language or actions of two consenting people if other workers find the language or behavior offensive.**
- 2) For "hostile working conditions," the conduct must be severe or continuous.**
- 3) The employer or someone in authority must know that a worker is being harassed. If the employer fails to take action to stop sexual harassment then their penalties can be greater. The "higher" up the boss is who is doing the harassment then the greater is the company responsibility.**

What About Workers Harassing Other Workers?

As a rank and file union we must make it clear that we want to make working conditions better for all workers, and therefore we cannot tolerate one worker or a group of workers making life miserable for other workers. This is not union behavior. The union's obligation is to make sure that everyone is treated fairly and gets a fair hearing. **If the union determines in good faith that a member was wrong and was harassing another member, then the union has no obligation to defend the harasser.**

Our policy is that workers get education on why their behavior is wrong. Many times this is enough to stop them bothering another worker. If we can handle this inside the union, that is the best approach, but if a worker after being "educated" continues to be abusive then we must take steps to protect the member who is being harassed. Our mission is to "unite all workers on an industrial basis, and rank and file control, regardless of craft, age, sex, nationality, race, creed or political beliefs and pursue at all times a policy of aggressive struggle to improve our working conditions."

Some Legal Terms

Quid Pro Quo is Latin for "this for that". This simply means demanding something from a woman in return for giving her something. "If you go out with me I'll make sure you get overtime" is something a boss may say to a woman worker. Hostile environment is any unwelcome sexual conduct that "unreasonably interferes with an individual's job performance or creates an intimidating, hostile or offensive working environment". This type of harassment also includes cases where a boss harasses women because he doesn't want them working on certain jobs, or he allows men to harass the women to get them "off of the men's jobs".

Fighting Back!

Every instance of sexual harassment will be unique ... but we've got some suggestions for developing thoughtful responses.

Every instance of sexual harassment will be unique and creating appropriate responses will require the Steward to be thoughtful, sensitive, and resourceful. Below are a few suggestions that should be kept in mind when dealing with sexual harassment:

- 1) The Union should make all members aware that sexual harassment is illegal and that the union will fight on behalf of its members to stop it.
- 2) Urge the employer post notices that sexual harassment is illegal.
- 3) Many women are not sure who to turn to when they are being harassed. The union can appoint several stewards (some of whom should be women) who are well known and respected by the members to be a special committee to deal with sexual harassment. Make this committee known to all workers.
- 4) When dealing with the issue in grievance meetings, make sure the victim isn't harassed again by the company by being made to recount what happened in front of many bosses. Make the company show some sensitivity.

- 5) Make the harasser pay for the crime, not the victim. Too often, the boss's solution is to move the victim off of her job to "keep her away from Joe". Make the employer fire or move the boss who was the harasser, not the worker.
- 6) Put the employer on notice that illegal behavior is going on. Be the buffer between the victim and the employer. Don't let a boss harass a worker into withdrawing their complaint.
- 7) In cases where a union member is the harasser, try to make them stop before going to the boss. Get the union committee involved if the worker doesn't understand what they are doing is wrong.

What is a Workplace?

Your workplace may be:

- an office
- a factory
- a building
- a private home
- a school
- a store

You may also work outdoors, on a road crew, or in a vehicle. The washroom, cafeteria, and locker room that you use are part of your workplace. So is any other place where your employer does business. Laws and policies are in place to protect you from harassment, no matter where you work.

You may have to travel as part of your job. For example, you might:

- visit various construction sites
- repair equipment at different places
- go to conferences or sales meetings

You may experience harassment while getting from place to place. This can also be seen as workplace harassment. Your employer can't guarantee that you won't be harassed on a bus or walking along a street, but your safety on the job or on the way to and from the job is their concern.

Sometimes harassment that occurs outside the workplace affects your work. Actions like these can cause problems or harm relationships among employees:

- someone from work follows you or hangs around your home;
- phone calls and letters are sent to your home
- things happen at staff parties or retreats

Who Can Be Involved In Workplace Harassment?

A harasser can be anyone you come in contact with because of your work. That person might be a:

- boss
- supervisor
- manager
- Member of your board of directors
- coworker
- customer
- patient
- delivery person
- person in your union

Harassment can happen anywhere in the workplace:

- in the lunchroom
- in rest and washroom areas
- in staff rooms
- on the production line
- in an office

You might also be harassed outside of your workplace. It can happen at a Christmas party, on a business trip or at a meeting at someone's home. Harassment is not always **workplace** harassment. It depends on the situation, and your relationship to the harasser. If your boss is in your home and demands that you have sex with him, it is still workplace harassment. Your boss has power over you. He could make things hard for you at work if you say no.

If the same thing happens with a coworker who has no power over you at work, it might not be workplace harassment. However, if the coworker harassed you at work later, it **would** be workplace harassment. The employer would be responsible for stopping it. Your employer is responsible for any form of harassment that affects the workplace, and your work.

Your Right to a Safe Work Environment

You have the right to work in an environment that is free from harassment. Employers are responsible for providing this to all workers. You have the right to expect your employer to take your concerns seriously. It is against the law for anyone you come in contact with on the job to harass you. It is against the law for your supervisor to promise you a raise or job perks in return for sexual favours.

The law also says that you have the right to work in an environment that is not "poisoned" by harassment. You cannot help but be affected by what is happening in the workplace. Your employer cannot expect you to work if people around you are making sexual, racial or homophobic jokes or comments, or putting graffiti and pinups on the wall. All of these

things can make it hard to work. They are bad for your mental wellbeing. They affect your work just as if the harassment were directed at you.

You have the right to ask your employer, your union, or an outside agency like the Human Rights Commission to take action against harassment.

Is Workplace Harassment Against the Law?

Sometimes it is. If someone's behaviour is making you uncomfortable, don't keep it to yourself. You may not choose to do anything else, but tell someone about it.

At some time in our lives, we all have to put up with people we don't like very much. Some bosses are not very good at managing staff. They can make the workplace unpleasant or even miserable. That doesn't always mean their behaviour is against the law.

What Does the Law Say Harassment is?

There is more than one definition of harassment under the law. Some forms of harassment are clearer than others. More work has been done on sexual and racial harassment than on other forms. Some other forms of harassment are still being argued in court. Harassment challenges are happening in a range of workplaces.

The Ontario Human Rights Code and the Canadian Human Rights Act name different forms of discrimination. You can contact The Human Rights Commission for more information. Some harassment cases have gone through the courts. The decisions that the courts have made set some precedents, or guidelines, for new cases.

In these precedent setting cases, the courts have decided:

- when employers are responsible for workers being harassed
- what is and is not acceptable behaviour
- to recognize the seriousness of the effects of harassment on women

Is Harassment the Same as Discrimination?

Legal cases have shown that harassment is a form of discrimination. Many collective agreements and workplace harassment policies now use these legal decisions as their own guidelines to protect workers against harassment.

If you do not presently have a Harassment Policy in your workplace, contact your Provincial Human Rights Commission to obtain a similar draft policy.

Guidelines on What Constitutes Harassment

What generally constitutes Harassment?	What may constitute harassment?	What does not generally constitute harassment?
<p>Serious or repeated rude, degrading, or offensive remarks, such as teasing about a person's physical characteristics or appearance, put-downs or insults. Displaying sexist, racist or other offensive pictures, posters, or sending emails related to one of the grounds prohibited under the Canadian Human Rights Act.</p>	<p>Criticizing an employee in public</p>	<p>Allocating work. Following-up on work absences. Requiring performance job standards. Taking disciplinary measures. A single or isolated incident such as an inappropriate remark or abrupt manner.</p>
<p>Repeatedly singling out an employee for meaningless or dirty jobs that are not part of their normal duties.</p>	<p>Exclusion from group activities or assignments.</p>	<p>Exclusion of individuals for a particular job based on specific occupational requirements necessary to accomplish the safe and efficient performance of the job.</p>
<p>Threats, intimidation or retaliation against an employee, including one who expressed concerns about perceived unethical or illegal workplace behaviours.</p>	<p>Statements damaging to a person's reputation.</p>	<p>Measures taken against someone who is careless in his or her work, such as handling of confidential documents.</p>

What Is Workplace Bullying?

Bullying is usually seen as acts or verbal comments that could 'mentally' hurt or isolate a person in the workplace. Sometimes, bullying can involve negative physical contact as well. **Bullying usually involves repeated incidents or a pattern of behaviour that is intended to intimidate, offend, degrade or humiliate a particular person or group of people.** It has also been described as the assertion of power through aggression.

Is bullying a workplace issue?

Currently there is little occupational health and safety legislation in Canada that specifically deals with bullying in the workplace. Quebec legislation includes "psychological harassment" in the "Act Respecting Labour Standards". Some jurisdictions have legislation on workplace violence in which bullying is included. In addition, employers have a general duty to protect employees from risks at work. This duty can mean both physical harm and mental health. Many employers choose to address the issue of bullying as both physical and mental harm can "cost" an organization. In general, there will be differences in opinion and sometimes conflicts at work. However, behaviour that is unreasonable and offends or harms any person should not be tolerated.

What are examples of bullying?

While bullying is a form of aggression, the actions can be both obvious and subtle. **It is important to note that the following is not a checklist, nor does it mention all forms of bullying.** This list is included as a way of showing some of the ways bullying may happen in a workplace. Also remember that bullying is usually considered to be a pattern of behaviour where one or more incidents will help show that bullying is taking place. Examples include:

- spreading malicious rumours, gossip, or innuendo that is not true
- excluding or isolating someone socially
- intimidating a person
- undermining or deliberately impeding a person's work
- physically abusing or threatening abuse
- removing areas of responsibilities without cause
- constantly changing work guidelines
- establishing impossible deadlines that will set up the individual to fail
- withholding necessary information or purposefully giving the wrong information
- making jokes that are 'obviously offensive' by spoken word or e-mail
- intruding on a person's privacy by pestering, spying or stalking
- assigning unreasonable duties or workload which are unfavourable to one person (in a way that creates unnecessary pressure)

- under-worked - creating a feeling of uselessness
- yelling or using profanity
- criticizing a person persistently or constantly
- belittling a person's opinions
- unwarranted (or undeserved) punishment
- blocking applications for training, leave or promotion
- tampering with a person's personal belongings or work equipment.

It is sometimes hard to know if bullying is happening at the workplace. Many studies acknowledge that there is a **"fine line" between strong management and bullying.** Comments that are objective and are intended to provide constructive feedback are not usually considered bullying, but rather are intended to assist the employee with their work. If you are not sure an action or statement could be considered bullying, you can use the "reasonable person" test. Would most people consider the action unacceptable?

How can bullying affect an individual?

People who are the targets of bullying may experience a range of effects. These reactions include:

- shock
- anger
- feelings of frustration and/or helplessness
- increased sense of vulnerability
- loss of confidence
- physical symptoms such as -
 - inability to sleep
 - loss of appetite
- psychosomatic symptoms such as -
 - stomach pains
 - headaches
- panic or anxiety, especially about going to work
- family tension and stress
- inability to concentrate, and
- low morale and productivity.

How can bullying affect the workplace?

Bullying affects the overall "health" of an organization. An "unhealthy" workplace can have many effects. In general these include:

- increased absenteeism
- increased turnover
- increased stress
- increased costs for employee assistance programs (EAPs), recruitment, etc.
- increased risk for accidents / incidents
- decreased productivity and motivation
- decreased morale
- reduced corporate image and customer confidence, and
- poor customer service.

What can you do if you think you are being bullied?

If you feel that you are being bullied, discriminated against, victimized or subjected to any form of harassment:

DO

- **FIRMLY** tell the person that his or her behaviour is not acceptable and ask them to stop. You can ask a supervisor or union member to be with you when you approach the person.
- **KEEP** a factual journal or diary of daily events. Record:
 - ◆ The date, time and what happened in as much detail as possible
 - ◆ The names of witnesses.
 - ◆ The outcome of the event.

Remember, it is not just the character of the incidents, but the number, frequency, and especially the pattern that can reveal the bullying or harassment.

- **KEEP** copies of any letters, memos, e-mails, faxes, etc., received from the person.
- **REPORT** the harassment to the person identified in your workplace policy, your supervisor, or a delegated manager. If your concerns are minimized, proceed to the next level of management.

DO NOT -

- ◆ **RETALIATE.** You may end up looking like the perpetrator and will most certainly cause confusion for those responsible for evaluating and responding to the situation.

The most important component of any workplace prevention program is management commitment. Management commitment is best communicated in a written policy. Since bullying is a form of violence in the workplace, employers may wish to write a comprehensive policy that covers a range of incidents (from bullying and harassment to physical violence).

A workplace violence prevention program must:

- ☑ be developed by management and employee representatives.
- ☑ apply to management, employees, clients, independent contractors and anyone who has a relationship with your company.
- ☑ define what you mean by workplace bullying (or harassment or violence) in precise, concrete language.
- ☑ provide clear examples of unacceptable behaviour and working conditions.
- ☑ state in clear terms your organization's view toward workplace bullying and its commitment to the prevention of workplace bullying.
- ☑ precisely state the consequences of making threats or committing acts.
- ☑ outline the process by which preventive measures will be developed.
- ☑ encourage reporting of all incidents of bullying or other forms of workplace violence.
- ☑ outline the confidential process by which employees can report incidents and to whom.
- ☑ assure no reprisals will be made against reporting employees.
- ☑ outline the procedures for investigating and resolving complaints.
- ☑ describe how information about potential risks of bullying/violence will be communicated to employees.
- ☑ make a commitment to provide support services to victims.
- ☑ offer a confidential Employee Assistance Program (EAP) to allow employees with personal problems to seek help.
- ☑ make a commitment to fulfill the prevention training needs of different levels of personnel within the organization.
- ☑ make a commitment to monitor and regularly review the policy.
- ☑ state applicable regulatory requirements, where possible.

What are some general tips for the workplace?

DO

- ENCOURAGE everyone at the workplace to act towards others in a respectful and professional manner.
- HAVE a workplace policy in place that includes a reporting system.

- EDUCATE everyone that bullying is a serious matter.
- TRY TO WORK OUT solutions before the situation gets serious or "out of control".
- EDUCATE everyone about what is considered bullying, and whom they can go to for help.
- TREAT all complaints seriously, and deal with complaints promptly and confidentially.
- TRAIN supervisors and managers in how to deal with complaints and potential situations. Encourage them to address situations promptly whether or not a formal complaint has been filed.
- HAVE an impartial third party help with the resolution, if necessary.

DO NOT

- ☛ IGNORE any potential problems.
- ☛ DELAY resolution. Act as soon as possible.

Recent Case Law: Member vs Steward

In Kingston, Ontario in 2011 an employee made a death threat against his Shop Steward. Once investigated, the employer terminated the employee for what was perceived to be workplace violence. The Arbitrator ruled that even though she did not believe that the employee would follow through with his threat, it was a very serious situation. It was more than harassment. "This is just not language, it is violence."

On that basis and in recognition of Ontario's Bill 168, the grievance was denied. While other provinces have yet to introduce their own version of Bill 168 we should take a lesson from this. Arbitrators are becoming more and more serious about dealing with workplace threats, harassment and safety.

Respectful Workplace Environment Questionnaire

Please circle the most appropriate answer listed below each statement:

1. Employees in my work area feel comfortable in raising concerns about disrespectful or disorderly behaviour with management.

Never	Rarely	Sometimes	Often	Always
-------	--------	-----------	-------	--------
2. Supervisors communicate respectful work environment issues as part of on-going training and communications.

Never	Rarely	Sometimes	Often	Always
-------	--------	-----------	-------	--------
3. I try to treat others in our workplace with dignity and respect.

Never	Rarely	Sometimes	Often	Always
-------	--------	-----------	-------	--------
4. I openly state my personal support for a respectful work environment.

Never	Rarely	Sometimes	Often	Always
-------	--------	-----------	-------	--------
5. I make inappropriate jokes or comments.

Never	Rarely	Sometimes	Often	Always
-------	--------	-----------	-------	--------
6. I hear others make inappropriate jokes or comments.

Never	Rarely	Sometimes	Often	Always
-------	--------	-----------	-------	--------
7. I challenge others who make inappropriate jokes or comments.

Never	Rarely	Sometimes	Often	Always
-------	--------	-----------	-------	--------
8. I challenge others who make assumptions and generalizations about people that are different from themselves.

Never	Rarely	Sometimes	Often	Always
-------	--------	-----------	-------	--------
9. I try to use terms that are modern and acceptable to everyone, avoiding dated or disrespectful terms.

Never	Rarely	Sometimes	Often	Always
-------	--------	-----------	-------	--------
10. The personal life or confidentiality of others is discussed in the workplace by coworkers.

Never	Rarely	Sometimes	Often	Always
-------	--------	-----------	-------	--------
11. I tend to get involved in rumours and the business of coworkers.

Never	Rarely	Sometimes	Often	Always
-------	--------	-----------	-------	--------
12. I am careful to ensure that my behaviour, both on or off the job, is supportive of a respectful work environment.

Never	Rarely	Sometimes	Often	Always
-------	--------	-----------	-------	--------
13. I feel comfortable with the respect shown to myself and others in our workplace.

Never	Rarely	Sometimes	Often	Always
-------	--------	-----------	-------	--------
14. I believe that management tries its best to treat complaints of discrimination and harassment seriously.

Never	Rarely	Sometimes	Often	Always
-------	--------	-----------	-------	--------
15. I believe everyone shares in the responsibility for a respectful workplace environment.

Never	Rarely	Sometimes	Often	Always
-------	--------	-----------	-------	--------

Employee Assistance Program

What Is The EAP?

Your Employee Assistance Program (EAP) will provide you and your significant others with confidential, professional assistance for personal problems that may negatively affect your well being.

Why Have an EAP?

Most people encounter problems from time to time. This is both natural and predictable. Often, you deal with such problems on your own without specialized help. Sometimes, personal problems are not easily resolved and they may begin to hinder your ability to perform properly on the job. Your EAP is intended to help you maintain satisfactory work performance and personal wellness.

Is It Confidential?

Confidentiality surrounding use of the EAP by any employee **is essential** to preserving confidence in the Program. To reinforce your confidence, additional EAP services have been contracted from an external source. Access to the EAP is voluntary, and if you decide to refer yourself to the Program, then only you will know. Within the limits of the law, no information about your EAP visits will be released unless authorized by your written informed consent. Similarly, no personal information regarding your EAP visits is put in your personnel file.

What Services?

Your EAP offers timely access to a team of health care professionals who have the skills required to assist you with a wide variety of personal difficulties or wellness concerns. Some of these services include personal counselling for managing stress and tension, family problems, emotional difficulties and coping with job stress and conflicts in the work place. Family counselling is available for dealing with marital and relationship problems, as well as child management. Crisis counselling is available twenty four hours daily by calling the EAP office telephone number.

How Do I Use It?

Contacting the EAP services is as simple as picking up the phone. Usually your first visit to the EAP will consist of a problem focused interview with a counsellor. Your counsellor will attempt to identify the underlying problem and recommend a mutually-agreeable plan of action. If you should require longer-term help, your counsellor will assist you in referral to a qualified professional or agency. If your counsellor feels that your problem is very serious, you may be asked to see your physician for referral to ongoing care.

Privacy Act (PIPEDA)

What Is PIPEDA?

- The Personal Information Protection and Electronic Documents Act (PIPEDA)
- Is Canadian federal legislation
- Regulates the collection, use and disclosure of personal information by private sector organizations that are involved in commercial activity.
- Balances the right of individuals to privacy against the need of organizations to collect, use and disclose personal information.

Where does PIPEDA apply?

- PIPEDA now applies to commercial activity in all Canadian Provinces and Territories, except Quebec, Alberta and British Columbia, which all have their own PIPEDA – style legislation.

Does PIPEDA apply to Trade Unions?

- PIPEDA does apply to trade unions:
- Trade unions are specifically mentioned as a type of organization that is subject to the Act.
- Trade unions are provincially regulated organizations and were, therefore covered in PIPEDA's third stage of implementation on **January 1, 2004**.

What is “personal information”?

- PIPEDA protects personal information as defined in the Act.
- Personal information means **information about an identifiable individual** (i.e. a human being), but does not include the name, title, business address, or business telephone number of an employee of an organization or, in other words, basic “business card” information.
- May be unrecorded or recorded e.g. **conveyed orally or captured by sound recording, or live or recorded videotape.**
- If there is **a reasonable expectation that an individual could be identified** by the information, the information is personal information within the meaning of the Act.
- Personal information includes factual and subjective information such as: age, name, ID number, income, ethnic origin, blood type, opinions, evaluations, comments; and
- social status, trade union membership, disciplinary actions, employee files, credit
- records, loan records, medical records.

What Trade Union Activities are Covered by PIPEDA?

The following trade union activities are probably **not** commercial activities:

- Organizing
- Engaging in collective bargaining and
- Representing employees in the grievance process.

The following trade union activities probably **are** commercial activities:

- The selling, bartering, or leasing of trade union membership lists;
- Providing union membership information to third parties that do engage in commercial activities (e.g. credit card or insurance companies); and
- Providing education or training programs for a fee.

Application of PIPEDA in the Federal Sector: Recent Case Examples (Ross v. Rosedale Transport Ltd. (2003) (Adjudicator Brunner)

- Driver with a federally regulated employer was fired after company's private investigator **surreptitiously videotaped** him moving furniture when he was supposedly injured;
- Driver filed a complaint under Canada Labour Code alleging dismissal without just cause and challenged videotape's admissibility on the basis that it was obtained without his consent as required by PIPEDA;
- Adjudicator ruled video surveillance breached PIPEDA **because collection was not reasonable in the absence of evidence that the employee was malingering, or had misrepresented his condition;**
- Without such evidence, employer could not establish its case.

PIPEDA Decision #242 (2003)

- An employee in transportation complained to the Privacy Commissioner on the basis that injured fellow employees, who were temporarily working in the employer's office, were **handling confidential payroll information.**
- The Assistant Commissioner found that the employer violated PIPEDA because the injured workers **were handling highly sensitive information without signing any agreements or receiving training with respect to confidentiality.**
- The Commissioner recommended that payroll information be accessible by only a few authorized personnel and that injured workers not be given access to pay stubs.

PIPEDA Decision #257 (2003)

- Employee complained to Privacy Commissioner that an **employer was requiring that a medical diagnosis be included on their doctor's medical certificate for sick leave in excess of 5 days.**
- Commissioner found that an employer **has the right to confirm that an**

employee's absence from work is justified, and the responsibility to ascertain if an employee returning to work is fit to resume duties, and may collect employee medical information and required doctor's medical certificates for those purposes.

- Commissioner found that the employer **could not, however, require that a doctor provide diagnostic information even in cases of safety-sensitive jobs, and suspicious absences. The Commissioner found that the word of the doctor should be sufficient.** In this case, the employer collected more information than it required and therefore violated PIPEDA.

Arbitration Decisions

In 2011 CP Railway was taken to arbitration over their policy of asking employees to provide records of their cell phone usage following a serious workplace accident. The union argues that under the PIPEDA that this was a violation of the employee's privacy.

The employer showed that there had been an increased number of railway accidents involving the use of cell phones. The employer also had a company policy that prohibited the use of personal electronic devices while at work.

A PIPEDA ruling in 2002 had determined that telephone records are "personal information". In this case however, Arbitrator Picher determined that a railway operation is highly safety-sensitive in nature and that unsupervised crews operate in a complex system of signals and switches that requires constant alertness. As such, there must be an inevitable balancing of interests between privacy rights of employees and ensuring safe operations. Grievance denied.

The company was not looking for names or numbers but only that the cell phone had been used at the time of the accident. They were not seeking the content of the communication. Think about this in terms of the earlier topics of accommodation.

In another case an employee was disciplined for writing an inappropriate comment on a sympathy card after the death of the supervisor's father. The employer contacted a forensic hand writing analyst along with a number of hand written notes in the employee's file.

At the Arbitration Hearing the union raised a preliminary objection to the fact that the employer had used the employee's personal notes from his file. The union argues that the use of these documents to identify the grievor contravened the Ontario legislation.

The Arbitrator did not agree and dismissed the union's objection.

APPENDICES

History and Structure of the IUOE

Whether it's the roads you travel on, the bridges you cross, the tunnels you whisk through, the subway systems you ride...or the buildings and complexes where you work, receive medical care, view sporting events...or the dams, pipelines, oil refineries and rigs, and petrochemical plants you rely on for water and energy needs, ... or programs to rid your schools and communities of asbestos and hazardous materials and waste... it's a good bet they were built and are operated and serviced by members of the International Union of Operating Engineers (IUOE).

Because it is Operating Engineers who survey the sites, make the cuts, hoist the steel and slabs...do the final grading... operate and maintain the finished product. We run the bulldozers, the graders, the backhoes, the cranes helping to form and shape the infrastructure and skylines. We work the mines, we dig the wells. We operate the boilers, the generators and the heating and cooling systems, as well as maintain the buildings and grounds, that help make you comfortable at work and play. We work in private industry and in various areas of public employment such as hospitals, nursing homes, schools and government complexes.

Operating Engineers are the first on a construction job and the last off. When it involves a commercial or industrial complex, stationary engineers are there long after the construction is finished, operating and maintaining the completed facility.

The IUOE is a progressive trade union representing all of these workers: from the heavy equipment operators and mechanics in the construction industry, to the stationary engineers who maintain and operate building and industrial complexes and service industries throughout the United States and Canada.

The IUOE also represents workers in a wide variety of other occupational categories. Our members provide diagnostic, therapeutic and administrative health care services in hospitals, paramedical emergency health care, and provide community group care to mentally challenged adults. We fly and service helicopters and planes, grow commercially produced flowers, operate armoured trucks in the banking industry, provide policing services and work in the mining industry and municipalities. These are just a few examples of the occupations that your union, the IUOE represents across Canada.

The IUOE is dedicated to serving and protecting the needs and interests of its members and their families through the collective bargaining process, legislative action and extensive training and skills improvement programs.

As the 12th largest union in the AFL-CIO and the fifth largest Canadian Building Trades Union in the Canada Labour Congress, the IUOE is a recognized leader in organized labour's efforts to improve the standards of living of workers and their families in both countries.

But getting to where it is today was no easy task for the IUOE. The road was strewn with obstacles and resistance. It was only through dedicated leadership, sacrifice, sweat and perseverance that the union was able to advance. Working conditions for construction and stationary workers in the late 1800s were, at best, appalling. Their wages, for 60-to-90-hour work weeks, were equally miserable. Benefits were practically unheard of.

In an effort to change those conditions, eleven pioneering individuals met in Chicago Dec. 7, 1896 to form the National Union of Steam Engineers of America, the forerunner of today's IUOE.

Each was from a small U. S. local union. The largest had only 40 members and all but one local was from the stationary field. The majority of these founders shared a common skill: the ability to operate the dangerous steam boilers of the day. (A fitting tribute to these early founders, a steam gauge even today dominates the emblem, or logo, of the IUOE.)

A year later, the first Canadian workers joined the fledgling union. To reflect this expansion across the border, the union's name was changed to the International Union of Steam Engineers. Their unique ability made the steam engineers vital to the operation of steam-driven construction equipment introduced on a large scale at the turn of the century.

Operating Engineers flocked to San Francisco to rebuild that majestic city after it was turned to rubble in the earthquake of 1906. Additional thousands of Operating Engineers moved mountains in the next few years in digging the Panama Canal.

More and more construction workers signed on and the union changed its name at its 1912 Convention to reflect this new composition in the first decade of the new century becoming the International Union of Steam and Operating Engineers.

As members began working with internal combustion engines, electric motors, hydraulic machinery and refrigerating systems, as well as steam boilers and engines, the word "steam" was dropped from the union's name and in 1928 it became the International Union of Operating Engineers.

As the organization progressed, it attracted workers from the public sector, making it a truly diverse trade union. Passage of the Davis-Bacon Act of 1931, which requires the payment of prevailing wages to construction workers employed on public works projects in the United States. This helped the union weather the after-effects of the Great Depression and maintain its progress.

The IUOE's growth and progress was fueled greatly at the end of World War II when the Federal Highway Trust Program came into existence, creating thousands of jobs for Operating Engineers in the USA.

In the following decades, the union persevered through boom times and lean times. Today, its members are reaping the rewards of the sacrifices and foresight of their predecessors. And rightfully so, because the Operating Engineers, as much as anyone, helped build America and Canada.

San Francisco's Golden Gate Bridge, the Panama Canal, Chicago's Sears Tower, Toronto's CN Tower and Sky Dome, New York's Empire State Building and Holland Tunnel, the Statue of Liberty, Vancouver's Lions Gate Bridge, the Alaskan Pipeline, Hoover Dam, Confederation Bridge, Hibernia Platform, Point Lepreau Nuclear Power Plant and Churchill Falls Power Project—all are monuments to the skills of the members of the Operating Engineers.

Today, the IUOE numbers more than 400,000 members in some 140 local unions throughout the U. S. A. and Canada. We are point in fact, among the best in the business. We are highly skilled craftsmen and women who learn by doing and through comprehensive training programs. We are highly skilled professionals in our respective fields and because of this Operating Engineers earn some of the top wages in their fields. We also enjoy benefits packages second to none.

Just as important, as members of the IUOE we are able to exercise a degree of self-determination about all aspects of our union and our jobs, a right most non-union workers do not have. This self-determination—or better, democracy at work—instills self-respect, pride and dignity on and off the job. This freedom of choice begins right in the members' local union. Members elect officers from their own ranks to represent them in their dealings with management, on matters such as contract negotiations, grievance and arbitration procedures, working conditions and benefits.

In the IUOE structure, local unions enjoy a great deal of freedom and autonomy in their operations, but the International Union is available to lend whatever assistance a local and its members require in any specific area of endeavor.

The IUOE is governed by the General President, who works out of the International Headquarters in Washington, D.C. He is assisted by the General Secretary-Treasurer. Fourteen General Vice-Presidents, who are business managers of local unions, comprise the General Executive Board. Five local union business managers currently hold the position of International Trustees.

The International headquarters serves as the nerve center for the IUOE's membership services. In keeping pace with modern technology, updated membership lists for all IUOE local unions, as well as financial and contractual records, are processed and stored electronically. The introduction of state-of-the-art software and computer equipment has improved efficiency and productivity—all of which helps better serve a multitude of local union and membership needs and requests.

On the staff level, the union's Legal Department is concerned with national and state/provincial legislation having direct impact on the jobs and the rights of IUOE members.

Through its Legislative Department, the International union keeps abreast of developments on Capitol Hill and Parliament Hill, as well as in state/provincial and local legislatures. In this way, the IUOE can best protect the hard-won rights and benefits of its members and their families and further advance their wellbeing as workers and citizens.

Through the years, the IUOE has been instrumental in securing passage of laws dealing with jobsite health and safety, the environment, hazardous materials and waste, infrastructure needs, health care, pensions and other economic issues which have helped create jobs and security for our members and their families.

Equally impressive have been the legislative successes registered by the Operating Engineers and all of organized labor on behalf of all citizens, union and nonunion alike. It was organized labour that was the prime mover behind enactment of legislation establishing Social Security, Medicare, Medicaid, the eight-hour work day, vacation with pay, overtime compensation, pension protections, Occupational Health and Safety, Workers' Compensation, Employment Insurance, health care benefits and a host of other work and social programs that have benefited all Americans and Canadians to some degree or another throughout their lifetimes.

Designated staff personnel at the International Headquarters handle jurisdictional problems, pipeline developments, heavy & highway projects and stationary and public employee concerns.

A Training Department develops programs and courses for apprenticeship and skills improvement at more than 90 union training sites in Canada and the U. S. to help members keep current with machinery and technological developments.

In the wake of the tragedy of September 11, 2001 the IUOE established its Homeland Security Training Program to prepare members to deal as "first responders" to terrorist attacks and other national emergencies.

The Organizing Department develops concepts and implements programs to bring union representation to workers needing professional expertise in their dealings with management. Adhering to the theory that there is strength in numbers, the IUOE lists organizing as a top priority and devotes considerable resources to its organizing efforts in order to enhance the union's influence and to increase its members' share of work throughout both countries.

Because of the dangers intrinsic to its members' occupations, the IUOE has been a pioneer in promoting and fighting for occupational safety and health measures. Its Health and Safety Department closely monitors the industry to protect its members' health and wellbeing. The union instituted its own accident prevention program over 40 years ago, well before government and industry recognized the need for such a program.

This tradition of championing safety is serving the IUOE well in its training of thousands of members in the delicate task of handling hazardous materials and cleaning up hazardous waste sites in the U. S. and Canada.

Invaluable resource materials and statistics, including data, displays and precedent cases for contract and grievance arbitrations, and other educational services are provided to local unions by the IUOE's Research and Education Department.

From the International office, the IUOE publishes its official newspaper, the International Operating Engineer, which serves as one of the union's main communication links with the membership. All IUOE Locals are encouraged to submit articles for publication.

All of these functions at the International office are designed to best serve and respond to the many needs of the IUOE membership. With the introduction of modern technology and the dedication of experienced personnel, the union is striving continually to improve and expand upon these services.

Today, the IUOE is carrying on its proud tradition of fighting for its members' rights and jobs through its policies and programs of service, involvement and education. Your participation in this Shop Steward Training is just another step in that direction.

By addressing the challenges of today with vigor and foresight, the IUOE is adding yet another level to an already solid foundation to ensure the future wellbeing of its members and their families. For them—and for workers everywhere, the IUOE is building a better tomorrow.

Parliamentary Rules and Procedures

The International Union of Operating Engineers is governed by 'Robert's Rules of Orders'. What this means is that when a procedural issue arises during any meeting and that issue is not specifically covered by the Constitution or the Local Union By-Laws it will be dealt with under Robert's Rules.

The primary purpose of adopting such rules is to ensure a democratic and orderly conduct of business at all union meetings. A working knowledge of these rules by members can greatly enhance their participation and make all meetings a more rewarding experience.

Agendas:

Every meeting should start with the adoption of an Agenda. If it is a monthly or annual meeting, your By-Laws may contain an Agenda that needs to be followed. If it is a special or lunchroom meeting, you will probably need to create an Agenda based on the issues to be addressed. Every successful meeting will stick to that Agenda and finish on time.

Quorums:

Most workplace meetings are held based on the number that shows up. Before holding any meetings it is a good idea to check with your Local Union Office and inquire about whether or not a quorum must be established and if so, what is that quorum? If a quorum is not required then you may start the meeting at the scheduled time and proceed with your business. If a quorum is required and you do not have enough members in attendance then you may not proceed with the meeting or you may simply hold an information meeting.

Minutes:

The keeping of accurate minutes provides a written record of all business conducted at your meeting. Every meeting should have a Recording-Secretary to take the minutes. Every motion or action taken by the group must be recorded! The minutes should be signed and dated by the person serving as Secretary and a copy should always be forwarded to the Local Union. A sign-in sheet is a good practice and can be attached to the minutes as part of the meeting record.

Motions:

The foundation of any meeting is the moving of 'motions'. Motions are simply proposed actions that are put forward for the consideration of those in attendance. There are four different categories of motions and certain motions take precedence over other motions. These can all be found at the end of this section in a reference chart that we have provided.

All business at any meeting is conducted by making motions. Motions guide the group as to what action they want to take or what direction should be followed.

To make a motion, you should be first recognized by the Chair (see chart for exceptions) and once recognized state your motion in a clear and concise manner. You have now

become the ‘mover’ of the motion. If the motion is seconded, then it will be placed before the meeting for debate and consideration. If it is not seconded, then it cannot be considered.

Once the motion has been moved and seconded it may be amended. You may amend a motion (1st degree amendment) and amend the amendment (2nd degree amendment) but that is it!

Always debate and vote on the 2nd degree amendment first, then debate and vote on the 1st degree amendment as amended then the whole motion as amended. Think of stacking blocks. You may stack them three high and then reverse your process. Also remember that when each block is moved it attaches itself to the next block.

MOTION

-

1ST DEGREE AMENDMENT

-

2ND DEGREE AMENDMENT

If the motion receives majority support of the meeting it will then become the decision of the meeting. Before any action is taken, always contact your Local Union and advise them of what the members have decided.

Note: before holding any meeting on company property make sure you have received permission to do so by the proper authority!!

Dealing with Difficult Members

1. THE CHAIRPERSON: Use Common Sense
Be Courteous
Display Confidence

2. RULES OF SPEECH: Don't allow people to speak unless recognized by Chair
Make people state their name and where they are from
Adhere to time limits on speakers
Always direct comments through the Chair

3. RULES OF ORDER: Motion to Adjourn if the meeting completely
Take a Recess
Question of Privilege
Point of Order
Objection to Consideration of Question
Move the Previous Question
Limit Debate

4. SGT.-AT-ARMS: Name of Member
Removal of Member
Test the Floor

5. BY-LAWS & CONSTITUTION: Article XVI (4) – Disruption
Article XXIV (3) (a) – Duties of Members

Parliamentary Procedures – Helpful Hints

1. Present and Approve Agenda
2. Once adopted, stick to it unless amended!
3. Recognize members before they talk
4. Allow both sides to speak
5. Restate a motion before voting
6. If in doubt, vote again
7. It's okay to abstain
8. Relinquish Chair when involved
9. Be firm but fair – stay “in charge”

PARLIAMENTARY CHART
(Robert's Rules of Order At a Glance)

MOTION	DEBATABLE	AMENDABLE	REQUIRES A SECOND	VOTE REQUIRED	IN ORDER WHEN ANOTHER IS SPEAKING	CAN BE RECONSIDERED
PRIVILEGED MOTIONS:						
Time of next meeting (when privileged)	No	Yes	Yes	Majority	No	No
Adjourn (when privileged*)	No	No	Yes	Majority	No	No
·	No	Yes	Yes	Majority	No	No
Question of Privilege (treat as main motion)	Yes	Yes	Yes	Majority	Yes	Yes
Orders of the Day	No	No	No	None; it takes 2/3 to postpone special order	Yes	No
INCIDENTAL MOTIONS:						
<i>Appeal</i>	No	No	Yes	Majority	Yes	Yes
Point of Order	No	No	No	None unless appealed, then majority	Yes	No
Objection to Consideration of Question	No	No	No	2/3	Yes	Yes
Withdrawal of Motion	No	No	No	Majority	No	Yes
Suspension of Rules	No	No	Yes	2/3	No	No
SUBSIDIARY MOTIONS:						
Lay on the Table	No	No	Yes	Majority	No	No
Previous Question (close debate)	No	No	Yes	2/3	No	Yes
Limit or Extend Limits of Debate	No	Yes	Yes	2/3	No	Yes
Postpone to a Definite Time	Yes	Yes	Yes	Majority	No	Yes
Refer or Commit	Yes	Yes	Yes	Majority	No	Yes
	Yes	Yes	Yes	Majority	No	Yes
Postpone Indefinitely	Yes	No	Yes	Majority	No	Yes
MAIN MOTION:	Yes	Yes	Yes	Majority	No	Yes
Reconsideration	Yes, if motion to which it applies is debatable	No	Yes	Majority	Yes	No
Rescind *	Yes	Yes	Yes	2/3	No	Yes

◆NOTE: 6. Rescind: Robert's Rules of Order state that this motion requires two-thirds (2/3) vote of members present unless previous notice has been given. When notice of motion is given at previous meeting, then only a majority vote is required.

LUNCHROOM MEETING

WEDNESDAY – 12:15 P.M.

AGENDA

1. CALL TO ORDER
 2. UNIFORM ISSUE
 3. SHIFT SCHEDULES
 4. ADJOURNMENT
-
- ❖ The employer has given us a 4:00 p.m. deadline to select a colour for the new uniforms. Otherwise, they will make the choice for us.
 - ❖ The employer is considering a change in the morning start time from 8:00 a.m. to 7:30 a.m. They want our feedback on this.

Labour Terminology

Across-the-board-increase - a wage adjustment given at one time to all or a significant group of the workers in a plant, company, or industry. The increase may be applied as a percentage or expressed as a fixed cents-per-hour. Generally speaking a fixed cents-per-hour adjustment favors the lower-skilled employee whereas the percentage adjustment favors the more highly skilled workers.

A.F.L. C.I.O. – The American Federation of Labour- Congress of Industrial Organizations with headquarters in Washington, D.C. This is the American equivalent of the Canadian Labour Congress and the Operating Engineers are an affiliated member.

Arbitration - a method of settling disputes through the intervention of a third party whose decision is final and binding. Such a third party can be either a single arbitrator, or a board consisting of a chairperson and one or more representatives. Arbitration is often used to settle major grievances and for collective bargaining disputes. Governments sometimes impose Arbitration as a means to avoid a strike or to end one.

Assessments - special charges levied by unions to meet particular financial needs.

Back Pay- wages due for past services - often the difference between money already received and a higher amount resulting from a change in negotiated wage rates.

Bargaining Agent - union designated by a Labour Relations Board for the purpose of collective bargaining.

Bargaining Unit - group of workers in a craft, department, plant, firm, industry or occupation, determined by a Labour Relations Board as being appropriate for representation by a union for purposes of collective bargaining.

Blue Collar Workers - production and maintenance workers as contrasted to office and professional personnel.

Building Trades Council - the provincial umbrella group for the unions who work in the construction industry. Every province has at least one council and some provinces like Nova Scotia and Ontario have two or more.

Building Trades Department - the construction division of the A.F.L. C.I.O. and serves as the umbrella organization for the 14 construction based unions. The Canadian Office is located in Ottawa, Ontario.

Business Agents or Representatives - usually fulltime employees of the local union. They work under the direction of the Local's Business Manager and service the members by negotiating collective agreements, investigating and presenting grievances and representing the members in various other affairs.

Business Manager - the elected chief executive officer of the Local Union. The Business Manager oversees the day to day operations of the local and is responsible for all affairs of the local including the hiring and firing of staff. The Business Manager is usually the chief spokesperson for the local and is the main representative of the local at conferences, conventions and other such meetings.

By-Laws - the governing rules for a local union and its administration. Local By-Laws must be approved by the General President of the I.U.O.E. and cannot contradict the International Constitution.

Canadian Conference - the annual conference of all Operating Engineer locals across the country. The Conference is usually held in late summer and provides an opportunity for local union staff and elected officials to get together to discuss common problems.

Canadian Joint Grievance Panel - a Panel of equal numbers of union and management representatives established by mutual agreement under your collective agreement to hear grievance issues. If the Panel is deadlocked on a grievance, then the matter may be referred to a Schedule II Panel or to traditional arbitration.

Canadian Labour Congress (CLC) - Canada's national labour body representing over 80% of organized labour in the country.

Certification - official designation by a labour relations board or similar government agency of a union as sole and exclusive bargaining agent, following proof of majority support among employees in a bargaining unit.

Check-off - a clause in a collective agreement authorizing an employer to deduct union dues and, sometimes, other assessments, and to transmit these funds to the union.

C.I.R.B. - the Canadian Industrial Relations Board. The C.I.R.B. handles all labour relations issues under the Federal Code including certifications, unfair labour practice complaints and related matters. The Federal Code applies to employers doing inter-provincial business, telecommunications, transportation, federal government departments and crown agencies.

Classification Plan - a job evaluation method based on a comparison of jobs against a money scale.

Closed Shop - a provision in a collective agreement whereby all employees in a bargaining unit must be union members in good standing before being hired and new employees hired through the union.

C.O.E.J.A.T.C. - The Canadian Operating Engineers Joint Apprenticeship Training Committee. It is made up of all 10 Hoisting and Portable locals and their employer representatives. The main mandate of this group is to standardize training and course curriculum across the country for heavy equipment instruction.

Collective Agreement - a contract or mutual understanding between a union(s) and an employer(s) or their representatives setting forth the terms and conditions of employment,

usually for a specific period of time. The scope and coverage of the agreement will depend on the parties. Most agreements include sections dealing with the bargaining unit, union security, seniority, wages and hours of work, and other working conditions, such as vacation pay, holidays, shift work, etc..

Collective Bargaining - method of determining wages, hours and other conditions of employment through direct negotiations between the union and employer. Normally the result of collective bargaining is a written contract which covers all employees in the bargaining unit, both union members and non-members.

Company Union - a one-company group of employees frequently organized or inspired by management and usually dominated by the employer.

Conciliation and Mediation - a process that attempts to resolve labour disputes by compromise or voluntary agreement. By contrast with arbitration the mediator, conciliator or conciliation board does not bring in a binding award and the parties are free to accept or to reject its recommendation. The conciliator is often a government official while the mediator is usually a private individual appointed as a last resort, sometimes even after the start of a strike.

Conciliator - a person appointed by the Minister of Labour to assist unions and employers in obtaining a collective agreement or sometimes in finding resolutions to grievances and other disputes. Conciliators usually work for the Provincial Department of Labour and most often have a union or employer background.

Consumer Price Index - Statistics Canada's monthly statistical study which checks retail prices of selected consumer items in a representative group of cities. Strictly, it is not a "cost-of-living" index, though it is often so described.

Contracting Out - practice of employer having work performed by an outside contractor and not by regular employees in the unit. Not to be confused with subcontracting, which is the practice of a contractor delegating part of his work to a subcontractor.

Contract Proposals - proposed changes to the collective agreement put forward by the union or the employer and subject to collective bargaining.

Cost-Of-Living Allowance - periodic pay increase based on changes in the Consumer Price Index sometimes with a stated top limit.

Craft Union - also called horizontal union. A trade union which is organized on the principle of limiting membership to some specific craft or skill, i.e., electricians, plumbers, etc. In practice many traditional craft unions now also enroll members outside the craft field, thereby resembling industrial unions.

Decertification - withdrawal by a Labour Relations Board of its certification of a union as exclusive bargaining representative.

Down Time - period when a machine is not operating due to mechanical failure, lack of materials, etc., through no fault of the operator, but with the machine operator still on the job. Under a union contract, down time is usually paid for.

Dues - periodic payments by union members for the financial support of their union.

Federation of Labour - A Federation, chartered by the Canadian Labour Congress, grouping local unions and labour councils in a given province.

Fringe Benefits - non-wage benefits, such as paid vacations, pensions, health and welfare provisions, life insurance, etc., the cost of which is borne in whole or part by the employer.

Green Book - refers to the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry Including Procedural Rules and Regulations. It is actually a green covered book that includes the procedures for the Plan and many letters of agreement between various International Unions.

Grievance - complaint against management by one or more employees, or a union, concerning an alleged breach of the collective agreement or an alleged injustice. Procedure for the handling of grievances is usually defined in the agreement. The last step of the procedure is usually arbitration.

Group Grievance - a grievance signed by many people in a workplace in order to show management that members are united in their opposition to a management's action.

Hiring Hall - a headquarters from which a union fills requests for workers. A central hiring hall is a place where union workers gather for referral to seasonal or casual jobs. A joint hiring hall is sponsored by employers as well as a union. A preferential hiring hall is one in which union members get first referral to jobs.

Hoisting and Portable (H & P) - the construction arm of the International Union of Operating Engineers. There are ten H & P locals across Canada with one local in each province.

Illegal Strike – a strike that is called in violation of the law, such as a strike that ignores "cooling off" restrictions or a strike that disregards a "no strike" agreement signed by the Union or imposed by a court of law.

Informational Picketing - picketing done with the express intent not to cause a work stoppage, but to publicize either the existence of a labor dispute or information concerning the dispute.

Interest Arbitration - a form of arbitration that deals solely with collective bargaining issues. Many unions across Canada do not have the right to strike and thus must use 'Interest Arbitration' as a means to resolve a collective bargaining impasse. Unions and employers must still negotiate and utilize all the usual steps before this process can be enacted. Interest arbitration is used primarily in the public sector.

International Constitution - the governing set of rules for the I.U.O.E. and its affiliated local unions across North America. The Constitution can only be interpreted by the General President and can only be amended at General Convention or a Special Convention called for that purpose.

International Representative - a field staff person employed directly by the International to work with and assist local unions in various endeavors. The I.R. usually works with the local union when requested by the Business Manager, President or when assigned to do so by the Canadian Director.

Industrial Union - also called vertical union. A trade union that organizes on the principle of including all workers from one industry, regardless of their craft or whether they are skilled or unskilled.

Incentive Pay - method of pay which varies according to production. Pay may depend upon number of pieces of work completed by individual or groups of workers. Wages may be paid on a piece, bonus or premium basis. Contracts guarantee incentive workers a minimum hourly rate.

Injunction - a court order restraining an employer or union from committing or engaging in certain acts.

International Confederation of Free Trade Unions (ICFTU) - an international trade union body formed in 1949, composed of a large number of national central labour bodies such as the Canadian Labour Congress. It represents 125 million members in non-communist countries.

International Labour Organization (ILO) - tripartite world body representative of labour, management and government; an agency of the United Nations. It disseminates labour information and sets minimum international labour standards, called "conventions", offered to member nations for adoption. Its headquarters are in Geneva, Switzerland.

International Union - a union which has members in both Canada and the United States.

Job Action - a concerted activity by employees designed to put pressure on the employer without resorting to a strike. Examples include: wearing T-shirts, buttons, or hats with union slogans, holding parking lot meetings, collective refusal of voluntary overtime, reporting to work in a group, petition signing, jamming phone lines, etc.

Job Analysis - investigation of duties and responsibilities of a job to determine its requirements in terms of human abilities and relationships.

Job Classifications - job rating based on an analysis of the requirements of the work.

Job Description - a part of job evaluation involving a review of the nature of the work, its relation to other jobs, working conditions, the degree of responsibility and the other qualifications called for by the work.

Job Evaluation - a system designed to create a hierarchy of jobs based on factors such as skill, responsibility, experience, time and effort. Often used for the purpose of arriving at a rational system of wage differentials between jobs or classes of jobs.

Job Security - a provision in a collective agreement protecting a worker's job, as in the introduction of new methods or machines.

Jurisdiction - the specific industry, craft or geographical area which a local union is chartered to organize or represent.

Jurisdictional Dispute - a dispute between two or more unions as to which one shall represent a group of employees in collective bargaining or as to whose members shall perform a certain kind of work.

Labour College Of Canada - institution of higher education for trade union members operated by the Canadian Labour Congress for the purpose of providing a training ground for future trade union leaders.

Labour Council - organization composed of locals of CLC-affiliated unions in a given community or district.

Layoffs - temporary, prolonged or final separation from employment as a result of lack of work.

Leave Of Absence - permitted absence for an employee for a limited period, ordinarily without pay.

Local (Union) - also known as lodge, or branch. The basic unit of union organization. Trade unions are usually divided into a number of local administrations. These locals have their own by-laws and elect their own officers; they are usually responsible for the negotiation and day-to-day administration of the collective agreements covering their members.

Lockout - a labour dispute in which management refuses work to employees or closes its establishment in order to force a settlement on its terms.

Labour Relations Board (LRB's) - provincial labour boards that enforce labour legislation in each province across the country. The Labour Board handles certification applications, unfair labour practice complaints, jurisdictional disputes and other matters covered by the applicable provincial legislation.

Maintenance Of Membership - a provision in a collective agreement stating that no worker need join the union as a condition of employment, but all workers who voluntarily

join just maintain their membership for the duration of the agreement as a condition of continued employment. See Union Security.

Management Rights, Employer Rights - the body of rights usually retained by the employer after certification including hiring, scheduling of hours of operation and assignment of work. Such rights must be exercised in accordance with the collective agreement.

Mediation - a means of settling labour disputes whereby the contending parties use a third person - called a mediator - as a neutral go-between.

Member in good standing - a union member who has fulfilled requirements for the organization and who has not voluntarily withdrawn from membership, been expelled, or suspended.

Modified Union Shop - a place of work in which non-union workers already employed need not join the union, but all new employees must join, and those already members must remain in the union. See Union Security, Union Shop.

Moonlighting - the holding by an individual of more than one paid job at the same time.

National Union - a union whose membership is confined to Canada only.

Open Shop - a shop in which union membership is not required as a condition of securing or retaining employment.

Overtime - hours worked in excess of a maximum regular number of hours fixed by statute, union contract or custom. Overtime is usually paid for at a premium rate.

Past Practice - customary way of doing things not written into the collective bargaining agreement. Past practices can sometimes be enforced through the grievance procedure if the practice has been longstanding, consistent, and accepted by the parties.

Plant Rules - management procedures to enforce discipline and maintain efficient production. A plant rule may be grieved because it is unreasonable, in conflict with the contract, unknown to workers, or not enforced equitably.

Per Capita Tax - regular payments by a local to its national or international union, labour council or federation, or by a union to its central labour body. It is based on the number of active members in the Local.

Picketing - patrolling near employer's place of business by union members - pickets - to publicize the existence of a labour dispute, persuade workers to join a strike or join the union, discouraging customers from buying or using employer's goods or services, etc.

P.L.C.A.C. - the Pipeline Contractors Association of Canada - this is an umbrella organization for almost all employers in the unionized pipeline construction industry from coast to coast.

Posting - required display of the vacancies available for competition within the bargaining unit.

Premium Pay - a wage rate higher than straight time payable for overtime work, work on holidays or scheduled days off, etc., or for work under extraordinary conditions such as dangerous, dirty or unpleasant work.

Probationary Period - Time during which a new employee is on trial by the company and usually subject to discharge without union challenge, except where the discharge is discriminatory.

Raiding - an attempt by one union to induce members of another union to defect and join its ranks.

Rand Formula - also called agency shop. A union security clause in a collective agreement stating that the employer agrees to deduct an amount equal to the union dues from all members of the bargaining unit whether or not they are members of the union, for the duration of the collective agreement.

Ratification - formal approval of a newly negotiated agreement by vote of the union members affected.

Recognition - employer acceptance of a union as the exclusive bargaining representative for the employees in the bargaining unit.

Red Circle Rate - a rate of pay for a particular employee which is higher than the maximum of the rate range or the rate for the work that employee is doing. For example, because of old age, disability or the like, an employee is demoted to easier, lower-paying work with no reduction in pay.

Reinstatement - the restoration of a wrongfully discharged employee to that employee's former job.

Re-opener - a provision calling for reopening a collective agreement at a specified time prior to its expiration for bargaining on stated subjects such as a wage increase, pension, health and welfare, etc.

Scab - a person who crosses a union's picket line to do the work of the striking employee. Scabs are hated in the labour movement and are shunned by all who know them.

Seniority - term used to designate an employee's status relative to other employees, as in determining order of lay-off, promotion, recall, transfer, vacations, etc. Depending on the provisions of the collective agreement, seniority can be based on length of service alone or on additional factors such as ability or union duties.

Severance Pay - lump sum payment by the employer to a worker laid off permanently through no fault of the worker.

Shift - the stated daily working period for a group of employees, e.g., 8 a.m. to 4 p.m., 4 p.m. to midnight, midnight to 8 a.m. See Split Shift.

Shift Differential - added pay for work performed at other than regular daytime hours.

Shop Steward - the local union's representative at the worksite. The shop steward can be appointed or elected depending on the local area practice. Stewards are the guardians of the collective agreement and assist coworkers when they have a problem.

Slowdown - a deliberate lessening of work effort without an actual strike, in order to force concessions from the employer. A variation of this is called a work-to-rule strike - a concerted slowdown in which workers, tongue in cheek, simply obey all laws and rules applying to their work.

Split Shift - division of an employee's daily working time into two or more working periods to meet peak needs.

Stationary - the non-construction arm of the International Union of Operating Engineers. There are only eight true Stationary Locals left in Canada. Most have merged with the larger H & P Locals or with each other. Stationary Locals represent a wide cross section of employee classifications in health care, education, municipal governments and private industry.

Strike - a cessation of work or a refusal to work or to continue work by employees in combination or in accordance with a common understanding for the purpose of compelling an employer to agree to terms or conditions of employment. Usually the last stage of collective bargaining when all other means have failed. Except in special cases, strikes are legal when a collective agreement is not in force. A rotating or hit-and-run strike is a strike organized in such a way that only part of the employees stop work at any given time, each group taking its turn. A sympathy strike is a strike by workers not directly involved in a labour dispute - an attempt to bring pressure on an employer in a labour dispute. A wildcat strike is a strike violating the collective agreement and not authorized by the union.

Strikebreakers; Scab - a person who continues to work or who accepts employment to replace workers who are on strike. By filling their jobs, he or she may weaken or break the strike.

Strike Sanction - in order for a local union to receive strike benefits from the International, the strike must be sanctioned by the General Executive Board.

Strike Vote - vote conducted among members of a union to determine whether or not to go on strike.

Successor Employer- an employer which has acquired an already existing operation and which continues those operations in approximately the same manner as the previous employer, including the use of the previous employer's employees.

Sweetheart Contract - term of derision for an agreement negotiated by an employer and a union with terms favorable to the employer. The usual purpose being to keep another union out or to promote the individual welfare of the union officers rather than that of the employees represented.

Suspension - a layoff from work or from union membership as a disciplinary measure.

Technological Change - technical changes to production methods such as the introduction of labour-saving machinery or new production techniques. These often result in person-power reductions.

Trade Union - workers organized into a voluntary association, or union, to further their mutual interests with respect to wages, hours, working conditions and other matters of interest to the workers.

Trusteeship- the taking over of the administration of a local union's affairs, including its treasury, by the parent body.

Union Buster - a professional consultant or consulting firm which provides tactics and strategies for employers trying to prevent unionization or decertify unions.

Unfair Labour Practices - those employer or union activities that are classified as "unfair" by labour laws.

Union Label; Bug- a tag, imprint or design affixed to a product to show it was made by union labour.

Union Security - provisions in collective agreements designed to protect the institutional life of the union.

Union Shop - a place of work where every worker covered by the collective agreement must become and remain a member of the union. New workers need not be union members to be hired, but must join after a certain number of days.

Vesting - the amount of time that an employee must work to guarantee that his/her accrued pension benefits will not be forfeited even if employment is terminated.

Voluntary Recognition - an employer and a trade union may agree that the employer shall recognize the trade union as the exclusive bargaining agent of the employees in a defined bargaining unit.

Walkout - loose term for a strike.

White Collar Workers - term applied to workers in offices and other non-production phases of industry.

Wildcat Strike - a strike undertaken without official union authorization.

World Trade Organization (WTO) - a Geneva-based organization with 130 member countries from the North and South, the WTO is the principal forum for managing global trade and investment.

Working Conditions - conditions pertaining to the workers' job environment, such as hours of work, safety, paid holidays and vacations, rest period, free clothing or uniforms, possibilities of advancement, etc. Many of these are included in the collective agreement and subject to collective bargaining.

Mock Cases

MOCK CASE #11 - HORTON CONVEYER SYSTEMS

MOCK CASE #12 - STRATFORD COMMUNITY LIVING INC.

MOCK CASE #13 - DENNISON INDUSTRIAL SERVICES

The Canadian Joint Grievance Panel

MOCK CASE #11 - HORTON CONVEYER SYSTEMS

THE ISSUE:

On August 14th while working a back shift, two Horton Conveyer System employees were assigned to do a repair job on the conveyer system in the main baggage area at the Vancouver Airport. The employees, Jeff Campbell and Mark Powell went to the baggage handling room and commenced their investigation into what was wrong.

The company has had a longstanding practice that prior to performing maintenance work on any equipment, the equipment had to be “locked out” In this case that meant that while performing work in the baggage handling room or on any piece of conveyer equipment, the machinery power source had to be locked out so that no machinery could physically operate and signs had to be clearly posted so that passengers could not come into the baggage area while they were working.

Campbell and Powell, prior to locking out, had to determine what the problem was affecting the conveyer. They were performing, what was referred to in the trade as, “trouble shooting”. In their minds they were not actually performing repair work but simply determining what the problem was so they could fix it.

Unfortunately for them, while doing the trouble shooting, a supervisor, Jim Watts came by to see how things were going. The supervisor observed them walking around the conveyer system, walking on the conveyer and poking at different parts while conversing with one another.

Watts then went around to the control box and noticed that no locks had been placed on the box. He then went out to the passenger baggage area and noticed that signs had not been put out warning incoming passengers of the work being done.

Watts went back to his office and wrote both employees up for the safety violation. These were reported to the company manager, Ralph Thompson later that morning. After reviewing the matter it was decided that both employees would be suspended for three days for the safety violation.

Campbell and Powell were called into the Manager’s office the next day when they reported for work and advised that they were being suspended immediately and to take their gear and go home.

The employees contacted their shop steward and the union filed two grievances claiming an unjust suspension.

FACTS:

Horton Conveyer Systems is a baggage handling conveyer maintenance contractor that had been recently taken over by an American corporation. Horton Conveyer Systems had been operating three shifts a day and doing emergency repairs on baggage conveyers for the last 15 years at Vancouver Airport.

There have been cutbacks in the company since the takeover and staff has been greatly reduced on the back shifts.

There had been a long and bitter strike at the company about a year earlier and there was still a lot of animosity and mistrust between the union and the employer. The two grievors in this case had been heavily involved in the strike and were known to be strong union supporters.

Jeff Campbell had been employed with the company as a Service Mechanic for approximately 12 years. He had a couple of minor infractions on his record for being late and smoking on airport property but generally speaking his employment record was clean at the time of the incident.

Mark Powell had been with the company for 8 years as welder/mechanic. Powell had previously (three years ago) received a written reprimand for a safety violation and had been caught smoking during working hours on another occasion. He had never been suspended.

The company conducts weekly safety meetings for each shift. At these meetings, employees are reminded that safety is a serious issue. As well, all employees were required to participate in the 'STOP' program. This program was designed to make people stop and think about the work they were going to perform. It also made them ask themselves questions like, "Am I doing this in the safest possible manner?" "Could I injure myself or others by doing this task in this way?" Campbell and Powell had both taken the program.

The employer had a written policy on workplace safety and in particular how and when to use 'lock-out' procedures. All employees were made aware of these policies and copies were kept at the workplace in the employee's lunchroom area.

The supervisor, Jim Watts did not approach the employees the night of the incident. Other than checking to see if the lock out procedures had been put in place he did not see fit to advise the employees that they were violating company policy. He later admitted that he had observed the employees for only a minute or two.

The task of repairing and maintaining equipment is easier when you have power into the particular area you are working on. It also makes the job go quicker. There has been considerable pressure lately to keep baggage moving and customers happy. Employees believed they had to get things fixed as quickly as possible although this has never been put in writing or conveyed to the employees in a formal staff meeting.

A couple of months prior to the grievances going to hearing, the employer had disciplined another employee for a safety violation. In this case the female employee had been

suspended for one week for not reporting a workplace injury. The company rescinded the suspension after she filed a grievance.

Following this incident, there were four more 'lock-out' violations and in each case, employees were suspended without pay. Grievances were filed and are pending in all cases.

CONTRACT LANGUAGE

Article 2 a) Without restricting the definition of just cause, the following shall be deemed to be just cause for dismissal:

1. Consumption of alcohol or use of drugs while at work.
2. Riding on conveyor belts.
3. Arriving at work while impaired by alcohol or drugs.
4. Deliberate theft of property.
5. Insubordination.
6. Breach of company rules as long as those rules have been posted for the information of employees and a copy has been sent to the union.
7. Deliberate or willful misuse or damage of company property.

Article 9:

- a) The Employer shall undertake and make reasonable provision for the safety and health of its employees during the hours of their employment. Protective devices and other equipment necessary to properly protect employees from injury during their working hours shall be provided by the Employer in accordance with usual standards of safety. The Union shall make every feasible effort to assist the employer in enforcing provisions of the Company Rules presently in force and posted at a conspicuous location on the Employer's property.
- b) The Employer and the employee shall comply with all applicable provisions of the Provincial Occupational Health and Safety Regulations in addition to those rules established by the Employer.
- c) The Employer shall establish and maintain a first aid room for injured employees and shall take reasonable steps to provide proper first aid equipment at proper places throughout the plant area.
- d) It is understood and agreed that the welfare plan covering the employees is part of the Agreement.
- e) Subcontractors working on Company property will be informed that they must comply with all safety regulations while on site. The Company and the Union mutually agree to monitor subcontractors on site to ensure compliance with applicable safety regulations. Union members will not be disciplined if a subcontractor does not comply with safety regulations.

HORTON CONVEYER SYSTEMS

Lockout Policy

Management has the overall responsibility to ensure the application of the Lockout Policy. It is the personal responsibility of each employee working with, on, or around power driven equipment to ensure they have properly locked out for their own safety, the safety of the equipment, process or system on which they are working. This is not an entire list of all lockout situations. If you are not sure what to lockout you should ask your supervisor. Each supervisor will ensure that each employee that reports to him has been properly trained and performs a lockout using proper procedure as defined in this program. Records of this training will be sent to HR & Safety. Except in emergency circumstances, any changes made to this lockout procedure will be reviewed with members of the safety committee before they are put in place. In emergency circumstances the changes must be approved by the plant manager.

Due to the extreme potential for serious injury or death when equipment is cleaned, repaired, or maintained without properly following the prescribed lockout procedures, the following requirement will be consistently applied.

“Failure to properly lockout is considered a major rule infraction which subjects the employee(s) involved to discipline up to and including discharge. Any employee who violates or condones the violation of the requirement, regardless of outcome, will receive a minimum of one (1) day unpaid suspension followed by a five (5) day unpaid suspension, followed by immediate termination in the event of any subsequent lockout rule or violation for the duration of their employment at Horton Conveyer Systems.

The lockout procedure is intended to provide employees with a zero mechanical state. It has been designed for everyone’s protection when carrying out clean up, adjustments, or repairs on all power driven equipment, where the accidental starting of such equipment can result in injury.

The procedure provides for the locking out of all power driven equipment before:

- a) working on any equipment;
- b) working in or on any moving component of a conveyor;
- c) entering any conveyor feed discharge chute, screening or crushing system;
- d) visiting or inspection of any component that if started would injure a person;
- e) or at any time when cleaning or working on or around equipment where its operation may present risk of injury.

A.B.C. LOCAL 999

Grievance Report Form

Employee's Name: Jeff Campbell

Department: Maintenance

Nature of Grievance: Grievor was suspended by the employer without just cause.

Request of Adjustment:

Request that the grievor have the suspension removed from his record with full redress.

Clause of Contract Violated: Article 2 (a) & any other applicable clause.

Grievor's Signature: *Jeff Campbell*

Date: August 16th

A.B.C. LOCAL 999

Grievance Report Form

Employee's Name: Mark Powell

Department: Maintenance

Nature of Grievance: Grievor was suspended by the employer without just cause.

Request of Adjustment:

Request that the grievor have the suspension removed from his record with full redress.

Clause of Contract Violated: Article 2 (a) & any other applicable clause.

Grievor's Signature: *Mark Powell*

Date: August 17th

The Canadian Joint Grievance Panel

**MOCK CASE #12 - STRATFORD COMMUNITY LIVING
INC.**

THE ISSUE:

Jim Campbell, a senior counselor at Stratford Community Living Inc. arrived for his regularly scheduled shift at 12:45 pm on June 17th. He was briefed by a co-worker on an unusual event that had occurred that morning at the worksite.

A taxi driver from one of the local cab companies had been hanging out in front of the worksite. When one of the workers went out to see what he wanted, the driver started making accusations against the employees of the cab company (Skylight Cab) currently in use by SCLI.

This taxi driver stated that drivers from Skylight Cab had been abusing SCLI residents and that something should be done about this. The SCLI employee immediately contacted their head office and reported these allegations. He then wrote up an incident report and placed it in the daily log book at the House.

When Campbell arrived at work, the day shift worker, Sarah Connolly, advised him of what had taken place.

Once the previous shift left for the day, Campbell went to the phone and called the owner of Skylight Cab to advise him that some serious allegations were being made against his company by a competing cab driver and that he should contact the head office of SCLI as soon as possible to deal with the matter.

When it was later discovered that Campbell had made this call, the employer terminated Campbell for a violation of their 'Confidentiality Policy' as well as other workplace policies. Campbell went to his union and filed a grievance claiming 'unjust dismissal'.

THE FACTS:

Stratford Community Living Inc. is a quasi government run operation governed by a Community Board of Directors. It provides a residential care environment for troubled youth, many of whom are mentally challenged. SCLI operates 23 'homes' that are spread throughout the Stratford area. Each home provides 24 hour supervision to 3 to 6 residents. The residents, for the most part, function in the community at various levels of competence. Almost all of the residents have difficulty with social comprehension and would be susceptible to abuse, both mental and physical.

SCLI employs an Executive Director, eight supervisors and a staff of 85 full and part time counselors. It receives its funding from government and has to report to the provincial Department of Social Services. It is also governed by a fairly stringent set of policy procedures and rules.

Jim Campbell is a seventeen year employee who works full time at SCLI. His employment record is somewhat checkered and about 13 months ago he had been terminated for tardiness and not adhering to company policy. He filed a grievance which the union took to arbitration and he was re-instated with a three month suspension.

In addition to his termination, he has been suspended twice for two days and has received three written reprimands over a three year period.

It should be noted that after his return to work from the earlier termination, his record was clean up to this incident. He did not have one instance of lateness nor did he receive any type of oral or written reprimand.

On June 17th, after Sarah Connolly had reported the incident with the cab driver, the Executive Director, Arnold Noseworthy, contacted the Supervisor for the area, Janet Fulton and asked her to initiate an investigation. Neither Noseworthy nor Fulton was overly

concerned by the allegations but as per procedure, they had to investigate and report all such incidents. It was later discovered that nobody from SCLI had even bothered to report the incident to the Department of Social Services.

This was not known to Jim Campbell at the time. He in fact tried to contact Fulton himself to advise her he had called the owner of Skylight Cab to give him a heads up. After two attempts, he left another message for Fulton telling her not to bother returning his call.

The next day, Campbell did contact Fulton and asked if he could speak to her that evening when at work. Fulton went to the home and Campbell told her 'in confidence' that he called Skylight Cab's owner Ricky Corbett, and told Corbett what the other cab driver was saying about Skylight drivers and that allegations of abuse had been made against his drivers.

Because he had told Fulton these things 'in confidence' he believed they were 'off the record'.

At a meeting with the employer and his union representative Campbell did admit making the call to Corbett but was adamant that he had not made any reference to abuse of clients. He also denied that Sarah Connolly had shown him the 'incident report' she had written up on the matter. He said he had made the call to give Skylight Cab the heads up and that they should contact SCLI to straighten things out. He saw nothing wrong in what he had done.

Campbell was a long time friend of Corbett's and they had played on the same dart team together. Campbell believed he was doing a favour for a friend and that it really wasn't a big deal. Everyone knew the allegations were ridiculous and as it turned out, nothing was done to Skylight Cab or its drivers. They still provide cab services to SCLI and its clients.

The employer determined that there no grounds to support the allegations made by the other cab driver thus no action was taken against Skylight Cab. At no time were the police notified of this matter nor were any reports made to the Department of Social Services. It was believed the other cab driver was trying to stir up trouble for Skylight Cab in the hopes that their contract would be terminated and the cab driver's own company might pick up the work.

G.E.U. LOCAL 999
Grievance Report Form

Employee's Name: Jim Campbell

Employer: Stratford Community Living Inc.

Nature of Grievance: Grievor was terminated by the employer without just cause.

Request of Adjustment:

Request that the grievor have the termination removed from his record with full redress.

Clause of Contract Violated: Article 2 (a) & any other applicable clause.

Grievor's Signature: *Jim Campbell* **Date:** June 20, 2010

Grievor's Signature: *Jim Campbell* **Date:** August 16th

CONTRACT LANGUAGE

Article 2 a) Without restricting the definition of just cause, the following shall be deemed to be just cause for dismissal:

8. Consumption of alcohol or use of drugs while at work.
9. Arriving at work while impaired by alcohol or drugs.
10. Deliberate theft of property.
11. Insubordination.
12. Breach of company rules as long as those rules have been posted for the information of employees and a copy has been sent to the union.

Article 11.1 An employee may be disciplined or discharged by the employer but only with 'just cause'. If an employee is disciplined or discharged he may file a grievance at Step III of the grievance process and be entitled to proceed to an immediate hearing under the Arbitration provisions of this agreement.

Article 11.12 An Arbitrator shall not amend or alter any provisions of this agreement but may substitute any form of disciplinary action that he or she deems appropriate under the circumstances.

Article 12.1 In addition to and notwithstanding the Employer's general right to discipline and discharge employees, the Employer shall have the right to immediately discharge an employee, without notice, when that employee has abused or stolen from a client.

STRATFORD COMMUNITY LIVING INC.

**EMPLOYEE DECLARATION OF OCCUPATIONAL HEALTH &
SAFETY**

REVISED: 03/15/08

I hereby acknowledge that as a member of the staff of **Stratford Community Living Inc.** I have read, understand and will abide by the information contained in the Occupational Health and safety Manual.

I also acknowledge that a breach of policy may result in my suspension or dismissal.

Signed: James Campbell

Date: June 23, 2003

THE OCCUPATIONAL HEALTH AND SAFETY MANUAL IS TO BE READ DURING THE FIRST WEEK OF EMPLOYMENT AND COMPLETED BY THE END OF THAT WEEK, AT WHICH TIME THIS DOCUMENT IS TO BE SIGNED AND RETURNED TO CENTRAL OFFICE.

06/01/03

SECTION 700 STANDARDS OF CONDUCT

701 PROFESSIONAL CONDUCT

September 2007

It is the policy of **SCLI** to expect each employee to conduct him/herself in a manner that reflects positively on his/her position, co-workers, residents and the agency in general.

Every employee will render honest, efficient and appropriate service.

Every employee will be free of influences, interests and activities that may serve to prevent him/her from acting in the agency's best interests.

Every employee will be held accountable for adhering to agency policies, procedures, rules and directives.

It is incumbent on every employee that he/she not act in a manner that diminishes **SCLI** effectiveness as a service-provider, or its standing in the community.

SECTION 700 STANDARDS OF CONDUCT

702 CONFIDENTIALITY

October 2008

It is the policy of **SCLI** to expect all employees, volunteers, Board of Director members and placement students to maintain strict confidentiality with respect to information obtained during the course of their affiliation with this agency.

Each new employee will receive policy training and supervisory guidance regarding the principals and practice of maintaining confidentiality.

Each new employee, volunteer, Board of Directors member or placement student must sign a Declaration of Confidentiality prior to placement with the agency.

SCLI' confidentiality guidelines apply to:

1. Any and all written/verbal information related to a person receiving service, his/her Family, his/her individual circumstances;
2. All other material contained in each person's file;
3. Employee performance reviews and all other performance-related information;
4. Employee personal information (address, telephone number, etc.);
5. All other material contained in each employee's file at the main office;
6. Any other written/verbal information/material specifically designated confidential by **SCLI**.
7. Any written, verbal or pictorial representation of **SCLI** placed on Internet Social Networks (i.e. Facebook)

It is the responsibility of each new employee, volunteer, Board member and placement student to seek clarification from the Executive Director when the purpose or the practice of maintaining confidentiality is unclear.

The Canadian Joint Grievance Panel

MOCK CASE #13 - DENNISON INDUSTRIAL SERVICES

THE ISSUE:

Gary Sangster has been employed at Dennison Industrial Services since they started the company. A quiet guy, he has been a good employee and basically keeps to his own business. Over the last six months, two younger employees, Mark Goodwin and Joe Harper have been verbally picking on Gary. Almost every day there have been comments made about Gary personally and at every opportunity they make Gary the brunt of a joke.

At first Gary ignored the two loud mouths. As time went by however, Gary found their behavior to be very irritating. He had started to have trouble sleeping and he was losing weight.

Finally, on December 7th, Gary was in the company's lunchroom when Goodwin and Harper confronted him. They said they had a gift for Gary and presented him with a gift box nicely wrapped up. Since December 8th was Gary's birthday, he thought the two employees were trying to make amends and accepted the gift. As other co-workers made their way into the lunch room, Gary opened the gift to find a small dead crow in the bottom of the box.

Gary flipped out and started throwing punches at both Goodwin and Harper. In the melee that broke out, Harper suffered a broken nose and Goodwin a black eye.

The next morning, the HR Director, Tim Chaisson, reviewed the matter with all three employees. He recommended that Goodwin and Harper be suspended for one week and that Sangster be terminated for what a clear violation of company policy.

When Sangster learned of his termination, he contacted his union representative and asked that a grievance be filed contesting his firing. Later that day, Goodwin and Harper also contacted their union and demanded that grievances be filed on their behalf.

FACTS:

Dennison Industrial Services is an industrial waste disposal service. It has been in operation for approximately 15 years. The company has grown from five employees to more than fifty over that period of time.

To keep pace with their growth, company owners have implemented various workplace policies to adhere to provincial law and to keep the workplace safe and productive for its employees.

The company has had few problems with discipline and most employees, once hired, stay with the company. Since it became unionized in 2005, wages and benefits have improved and most employees agree that it is a good place to work.

In 2007, on the advice of the company's lawyer, owners implemented a revised 'Workplace Harassment Policy' as well as a 'Violence in the Workplace Policy'. All employees were provided with a half-day training session on the policies and were then required to sign off that they had received this training and understand the policies as presented. This then became part of the pre-employment hiring process for all new employees.

Gary Sangster was one of the original employees of Dennison Industrial Services. He has a good employment record and except for one written reprimand for a safety violation in 2006. While not the most popular employee at the company, Sangster gets along with his co-workers.

This started to change in 2009. Mark Goodwin and Joe Harper were hired about six months apart and over a period of a few months, became close buddies. Goodwin and Harper were both in their early twenties and soon became known for their practical jokes at the worksite. For the most part these jokes were amusing and playful but there were times when they crossed the line of acceptance.

In the summer of 2010, something happened at the workplace between Sangster and Goodwin. There were rumors of what had occurred but nothing could be substantiated. Clearly, whatever had taken place caused a serious rift between the co-workers. From that point on, the playful practical jokes turned more serious and were almost always directed at Gary Sangster.

Up until the incident on December 7th, none of the employees involved had ever reported a problem to their supervisor. In fact, if supervisory staff were around, it was business as usual.

Both Goodwin and Harper had received a written reprimand for one of their practical jokes they had played on another co-worker, Cam Barker.

Harper and Goodwin received medical treatment for the broken nose and black eye each suffered. Sangster received some minor facial cuts and bruised knuckles. He chose to take care of these on his own.

When the company completed its investigation into the matter it was determined by them that Sangster threw the first punch. Both Goodwin and Harper were adamant that they were only defending themselves. Co-workers who were arriving at the lunch room were so shocked by the outburst that their versions of what actually occurred were widely varied and nobody seemed to know for sure who had started the fight.

Based on the company's findings, they terminated Gary Sangster and disciplined the other two by imposing a week suspension.

All three employees filed grievances. Goodwin and Harper's cases have been set aside by the union pending the outcome of the Sangster hearing.

CONTRACT LANGUAGE

Article 9: Safety and Health

- 9.1 The Employer shall undertake and make reasonable provision for the safety and health of its employees at the plant during the hours of their employment. Protective devices and other equipment necessary to properly protect employees from injury during their working hours in or at the plant shall be provided by the Employer in accordance with usual standards of safety. The Union shall make every feasible effort to assist the employer in enforcing provisions of the Plant Rules presently in force and posted at a conspicuous location on the Employer's property.
- 9.2 The Employer and the employee shall comply with all applicable provisions of the Provincial Occupational Health and Safety Regulations in addition to those rules established by the Employer.
- 9.3 The Employer shall establish and maintain a first aid room for injured employees and shall take reasonable steps to provide proper first aid equipment at proper places throughout the plant area.
- 9.4 The employer and the Union agree that Harassment and Violence in the Workplace policies shall be strictly complied with by all employees.
- 9.5 It is understood and agreed that the welfare plan covering the employees is part of the Agreement.

Article 11: Discipline and Discharge

- Article 11.1 An employee may be disciplined or discharged by the employer but only with 'just cause'. If an employee is disciplined or discharged he may file a grievance at Step III of the grievance process and be entitled to proceed to an immediate hearing under the Arbitration provisions of this agreement.
- Article 11.2 An Arbitrator shall not amend or alter any provisions of this agreement but may substitute any form of disciplinary action that he or she deems appropriate under the circumstances.
- Article 11.3 In addition to and notwithstanding the Employer's general right to discipline and discharge employees, the Employer may immediately discharge an employee, without notice, for the following infractions:
- a) Consumption of alcohol or use of drugs while at work.
 - b) Arriving at work while impaired by alcohol or drugs.
 - c) Fighting or other excessive use of physical force against a coworker, supervisor or anyone contracted to work for the employer.
 - d) Deliberate theft of property.
 - e) Insubordination.
 - f) Breach of company rules as long as those rules have been posted for the information of employees and a copy has been sent to the union.
 - g) Deliberate or willful misuse or damage of company property.

G.E.U. LOCAL 999
Grievance Report Form

Employee's Name: Gary Sangster

Department: Maintenance

Nature of Grievance: Grievor was terminated by the employer without just cause.

Request of Adjustment:

Request that the grievor be reinstated with full redress.

Clause of Contract Violated: Article 9 & 11 & any other applicable clause.

Grievor's Signature: Gary Sangster **Date:** December 10th

Dennison Industrial Services

Health and Safety Policy/ Procedure - Canada

Policy Name: Violence In The Workplace	Total No. of Pages: 4	Date of Issue: 01/07
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APPLIES TO: All active full-time, part-time, casual employees, and contractors or third parties of **Dennison Industrial Services** (hereinafter “the Company”)

1. PURPOSE

1.1 Dennison Industrial Services (hereinafter “the Company”) as part of our Health and Safety program is committed to providing a workplace that is safe and free from violence or threats of violence. And the violence hazard assessment in the program is the responsibility of the local Joint Health and Safety Committee and any concerns and recommendations shall be noted in the minutes.

2. POLICY

2.1 The Company will not tolerate any type of workplace violence committed by or against employees. It is strictly forbidden for any person to threaten, exhibit threatening behavior or engage in acts of violence against employees, visitors, guests or other individuals on Company property while at work or on airport/terminal property.

2.1.1 Workplace violence, for the purpose of this Policy, is defined as any act in which a person is abused, threatened, intimidated or assaulted in his or her employment. Workplace violence includes:

Threatening behaviour - such as shaking fists, destroying property or throwing objects, which give a worker reasonable grounds to believe he or she is at risk of physical injury.

Verbal or written threats - any expression of an intent to inflict harm on a person, persons or the Company.

Harassment - any behaviour that demeans, embarrasses, humiliates, annoys, alarms or verbally abuses a person and that is known or would be expected to be unwelcome. This includes words, gestures, intimidation, bullying, or other inappropriate activities.

Verbal abuse - swearing, insults or condescending language.

Physical attacks - hitting, shoving, punching and kicking. Any kind of overt physical contact that could cause injury or embarrassment / humiliation.

Rumours, swearing, verbal abuse, pranks, arguments, property damage, vandalism, sabotage, pushing, theft, physical assaults, psychological trauma, anger-related incidents, rape, arson and murder are all examples of workplace violence.

Workplace violence is not limited to incidents that occur within a traditional workplace. Work-related violence can occur at off-site business-related functions (conferences, trade shows), at social events related to work, in clients' homes or away from work but resulting from work (a threatening telephone call to your home from a client) any physical assault, threatening behavior or verbal abuse occurring in the workplace. It includes but is not limited to beating, stabbing, shooting, sexual assault, and psychological trauma such as threats, obscene phone calls, an intimidating presence, and harassment of any nature.

2.2 No one working for the Company may threaten to act with violence or cause another to act with violence against any other employee(s) or person(s) or against the Company.

2.2.1 Violations of this Policy will lead to disciplinary action, up to and including termination of employment. Other consequences may include arrest and/or prosecution.

2.2.2 Any person or employee who makes violent threats, exhibits threatening behavior, engages in violent acts or harms another employee or person, or causes/provokes another person to do the same while on Company property and/or airport/terminal property shall be removed from the premises as quickly as safety permits. The accused individual shall not be allowed to return to Company premises pending the outcome of an investigation, and/or until he/she is given permission to do so.

2.3 The Company will immediately investigate any reports of violence and initiate an appropriate response dependent on the facts revealed in the investigation. This response may include, but is not limited to, suspension and/or termination of any business relationship, reassignment of job duties, suspension or termination of employment or security clearance.

2.4 **There shall be no retaliation in any form to any employee** who, in good faith, reports what is believed to be workplace violence or who cooperates in any investigation. Any employee who believes he/she is the victim of retaliation for reporting workplace violence or cooperating in an investigation should immediately contact his/her Regional Human Resources Director or the local General Manager.

2.5 The Company will provide support services to victims to violence.

2.6 The Company will provide violence prevention training need when occurs.

2.7 The Company will closely monitor the use of the policy, and review the policy when needed.

2.8 The Company representative on the local Joint Health and Safety Committee shall conduct annual Violence Assessments in conjunction with the Worker Representative Joint Health and Safety Committee, and each branch shall report findings with their recommendations to senior management.

3. REPORTING PROCEDURES

3.1 Any employee who has received, witnessed or been told of another employee who has witnessed or received any threats or acts of violence is required to report such information to a Supervisor, Manager , General Manager or Regional Human Resources Director. Employees must also report any witnessed behavior that is threatening or violent that may lead to acts of violence being carried out on Company property or in connection with the Company conducting its business.

3.2 Each Company location's staff is responsible for reporting incidents of violence or behavior that threatens violence to Company employees or Customers as follows:

- Supervisors and Managers observing or receiving reports of violence or threatening behavior **must** immediately notify the next level of management,
- and Supervisors/Managers must telephone the Regional Human Resources Director and / or local General Manager especially if Police or EHS is called. If the GM or RHRD is not immediately available, the reporting Supervisor or Manager shall request to speak with any other senior executive of the Company.

3.3 Always write a preliminary report identifying key details of date, time, witnesses, witness contact information, was Emergency Health Services (EHS) called, police, family members etc. This information is crucial for follow-up investigation purposes.

3.4 The Supervisors and / or Managers must not hesitate to call the Police or EHS if the health or safety of the employee(s) or customer's employee(s) is at risk.

4. DOMESTIC VIOLENCE

4.1 Domestic violence may become a form of workplace violence in certain situations and the reporting of such acts should be handled in accordance with the Reporting Procedures outlined above.

4.2 Any individual who applies for and/or obtains a protective/restraining order from the Court that lists any Company location as being a protected area **must** provide to the Regional Human Resources Director and / or the General Manager of the Branch location a copy of the petition and declarations used to seek the order, a copy of any temporary protective or restraining order which is granted and a copy of any protective or restraining order which is made permanent within five (5) calendar days of obtaining such order. This also applies should the Restraining Order be directed at another employee.

4.3 Once the Company has received any such notice of a Restraining Order, it shall then determine options, as this will be deemed as an "accommodation".

The employee must request an accommodation in writing with copies of all paperwork to the Regional Human Resources Director and / or the local General Manager. A formal answer from the Company will be forthcoming within seven (7) business days.

5. VIOLATIONS

5.1 Any employee who is found to have made a deliberate false accusation of workplace violence violates this Policy. In such instances, the complainant will be subject to disciplinary action up to and including termination of employment. However, failure to prove a claim of workplace violence does not constitute proof of a false and/or malicious accusation.

5.2 Violations of this Workplace Violence Policy will be met with appropriate disciplinary action, up to and including termination of employment from the Company.

5.3 If and when appropriate the Company shall cooperate with any criminal investigation as a result of a Workplace Violence incidence.

6. ENFORCEMENT

6.1 Every Officer, Manager and Supervisor of the Company shall have the responsibility of maintaining a workplace free of violence or threats of violence.

6.1.1 Further, Officers, Managers and Supervisors shall report to the appropriate Human Resources Representative any employee who he/she suspects may be experiencing post-traumatic stress disorder in connection with an employment related traumatic event.

6.2 It shall be the specific responsibility of the Human Resources Department to provide information to Officers, Managers and Supervisors as to management's duties, responsibilities and roles relative to the prevention, reporting and handling of threats or acts of violence in the workplace.

6.3 Further, the Human Resources Department has the responsibility of assuring that any employee who may be experiencing post-traumatic stress disorder in connection with an employment related traumatic event receives assistance with information about stress debriefing services.

7. CONFIDENTIALITY

7.1 The Company understands the sensitivity of the information requested and will keep it confidential to the extent possible in recognition and respect for the privacy of the reporting employee(s). However, a promise of confidentiality will not limit the Company from informing any and all personnel who in the Company's opinion have a need-to-know such information in order to take appropriate action to assure the safety of those threatened with harm.

7.2 The appropriate General Manager and Regional Human Resources Director will determine who will be notified, the type of information to be disclosed, and the timing of such disclosure.

Dennison Industrial Services

HR Policy/ Procedure Canada

Policy Name: Harassment/Discrimination In the Workplace		Total No. of Pages:	Date of Issue: 1/07
Approvals: (1) COO (2) General Counsel (3) VP Human Resources	Department: Human Resources		Date of Review: 02/07
			Date of Review: 03/07

Applies to: All active full-time employees scheduled part-time, casual part-time and temporary employees, contractors, customers and vendors.

1. PURPOSE

1.1 To provide employees of Dennison Industrial Services (hereinafter “the Company”) a workplace free of all types of discrimination and harassment as it is contrary to the *Canadian Human Rights Act*, the *Canada Labour Code* section 247 and the *Canadian Charter of Rights and Freedoms* section 15 and on rare occasions the *Criminal Code*. Assaults including sexual assault are covered by the *Criminal Code* and in such cases the police should be contacted.

2. POLICY

2.1 Every employee is entitled to employment and work environment that is free of discrimination and harassment.

2.2 Harassment in the workplace that creates an intimidating, threatening, coercive or hostile work environment is unacceptable. Inappropriate or malicious conduct or comments that are based on prohibited grounds are illegal. Prohibited grounds are:

- Race, nationality or ethnic origin, colour
- Religion
- Age
- Sex and / or sexual orientation
- Marital status and / or family status
- Citing a conviction of an offense for which a pardon has been granted

- Disability

2.3 Sexual Harassment is defined in the *Canada Labour Code* as any conduct, comment, gesture or contact of a sexual nature.

- (a) that is likely to cause offence or humiliation to an employee; or
- (b) that might on reasonable grounds, be perceived by that employee as placing a condition of a sexual nature on employment or any opportunity for training or promotion.

2.4 Harassment, when based on prohibited grounds, may include: (but not limited to)

- Abuse, threats, or intimidation;
- Leering (suggestive staring);
- Obscene or offensive gestures;
- Sexually-oriented comments, including unwanted invitations or requests for sexual favors, whether direct or indirect;
- Persistent, unwanted contact after the end of a consensual relationship;
- Racial or ethnic slurs;
- Display of offensive or derogatory material, including hate literature;
- Graffiti aimed at a person or group;
- Practical jokes which embarrass or harm an employee, or which negatively affect work performance;
- Behavior which undermines self respect or negatively affects job performance or the workplace;
- Unwanted physical contact such as touching, kissing, patting, pinching, etc;
- Vandalism of Company/ Employee/Customer property;
- Physical assault, including sexual assault.

2.4.1

What generally constitutes harassment?	What may constitute harassment?	What does not generally constitute harassment?
<p>Serious or repeated rude, degrading, or offensive remarks, such as teasing about a person’s physical characteristics or appearance, put-downs or insults.</p> <p>Displaying sexist, racist or other offensive pictures, posters, or sending emails related to one of the grounds prohibited under the Canadian Human Rights Act.</p>	<p>Criticizing an employee in public</p>	<p>Allocating work.</p> <p>Following-up on work absences.</p> <p>Requiring performance job standards.</p> <p>Taking disciplinary measures.</p> <p>A single or isolated incident such as an inappropriate remark or abrupt manner.</p>
<p>Repeatedly singling out an employee for meaningless or dirty jobs that are not part of their normal duties.</p>	<p>Exclusion from group activities or assignments.</p>	<p>Exclusion of individuals for a particular job based on specific occupational requirements necessary to accomplish the safe and efficient performance of the job.</p>
<p>Threats, intimidation or retaliation against an employee, including one who expressed concerns about perceived unethical or illegal workplace behaviours.</p>	<p>Statements damaging to a person’s reputation.</p>	<p>Measures taken against someone who is careless in his or her work, such as handling of confidential documents.</p>
<p>Unwelcome social invitations, with sexual overtones or flirting, with a subordinate or coworker.</p> <p>Un welcome sexual advances.</p> <p>Unwelcome jokes that are based on one of the grounds prohibited under the Canadian Human Rights Act.</p>	<p>Making sexually suggestive remarks.</p> <p>Physical contact such as touching or pinching.</p>	<p>Friendly gestures among co-workers such as a pat on the back.</p>

2.5 The Company will make every reasonable effort to ensure that no employee is subject to any type of discrimination or harassment;

- 2.5.1 The Company will take such disciplinary measures as is deemed appropriate against any person under the Company's direction who subjects any employee to discrimination or harassment;
- 2.5.2 Each person under the Company's direction will be made aware of this policy and procedure.
- 2.5.3 The Company will not disclose the name of a complainant or the circumstances related to the complaint to any person except where disclosure is necessary for the purposes of investigating the complaint or taking disciplinary measures in relation thereto; and
- 2.5.4 Employees who feel they are being treated in a discriminatory or harassing manner as defined by this Policy should seek redress first through the Company's internal procedure, then the grievance process or finally the Canadian Human Rights Commission.
- 2.5.5 The Company will not disclose the names of the witnesses spoken to during an investigation. Their original statements shall be documented and filed in a secured Human Resources file and used only in the investigation report.

3. PROCEDURE – See Appendix A (flow chart) and B (complaint form)

- 3.1 Don't ignore it. Harassment continues if not addressed, in fact, it has a tendency to get worse if it isn't stopped. Sometimes, silence may be interpreted as consent.
 - 3.1a) Harassment is often not intended. Tell the harasser that their behavior is not wanted. Ask them to stop. Tell them that if their behavior does not stop, you will report it.
 - 3.1b) If you do not want to speak to the harasser yourself, or if the harassment continues after you have asked that it stop, tell your supervisor about it.
 - 3.1c) If you are not comfortable discussing the harassment with your supervisor, you can speak to any member of Dennison Industrial Services management or direct your concerns to the Human Resources Director.

- 3.1d) **Early problem resolution** provides a method in which to resolve any situation or conflict as soon as possible, in a fair and respectful manner between the parties without having to resort to the complaint process. Every effort should be made to resolve the problem early with open communication and in a co-operative manner.
- 3.1e) When performing your job duties if a co-worker, supervisor, manager, member of the public, vendor or customer harasses or discriminates against you, get the facts (listed below) and let your supervisor know immediately. A number of options will be explored such as early resolution, mediation or investigation. **See Appendix A**

3.2 When you file a formal complaint that is for investigation it must be in writing. Keep a record of incidences whenever possible. Write them down so you don't forget:

- What happened?
- When (dates & times) did it happen?
- Where did it happen?
- Were there any witnesses?
- What are their names?

3.3 WHAT SHOULD YOU DO IF YOU WITNESS HARASSMENT?

If you know that a co-worker is being harassed, you can offer your support by encouraging them to report the harassment and offer to act as a witness. You can also let the harasser know that their behavior is inappropriate and ask them to stop. If the harassment continues, you can report it yourself to a supervisor or manager.

3.4 WHAT SHOULD YOU DO IF YOU ARE ACCUSED OF HARASSMENT?

If someone tells you that you have harassed him or her, listen to what they have to say and think about it. Realize that even if you did not intend to hurt them, your conduct has caused offense. Apologize and tell the person that it won't happen again. Stick to your word. If you are notified that you have been named in a complaint, tell the investigator what happened. Give the names of any witnesses. Remember that both the Company and the Canadian Human Rights Act forbid any form of retaliation against the

person who has made a complaint. Retaliation is itself a form of harassment and will be subject to disciplinary measures.

3.5 WHAT HAPPENS IF IT IS DETERMINED THAT THE ALLEGATION(S) OF HARASSMENT OR DISCRIMINATION IS FRIVOLOUS, BLATENTLY FALSE AND/OR DONE WITH MALICIOUS INTENT?

The person(s) who made the false allegations shall be subject to discipline measures up to and including termination of employment.

MEMORANDUM OF UNDERSTANDING

Dennison Industrial Services and the *Canadian Human Rights Commission* recognize that reducing discrimination and harassment requires a proactive and systemic approach, and that it is in the best interests of all parties to work together to resolve allegations as early as possible.

Upon learning of a human rights dispute in the workplace, the Company will immediately invoke the internal complaint policy and procedure and attempt to seek resolution using the in-house processes. Should this fail, the Company may choose to get assistance from the Commission in order to seek assistance to resolve the dispute before a grievance or complaint is filed, including but not limited to the use of Commission mediators with human rights training. The Commission also provides the option of an alternative dispute resolution (ADR) process.

Appeal Process

Employees who feel that their concerns were not addressed in the in-house or internal process should if unionized file a grievance or if not unionized file a complaint with the Canadian Human Rights Commission.