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THE UNION STEWARD

The Steward is a very important part of the unionization process. If the Steward fails to perform his or her duties and functions, the whole organizational structure suffers, and therefore, the members do not receive the benefits they deserve. Just as it is with any other team effort, if the players don't do their job, everyone on the team loses.

The Steward is the main communication link in the Union process. If there is a breakdown at the Steward's level, it ruins the whole unionization process. The Steward is the Union Representative on the job. The Union's perception to the membership is based mainly on the actions of the Steward. If the Steward does his or her job, the Union will be perceived in a favorable manner, and a positive atmosphere will be created.

THE STEWARD'S RESPONSIBILITIES

1. Give leadership to those they represent.
2. See that all workers are treated equally.
3. Take up all grievances that arise.
4. Stop rumors before they get out of hand.
5. Keep members well-informed on issues that affect the Union - especially the outcome of the grievances.
6. Get the members to know you.
7. Gain their confidence so people will work with you.
8. Set an example for others to follow.
9. Fight against discrimination vigorously and for other basic Union principles and policies.
10. Keep abreast of all significant political developments.
11. Know your supervisor.
12. Know the contract and bargaining procedures.
13. Maintain an atmosphere of receptiveness to new ideas, problems, work or personnel.
14. Attend Union meetings.
15. Check for health and safety hazards.
16. Know all job classifications and hourly rates in the contract.
17. Know the Employer's policies, rules, and regulations.

THE STEWARD IS REQUIRED...

1. To report to the Local Union office, as they occur, any change in the status of the members in the unit, such as:

   A. Retirements (as early as possible).
   B. Job openings or jobs filled.
   C. Deaths.
   D. Members off due to sickness or accident.
   E. Members working on permit.
   F. Any change in job classification or wage scales.
   G. Inform the Company one month in advance to change union dues when a wage increase comes into effect.
   H. Follow-up to make sure payroll makes the correct union dues deductions.

2. To maintain a bulletin board where all members of the bargaining unit have access.

   To post all material sent by the Local.

   To maintain the bulletin board in an orderly fashion, and remove any controversial material, jokes, pictures, etc.

International Union of Operating Engineers Local 95

Union Stewards

Stewards who represent more than fifteen (15) members are relieved of paying union dues conditional on them attending Union Steward Training and a minimum of four (4) Union Meetings or three (3) Union Meetings and the Labor Day Parade each year.

MEMBER FORMS GUIDE FOR LOCAL 95 STEWARDS

**Stewards must hand out to ALL members when any of the following takes place, after they are filled out, return them to the Hall and copy the employer:*

When an employee is hired, fired, dies, is on any type of disability, on FMLA, on active duty serving our Country, quits, retires, changes their email address, changes their mailing address or any phone numbers.

FORMS TO BE USED;

New Hires (full time)

Application (circle Full Time)

All Full Time members must *COMPLETELY* fill out the application form and submit it to the Union Hall.

Dues authorization (choose the correct form for your site, $125 or $300)

The member must choose their initiation fee payment schedule and sign the form prior to submitting it. Employee does not become a member until initiation fee is paid in full.

PAC Fund

This is a voluntary monthly $5 deduction from the members' pay. You are asked to encourage participation in the PAC fund as this is the ONLY monies that are used for political contributions. NO DUES ARE USED FOR POLITICAL CONTRIBUTIONS; WE RELY ON THE PAC FUND FOR THIS. (Despite what the right (not) to work commercials say)

Temporary Employees (Full or part time)

Application (circle Temporary)

If the Temp is eventually hired Full Time, you must fill out a Member status form and submit it all new information.

Dues authorization – permit fee (choose the correct form for your site, $125 or $300)

Temporary employees are not members of the Union.
The temp employee will not pay an initiation fee unless they choose to or become a full time member. If they choose to pay their initiation fee while being a temp, it does not change their temp status.
They will pay a permit fee equal to the dues at your facility.
They must sign the form prior to submitting it.

PAC Fund

This is a voluntary $5 deduction from the members' pay. You are asked to encourage participation in the PAC fund as this is the ONLY monies that are used for political contributions. NO DUES ARE USED FOR POLITICAL CONTRIBUTIONS; WE RELY ON THE PAC FUND FOR THIS. (Despite what the right (not) to work commercials say

Disability - Member Status forms need to be filled out and turned into the Hall when a member both goes out on a disability and when he returns to work.

*MEMBER IS RESPONSIBLE FOR MINIMUM MONTHLY DUES WHILE ON A DISABILITY IF EMPLOYER IS NOT PAYING THEM. PAYMENT MUST BE SUBMITTED TO DUES DEPARTMENT ON A MONTHLY BASIS.

Active Duty - Member Status forms need to be filled out and turned into the Hall when a member both goes on active duty and when he returns to work.

*ACTIVE DUTY MEMBERS' DUES ARE WAIVED WHILE ON ACTIVE DUTY

FMLA - Member Status forms need to be filled out and turned into the Hall when a member both goes out on FMLA and when he returns to work.

*MEMBER IS RESPONSIBLE FOR MINIMUM MONTHLY DUES WHILE ON FMLA IF EMPLOYER IS NOT PAYING THEM. PAYMENT MUST BE SUBMITTED TO DUES DEPARTMENT ON A MONTHLY BASIS.

Email or mailing address or phone number(s) - Member Status forms need to be filled out and turned into the Hall when a member changes their email or mailing address as well as their phone numbers.

Deceased - Member Status forms need to be filled out and turned into the Hall when a member passes away.

Discharged - Member Status forms need to be filled out and turned into the Hall when a member is discharged.

Quit or retires - Member Status forms need to be filled out and turned into the Hall when a member either quits or retires.

*MEMBER IS RESPONSIBLE FOR MINIMUM MONTHLY DUES IF THEY CHOOSE TO REMAIN A MEMBER OF LOCAL 95. PAYMENT MUST BE SUBMITTED TO DUES DEPARTMENT ON A MONTHLY BASIS.

*RETIREES MUST REMAIN MEMBERS TO BE ELIGIBLE FOR RETIREE HEALTH & WELFARE PLAN

WHAT I NEED...TO DO MY JOB

1. Union Contract.
2. Membership Applications.
3. Union Dues Deduction Authorization Cards.
4. Rebuttal Forms.
5. Grievance Fact Sheets.
6. Seniority Lists.
7. Job Classifications.
8. Spiral Notebook and Pen.
9. Grievance Forms.
10. Record of past grievances settled.
11. Employer's Work Rules.

WHAT DO THE MEMBERS NEED?

1. A feeling of security.
2. A feeling of job growth.
3. A feeling of involvement.
4. A feeling of importance.
5. A feeling of freedom or expression.
6. A sense of dignity.
7. A feeling of being appreciated.
8. A feeling of having their concerns voiced.

THINGS TO DO & THINGS TO AVOID TO BE EFFECTIVE

DO

1. Be firm, but fair and consistent
2. Seek the advice of your Business Representative.
3. Get **all** the facts and keep written records.
4. Keep members informed on issues that affect them.
5. Attend education classes.
6. Attend Union meetings.
7. Listen to "complaints" as well as grievances.
8. Give credit where credit is due.
9. Keep records of grievance decisions.
10. Discuss work-related problems with co-workers.
11. Prevent grievances when possible by getting the supervisor to consult with you prior to taking action.
12. Know the meaning of contract clauses.
13. Check with members as much as possible.
14. Know your people personally.

DO NOT

1. Be timid or apologetic.
2. Shout, rant or denounce.
3. Be side-tracked with irrelevant issues.
4. Lose your temper.
5. Fall for soft-soap or back-slapping.
6. Play politics with grievances - you represent everyone.
7. Miss meetings.
8. Pretend to know all the answers.
9. Bawl out a member in front of others.
10. File a grievance without investigating.
11. Give out false information.
12. Ask for special privileges.
13. Make side agreements.
14. Knock management unnecessarily.

STEWARD'S RESPONSIBILITY TO HELP ORGANIZE
THE IMPORTANCE OF ORGANIZING

Many times in our day-to-day lives, we may hear one of our friends or acquaintances express a desire to have a Union in their workplace. If you should ever encounter this situation, it is important to contact your Union Representative. Your Union's Representatives are knowledgeable in the procedures involved with bringing our Union into an unorganized place of work.

All unions gain strength through their members, and it only stands to reason that the more members your Union has, the more power and influence your Union will have. This is especially important in the pursuit of a better standard of living for all workers.

In private employment, all employees are protected by the National Labor Relations Act, except supervisors and guards. In public employment, even supervisors have protection under the Public Employment Relations Commission.

Remember to tell people who have an interest in organizing that they have the legal right to:

1. Self-organization.
2. Form, join, or assist labor organizations.
3. Bargain collectively through representatives of their own choice.
4. Act together for the purpose of collective bargaining or other mutual aid or protection.
5. Refrain from these activities.

These rights are protected by Federal and State labor laws. These rights are very important, and if they are violated, your Representative knows how to handle the problem.

The process for organizing non-union workers is just one more way that you can become involved in your Union. We encourage this to the fullest, and we look forward to working with you in these types of endeavors.

GRIEVANCES

UNION FACT SHEET

GRIEVANCE FORM

WEINGARTEN RULES

WEINGARTEN RIGHTS

POINTERS FOR WITNESSES

LETTER OF REBUTTAL

International Union of Operating Engineers

LOCAL UNION NO. 95-95A

AFFILIATED WITH STATE COUNCIL OF OPERATING ENGINEERS
MEMBERS OF THE PENNSYLVANIA AFL-CIO

300 SALINE STREET
PITTSBURGH, PA 15207
(412) 422-4702
FAX (412) 422-4721

116 DOBSON AVENUE
WARREN, PA 16365
OFFICE/FAX
(814) 726-7334

GRIEVANCE FORM

Building _____ Grievance No. _____

Date Filed: _____ Step No. _____

Grievant Name(s) _____

Date of Grievance: _____ Steward: _____

Statement of Grievance: _____

_____

_____

_____

The Grievance is a violation of but not limited to

Article(s). _____

Relief Requested: _____

_____

_____ _____

Employee's Signature Steward's Signature

_____ _____

Company's Signature, Title

Company response _____

_____

_____

_____

_____

Date of Company response _____

Attach all pertinent material.

UNION RESPONSE

Accepted _____ Rejected _____ Date _____ Step No. _____

White Copy: Union Yellow Copy: Grievant Pink Copy: Employer

GRIEVANCES

A grievance shall be filed if a violation of the contract or a practice occurs which endangers life, limb, or property.

When a member feels that he or she must grieve, check the contract to be sure that a grievance is in order. If a grievance is in order, be sure to follow the procedure outlined in your contract **to the letter**.

When filling out a grievance, there are 6 areas of information which should be determined:

1. Who are the parties involved?
2. What happened?
3. Where did it happen?
4. Why is it a grievance?
5. When did it happen?
6. Send a copy to your Union Representative.
7. WHOA! Go back and check the grievance to be certain that it is filled out correctly within the time limits.

An important item to remember is that in filing a grievance, you must ask for a remedy. That is, the grievant must be made whole!

Every contract outlines a procedure and time limits which must be adhered to when filing a grievance. This is important, because if proper procedures are not followed, the grievance will fail. If the time limits are not adhered to, the grievance will be declared untimely.

If a proper answer to a grievance is not received, it can be advanced to a higher step. The procedure is outlined in your contract and must be followed.

In the event that doubt exists as to whether or not a grievance is in order, contact your Union Representative for clarification.

Always check your contract so all grievances are kept within the appropriate time lines. This is probably the most important single issue in filing a grievance.

GRIEVANCE FACT SHEET

This form is to be used to aid in investigating a grievance. The FACT SHEET outlines the information that will be necessary to develop a strong case. Use additional pages to document all the details. **DO NOT TURN THIS FORM INTO MANAGEMENT; THIS INFORMATION IS FOR THE UNION'S USE ONLY!**

Employer_____
SS#_____
Grievant_____
Department_____
Classification_____ Date of
Hire_____

What happened? Also, describe incident which gave rise to the grievance.
_____
_____
_____

Who was involved? Give names and titles. _____
_____
_____

When did it occur? Give day, time, date(s). _____
_____
_____

Were there any witnesses? Give names and titles. Get a signed statement.
_____
_____
_____

Where did it occur? Specific location(s)._____
_____
_____

Why is this a grievance? What is management violating: contract, rules and regulations, unfair treatment, existing policy, past practice, local, state, federal laws, etc._____
_____
_____

ARTICLE SECTION PAGE

(but not limited to the above

What adjustment is required? What do you think management must do to correct the problem?

Additional comments. Use reverse side if needed.

Grievant's Signature

Date

Steward's Signature

Date

NOTE: A COPY OF THIS FORM TO BE COMPLETED BY STEWARD OR OFFICER FILING GRIEVANCE AND TO BE TURNED INTO LOCAL UNION'S GRIEVANCE FILE, ALONG WITH A COPY OF GRIEVANCE AND DISPOSITION.

CHECKLIST

FOR GRIEVANCE INVESTIGATION

HAVE THESE POINTS BEEN COVERED AND ENTERED ON THE FACT SHEET?

****Discharge and Penalties**

1. Just cause.
2. Complete statement of events leading to discipline.
3. Date and times (important to document)
4. Supervisor's name.
5. Name, address, phone and statement of witness (if any)
6. Employee's record.
7. Print or diagram of area (if applicable)

Job Posting

1. Grievor's classification and seniority
2. Grievor's previous classifications.
3. What grievor was temporarily promoted to.
4. Date of promotions (if any).
5. Pay stubs if possible.
6. Grievor's experience in vacancy requested.
7. Name and seniority of employee awarded job.
8. Number of posting and grievor's application.
9. Articles violated.

Job Postings (Improper or Non-Posting)

1. Classification of vacancy.
2. Area vacancy existed.
3. Name of employee who held vacancy
4. Name of employee promoted to fill vacancy.
5. Article violated.
6. Shift at time of posting.

Removed From Posting

1. Grievor's posted classification.
2. Date of last posting.
3. Grievor's qualifications.
4. Reasons for removal.
5. Classification assigned to.
6. Name of employees junior and not affected.

Temporary Promotion

1. Grievor's seniority and classification
2. Grievor's qualification
3. Classification promotion was made
4. Time of promotion
5. Availability of grievor at time of promotion
6. Name of supervisor involved.
7. Name of employee promoted.
8. Location promotion made.
9. Instructions to grievor (if any).
10. Exact work performed by grievor
11. Articles violated.

Improper Pay (Work Assignment)

1. Grievor's regular posted classification.
2. Grievor's regular work assignment.
3. Grievor's assignment on day in question.
4. Name of employees who worked in grievor's place (if any).
5. Name of employee available (junior to grievor).
6. Date of grievor's last posting.
7. Safety involved (if any).
8. Rate of pay applicable to assignment.
9. Exact work performed by grievor and instructions from supervisor
10. Articles violated.

Demotion

1. Grievor's classification and seniority
2. Number of employees affected.
3. Grievor's qualifications.
4. Classification demoted to.
5. Names of junior employees holding higher rated jobs (if any)
6. Name of employee performing grievor's regular work (if any).
7. Articles violated.

Overtime

1. Grievor's classification
2. Shift or work group
3. Date and shift overtime was scheduled.
4. Classification scheduled for overtime.
5. Name and classification of employee who worked
6. Record of overtime from supervisor's book
7. The actual work that was performed.
8. Articles violated.

Statutory Holiday

1. Same as overtime
2. Seniority of grievor
3. Seniority of employees who did work.

Vacations

1. Seniority
2. Time requested.
3. Time allotted.
4. Grievor's qualification
5. Name and classification of junior employees.
6. Number of employees in work group.

Supervision Working

1. Name of personnel doing the work
2. Type of work performed
3. Amount of time worked.
4. Area where work done.
5. Grievor's classification
6. Availability of grievor

Transfer

1. Seniority
2. Department requested
3. Name of new employees
4. Grievor's classifications
5. Employees available to replace grievor
6. Date of grievor's request for transfer

****Note:**

If this is a Discharge or Discipline Case: —

— Did the steward ask about personal problems of the grievor?

Did the steward ask about any previous record, good or bad, long or short?

Did the steward probe any extenuating circumstances in this case?

— Did the steward ask about the personal character of all people involved?

— Did the steward discuss the consequences of the penalty?

— Did the steward consider whether or not the "punishment fits the crime"?

— Did the steward advise the grievor to seek employment while waiting?

WEINGARTEN RULES

What is an investigatory interview?

Employees have Weingarten rights only during investigatory interviews. An investigatory interview occurs when a supervisor questions an employee to obtain information which could be used as a basis for discipline or asks an employee to defend his or her conduct.

WEINGARTEN RULES

Under the Supreme Court's Weingarten decision, when an investigatory interview occurs, the following rules apply:

RULE 1. The employee must make a clear request for Union representation before or during the interview. The employee cannot be punished for making this request.

RULE 2. After the employee makes the request, the Employer must choose from among three options:

A. Grant the request, and delay questioning until the Union Representative arrives and has a chance to consult privately with the employee;

B. Deny the request, and end the interview immediately; or

C. Give the employee a choice of the following:

1. having the interview without representation; or
2. ending the interview.

RULE 3. If the Employer denies the request for Union representation, and continues to ask questions, it commits an unfair labor practice, and the employee has a right to refuse to answer. The Employer may not discipline the employee for such a refusal.

WEINGARTEN RIGHTS

This was a case that was decided by the United States Supreme Court in 1975. The Employer in this case was a chain of retail stores under the name of J. Weingarten, Inc. The stores had food counters in the lobby which sold food that could be eaten there or taken out. One of the employees, a Laura Collins, was under surveillance for reported theft. The surveillance was unsuccessful, but acting on information from one of Collins' fellow lobby employees, Collins was brought in for questioning. She was accused of purchasing a box of chicken that cost $2.98, but only paying $1.00. Collins asked for union representation, but was denied. Collins explained that she bought 4 pieces of chicken which cost a $1.00, but because they were out of small boxes, she used a larger box which normally sold for $2.98. Her story was investigated, and it checked out. After being told that everything was OK, Collins broke down and admitted that the only thing she had taken without paying for was lunch.

Again, they began interrogating Collins. Again, Collins requested and was denied union representation. Upon further investigation, they found that there was no store policy against taking a free lunch, and in fact, all lobby employees were taking free lunches. Again, they told Collins that everything was OK, and she would not be disciplined for her actions. She was told not to discuss this matter with anyone, because it was private. Upon being let go, Collins reported the Company's actions to her Steward and Representatives of her Retail Clerks Union.

The Retail Clerks Union filed an Unfair Labor Practice with the NLRB. The Board issued a cease and desist order, and subsequently sought enforcement in court. The Fifth Certiorari was granted to the Supreme Court.

The Supreme Court decided in favor of the NLRB and Collins based on the following points.

1. The right inheres in Section 7 - guarantee of the right of employees to act in concert for mutual aid and protection.

WEINGARTEN RIGHTS
(Continued)

"An employee's right to union representation upon request is based on Section 7 of the Act which guarantees the right of employees to act in concert for mutual aid and protection. The denial of this right has a reasonable tendency to interfere with, restrain, and coerce employees in violation of Section 8(a)(1) of the Act. Thus, it is a serious violation of the employee's individual right to engage in concerted activity by seeking the assistance of his statutory representative if the Employer denies the employee's request and compels the employee to appear unassisted at an interview which may put his job security in jeopardy. Such a dilution of the employee's right to act collectively to protect his job interests is, in our view, unattended interference with his right to insist on concerted protection, rather than individual self-protection, against possible adverse Employer action."

2. The right arises only in situations where the employee requests representation. (The Steward's job is to make sure his membership knows their Weingarten rights.)

3. The employee's right to request representation as a condition of participation in an interview is limited to situations where the employee reasonably believes the investigation will result in disciplinary action.

4. Exercise of the right may not interfere with legitimate Employer prerogatives. In other words, the Employer may continue with the investigation, but not the interview.

5. The Employer has no duty to bargain with any Union Representative who may be permitted to attend the investigatory interview. "The representative is present to assist the employee, and may attempt to clarify the facts or suggest other employees who may have knowledge of them. The Employer, however, is free to insist that he is only interested, at that time, in hearing the employee's own account of the matter under investigation." (The Union Steward has a right to meet privately with the Union member before the interview begins.)

POINTERS FOR WITNESSES

1. **Tell the truth.** Always remember, as a witness, your principal role is to give the truthful facts as you know them. You do not normally have to testify about your opinions, and unless instructed to the contrary by your attorney, you should not do so. Truthful testimony is imperative. Your attorney can usually explain facts that are damaging to a case, but there is no effective way to explain why a witness lied or concealed the truth.

2. **Never guess.** Do not state facts that you don't know. Frequently, you will be asked a question, and in spite of the fact that you feel you should know the answer and you do not, you may be tempted to guess, speculate, or estimate what you think the answer should be. This is a mistake. If you do not know an answer to a question, say you don't know.

3. **Never volunteer. Give short answers.** Answer only the question that is asked. Do not attempt to explain, justify, or expand on a very brief answer. You are there to give the facts as you know them. You are not required to apologize or attempt to justify those facts. Any such attempt will make it appear that you doubt the accuracy or authenticity of your own testimony or the legitimacy of your conduct. Never say anything or provide any information not requested by the specific question.

4. **Do not agree to find facts or provide documents.**

   A. You are only to testify to the facts that you personally know. If you do not know certain information, do not give it. Do not turn to your attorney and ask for the information. Do not turn to another witness or anyone else present and ask them for the information or to confirm the information. Do not promise to get information that you don't have readily at hand, unless your attorney advises you to do so.

   B. Do not, without your attorney's request, produce any documents during the arbitration.

5. **Listen carefully. Think. Speak slowly.** The faster you talk, the greater the likelihood of a serious mistake or confusion. If you think that a question is vague or confusing, ask that it be rephrased.

6. **Do not engage in substantive discussions with opposing counsel or witnesses.** Before, during, or after the arbitration, do not discuss any matters

even remotely connected with the grievance with the opposition or its attorney. Do not let an attorney's friendly manner cause you to drop your guard and become to chatty.

7. **Never lose your temper or fence with opposing counsel.** Do not let the opposing attorney get you angry or excited. This can destroy the effect of your testimony. If you do, you could say things which could be used to your disadvantage. Sometimes, the intent of the opposing attorney is to get a witness angry or excited during the witness testimony, hoping that person will make serious mistakes or say things that can be used against them. Under no circumstances should you argue with the opposing attorney. Answer every question cordially and in the same manner that you would to your own attorney. If an opposing attorney becomes aware that you get emotional about certain facts or points, he will use it to your disadvantage in the proceeding.

8. **Do not memorize.** Do not attempt to memorize verbatim your testimony prior to the arbitration. A memorized story or version of the facts will come across very poorly. Be natural, and use words that you normally use.

9. **Drawings/illustrations.** You may be asked to make a drawing. Do so very carefully. Most people are not artists and have difficulty with proportions or relationships when making drawings. If you think that a drawing would make your testimony more understandable, prepare the drawing beforehand.

10. **If your attorney speaks or objects:** Remain silent and listen carefully. Do not say anything until your attorney tells you to do so.

11. **If asked, be willing to admit facts which are true, even if they are damaging to your case.** If damaging evidence is known to the opposition, it is often better to volunteer it, before the opposition has the opportunity to bring it to the attention of the arbitrator.

12. **Review all documents that are likely to be exhibits.** Although you will have a chance to review exhibits during the arbitration itself, it is important that you do so beforehand so that you are very familiar with the entire exhibit before you begin testifying about it. This is particularly the case with multi-page, complex exhibits.

13. **Dress neatly.** You need not wear clothes that make you uncomfortable or that you normally do not wear, just be neat.

LETTER OF REBUTTAL

Date: _____

Dear _____:

This letter of rebuttal is to be placed in my personnel file and must be included when or if the information protested is divulged to a third party.

I am writing to protest the _____ dated _____ for the following reasons:

_____

_____

_____

_____

_____

_____

_____

_____

This action taken is unfair and unjust.

Sincerely yours,

_____

Employee's Signature

Copies to: International Union of
Operating Engineers, Local 95
300 Saline Street
Pittsburgh, PA 15207

DUTY OF FAIR REPRESENTATION

DUTY OF FAIR REPRESENTATION

The Duty of Fair Representation is not specifically covered by the National Labor Relations Act. The United States Supreme Court imposed the Duty of Fair Representation on unions based on the fact that the Act provides for the doctrine of exclusive representative. The doctrine of exclusive representative is based on Section 9(a)(1), which provides that: representatives designated or selected for the purpose of collective bargaining by a majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment. Accompanied with the right of exclusive representative is the duty to represent all bargaining unit employees fairly.

This doctrine was fully developed in the Supreme Court's decision in *Vaca v. Sipes (1967).*

A. THE DUTIES OF FAIR REPRESENTATION.

In *Vaca,* an employee has been discharged because of poor health. The employee claimed he was able to do his job and filed a grievance. The union processed the grievance through the pre-arbitration steps of the grievance procedure. At the union's expense, the employee went to a doctor for examination, but the examination was unfavorable. The union tried to convince the employer to give the employee light work, but the employer refused. The union then decided to drop the grievance.

The employee filed suit against the union in the State Court, alleging that the union had arbitrarily and capriciously dropped his grievance. A jury awarded the employee $10,000 in damages. The case was appealed to the State Supreme Court, which upheld the jury verdict. The State Court reasoned that there was sufficient evidence for the jury to conclude that the employee was able to work and that the union had made the wrong decision in not arbitrating the grievance. The case was appealed to the United States Supreme Court.

The Supreme Court reversed the State Court decision. The Court said that the actual issue in the case was whether the union had violated its duty of fair representation in dropping the employee's grievance. A union breaches its duty of fair representation if it represents an employee arbitrarily, discriminatory, or in bad faith. Arbitrarily means making a decision without reason or at whim. The Supreme Court said the State Court had incorrectly based the union's liability on whether the union was right or wrong in its decision. The Court indicated that it did not matter whether a union was right or wrong, only whether a union had acted arbitrarily, discriminatory, or in bad faith in dropping a grievance. The Court concluded that the union had not acted arbitrarily and had met the fair representation standard in this case.

B. UNION DISCRETION TO ARBITRATE.

The *Vaca* decision clearly establishes that a union does not have to take every grievance to arbitration. A union has the right to settle or to drop a grievance even though the grievance may have merit, so long as its decision does not violate the union's duty of fair representation.

C. PERFUNCTORY PROCESSING AS A VIOLATION OF FAIR REPRESENTATION: THE HINES DECISION.

The basic standard for compliance with a union's duty of fair representation is that a union not act arbitrarily, discriminatory, or in bad faith with a bargaining unit employee. However, the Supreme Court also indicated in *Vaca* that a union can violate the duty if it processes a grievance in a perfunctory manner. Perfunctory means acting in a superficial manner without care or interest. In *Vaca*, the union had thoroughly investigated the employee's grievance and had even sent the employee to another doctor for evaluation at the union's expense. Thus, the Court briefly noted that perfunctory treatment could be a violation but did not consider that aspect of the doctrine in detail because it was clearly inapplicable under the facts.

In *Hines v. Anchor Motor Freight, Inc.*, the Court directly faced the perfunctory processing issue. In *Hines*, the employer discovered that certain drivers had turned in expense vouchers for motel rooms that, according to motel records, were higher than the amount the drivers had actually paid for the rooms. The employer, concluding that the drivers had pocketed the difference, discharged them. The drivers maintained that they had paid the full amount for the rooms. They told the union that the motel clerk must have altered the motel's records and embezzled money from the motel. The union business agent told the drivers that he would check with the motel, but he never did. The union processed the drivers' case to arbitration. The drivers continued to maintain their innocence, but the arbitration board upheld the discharges.

The employees sued the union for breach of fair representation and the employer for breach of contract in the same suit, on the theory that their discharges had violated the just cause provision of the contract. During pre-trial proceedings, the motel clerk admitted that he had stolen the money and that the drivers were innocent, as they had claimed. The employer argued that the arbitration board's decision was final and binding, even though the employees could now prove their innocence. The Supreme Court stated that normally an arbitrator's decision, right or wrong, is final and binding on the employees. However, the Court held that an arbitrator's decision is not binding on the employees, if the union violates its duty of fair representation in processing the case. The Court concluded that the union had violated its duty because it had handled the grievances in a perfunctory manner by failing to check out the employees defense that the motel clerk was guilty.

1. PERFUNCTORY PROCESSING V. MISTAKE.

The Supreme Court emphasized in *Hines* that the union had not violated its duty of fair representation just because the employees could prove their innocence. The *Vaca* decision had already established that a right/wrong test is not the basis for determining whether or not a union had violated its duty of fair representation.

Thus, the employees in *Hines* had to prove more than bad judgment or a poor investigation by the union. The Court said that the grievance process could not be expected to be error free. The employees had to prove perfunctory treatment. What if the union had checked out the driver's claim that the clerk was guilty by contacting the motel, but the clerk had not admitted his guilt? Then, the union's handling of the grievance would not have been perfunctory, and the employees would have been bound by the arbitrator's decision.

The *Hines* case requires that a union investigate the merits when a grievance is filed; it cannot simply go through the motions. A union's decision whether to proceed, drop, or settle a grievance must be based on a consideration of the grievance's merits, and the advantages or disadvantages of proceeding. A grievance cannot be treated as a casual matter or processed as a matter of form without any interest or true consideration of its merits. So long as a union gives a grievance the consideration it deserves and does not deal arbitrarily, discriminatorily, or in bad faith with employees, the union's decision (right or wrong) does not violate the duty of fair representation.

2. PRACTICAL STEPS TO AVOID A FAIR REPRESENTATION SUIT.

A union should also keep employees informed on the status of their grievance. Some fair representation suits are filed just because the employee is unaware of the union's efforts on his behalf. Unions win most of these cases, but only after considerable time and expense. If a union drops a grievance, the employee should be advised of the union's decision and its reasons. The union should give the employee the opportunity to present additional evidence or arguments on his behalf. In this way, the union can avoid being accused of treating the grievance in an arbitrary or perfunctory way.

A union is not required to process a grievance every time an employee complains that his contract rights have been violated. The facts of a grievance or the contract's language may be such that the grievance is clearly without merit, or a prior grievance may have already raised and answered the same issue. However, a union that does not file a grievance because it apparently lacks merit, runs the risk of being accused of perfunctory treatment. After all, the union in *Hines* may have thought it was a waste of time to check with the motel. In most cases, the better practice is to file a grievance for an employee, investigate the facts as necessary, and then withdraw the grievance with notice to the employee if it lacks merit.

D. UNION NEGLIGENCE AS A VIOLATION OF THE DUTY OF FAIR REPRESENTATION.

However, more recently, the Courts of Appeals which have considered the issue have uniformly held that simple or ordinary negligence by a union in the processing of a grievance does not violate the duty of fair representation. These Courts have indicated that there must be some intentional misconduct on the part of a union, above mere negligence, before a union violates the duty of fair representation.

E. THE DUTY TO PROVIDE INFORMATION FOR BARGAINING.

1. THE RIGHT TO RELEVANT INFORMATION.

Unions have a broad right to information relevant to the negotiation and administration of the collective bargaining agreement. This obligation is based on the principle that the employer's duty to bargain includes the duty to provide the union with the information it needs to engage in informed bargaining.

DUTY OF FAIR REPRESENTATION
(Continued)

The employer need not give assistance voluntarily, so the union must request the information it wants. The information requested must be relevant to the formulation of the union's bargaining position, contract negotiations, or contract administration. Also, the union is entitled to information needed to evaluate and process a grievance through the grievance procedure to arbitration. If a union is considering a proposal limiting subcontracting, it can request data on company subcontracts. If the union is considering a proposal on overtime, the union can request data on the number and distribution of overtime hours. If the union believes a contractual provision has been violated, such as improper work assignments or overtime distribution, it can request information and inspect company records to check out the matter. If there is a dispute as to production-line speed, the union is entitled to company's time-study data; and may even make its own time-study. If an employee is discharged, the union can request information about the basis of the discharge and the evidence supporting it.

The union is entitled to information on the employer's hiring and promotion of minority group bargaining unit members. The Board has held, however, that a union usually is not entitled to a copy of an employer's affirmative action program, if any. A union is entitled to the names of each employee in the bargaining unit, their job classification, wage rate, and seniority date. This basic data is necessary to begin bargaining. The union can also request the name of each new employee, as hired, in order to enforce the union security provisions of a contract. Technically, a union represents strike replacements; thus, a striking union can request the names of the replacements. However, the Board has held that an employer does not have to release the names if the employer has a reasonable basis for believing that the union will use the list to harass the replacements.

If relevant, the union is also entitled to information pertaining to non-bargaining unit employees. Thus, for example, if the union has reason to believe that employees outside the bargaining unit are performing bargaining unit work, it can request information about the work such employees are doing. The information might be relevant to a pending grievance over the work or might be needed for the union to formulate contract proposals limiting the right of non-bargaining unit employees to perform bargaining unit work. Similarly, the union may be entitled to information as to the wages and fringe benefits received by non-bargaining unit employees because such information may be relevant to the union's formulation of its own contract proposals.

This list of possible information is far from exhaustive. Basically, the scope of the union's right to information is as broad as the union's need for information on any matter relevant to the bargaining process.

Although it does not occur often, employers are also entitled to relevant data from the union. If a contract requires that an employer obtain his employees from a union hiring hall, the employer can request data as the union's ability to refer enough qualified employees to meet the employer's needs.

2. LIMITS ON THE EMPLOYER'S DUTY.

There are some limits on the employer's obligation to provide information. The union's request cannot unduly burden the employer. The union may have to pay for the employer's administrative expenses (such as clerical and copying costs) when gathering large amounts of information. If substantial costs are involved in gathering the requested information, the parties may bargain over the amount the employer may charge the union.

If no agreement is reached, the employer may simply permit the union to have access to the records from which the union can reasonably compile the needed information on its own. Also, the employer can require the union to state why the requested information is relevant. Usually, the employer does not have to interpret the data provided to the union or put it in the precise form the union requests. It need only make the information available. However, if the information requested is computerized or needs explanation to be understood, the employer must put the data in a usable form and give the necessary explanation.

A. RIGHT TO PROFIT INFORMATION.

The union is entitled to financial information about the company profits only if the employer pleads he is financially unable to pay a requested increase. This is called "pleading poverty." The union is not entitled to financial data just because it would assist it in preparing wage demands for bargaining.

B. CONFIDENTIAL DATA.

The Supreme Court has indicated that an employer's legitimate interest in the confidentiality of certain information may prevail over the union's need. In *Detroit Edison*, the union requested that the company provide it with a copy of an aptitude test used to determine eligibility for promotions and copies of the test results for those taking the test. The data was needed to prepare a grievance the union was arbitrating over denial of promotions to certain senior employees. The company denied the union's request for the test on the grounds that the test had to be kept secret. The company did offer to allow a psychologist, selected by the union, to evaluate the test in confidence, but the union rejected this proposal.

The employer also denied the union's request for the test results of individual employees, because the company had promised employees that it would keep the results confidential. The company did offer to release the test results of any employee who signed a waiver permitting the release.

The Board held that the union was entitled to a copy of the test and the individual employees test scores. The Supreme Court reversed the Board, holding that the employer did not have to turn over the test directly to the union. The Supreme Court also said that the employer's requirement that the individual employees agree to the release of their scores was reasonable. The employer's interest in maintaining the confidence of the material was greater than the union's need for the data. The Court stated that the burden on the union in getting the release was minimal.

C. OCCUPATIONAL SAFETY AND HEALTH DATA.

In a series of 1982 decisions of great potential benefit to employees, the Board held that a union is entitled to a broad range of data from the employer pertaining to occupational safety and health, including such items as morbidity and mortality statistics on past and present employees; the generic names of all substances used in the plant and a statement of their known effects; results of clinical and laboratory studies of individual employees taken by the employer; and company statistics as to occupational illnesses and accidents related to workers compensation claims. The employers, citing the *Detroit Edison* decision, discussed above, argued that the union should not have access to medical data pertaining to individual employees, because it was confidential, privileged information. However, the Board held that unions are entitled to such information, if the name of the individual employee and any

references which would identify the individual, are removed. The Board also noted that, to the extent that supplying the union with statistical or aggregate medical data may result in the unavoidable identification of some individual employee's medical information, the union's need for the data, potentially revealing the past effects of the work place environment on the employees, outweighed any minimal intrusion into the employee's privacy.

The Board was concerned, however, about the release of generic chemical names which might reveal company trade secrets. Rather than offering specific guidelines on this issue, the Board said that the parties should bargain in good faith regarding the conditions under which needed generic chemical information should be furnished to the union with appropriate safeguards to protect the company's legitimate rights to maintain the secrecy of its processes.

NATIONAL LABOR RELATIONS ACT

NATIONAL LABOR RELATIONS ACT

The National Labor Relations Act was passed into law in 1935. This law followed a very bad period in American labor history and was the first type of legislation to declare a national policy in favor of unions and the collective bargaining process. The Act was hailed as the Magna Carta of American labor movement.

This Act has been amended several times, but still remains the number one law that you as Stewards will be dealing with. In 1935, the NLRA was passed, and it created the National Labor Relations Board to administer this new legislation. The Act provided the protection for union activity and created unfair labor practices for employers who violated its provisions. In 1945, the Act was amended to provide for union unfair labor practices.

In the 1980's under the Reagan administration, the conservative appointments to the Board overturned thousands of prior rulings, and today leaves us with a set of laws that are very much slanted in the favor of employers. Regardless, this is the law that we have to work with, and we, as Union Stewards, should know how to use it to the best of our advantage. What we are going to do is take a look at the law's most important provisions. You don't have to become an expert at this Act today, but when we reference it later on, you will have a better understanding of what we are doing.

The rights of employees are set forth principally in Section 7 of the Act, which provides as follows:

> Section 7 Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3).

Examples of the rights protected by Section 7 are as follows:

Forming or attempting to form a union among the employees of a company.

Joining a union whether the union is recognized by the employer or not.

Assisting a union to organize the employees of an employer.

Going out on strike to secure better working conditions.

Refraining from activity on behalf of the union.

The unfair labor practices of employers are listed in Section 8(a) of the Act:

> Section 8(a)(1) forbids an employer □to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7.□ Any prohibited interference by an employer with the rights of employees to organize, to form, join, or assist a labor organization, to bargain collectively, or to refrain from any of these activities, constitutes a violation of this Section. This is a broad prohibition on employer interference, and an employer violates this Section whenever it commits any of the other employer unfair labor practices. In consequence, whenever a violation of Section 8(a)(2), (3), (4), or (5) is committed, a violation of Section 8(a)(1) is also found. This is called a □derivative violation□ of Section 8(a)(1).

Employer conduct may of course independently violate Section 8(a)(1). Examples of such independent violations are:

Threatening employees with loss of jobs or benefits if they should join or vote for a union.

Threatening to close down the plant if a union should be organized in it.

Questioning employees about their union activities or membership in such circumstances as will tend to restrain or coerce the employees.

Spying on union gatherings or pretending to spy.

Granting wage increases deliberately timed to discourage employees from forming or joining a union.

Section 8(a)(2) makes it unlawful for an employer "to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it." This Section not only outlaws □company unions□ that are dominated by the employer, but also forbids an employer to contribute money to a union it favors or to give a union improper advantages that are denied to rival unions.

An employer violates Section 8(a)(2) by:

Taking an active part in organizing a union or a committee to represent employees.

Bringing pressure on employees to join a union, except in the enforcement of a lawful union-security agreement. Allowing one of several unions, competing to represent employees, to solicit on company premises during working hours and denying other unions the same privilege.

Soliciting and obtaining from employees and applicants for employment, during the hiring procedure, applications for union membership and signed authorizations for the check-off of union dues.

Section 8(a)(3) makes it an unfair labor practice for an employer to discriminate against employees "in regard to hire or tenure of employment or any term or condition of employment" for the purpose of encouraging or discouraging membership in a labor organization for the purpose of Section 8(a)(3). It also prohibits discrimination because an employee has refrained from taking part in such union or group activity except where a valid union-shop agreement is in effect. Discrimination within the meaning of the Act would include such actions as refusing to hire, discharging, demoting, assigning to a less-desirable shift or job, or withholding benefits.

Examples of illegal discrimination under Section 8(a)(3) include:

Discharging employees because they urged other employees to join a union.

Refusing to reinstate employees when jobs they are qualified for are open because they took part in a union's lawful strike.

Granting of "super seniority" to those hired to replace employees engaged in a lawful strike.

Demoting employees because they circulated a union petition among other employees asking the employer for an increase in pay.

Discontinuing an operation at one plant and discharging the employees involved, followed by opening the same operation at another plant with new employees, because the employees at the first plant joined a union.

Refusing to hire qualified applicants for jobs because they belong to a union. It would also be a violation if the qualified applicants were refused employment because they did not belong to a union, or because they belonged to one union, rather than another.

Section 8(a)(4) makes it an unfair labor practice for an employer "to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act." This provision guards the right of employees to seek the protection of the Act by using the processes of the NLRB. Like the previous Section, it forbids an employer to discharge, lay off, or engage in other forms of discrimination in working conditions against employees who have filed charges with the NLRB, given affidavits to NLRB investigators, or testified at an NLRB hearing. Violations of this Section are in most cases also violations of Section 8(a)(3).

Examples of violations of Section 8(a)(4) are as follows:

Refusing to reinstate employees when jobs they are otherwise qualified for are open because they filed charges with the NLRB claiming their layoffs were based on union activity.

Demoting employees because they testified at an NLRB hearing.

Section 8(a)(5) makes it illegal for an employer to refuse to bargain in good faith about wages, hours, and other conditions of employment with the representative selected by a majority of the employees in a unit appropriate for collective bargaining. A bargaining representative which seeks to enforce its right concerning an employer under this Section must show that it has been designated by a majority of the employees, that the unit is appropriate, and that there has been both a demand that the employer bargain and a refusal by the employer to do so.

Examples of violations of Section 8(a)(5) are as follows:

Refusing to meet with the employee's representative because the employees are out on strike.

Insisting, until bargaining negotiations break down, on a contract provision that all employees will be polled by secret ballot before the union calls a strike.

Refusing to supply the employee's representative with cost and other data concerning a group insurance plan covering the employees.

Announcing a wage increase without consulting the employee's representative.

Subcontracting certain work to another employer without notifying the union that represents the affected employees and without giving the union an opportunity to bargain concerning the change in working conditions of the employees.