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Careful with that Timecard!

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Millions of workplaces across North America require workers to fill out or punch in time cards — and it's probably not a stretch to speculate that there have been millions of problems over the years involving the use of that centuries-old method of tracking workers' hours. As often as not, they are the kinds of problems that end up in the hands of union stewards.

If you are the steward who has to defend co-workers accused of improperly filling out their time, or punching someone else in or out, this article offers some basic principles that will help you do a proper job of representation, while at the same time respecting management's legal right to discipline for proper cause.

But a word of caution: don't assume that an employee caught committing an apparent time card infraction is automatically guilty of wrongdoing. Always investigate the specifics of each case before making the decision to file a grievance or counsel the worker, and be aware of the level of rule enforcement typical of your workplace.

Following are a few basic principles and some sample cases to illustrate how they have been applied by arbitrators:

Right to Due Process

An employee was discharged for not clocking out. The arbitrator put her back to work: she had been refused her request that a union representative be present when she was issued the separation notice, and she was not given the pre-disciplinary interview as called for by the company rules.

Make Sure the Employer has Documented Its Case

An employee interrupted his lunch hour to go back on the clock to help a supplier unload an order. He then punched back out to take his lunch period. The employer fired him for violating company rules by punching his card multiple times. An arbitrator put him back to work, noting that management had not called him in for an interview following the incident, as required by company rules. The arbitrator denied the worker back pay, however, to emphasize the seriousness of the rule against falsifying time records.

Another employee was fired for allegedly punching in a second employee's card. The arbitrator put him back to work because "alleging" someone did something is not proof he did so, and a prior offense — he had threatened someone — was not material to the case.

Punching Someone's Card is Theft

A worker punched out another employee's card and was discharged for breaking the rule prohibiting that act. An arbitrator upheld the firing, saying it was a serious form of theft and the employer had a right to discipline, even though the employer did not discharge the worker whose card was punched. The arbitrator said that the supervisor who made the discharge decision acted correctly even though he did not talk to the employee himself, and that discharge was appropriate even though it was claimed everyone was punching others' cards. Even though the terminated worker had previously kept out of trouble and performed work satisfactorily, the arbitrator said, those were traits that all workers should have.

In another case two employees were fired for "theft of time" when they stayed on the clock to write their reports at the end of their shift. Management said they were malingering, but the arbitrator put them back to work, saying no one had seen them malingering. The arbitrator did not buy the union's argument the workers were "set up" by supervisors, who did not get along with the two grievants. He noted that the time and production records produced by inspectors were acceptable to management.

Mistake in Recording Time, but No Motive to Cheat

A supermarket worker arrived for work at 3:08 p.m. and wrote on the exception portion of her time card that she entered at 3:03. She was trying to avoid the automatic discipline for reporting in more than 5 minutes late. The arbitrator returned her to work with all benefits and lost time. He said that discharging workers for mere mistakes in writing entries on time cards does not comport with the just cause standard, where otherwise every employee in the grocery industry might be summarily discharged. He said there was no evident motive to cheat by writing 3:03 p.m. for 3:08 p.m. where she entered all other times that day correctly. The arbitrator has final say in the matter even though he seemed to agree in this case that the employee falsified her time card.

All Arbitrators Don't Think Alike

Two different arbitrators heard separate cases on behalf of two employees accused of falsifying their time records. One case was handled by an arbitrator who upheld the discharge. The second employee filed a separate grievance, and in his case, the arbitrator found that the company had violated the contract. He said that each arbitrator must decide the case on the basis of evidence presented, and he said the employee in question was a responsible person who received commendations for superior performance, and he put him back to work.

"Jokes" May Backfire

A worker visiting the work site after a two-month absence was fired for filling out a time card for the day. He said it was a "joke." The arbitrator believed him and reversed the company's action, saying the aggrieved told the employer it was a joke after the activities were noted and before he actually received pay for the time.

— George Hagglund. The writer is professor emeritus at the University of Wisconsin's School for Workers.

Last Chance Agreements

Here's the scene: You're called into the supervisor's office and informed that an employee you represent will be discharged for being under the influence of alcohol — cause for termination under company rules, even though it's the employee's first such offense. The supervisor tells you that the only way you can save the employee's job is to sign a "last chance" agreement. The agreement requires completion of an alcohol abuse treatment program, and failure to complete the program or violating *any* company rule during the next year will result in discharge. Your investigation and the evidence in the case indicates that the employee did indeed come to work intoxicated, and you're convinced you would lose a discharge grievance. Should you sign the last chance agreement?

Last chance agreements can save jobs, but be sure they meet certain standards.

A last chance agreement, if you haven't encountered the practice before, allows a worker to be given one "last chance" and continue in the job even though management has sufficient reason for termination. Be aware that if you believe you can win a grievance, a last chance agreement is not appropriate. Last chance agreements should be for desperate situations where they're the only way to save a job.

The problem is, if a worker is fired while working under the terms of a last chance agreement, the union has little ammunition with which to fight the discharge. Most arbitrators are only concerned with one issue if such a grievance is filed under a last chance termination: was the agreement violated by the worker? Remember, the union can no longer argue that the worker was discharged without just cause. No more arguing about a lack of warning, that no fair rule existed, that an investigation was unfair, that there was disparate treatment, that the penalty is too harsh — none of these standard arguments are possible.

Most arbitrators will not lessen a punishment under a last chance agreement that calls for discharge if the agreement is violated. Even if a lesser punishment is appropriate the arbitrator is unlikely to take that route. In one case, an employee with several incidents of alleged insubordination on her record signed a last chance agreement that prohibited tantrums and visual displays of disgust such as rolling her eyes. Soon after signing the agreement she rolled her eyes and slammed a book down on the counter when a supervisor made a comment to her. While an arbitrator later said he would not normally sustain a discharge for "such a mild display of irritation," he said the worker had violated the last chance agreement. He said he could not mitigate the punishment under the deal, and upheld the discharge.

Last chance agreements can save jobs, but a union should not sign such deals unless they meet certain standards:

- The agreement should have an expiration date, usually no longer than one year.
- The agreement should be removed from the personnel file when it expires.
- The agreement should not make the worker satisfy vague or general expectations.
- Any requirements in the agreement should be directly related to the conduct that is charged.
- The agreement should not deny access to the grievance procedure or the courts.
- The agreement should not make the worker give up any contract rights (for example, bidding rights, overtime or use of sick leave) or statutory rights, such as guaranteed by federal, state or provincial health and safety, anti-discrimination or other laws.
- The agreement should not require the release of confidential medical or psychological records (but it may require certification that the worker completed a drug or alcohol treatment program).

Bad agreements may just postpone a discharge and undermine the collective bargaining contract.

The union must negotiate last chance agreements that meet these *minimum* standards *or* the agreements are not in the best interests of the worker or the union. Punitive last chance agreements that cede too much power to management may just postpone a discharge and undermine the collective bargaining contract.

A last chance agreement can save the job of a worker who has slipped badly and who may be able to correct his behavior with another chance. In some cases, the shock of the threatened discharge and a last chance agreement will cause the worker to adhere to rules that have been broken. If you can negotiate a good one, you can use a last chance agreement in an appropriate situation.

So what happened to the worker who signed the last chance agreement to go to alcohol rehab and not violate any company rule for a year? He forgot to wear safety glasses one day and thus violated a company safety rule. He was fired and the arbitrator upheld the discharge because the last chance agreement had been violated: the union had agreed to general terms that were unrelated to coming to work intoxicated. A more carefully written last chance agreement would have saved his job a second time.

— Joel Rosenblit. The writer is a staff attorney for Oregon Public Employees Union, SEIU Local 503.

Rules of Engagement

Every experienced steward knows that the relationship between stewards and those who represent management can be a complex one. While both sides want to see the employer thrive, they frequently have opposing interests, and it can make things combative. This reality makes it important that certain rules of conduct be established and adhered to, by both sides.

In most cases, acting with civility and professionalism, adhering to established protocol and respecting the chain of command, yet still actively and aggressively representing your members, should be minimal requirements for appropriate steward conduct.

While this can be a delicate balancing act most of the time, at least the majority of representation situations have clearly defined lines with few gray areas.

But what about when the lines aren't so clearly defined? What if a member of management does things — perhaps innocently, perhaps with something more manipulative in mind — to create a "more friendly" relationship with you? Or what if those strictly business relationships eventually evolve into a sincere friendship, or even something more? What rules should apply then?

Beware of Strangers Bearing Gifts

At times, supervisors might try to gain favor with stewards in an attempt to make their own lives a little easier. This could involve an offer to buy a cup of coffee or lunch, being more lenient on the steward's attendance or work performance, or any gift, favor or advantage offered out of the norm.

When you're faced with situations like these, the rule must be hard and fast. Simply ask yourself whether these goodies are being offered to the entire membership. If the answer is no, then that's your answer as well.

Even if these offerings were totally innocent, with no strings attached, you can be sure that an awful lot of your co-workers wouldn't see it that way. In your heart you "know" a free lunch couldn't possibly affect how aggressively you represent your members' interests — but you can be sure some of your members would think differently.

So if and when these kinds of offers come your way, your response must always be "Thanks, but no thanks." That way your integrity and reputation remain unquestioned.

Matters of the Heart

Sometimes it's more complicated. Interacting regularly with someone in an up close and personal situation, even an adversarial one, can breed familiarity and, sometimes, even admiration. In some work settings, in some situations, common interests can be discovered. These all-too-human realities can open the door to all sorts of things. Like doing something after work together. Or, in some workplaces, even dating.

Understanding how co-workers would feel if they knew you were being taken to the lunch by the boss, how do you think they would react by knowing you were hanging out with — or *dating* — him or her? Not good.

Your life is your life, but try to avoid these relationships. You accepted the steward's role to serve your co-workers, and to do that you need their confidence and trust. Having a social relationship with their supervisor will detract from that in a huge way.

Still, to paraphrase a line from the father of the bride in the movie *Wedding Crashers*: the heart wants what it wants. If a serious friendship or full-blown romance develops, you owe it to yourself and the people you represent to establish some tough ground rules. You must not only avoid potential conflicts of interest, you must avoid even the hint of one. You must:

- Stay professional. At work focus on work, not relationship.
- Don't publicize your relationship, be it a friendship or a romance. If discovered, don't deny. Simply explain safeguards have been put in place to avoid impropriety. And be prepared for people not to believe you.
- Remove yourself from any representation situation involving your friend or significant other. Any unresolved cases you were involved in together prior to the relationship developing should be smoothly handed off to another steward or union officer for resolution.
- Don't discuss union or employer business during personal time together. Keep all conversations strictly on personal interests and activities.
- Stay professional. Again, keep your personal feelings out of the workplace. If the friendship or romance sours, keep your cool and move on. Never use your position to settle personal scores.

When looking at when and where to apply these rules, don't limit your focus to immediate supervision. They should be applied to anyone in a position that can have a direct effect on your members' work lives. Security and medical personnel, secretaries and administrative assistants, members of human resources and upper-level management, and even leads, forepersons or crew chiefs — or their equivalents, depending on where you work — who may be part of your own bargaining unit could potentially fall into this category. Err on the side of caution.

You may never find yourself in any of these situations, but they do happen. Following these rules of engagement can't assure smooth sailing, but they should help you to avoid rough waters or at least help to navigate you safely through them should the need occur.

— David Bates. The writer is a twenty-two-year member and former steward and president of a Transport Workers Union local in Florida.

Breaking in a New Boss

There can be nothing more disruptive to a smooth-running workplace and a steward's mental health than the appointment of a new supervisor or management team.

It makes no difference whether you're working for a private company that's operating under a new personnel director, or even new ownership, or a government agency where there's been a big political shift or some form of privatization. The bottom line threat is that "things are going to be different here," or "rules are going to be enforced from now on," or "things have been just too lax in this office/shop/agency/department/etc."

New policies or work rules are posted or handed out.

You'll probably find that if you file a grievance, management rejects it because it wasn't written properly, or a deadline was missed. When you cite past practice, management states they are new, and that only past practices that benefit the employer will be recognized. Union members are mad and demand that the union take action. Even lower level management may complain and tell the union that it better do something about the new approach.

Why the Change?

What brings things to this point? Often it's a new young boss trying to make an impression. Since many workplaces are non-union, odds are this person has never dealt with a union before and just doesn't understand how a unionized location operates. This leaves it up to the union to not only defend working conditions but also "break in" new management. There may need to be a lesson on how to act like civilized human beings. Respect for the members must be reestablished.

As you take on this task, play it smart. Make sure your elected leadership has signed on to your approach. Don't ignore any legal issues that could flow from your tactics, and stay grounded in reality. Be clear in your mind just where you'll draw the line in terms of what you can afford to let management get away with; have a sense of what will be the event or management action that forces the union to respond aggressively.

When that time comes, the union's best weapon will be its members. They control production quantity (a lot or a little) and quality (good or bad). They control the delivery of services — fast or slow, with a lot of "red tape" or barely any at all. Often what's needed is a method to remind the employer of the members' power. There are several ways to do that.

Ideas for Action

Discuss the situation with your co-workers. Hold meetings, either formal or informal (at lunch, in the parking lot, in a nearby restaurant). Make sure a substantial majority are on board and that they understand the problem.

Make sure all the other stewards are with you on a plan of action. Hold a mini stewards class, if necessary. Make sure everyone knows their legal and contractual rights and authority. Make sure everyone's up to speed on the best techniques for grievance writing and presentation, and be sure everyone's clear on the importance of meeting the contract time lines.

Don't skip steps in the grievance procedure, even if the supervisors claim they can't do anything to resolve the grievance. If the union members are going to be made miserable by the new management's tactics, lower level bosses need to be made just as miserable. Pressure must be put on them to whip the new managers into line.

Work on management at every level. Try to determine if its new aggressiveness is the policy of the employer or just the action of one individual out to make an impression. The union has more leverage if the problem is with the individual: other levels of management may not be interested in going to war. Try to use any division in management's ranks to the union's advantage. Remember, management will generally not publicly denounce one of their own, but if we can pit them against each other the union will gain bargaining leverage.

Some other Pointers:

- Don't expect to win this fight overnight. It will take time. Make sure the members and stewards know and understand this.
- Don't allow management to single out union officers or stewards for punishment. Advise people not to lose their temper or do anything stupid — sure ways to play into management's hand. They may be looking for a union official to fire and scare everyone else.
- Don't be afraid to file a lot of grievances: They may have to be withdrawn later, but let the employer know that people aren't happy. Let management know you are willing to spend as much time as it takes sitting in grievance meetings. When possible, present group grievances. (Either file a lot of separate grievances, or have everybody sign one grievance.) Have as many members as possible come to the grievance meeting to testify.
- Work to rule when you can. Take time filling out paper work and always work in an extremely safe manner. Everyone should ask their immediate supervisor a lot of job-related questions. Remember, being a model employee takes time.
- Be prepared to take the fight outside the immediate workplace. Petitions may need to be sent to corporate headquarters. Practice picket lines can be held (off hours) to let the employer know how far you're prepared to go. You might call a press conference to inform the public if union members provide services to them.

Figure out the best resolution to this problem. It's rare that the employer will fire a boss because the union demands it. Most likely, someone different will handle the grievance procedure for a while, or the situation may improve over time. Leave management room to save face.

— Adapted with permission from the UE Steward Handbook, *published by the United Electrical, Radio & Machine Workers of America.*

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OFFICE OF THE INTERNATIONAL PRESIDENT

Greetings Sisters and Brothers:

This time of year we often stop — or at least slow down — and reflect upon all for which we have to be thankful. Here in the IAM, we're thankful for YOU, the Shop Steward. Your unselfish commitment to serve your brothers and sisters is a blessing to this Organization, and we thank you for all you do.

Many of us can also be thankful for a good union job that enables us to provide a roof over our head, food on our table, education for our children, health care for our family and a retirement plan for our later years. It's been called the "American Dream."

But for too many, the "American Dream" has become a nightmare because of misguided government policies. Bad trade deals have shipped many of our manufacturing and other good-paying jobs out of the U.S. Many of those that remain have been reduced to a shadow of their former selves by greedy CEOs using bankruptcy and other schemes to renege on promised pensions and benefits. To add insult to injury, skyrocketing health-care costs have put such a burden on American families that many are forced to choose between buying groceries and buying medicine.

What can you and I do to reverse this course… to recapture the Dream? We got off to a great start when we put worker-friendly representatives back in control of Congress. We've seen positive results already, but that's just the beginning. Now it's time to put a worker-friendly President in the White House.

For the first time in its history, the IAM made a dual endorsement for the presidential primaries. After listening to the candidates — and our members — we've endorsed Republican and former Arkansas Governor Mike Huckabee and Democratic New York Senator Hillary Clinton. Between now and the primary or caucus in your state, we ask that you educate your members about the importance of their vote. Let's make the American Dream possible again. To do that, the next President of the United States *must* care about working families.

And for your role as Steward, in this issue of the *IAM Educator* you'll find tips to use when a new supervisor or management team comes on board; the importance of maintaining a professional balance with management representatives; taking care with your time card; and a look into "last-chance agreements" — are they good or bad? Finally, you'll find information on the 2008 Leadership classes being held at our William W. Winpisinger Education & Technology Center, which you'll definitely want to consider.

Again, thank you, IAM Steward, and Happy Holidays!

In Solidarity,

R. Thomas Buffenbarger

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International President

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