

TAM

E D U C A T O R

Update for Stewards Vol. 5, No. 4

Tell a Winning Story



Tell a Winning Story

Every good defense lawyer knows that it's not just the facts that count, it's the way you present them to the jury. That's a bit of tradecraft that every steward would do well to keep in mind.

As a steward, you should not only marshal all the facts you need to speak for a member facing discipline or discharge, you should consider why the worker you are representing is being treated unfairly. You want to portray the grievant in a sympathetic light, as much as possible, through the entire grievance procedure. The best way of doing this is to think of the grievance as a story, and your grievant as the main character. If the case goes to arbitration — a process not unlike a case going before a jury — you want the arbitrator to like your grievant and to see him or her as more of a hero than a villain in the story of what happened.

Researchers have found that the human brain responds positively to narratives. People tend to remember facts more accurately if they encounter them in a story instead of a list. Arguments are more convincing when they are built into stories, not just recited as a series of facts.

Discipline Cases

In a discipline case, your account of the case needs to explain why the grievant does not deserve to get punished.

Example: Karen was a home health care aide who put more hours on her time sheet than she was authorized to work, even though she did work all those hours. Management claimed that she was trained to only put authorized hours on her time sheet. The time sheet asked for "actual hours worked." In fact, Karen did not expect to be paid the extra hours: she volunteered to help her client because her client needed more assistance than usual after she was released from the hospital. The steward argued that Karen shouldn't be punished for helping her client and that punishment should be reserved for cases of abuse and neglect;

Karen's only "crime" was compassion. The steward carried the day, making Karen into a Good Samaritan rather than someone putting unauthorized hours on a time sheet.

Example: Mike was talking with his co-workers about getting 5 percent bonus pay for working at heights to trim trees away from power lines. Joe, who wasn't part of the group, overheard the discussion and interjected that he could operate a chain saw better than Mike. In the argument that ensued, Joe, who was a smooth talker, was getting the best of Mike. Mike got frustrated and shoved Joe, in full view of his co-workers and a supervisor. Mike was suspended for violating management's zero tolerance policy against workplace violence, while Joe received no discipline even though he started and perpetuated the argument. The steward was able to get higher management to overrule the local supervisor's decision and reduce Mike's discipline to a reprimand. How? She convinced upper management that Mike was not a violent person by nature, just frustrated by Joe's ability to outtalk him, and not totally at fault in the incident. It also helped that Mike was a 20 year employee and had never before been disciplined.

Contract Interpretation Cases

In a contract interpretation grievance, your primary concern should be with how management violated the contract, but you should also think about how the grievants were harmed because of management's actions.

Example: When a warehouse laid off some employees and reduced the hours of others, those with reduced hours had their health care benefits pro-rated. For the first time ever, workers who worked half time had to pay half of the insurance premium. Management and the

union argued about whether this could be done based on their interpretations of the collective bargaining agreement. Not limiting himself to contract-based arguments, the steward was quick to point out the hardship caused by not only losing half your pay, but facing the additional burden of having to pay half your medical premium or dropping coverage altogether and leaving your family unprotected. The steward's arguments gave the grievance a human face, and he prevailed.

Example: An employer tried to impose uniform schedules so that every worker would be there when the office was open. Sally had long worked a flexible schedule,

arriving two hours early and leaving two hours early. She wanted that schedule for self-directed physical therapy exercises she had to do because of a neck injury she suffered in an automobile accident. If she got off early, she could get to the gym before it was crowded. Without an early quitting time, she got to the gym when there were lines at the machines and she couldn't perform the exercises in rapid succession, as her physical therapist wanted her to do. The steward, armed with notes from Sally's surgeon and her physical therapist, convinced management that she needed an exception.

A steward must persuade whoever has the power to reverse the decision that resulted in the grievance. Management will try to justify its actions with its own version of what happened, and the steward must tell a different story. Persuasion requires selecting the facts and putting them into a narrative showing that the grievant is someone who has been wronged. In many cases it's not too hard to portray the grievant as a victim who has suffered. In some cases it is a challenge, but it can be essential to winning or at least satisfactorily settling the case.

Think of the grievance as a story, and your grievant as the main character.

Settling Problems Before They Become Grievances

Workers whose union contract contains a strong grievance procedure enjoy a vitally important tool that protects their rights on the job.

But let's be honest — the grievance procedure has its down sides: The grievance process takes time, especially when managers stretch it out. Work has to continue while a grievance winds its way through the various steps, which means the problem that caused the grievance hangs over a worker or an entire bargaining unit until it's resolved (or not resolved!). Such delay can frustrate the grievant and dilute the entire membership's sense of the union's power.

Experienced stewards know that as valuable as the grievance process is, it's foolish to rely on it as the sole way to resolve workplace issues. Sharp stewards often resolve problems without filing grievances. They have learned techniques over the years of using the grievance procedure in a more strategic way — usually for bigger issues — and often in addition to tactics that demonstrate to management that the union can, and will, flex its muscle to protect its members — like organizing worker petitions, a button or sticker day, or a delegation to confront the boss.

Here are a few ideas that more creatively settle problems without filing a grievance:

1 Be on top of things. Know the issues in your area. On a regular basis, ask the workers in the unit what's happening. Don't assume they will always tell you without your asking. Ask them how the work is going, how management is acting, what they have experienced that might be new or troublesome. This will help spot small problems before they become big.

Management is also less likely to try to get away with things if they know they are dealing with a steward who is aware of what's going on and asking a lot of questions. It also demonstrates your concern to your co-workers.

2 Know the managers you must deal with. Develop a professional (not “buddylike”) relationship with the manager with whom you must deal at each level. Bring potential troublesome issues to their attention immediately, using an approach something like this: “It makes sense that you know that we know this is happening ... and it makes sense to deal with it now, before it becomes a big problem for everyone.”

3 Appeal to the self interests of both workers and managers. As much as we'd like to think we're always 100 percent right and management's always 100 percent wrong, we know that's not the case. Some problems fall into “gray” areas. For instance, say there's been a verbal fight between a manager and a worker. Both of them said things they shouldn't have. You know that some disciplinary action could result. So, you go to the manager and suggest that both sides might benefit from putting this behind them because it won't look good for anyone if it goes any further. You promise to talk to the worker involved and help him “adjust” his behavior.

Look at each situation and decide what's in the best interest of each side to get things resolved quickly and fairly. Make your “pitch” on that basis. If it doesn't work, you've lost nothing.

4 Use the grievance procedure wisely. The union's credibility is weakened when it files frivolous

grievances. By coming away the loser time after time, you're diminishing your chances of succeeding at any other method of settling problems that you might try. Workers lose faith quickly in a union that spends its time and resources protecting workers who aren't doing their job.

Don't let members bully you into filing insignificant grievances by shrieking about “duty of fair representation.” All the duty of fair representation requires you to do is to investigate thoroughly and fairly and follow due process according to your local union's guidelines. It doesn't require you to file a formal grievance just because a member wants you to. Check with your local union leadership for more information.

5 Build and maintain a strong unit. Your effectiveness in settling problems without filing grievances is directly related to how your co-workers demonstrate their support for your union. Do you have 100 percent union membership? Do members participate in union activities? Do members support each other, not taking management's bait to divide and conquer along job classification, race or gender? Will members stand up to the boss as a group when a worker is unfairly treated? A manager is much more willing to settle a problem if the answer to those questions is yes. Most managers don't want to be outnumbered. They would rather deal with the steward, but will only do so if you have the real muscle of your co-workers behind you.

Building a strong unit takes time, but it builds more power for the union and effectively settles more problems than the grievance-filing rat race.

— Pat Thomas. The writer is on the staff of the Service Employees International Union, AFL-CIO.

Steward Smiles



There's nothing like humor to lighten your load, and, often, to make a point. Here are a few classic workplace jokes and stories that union activists may find especially appropriate. Enjoy!

The Corporate Horse

The Dakota Indians of North America passed on this piece of wisdom from generation to generation by word of mouth: "If you are riding a dead horse, the best thing to do is dismount." In the corporate world, other things to be tried include the following:

- Change riders.
- Appoint a committee to study the horse.
- Arrange to visit other sites to see how they ride dead horses.
- Change the form so it reads, "This horse is not dead."
- Hire outside contractors to ride the dead horse.
- Harness several dead horses together for increased speed and efficiency.
- Donate the dead horse to a recognized charity and deduct its full original cost.
- Declare that the dead horse has lower overhead and is therefore more cost-effective.
- Promote the dead horse into a management position.

The Difference Between a Therapist and a Union Organizer

A mental health therapist and a union organizer were walking along a path by the river. All of a sudden they heard a scream from someone being carried down the river, yelling for help. The therapist jumped in and saved the person from drowning.

As they walked further along, the therapist and organizer heard another person being carried down the river, screaming for help. Again, the therapist jumped in and saved someone.

At the same time, the organizer took off running up the path.

"Where are you going? We need to save these people!" yelled the therapist.

Shouted the organizer, over his shoulder: "I'm going to find the bastard who's throwing everyone into the river!"

Short Changed

A worker was shorted \$50 in his paycheck, and complained to the boss. "You were overpaid \$50 by mistake last week and didn't object", said the boss. "I know," said the worker. "I don't mind overlooking one mistake, but when it happens the second time, I think it's time to complain."

Laws of the Workplace

- You can go anywhere you want if you look serious and carry a clipboard.
- To err is human, to forgive is not company policy.
- Authority is inversely proportional to the number of pens a person carries.
- The longer the title, the less important the job.

Help-Wanted Ad Translator

This: Ability to manage multiple tasks simultaneously

Means this: You'll be replacing three employees

Speaketh the Boss

"We are going to continue having these meetings, every day, until I find out why no work is getting done."

Busy, Busy, Busy

A self-important manager sat behind his desk shuffling papers and trying to look busy on his first morning on the job.

As his secretary was leading a man into the office, the manager picked up the phone and barked, "Sorry, but I've got a huge workload here and won't be able to look into this for several weeks. Call me back then, and I'll see what I can do."

Returning the receiver to its cradle, and ignoring the stunned look on his secretary's face, he turned to the visitor and said, "And just what can I do for you, sir? I'm quite busy at the moment." "Nothing at all," the man replied, trying not to laugh, "I'm just here to hook up your telephone."

Making the Most of Information Requests

If you've been a steward for a while, you've undoubtedly had more than a run-in or two with your employer. And you've probably come to appreciate that the more you know, the stronger your arguments on behalf of those you represent can be. You probably know that the union has the right to get information from the employer, and you may have made an information request in connection with a grievance that you've pursued. But many stewards don't appreciate the vast amount of information you can actually get, and the many uses to which you can put that information.

The National Labor Relations Act in the private sector, as well as similar provisions in most state and local bargaining statutes, creates a broad obligation on employers to furnish union representatives with all kinds of information affecting bargaining unit members. This grows out of the duty to bargain in good faith, one element of which is that the employer must, upon demand, supply all relevant information needed by the union "for the proper performance of its duties as collective bargaining representative" so as to "enable the [union] to understand and intelligently discuss the issues raised in bargaining."

When the union makes such a request it is considered to be "presumptively relevant to bargaining", meaning that the law assumes that the request is for legitimate purposes. If an employer disputes that this is the case, he bears the burden of proving his contention. (When the union seeks information about people outside the bargaining unit — for example, dealing with work that the employer has contracted out — there isn't such a presumption under the law, but the union is entitled to that information provided that it can justify the relevance.) In all

cases, the National Labor Relations Board applies "a liberal discovery-type standard," meaning that the requested information need only to have *some* bearing on an issue in dispute; it is not necessary for the union to show that the information sought would be definitive in resolving a dispute.

Not Limited to Documents

A union's request for information is not limited to documents. You can, for example, ask for electronic records, or simply for factual information (that is, you can request information in the form of answers to questions, rather than simply being provided with documents.)

The union is entitled to information dealing with all aspects of contract administration, not just what might be needed for processing a grievance that's already been filed or for contract negotiations.

So an employer must also provide information needed by the union so that it can evaluate whether to file a grievance, or to put a particular proposal on the bargaining table, or to monitor any aspect of compliance with the collective bargaining agreement, for that matter.

So long as you're prepared to explain what the legitimate purpose is for your information request, you are within your rights to request just about any information in your employer's possession (or information your employer can get from another party that it has a business relationship with) that relates to contract rights.

Examples of Info Requests

Following are some examples of situations where the union has a legal right to information from the employer:

- The union hears rumors that the company is planning to subcontract some

work, or to shut down operations entirely. Even if you have no hard evidence that this is true, since any such move on the employer's part would trigger a bargaining obligation, the company would have to respond to your request for information about whether such a move is in fact planned.

- You notice that a number of people in a certain work area seem to be coughing, or are missing an unusual number of days at work. Since the union clearly has a right to police health and safety violations in the workplace, you can ask for information about what chemicals might be in use in that work area, or for comparative absenteeism records for that work area and others.

- Some members of a particular group in the workplace (such as women or African Americans) think that they are unfairly being denied promotion opportunities or pay raises, being given less desirable work assignments, or treated differently in some other aspect of the job covered by the contract. Rather than take the employer's word for it that no discrimination is taking place, you can make a request for personnel records so that the union can evaluate the situation for itself.

While the law stops short of allowing unions to engage in "fishing expeditions", with a little bit of care you can obtain a very wide range of information, and you can put that information to use in defending the union's members in the grievance process, at the bargaining table, and in other ways.

Remember, these are just a few examples: given the broad range of information a union can legitimately request, let yourself stretch your imagination on what you can do as you fight for fairness and justice for your co-workers.

— Michael Maurer. The writer is director of organizing and services for the American Association of University Professors and author of *The Union Member's Complete Guide*.

Requests don't have to be limited to documents; you can submit a list of questions.

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OFFICE OF THE INTERNATIONAL PRESIDENT

Greetings Sisters and Brothers:

Labor Day, back to school, Fall just around the corner... where has the time gone? Before we know it, the presidential primaries will be here. It seems too early to even mention "primary", but 25 states will hold primaries or caucuses between January 14 and February 5, 2008, and another 16 states will vote by March 4!

So how does that affect us in the IAM? We need, more than ever, to keep banging the drum for working-family issues. As we did for the 2006 mid-term elections, it's up to us to ensure our voices are heard and understood in the presidential election. How will a candidate protect us and our loved ones when it comes to issues like jobs, trade, education, health care, and manufacturing? It's the answers to questions like those that will make the difference. Between now and the primary or caucus in your state, educate your members to make certain that the next President of the United States cares about blue-collar workers.

Now on to the work front, to assist you in your role as IAM Steward, this issue of the *IAM Educator* offers ideas to "creatively" settle problems before they get to the grievance stage; discusses the vast amount of information you, as a union representative, have the right to ask the employer for; and advises how to represent a member facing discipline. And, to assist in your awesome duties as an IAM Steward, this month's issue has a special treat — humor! Check out "Steward Smiles" for a dose of good medicine.

Thank you, IAM Steward, for all you do. Your Union appreciates it!

In Solidarity,

R. Thomas Buffenbarger
International President

