

TAMI

E D U C A T O R

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Off-Duty Conduct Disciplines

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Off-Duty Conduct Disciplines

The highly publicized case of Michael Vick brought up a controversial problem for union stewards: off-duty misconduct. In case you've been on another planet, Vick is the pro football quarterback who was arrested and pleaded guilty to a felony count arising from brutal, illegal dog fights at his estate in southern Virginia.

While Vick was awaiting sentencing, a question came up in one of my classes: can his boss (the Atlanta Falcons) fire him because of the crime? If so, then what about the case of a worker who demanded that the company discipline a co-worker, with whom she had been riding to work for years, for sexual harassment after an incident that allegedly happened on the way to the job? Or how about another situation, involving a long-time firefighter in Ohio, who was suspended after being charged with the rape of a teenage girl he was babysitting?

Many Examples, a Common Thread

Books about how to handle grievances are filled with examples of disputes that occur away from the workplace: a boss and a worker who may have had too much to drink at a local watering hole, for example, get into a dispute. The boss demands that the worker be fired "in the interest of workplace safety."

These cases, and many others like them, have a common thread: an incident took place — or *may* have taken place — away from the workplace. But, even though nothing happened directly in the workplace, the boss is punishing the employee.

In the past, this kind of thing didn't seem to be an issue: if a worker could get to work and carry out normal work functions, any situations away from the job were considered wholly separate and

unrelated to the job. As employers' sense of control increased, so did the frequency of off-duty misconduct issues, increasing the demands on a steward to represent a worker in a proceeding that began far from the job.

Basic Steps

So, what should a steward do in such situations?

First, try to figure out what really happened. You'll find that if determining the facts of a situation at work is often difficult, then figuring out the details of an off-duty episode is even more so. A steward may have to leave work to try to interview witnesses, if any can be found, or may need to access public records — like police reports — to gather information. Unfortunately, laws that could require witnesses to testify don't apply to grievance procedures, so a steward has to be especially resourceful.

A steward should also follow the first rule of effective grievance: make the employer present the case. See what witnesses the boss can produce or what documentation may be available. Be sure you don't simply accept the boss's version of "the facts," frequently based on hearsay or prejudice.

Is It Really Relevant?

The steward should raise the issue, as a kind of "threshold," of how the episode is related to the workplace. Even if something did happen, make the boss prove that it has relevance to the workplace.

Another question you want to answer is whether the incident might force the member to miss work, possibly due to jail time. If so, the nature of the grievance might change because the boss may simply try to discipline or terminate the worker for "excessive absenteeism."

You have to see if the off-duty misconduct might affect the member's ability

to continue doing the job. For example, if a truck driver convicted of driving under the influence loses his or her drivers license, is there other work that can be done until the license is restored? If the license suspension is short-term, could the steward try to limit the discipline to a suspension of the same duration, rather than a discharge?

Check Past Practices

Look at past practices. How have other cases of off-duty misconduct been handled? Some employers have a practice of "forgiving" workers for off-duty misconduct, even allowing members to come back in on a work release program.

Important: Look for episodes in which a member of management was involved in a situation and got a break. Demand that a union member receive the same consideration.

As a final step in your investigation, ask the question: does the punishment fit the crime? Even if you uncover evidence of some off-duty misconduct, does the misconduct affect anything, or anyone, in the workplace? This can be an area of great latitude and judgment, based on your industry. In occupations where workers have to deal directly with the public — school teachers, police officers, sales reps or, yes, professional athletes — employers may try to set a standard different from the one covering a manufacturing worker or a white collar worker buried in a cubicle in a bureaucracy. Finally, the steward should look at the usual factors, including the worker's length of service and past work history.

Ultimately, the "just cause" section of most union contracts offers protection for the worker, as it does for all workers. It is important for a steward to stress this point to other union members who may be inclined — depending on the nature of the off-duty episode and who is involved — to let the boss get rid of a co-worker without making a convincing case. When you enforce the contract for one member you are enforcing the contract for all members!

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

Is It a Grievance?

One of the most common problems faced by stewards is also one of the most basic: deciding whether a complaint is a legitimate grievance.

A boring or limited food selection in the employer's cafeteria probably couldn't be considered grounds for a grievance.

Nor could a co-worker's insistence on showing you — over, and over, and over again — the pictures of his new grandson.

But how about the price of food in an employer's cafeteria when there's no other eating establishment for miles around? And what if the proud new grandfather is your supervisor, and he's insisting you look at photos while you're supposed to be working, and it's cutting into your earnings?

Determining what's a grievance, and what isn't, can be tricky. And it's important. A steward who pursues nongrievances quickly loses his or her credibility — with co-workers, with the union leadership and with the employer. On the other hand, a steward who turns away workers' complaints out of the belief that they aren't legitimate grievances, when in fact they are, will quickly find him or herself on the sidelines.

How do you determine if there are legitimate grounds for a grievance? There are five basic ways.

Does It Violate the Contract?

Look at the union contract (or memorandum of understanding or whatever it's called in your workplace). While the meaning of a specific piece of contract language can be debated, you're usually in a good position to argue that a certain section or clause has been violated.

Does It Violate Past Practice?

Is what's going on a violation of past practice? Even if something isn't spelled out in the contract, if it's been done that way for years, a change or crackdown may as well be a violation. Let's say an employer

has always given a little slack to workers who arrive late during bad weather. All of a sudden he starts docking people who arrive even five minutes late when a blizzard is roaring outside. In such a case, you've got a pretty good past practice grievance on your hands.

If you're going to cite past practice as the reason for your grievance, be sure the practice has existed for a substantial period of time. Using the example above, be able to document how long the liberal arrival time response during inclement weather has been the unspoken rule.

Does It Violate Employer Rules?

Has there been a violation of your employer's own rules and regulations? Uneven enforcement of the rules can provide the grounds for a grievance. For example, a worker caught smoking in a nonsmoking area can't be fired if other people routinely do the same thing and are not disciplined. If supervisors escape employer discipline when they take extra-long breaks, even though the employee handbook says you will get in trouble by doing so, then workers should get the same latitude.

Does It Violate the Law?

Your employer can't violate the law. Even if your contract is silent on a specific issue, you still have the right to grieve if the employer does something illegal.

Let's say your contract doesn't speak to health and safety issues, but your boss orders you to do something that's clearly dangerous. You don't have to cite contract language as the basis for your grievance; you can point instead to state, or provincial, or federal occupational safety and health legislation.

Does It Violate Basic Rights?

Finally, you can have legitimate grounds for a grievance if a worker's basic rights are violated. If there's been discrimina-

tion, you may have something to grieve.

Discrimination occurs when two people are treated differently under the same conditions, in a way in which one of them is harmed or treated unequally. While the most common types of discrimination tend to be based on race or sex, there are other ways as well, including age, physical appearance, personality — and union activity, for that matter.

Be aware that discrimination charges can be awfully hard to prove. If you can base your case on contract language you'll find your case a lot easier to pursue.

Winning the "Illegitimate" Grievance

Now that we've established the grounds for a formal grievance, let's take things one step further. Say you've gone through these guidelines and determined that you don't have grounds to file a grievance. Does that mean you can't do anything? Not necessarily. There are few grievances — "legitimate" or "illegitimate" — that can't be won, one way or the other. You just have to use a little imagination.

Consider the problem we mentioned earlier: a boring or limited food selection in your employer's cafeteria. While it may not be a grievance in the contract sense of the word, that doesn't mean you and your co-workers have to live with it. Instead of filing a grievance, you can win change by getting everyone involved in a little education project.

One way to convince management that change is needed would be to simply stop buying your food there. Arrange for everyone to bring their own lunch one day, and have the union award a prize for the most creative sandwich. The next day you could order out for pizza; on the third day you could have the union cart in a huge pot of chili. Cafeteria sales would be in the tank. Management would notice, and pretty likely be interested in getting things back on track.

There are few workplace situations that can't be improved by people working together in common cause — "legitimate" grievance or not.

— David Prosten. The writer is editor of *Steward Update*. With thanks to James Wallihan of Indiana University and the Labor Education Service of the University of Minnesota.

Even if it can't be grieved under the contract, it doesn't mean you can't improve things.

Professionals and Unionism

Workers who are traditionally considered “professionals” — nurses, doctors, social workers, scientists and more — are voting for union representation these days as never before. It’s good news for them, for their professions, and for the labor movement itself. And, of course, it’s a special kind of challenge for those who become their union stewards.

No matter whether you’re in a workplace that requires union membership as a condition of employment or one where membership is wholly up to the worker, it



helps to be sure professionals understand that they have something to gain from an organization some may consider more natural and appropriate for coal miners and auto workers.

First, a couple of pointers. When talking to your co-workers, don’t be defensive or argumentative. No one likes to be told they’re wrong. While you should make it clear that there’s always room for opposing viewpoints, you can also suggest that the reticent worker just may not have all the information. Meet in a comfortable place and bring documents, Internet addresses and professional newsletters that discuss important issues you face at work.

And be prepared with some of these quick but considerate responses to traditional objections to becoming unionists.

1 **“Professionals join associations, not unions.”** Sometimes it really is just semantics. If the professional you’re talking to insists on conjuring up Hollywood clichés of strikes, violence and

The Mob when you say the word union, you need to get back to the basics.

Explain that unions are nothing more than a collective of workers with the same interests, much like the professional associations many of your co-workers may belong to, but with the added strength of having the legal right to negotiate as equals with your employer about things that concern them at work.

2 **“I’m too professional to be in a union.”** Unions are for every worker who has had his or her discretion taken away, has received raises — or not — based on arbitrary evaluations, or whose opinions no longer matter to the people in charge. Today’s unions are changing to accommodate the needs of a vital new segment of the workforce, one based in service, in the Internet, and in the intellectual centers of our country. Graduate students, Microsoft employees and doctors are organizing because they see that unions are the only way to have a real say in their workplaces and in their professions.

3 **“Unions are self-serving bureaucracies.”** Professionals are not the only ones to believe this, but those covered by your union contract have an opportunity to see a different side of this old story. You can show professionals that the union reflects the interests of its members who are their very co-workers — people who want to produce a good product and provide quality service. They want an organization that reflects those principles. Are the professional’s co-workers self-serving bureaucrats? Doubters and cynics will begin to soften when they see that the union is a group of people just like they are, not some distant office full of tough-talking mobsters in pinstriped suits or crazed fanatics throwing firebombs.

4 **“Union contracts protect lazy workers.”** If you’ve been a steward long enough, you’ve probably helped save the job of a worker who, deep in your heart, you believed to be unworthy of a defense. Now it’s coming back to haunt you. The best way to counter the charge that the union is just in business to protect sluggards and goof-offs is to be specific. Let the concerned professional know about the good people you’ve helped. Then ask the doubter if he has a specific case you can speak to. Explain that a union contract might succeed in delaying a “lazy” worker’s discharge, but it won’t prevent it, ultimately. If it’s seniority that the worker disagrees with, talk about how seniority rewards experienced workers, who stay on the job and contribute to the collective knowledge. Veteran employees, their understanding of how things work, their “institutional memory,” can be a valuable resource for co-workers and employers alike.

5 **“I got here on my own and I’ll stay here on my own.”** Many professionals went through years of special training and education to get the position they have now. These “rugged individualists” believe they will always be judged by their hard work and expertise: they’re too smart and important to be downsized, or to be sacrificed in a corporate merger or public sector restructuring, or a technological shift that makes their skills outdated or unneeded. Just telling them change is coming won’t convince them; they believe they’re shielded from it. Consider appealing to their intellectual side — show them business reports about changes in their industry or recent policy changes that affect their ability to do their job. Ask them if anyone ever asked their opinion about these changes, and why not. Remind them that the union can be a vehicle for them to have a say in their workplace — about professionalism, about good service, about quality work.

If they don’t become solid union members right away, don’t lose hope. Come back to them again later.

Getting Your Point Across

Workplace issues are not always simple. That's why stewards were invented. As a steward, you're sometimes faced with the unenviable task of explaining to your co-workers a union position your employer rejects and even many workers may question. It's a delicate task, one which could get you in hot water with your co-workers, your union and your boss — all at the same time.

A typical situation might involve a longstanding privilege. Let's use, as an example, taking personal calls during work, a practice the boss wants to modify because some workers have been abusing the privilege. Let's say he wants to limit personal calls to break times, and may be threatening to eliminate the privilege altogether if workers don't agree to his proposed change. The union may want to insist on maintaining the existing privilege, while agreeing that abuses should be curbed. It could see the issue as a matter of principle as well as concern for workers who need, for example, to keep in touch with home-alone children.

Steward In The Middle

The problem is that while many workers may take the union's position, many may want to go along with the boss — some out of sympathy with his concerns, others out of fear for his ultimatum. This puts you squarely in the middle.

The solution? You don't have to convince the members that your position is right, but rather that they'll be right if they *adopt* your position. To pull this off, you need three main elements to sway your co-workers: an appealing story, a convincing analysis and a winning conclusion.

First, tell a better story than your employer tells. An appealing story must deal with the facts of the situation: it should present all the relevant events and

evidence in a way that will make more sense to your co-workers than your employer's story does. For example, if the boss cites instances of workers abusing their phone privileges to conduct private businesses or arrange their social lives, you may be able to portray these as isolated instances and cite counter evidence of overall increasing productivity in your unit.

Your story should have emotional and imaginative appeal: it should touch on important values shared by your co-workers and fit in with their view of the world. While some workers may respect the

boss' concerns, or fear his displeasure, almost everyone should be able to identify with co-workers who need to keep in touch with their children or make other important

calls during work. Make your argument personal, but don't become overly melodramatic — your colleagues may feel as if you're trying to manipulate them.

Second, appeal to your co-workers' better judgment. A convincing analysis will explain why your story is better than your employer's. Your analysis should discuss facts and arguments that seem to go against your position, but which you can refute or belittle — why, for example, the boss' concern about a few unnecessary phone calls is not as serious as co-workers' concerns about the harm that could result if they were not able to make or receive important calls during work.

If your employer has valid concerns, such as the abuse of phone privileges by some workers, acknowledge those concerns — but explain why they should not be the deciding factor. Openly appeal to the intelligence of your co-workers by explaining how your position is the best position — such as how you propose to curb telephone abuses while maintaining current telephone privileges — rather than try to pretend that your position is perfect and that you have all the answers.

Third, present a winning conclusion.

You should explain how and why your position is more likely than your employer's position to help your co-workers and benefit all parties. For example, explain how winning the dispute over maintaining current privileges will help to strengthen the union's position generally, and will sustain morale in the best interests of both workers and the boss.

Don't Force Your Conclusion

Don't try to force your conclusion on your audience. Instead, appeal to their self-interest and their social interests, and ask for their help.


If your presentation includes these three elements — a story which appeals to your colleagues' sense of how the world works, an analysis that appeals to their intelligence and a conclusion that appeals to their interests — you will be taking big strides toward getting your point across and achieving your goal.

— Burt Weltman. The author is a professor of social studies education at William Paterson University, Wayne, New Jersey, and a lawyer.

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OFFICE OF THE INTERNATIONAL PRESIDENT

Dear IAM Stewards:

"Super-Duper Tuesday" may have passed, but the issues confronting America's workers are still fueling the debates. One such issue demanding the attention of all candidates is the alarming — and growing — skills shortage in America. Maybe you've experienced the shortage at your workplace, or heard others telling of it at theirs. With "Baby Boomers" retiring and blue-collar kids increasingly finding the path to college blocked by exorbitant costs, labor economists tell us that the lack of skilled workers will grow to 5.3 million two years from now and 21 million by 2020!

Each year, over half a *trillion* dollars of local, state and federal monies is focused on students bound for college. Yet, technical and vocational education receives less than two percent of that amount. What can we do?

To start, the IAM has launched a SKILLS initiative called "America's Edge: Our Skills, Our Kids." It has three components: Re-emphasizing technical and vocational classes in America's high schools; expanding the availability of industrial technology and information technology courses in America's community colleges; and creating high-tech institutes in each state that focus on 21st Century manufacturing technologies and materials. Simply put, AMERICA'S EDGE relies on our skills and our kids' abilities to learn and adapt to the ever-changing demands of tomorrow's workplaces. And it is time public investment flowed in their direction.

As stewards, you can help us support the sharpening of America's Edge in this global economy, and take a stand for your family, your community, our country. Urge your fellow members to go to the America's Edge website at www.americasedge.tv, and sign the petition to send a clear message to the candidates in the 2008 elections and beyond that: "THESE are issues we care about... issues that affect us directly. Pay attention, elected officials. We will measure you by what you say — and what you do — about schools, infrastructure, jobs and the economy."

In closing, let me tell you that this issue of the *IAM Educator* is chock full of practical information to assist you as an IAM Steward. You'll find guidance on how to explain to co-workers a union position that the employer and even many workers may question; how to represent a member disciplined for off-duty conduct; how to decide whether a complaint is a legitimate grievance, and lastly, how to organize "professionals."

Keep up the good work; your Union appreciates it!

In Solidarity,

R. Thomas Buffenbarger
International President

