

AN INSTRUCTIONAL UNIT
FOR IAFF AFFILIATES
AS A GUIDE TO
EFFECTIVE STEWARDSHIP.





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INTRODUCTION

Every steward has a special relationship with the fire fighters he* represents. In the majority of locals, the average fire fighter does not personally know the General President of the International, and in some of the larger local unions the average fire fighter may not even know his own union president. It is the steward with whom many of the members are in contact.

The average fire fighter's image of his local union, the International, and labor organizations in general, evolves out of his attitude towards his own union steward. Therefore, if the union member considers the steward to be aggressive, fair-minded and well informed, then he will generally feel the same way about his union and other unions in general. In this way, a steward has an unique opportunity to build a strong local.

Being a steward is the best training possible for other positions of responsibility

*Whenever a male gender is used in this manual it shall be construed to include both women and men.

within the union structure. For the future union leader there is no substitute for the kind of experience acquired as a steward. More importantly, however, is that even though being a steward can be hard work and time consuming, it is rewarding to feel that one is helping others.

The amount of information that a steward must have today is both large and always expanding. Because a steward must be familiar with a variety of important subjects, a serious effort is being made by the International Association of Fire Fighters to provide its stewards with as much assistance and information as possible. With this goal in mind, the International has developed this manual as a reference for all of its IAFF stewards.

QUALIFICATIONS

Due to the size of many locals and due to the fact that many IAFF members do not attend union meetings on a regular basis, a majority of IAFF memberships do not develop a personal relationship with their unions. The most important responsibility you have as steward of your local is to provide

your members with this relationship.

To carry out this responsibility, you must meet a wide variety of qualifications. In general, to be steward you must be impartial, fair, objective, and business-like; quick to grasp facts and able to use this information effectively; enthusiastic about your union work; able to "sell the union" to your fellow fire fighters; and courageous enough to stand up to your administration.

In order to be an effective steward, you must be qualified to perform many different jobs, including: organizing fire fighters in your department; getting your members to attend meetings; acting as a communications link between your local's officers and its members; selling union ideas and programs; knowing the collective bargaining agreement or civil service regulations; and handling grievances.

You the steward represent your local's members at all times. Between your local and its membership, and between your local and administrative officials you are the key contact. As steward, you must be qualified to carry out your

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role at all times as spokesperson for your fellow fire fighters.

RESPONSIBILITIES

As steward, you have many different responsibilities. Some of your more important duties include knowing your union's contract, handling grievances, unionizing your members, and transmitting information.

KNOWING YOUR UNION'S CONTRACT

The only way that you can determine if the administration is living up to its agreement is to know what is in your written contract. Therefore, one of the most important responsibilities you have as steward is knowing your local's contract. Unless you know what the contract provides the members of your local, you will not be able to assist your fellow fire fighters, and you certainly will not be able to hold discussions with city officials concerning issues important to your members.

Your union's contract represents the laws of your department agreed to by your fellow fire fighters and the city. Merely reading

the agreement is not enough. As steward, you must know how it has been interpreted. Often-times, a new steward can better understand the contract by discussing any problems he may have with more experienced stewards or the principal officers of his local.

As steward, you must keep up-to-date with all grievance settlements and new interpretations of various clauses in your union's contract. You should keep records of every contract clause that results in a grievance. This type of record is not only invaluable to you when performing your duties, but can also be invaluable to your local's negotiating committee when preparing to sit down at the bargaining table.

HANDLING GRIEVANCES

The grievance procedure is an extremely important responsibility of all stewards. Contract enforcement, as well as labor relations in your fire department depend upon your ability to carry out this duty. A contract will usually provide for three or four steps for settling a grievance. As steward you will probably handle the first or second step of the

grievance procedure while the officers of your local handle the third or fourth step. To avoid compromising the successful pursuit of a grievance, it is vital that you know these steps and make sure that each one is fulfilled within its required time limit.

UNIONIZING YOUR MEMBERS *

Simply because a fire fighter is a dues payer does not necessarily mean that he understands or actively participates in the affairs of his local. Therefore, one of the steward's basic responsibilities is to get acquainted with a new fire fighter when he starts work and to inform him about the union and its activities. A union whose steward makes it a practice to contact new employees as soon as he appears on the job creates the impression of being "on the ball" as well as interested in the individual.

When a new fire fighter shows up, as steward of your local you should:

- Introduce yourself and explain that you are available if the fire

fighter has any questions concerning his rights.

- Provide the new fire fighter with a copy of the contract, explaining that the agreement represents benefits that were obtained from union demands.

- Know why your local was originally organized so that you can convey to the new fire fighter an understanding of the problems faced at that time and what your local did about them. Today, all too often, unions are taken for granted with little understanding as to why they were formed.

- Be prepared to give the new fire fighter some sense of what your local has accomplished over the years. You can do this by drawing up a leaflet describing current working conditions as contrasted to those at the time your local union was organized or those of a number of years ago.

- Explain what your local's program is for today and tomorrow — not just what it did yesterday.

**Paraphrased from the AFL-CIO Manual for Shop Stewards.*

It should be noted that in many places, including “right-to-work” states, there are still contracts that do not require union membership as a condition of employment. In these types of situations, the steward must be an effective organizer if the union is to remain strong. A steward should never give up looking for ways to bring into his local those fire fighters who may resist joining.

TRANSMITTING INFORMATION

In the past, the local union meeting was the place where officers and members met and got to understand each other. However, as these organizations grew in size the process of keeping in touch became a more complicated process. Most locals today find that their average member is not interested in going to routine business meetings. In general, only important business, such as elections and contract ratifications, tend to draw a large turnout. Because it is impossible for a local to schedule this type of business for all of its meetings, it is essential that the steward inform the fire fighters in his department about the policies and decisions of the local.

As steward, keep in mind that an uninformed union member cannot become an interested union member. The more a union member knows and understands about his local, the more active he will become. If you make union activity sound exciting, your local will get more help from its members.

In addition to reporting to the membership, you have the responsibility of communicating the views of those you represent to the officers and the executive board of your local. As a representative of your department you are expected to act as a spokesperson for your constituents.

LEADERSHIP

As steward you must continually provide leadership to the members of your local. Your leadership duties include: encouraging union participation; educating your members; assisting with the democratic process; and eliminating rumors and misinformation.

ENCOURAGING UNION PARTICIPATION

As a leader, you should encourage your members to participate in the affairs of your local as much as possible. While all stewards would like to see an increase of participation at local meetings, this is not the only way that members can participate, nor is it the best standard for judging whether a person is a good union member.

Your local may have a number of active committees that might appeal more to the interest and abilities of one of your members than regular attendance at a union meeting. For example, your local may have a social committee that sponsors dances, picnics, and other forms of recreation. Some locals form bowling, basketball, and baseball teams, which appeal to a wide variety of members. You should not overlook any of these activities when attempting to encourage your members to participate in their local.

There are, of course, many fire fighters who will neither attend meetings nor participate in the

activities of your local. However, these fire fighters should not be forgotten nor overlooked. Many members of your local may have family and other responsibilities that do not allow them to be active in the local. Whatever the case may be, an effort on your part, as steward and leader of your local, is to keep in contact with these fire fighters and make sure they are informed.

EDUCATING YOUR MEMBERS

Many decisions are made by your local union officers that can affect the members of your local. As steward of your local, you must be prepared to educate your membership on these decisions. You can do this by:

- **Explaining any policy determined at the local union meeting.** A good steward performs an important function by telling his members what has occurred. As steward, you may even go one step further by pointing out business that will be coming up at the next meeting. This type of strategy may help to encourage attendance.
- **Explaining any decisions made by committees.**



These decisions may concern sending certain grievances to arbitration or dropping them, or activities your local intends to engage in with the community or solely for its own membership.

■ **Explaining policy and information that comes from the International.**

Because this information can be of importance to your membership, as steward you will need to relay and explain this material to them.

ASSISTING WITH THE DEMOCRATIC PROCESS

As a steward, you should spend more time listening to the members of your local than talking. You should be gathering reactions to union policy, attitudes, and opinions on your contract, the administration, and your local union officers. In general, you should be discovering the problems that face your members both in the station and in the community. If your local union officers are to adapt their policies to the needs of the members of your local, they must be informed of these interests by the union steward — the

person who is closest to the “rank and file.”

ELIMINATING RUMORS AND MISINFORMATION

As important as any of the duties you have as a leader, is your responsibility of eliminating rumors, exaggerations, and at times, outright lies. This type of misinformation can destroy cooperation and coordination within your union. When your city makes proposals to your union, as steward you should learn of these from your union officers and then make them clear to your membership. When a rumor concerning contract negotiations occurs, you should immediately contact your local union officers. It may be necessary for them to issue statements explaining the city’s and the union’s positions.

WHAT SHOULD A UNION STEWARD DO?

As steward you should:

■ **Speak for your members.** Your duty is to help enforce the provisions of your local’s contract, take up the initial steps regarding individual and group grievances with your

administration, and to carry out the general policies of your local.

■ **Give leadership to your members.** Part of your job is to make your local as strong, efficient, and democratic as possible. To be able to speak successfully for your fellow fire fighters, you must have a strong union to back you up.

■ **Organize your members.** Your support will be its strongest when every fire fighter in your department is a union member. You must organize your own fire department completely. When a new fire fighter comes in, introduce yourself and explain your responsibilities as a steward. Give the person a copy of the contract and answer any questions he may have concerning it and your local in general. Above all, make the fire fighter feel at home.

■ **Keep your members informed.** As the official closest to the fire fighters who make up your union, you are responsible for keeping them informed of union activities and policies.

You are the union to many of them. Informing your members of an important decision is not enough. You must be prepared to explain policy wherever necessary.

■ **Distribute information to your members.** As steward, you should see that each fire fighter receives bulletins and other publications from your local’s office, as well as the International office. You should also publicize all union educational and recreational activities. In this respect, it is important that you keep your local’s bulletin board up-to-date and fully posted.

■ **Communicate with your members.** Whenever you have the chance to get a group of your members together, tell them what is going on and listen to their ideas. Your job will be much easier if you hold these meetings on a regular basis.

■ **Urge your members to attend union meetings.** Fire fighters who fail to attend meetings and participate in union activities weaken your

local. As steward, you are responsible for urging members to attend union meetings.

■ **Educate yourself.** To educate your membership so that they understand and cooperate with union policies, you must first educate yourself. One way to accomplish this is by attending as many classes and seminars sponsored by your union and the International as possible.

■ **Be present at every meeting of local stewards.** These meetings should be held at least once a month to discuss and review contract knowledge, current grievances, pending legislation, city council action, etc. These meetings are designed to specifically help you in the performance of your duties. They are the place to talk over your own problems with other stewards.

WHAT SHOULD A UNION STEWARD KNOW?

As a steward, you should know about those problems within and outside your station that directly

concern your fellow fire fighters' welfare. For example, you should:

■ **Know your contract.** As stated earlier, one of the most important responsibilities of a steward is knowing your contract. Read over the contract and discuss it with your local officers. Be sure that you understand how its provisions apply to special departmental conditions. This includes keeping up-to-date with grievance settlements and new interpretations of different clauses.

■ **Know your local's constitution and by-laws.** As soon as you receive any union pamphlets or other publications, go over them carefully as well. This will help you to act and speak in line with union policy, as well as help you to accurately and convincingly answer any questions you may receive about your local.

■ **Know your fellow fire fighters' job.** To be an effective steward, you must be familiar with the work of those you represent, as well as familiar with the standard operating

procedures of their department.

■ **Know your seniority list.** Your seniority list may be needed to determine the validity of layoffs, promotions, length of vacations, eligibility for pensions, and a number of other items.

■ **Know your fellow fire fighters.** One of your toughest jobs is getting to know and understand the people you represent. It is important that you develop this skill as quickly as possible so that you can distinguish between those members who tend to present "just" grievances and those who are just "beefing".

■ **Know your grievance procedure.** Your grievance procedure is the heart of your contract. The enforcement of your union's contract, as well as labor relations within your fire department depends upon your knowledge of how to file and follow through a grievance.

■ **Know the legal rights of fire fighters.** Fire fighters will often fail to file required claims

because they do not understand their legal rights. As steward of your local, you should be able to inform your members on how to file for workmen's compensation and other benefits. It is also vital that you keep abreast of state (or provincial) and federal labor legislation. This type of information can be obtained from your State/Provincial Association, as well as the International.

■ **Know how to avoid delays.** Unsettled grievances will weaken your local. Sometimes an administration will take advantage of this and try to drag out a case instead of help solve it. As steward, you must watch out for this. Be sure that you get right on the job with a grievance. This type of promptness on your part will help to build membership morale.

■ **Know your resources.** Know what is available to you and how to access them. Your resources include the IAFF and the experience of other local union stewards. Be sure to utilize the various IAFF Educational Seminars

held throughout the United States and Canada, as well as the many publications available from the International, including *Local Union Administration, Grievance Arbitration, Public Relations ... Putting it All Together, Legislation and Fire Fighters: A Call for Action, The National Grievance Arbitration Summary of Canadian Locals, and Political Action for Fire Fighters: A Grassroots Political Guide for Canadian Fire Fighters.*

STEWARD'S HANDBOOK

In order for you to adequately perform your duties as steward, you must be supplied with the most current information available to you. The most efficient way to do this is with a properly prepared handbook. The handbook itself should be kept in a loose-leaf notebook for ease in keeping it current. As a minimum, your steward's handbook should contain the following items:

- A copy of your negotiated contract. There should be notes entered into this portion of the handbook whenever a grievance

has been carried to final solution, with a reference as to the article and clause of the contract affected by this grievance resolution.

- A copy of the constitution of your local, along with all of its amendments. It should be standard practice for your local union secretary to supply you with a copy of each constitutional amendment.
- Copies of grievance forms as filled out by grievants while the grievance is pending. When the final dispositions have been made, the forms should be placed in a permanent file.
- A section for recording all actions taken by your Executive Board and your local union at its meetings that affect the responsibilities of your job as union steward.



INTRODUCTION

Winning or losing a grievance often depends on how it is initiated at the steward level. A steward who knows his contract and knows how to investigate and prepare a grievance will usually settle a majority of grievance disputes at his level. If he is unable to resolve the grievance himself, then he will have rendered his local officers with valuable information and assistance that they will need during the latter steps of the grievance procedure.

WHAT IS A GRIEVANCE?

A grievance is a violation of a fire fighter's rights on the job and includes disciplinary action, suspension, termination, demotion, written reprimand and in some cases, transfers and extra duty. It is important that a steward be able to distinguish between a complaint and a "bona fide" grievance. To determine if a grievance exists, you must check to see if it is:

- **A violation of a specific contract provision.** Because most of the rules governing the relationship of a fire fighter

to his job are contained in the contract, this is the first place you should look to see if the fire fighter's complaint is a legitimate grievance. While some grievances are obvious violations of the contract and easy to prove, others such as grievances that concern the interpretation of the contract may not be as easy to determine

- **A violation of an established past practice.** A past practice can also be a basis for a grievance, particularly in areas where the contract is silent or unclear. However, grievances in this area can be, depending on the circumstances, quite difficult to prove.
- **A violation of federal and state (or provincial) laws and standards.** Grievances charging violations in laws and standards usually involves the city's responsibility to working conditions and collective bargaining laws. Violations that fall into this category also involve safety hazards.
- **A violation of city policies and/or civil service rules.** Since

most contracts encompass these types of policies and rules, if violated they can become as grievable as the contract itself.

WHEN DOES A COMPLAINT BECOME A GRIEVANCE?

All complaints that you receive as steward will not necessarily become legitimate grievances. As steward, you will need to investigate the complaint to determine its legitimacy. In general, all grievances will fall into one of three categories:

- **Justified Grievances -** to determine if a fire fighter's complaint is a justified grievance, you will need to ask yourself:
 - Was the city's action for just cause or within reason?
 - Did the city violate the contract?
 - Did the city violate a past practice?
 - Did the city violate any laws?
 - Did the city violate any policies or rules?

If you answer "yes" to any one or more of these questions, then the grievance can be considered justified.

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■ Unjustified Grievances

—Many times, after examining the contract, regulations, facts, etc., you may determine that a fire fighter's complaint is an unjustified grievance because:

- The fire fighter misunderstood the contract.
- The fire fighter misrepresented the facts.
- The complaint involved something for which the city is not responsible or within their rights.

It is important that for whatever reason you determine a complaint to be an unjustified grievance, you carefully explain to the fire fighter why he does not have a grievance. If the fire fighter is dissatisfied with your explanation, you must point out where, within your local, the complaint can be appealed. By pointing out the appeal procedures you protect yourself from charges of arbitrary action.

■ Borderline Grievances -

—Oftentimes your contract will not provide a clearly defined determination of the existence of a grievance.

If in doubt about a given complaint, you should check with your local's grievance committee. If doubt still remains, you should give the benefit of the doubt to the fire fighter and process the complaint as a grievance.

Care should always be exercised when taking up grievances. Your local will lose its credibility if you continually file unjustified grievances. The result may be that the city will stiffen its resistance on a legitimate grievance under the assumption that you are unable to distinguish between a good and bad case.

GRIEVANCE PREPARATION

Depending on the operation of your local, as steward you may or may not play a major role in your local's grievance procedure. If you do play a more active role (i.e., you are a member of your local's grievance committee), then you will need to observe the following basic steps when preparing a grievance:

1. Get Your Facts

- a. Separate facts from opinion.
- b. Take no information for granted.

- c. Talk to all persons involved.
- d. Use the five "W's" system of interrogation.
 - Who is involved?
 - When did it happen?
 - Where did it happen?
 - Why is it a grievance?
 - What happened?

- e. Write down, in clear and concise language, all factual information.
- f. Ask yourself questions about every aspect of the complaint.
- g. Collect supporting documents to confirm the facts.

Keep in mind that most grievances that arise in a contractual relationship usually represent disputes on facts, rather than arguments on principles. In most cases, it is your facts that will settle your grievances successfully.

2. Develop Your Supporting Arguments

Ask yourself:

- a. Is the contract provision clear enough to rely on just

the "bare" language of the contract?

- b. What does past practice show that may establish the intent of the contract?
- c. Are there similar grievances on record that were previously settled in favor of the local?

3. Develop Your Presentation

Armed with facts and supporting arguments you can still lose a grievance with a poor and ineffective presentation. Be sure that you:

- a. Identify the grievance and present the facts.
- b. Be a good listener. You can only break down the city's reasons for denying a grievance after you have fully heard what is said.
- c. Do not bluff or make empty threats.
- d. Do not lose your temper. Getting mad does not make a fact any stronger.
- e. Do not allow city officials to delay answering your grievances. A "bogged-down" grievance procedure can become discouraging to your fellow fire fighters.
- f. Settle each grievance on its own merits.

- g.** Do not allow yourself to be swayed by side-issues. Stick to your local's position until it is proved incorrect.
- h.** Do not allow your fellow fire fighters to argue with each other in front of city officials.
- i.** Report back to your fellow fire fighters. This helps them to firm up your local's position, as well as educate your members on their rights under the contract.

4. Write Up the Grievance

- a.** Write the grievance using whatever language is necessary to be concise and adequate enough to express the facts.
- b.** Observe your time limits. Many cases are lost simply because they were filed too late.
- c.** Be sure that the request or relief sought is clear, precise, and to the point.
- d.** Be careful that you do not mistake opinion for fact, or that you write arguments into your grievance when only the facts are necessary.

- e.** Cite the part of the contract that was violated. If possible, state the exact article and section that was violated.
- f.** Keep records of all the grievances handled. Accurate records can be invaluable in future settlements of grievances.

TEN BASIC POINTS FOR PREPARING YOUR PRESENTATION

The following ten points are designed to assist you in preparing for your written or oral arguments during the presentation portion of the grievance process:

1. Identify the grievant by name, social security number, and station number.
2. If the grievance is a disciplinary case, obtain the fire fighter's previous disciplinary record.
3. If the grievance is a seniority dispute (i.e., promotion, demotion, validity of layoffs, length of vacations, or eligibility for pensions), obtain all the facts relative to the fire fighter's qualifications.

4. When presenting the case, never use phrases such as "I contend" or "It is my position". Always say, "It is the union's position", or "The position or contention of the grievance committee is ..."
5. Be sure that every statement of fact raised by the city is checked thoroughly before you or your local officers attempt to answer it.
6. When a contradiction in statement of fact exists, try to obtain witnesses from the bargaining unit to back up your facts.

7. Get all of the facts into the case at the earliest possible step in the grievance procedure.
8. Support your facts and contentions, when possible, by contract language, past practice, and previous arbitration awards.
9. Recheck your case to make sure that the five "W's" have all been answered. Keep in mind that many arbitrators will reject new evidence at an arbitration hearing.

10. Observe the following chronology:

- a.** Write your statement of facts, raising no contentions. Simply state what happened.
- b.** Answer all contentions raised by the city to date, whether they are verbal or in writing.
- c.** Write your supporting position, raising the proper contentions relative to the contract, past practice, and previous arbitration awards.

A STEWARD'S RELATIONSHIP WITH CITY OFFICIALS *

As a steward, it is important that you understand the relationship you have with your city officials. Although the city exercises certain authority over you as a fire fighter in your fire department, when you meet to discuss grievances you are acting as an official representative of your union and, therefore, have equal status. You have every right to expect to be treated as an equal as well as the right to express yourself fully on any problem under discussion.

* Paraphrased from the AFL-CIO Manual for Shop Stewards, p. 36-39.

STALLING

If the city stalls in giving an answer on a grievance, you should not hesitate to invoke the time limitations in the contract. If there are no time limitations you may have to systematically badger the appropriate officials until you get an answer. If there is still no response you may have to file a grievance charging the administration with stalling or otherwise move directly to the next step in the procedure.

HORSETRADING

Sometimes a city official may offer to split the grievances — your local wins half and loses half. This might prove to be a temptation, but it is important to remember that each fire fighter is legally entitled to fair representation. Trading grievances may also cause additional litigation.

ANGER

Sometimes a city official will attempt to provoke a steward hoping he will lose his temper and make rash promises or threats which he is unable to carry out. Such actions on your part will result in you losing the respect of both city leaders and the fire

fighters you represent. Keep in mind that most people do not think straight when they are angry. Also, anger does not tend to help make effective arguments.

SIDE ISSUES

Oftentimes the city will try to sidetrack you by discussing matters not related to the grievance under consideration. If the issue is of concern to your local, you should ask that it be discussed after the grievance is resolved. If the issue is irrelevant, you should remind the officials of the purpose of the meeting in such a way that no offense is taken.

TALKING

It is usually better to say too little rather than too much. By listening to the other side of an issue, it is often possible to get a better understanding of the other person's arguments and, therefore, be in a better position to combat them. If the city has conceded the grievance, you should end the discussion and not rehash it.

FAILURE TO REACH AN AGREEMENT

If you are unable to obtain a settlement you should

notify the appropriate city officials that the grievance will be appealed. In addition, you should brief the union representative who is involved in the next step of the grievance procedure as to the main line of argument taken by the city.

HANDLING PAST PRACTICES DISPUTES

A past practice can be the basis for a grievance, particularly in areas where the contract is silent or unclear. Contrary to popular opinion, unilateral management policy changes with regard to past practices can be successfully resolved using the grievance procedure. There does exist cases involving past practice disputes in which the arbitrator ruled to continue a past practice even when existing contract language was to the contrary. However, grievances in this area can be quite complicated and are generally governed by the following rules:

- For a practice to be considered valid, it must be repeated over an extended period of time.
- The practice must be accepted explicitly or implicitly by both

parties. Explicit acceptance exists if both parties have formally agreed, either orally or in writing, to the procedure. In the case of implicit acceptance, neither party has formally objected to the procedure over a period of time.

- If a practice violates the contract, then either side can demand that the agreement be enforced.
- If a practice is unsafe, an arbitrator can throw it out on the grounds that it should never have been established in the first place.

The following are some questions that you should ask yourself when looking for information that may weaken or strengthen your case in a past practice dispute:

- Does the agreement contain a clause which recognizes that existing customs, precedents, practices, and unwritten agreements not affected by the agreement, shall continue for the life of the contract?
- Is the practice something that is of consider-

able benefit to your fellow fire fighters?

- Are existing conditions of such a nature that continuation of the past practice is reasonable and logical? Or, alternatively, have conditions changed so as to render the old practice or system inadequate?
- Have any previous grievances been filed and satisfactorily settled relative to the past practice?
- Is there any evidence that the past practice has been discussed and orally agreed to by both parties at any time?
- Has the past practice been consistently applied to an identifiable group of fire fighters or to all fire fighters within the bargaining unit over a long period of time?
- Does the past practice represent a violation of a departmental rule or policy that has not been enforced by the city over an extended period of time?
- Did the city give written notice to your fellow fire fighters, or discuss a change in policy with

your local, before making any changes in past practices?

- Is the past practice one in which the city was fully aware and made no previous attempts to limit or prevent?
- Does the past practice represent a mutually accepted waiver or abandonment of a written agreement between the parties over a long period of time?
- Does the past practice violate any local, state, or federal statutes?
- Is the city misinterpreting the agreement to eradicate or change a past practice?
- Is the past practice or benefit an inconsequential matter of little importance to your fellow fire fighters?
- Is the past practice or policy one in which the city is benefited and to which your local has clearly agreed to for a considerable period of time?
- Does a change to the past practice impose a serious burden upon

your fellow fire fighters' working conditions? Or, alternatively, does it impose a serious burden on the city?

- Does the changed practice involve an insertion of changed contract language, the intent of which was not clear to your local at the time of negotiations?
- Does the past practice involve misuse or abuse of an original agreement made orally between your local and the city?
- Did your local propose and fail to secure a contract clause relative to the past practice in negotiations?
- Is there a contract clause that specifically allows the city to change past practices or precedents?
- Is the past practice one which creates unsafe or dangerous conditions?



INTRODUCTION

The term, “duty of fair representation”, is a common one which many IAFF members have heard. However, some members do not understand the full intent of this piece of legislation. As union steward, it is important that you are aware of the responsibilities your local has to this law.

HISTORY AND IMPLICATIONS

In 1944, the first U.S. Supreme Court decision that involved “duty of fair representation” came from the case of *Steele vs. Louisville and Nashville Railroad*. In this case, a union had been designated, under the Railway Labor Act, to represent a bargaining unit of railway fire fighters. Although there was a substantial black minority, the union excluded blacks from its membership. The union proposed contract changes that would have eventually excluded blacks from fire fighter positions. The suit was brought by a black bargaining unit employee to have the agreement declared void.

In *Steele*, the Supreme Court stated that the union had to represent all

employees in the bargaining unit fairly, even if they were not union members. The Court went on to declare that the right to exclusive representation carried with it the duty to represent all employees fairly.

In 1967, the Supreme Court decided the leading case dealing with “duty of fair representation.” In *Vaca vs. Sipes*, a union processed a grievance of a discharged employee only through the fourth step. This was just short of referral to arbitration. The employee had been discharged due to poor health, but felt that he was able to perform his job duties.

A suit was brought against the union by the employee, alleging that the union had arbitrarily and impulsively dropped his grievance. The most important element of the Supreme Court’s decision was that a union has the right to honestly and in good faith settle or drop a grievance that lacks sufficient merit to justify an arbitration, as long as its decision does not violate the union’s duty of fair representation. In rendering its decision, the Court made it clear that an

employee does not have an absolute right to have his grievance taken to arbitration.

The Supreme Court also stated in the *Vaca* case that a union can violate “the duty of fair representation” if it processes a grievance in a “perfunctory” manner. The word “perfunctory” carries with it the meaning of acting in a superficial and careless manner without giving adequate consideration to the grievance. The case of *Hines vs. Anchor Motor Freight, Inc.* dealt further with the “perfunctory” issue.

The case of *Hines vs. Anchor Motor Freight, Inc.*, concerned several drivers of Anchor Motor Freight, Inc. who had turned in expense vouchers for a motel room in an amount higher than that for which the motel claimed the drivers had paid for the rooms. It was for this reason that the employees were discharged. The drivers claimed that they had paid the amount shown on their expense vouchers and that the motel clerk must have changed the records and pocketed the extra money. The business agent of the union promised the drivers

CHAPTER 3: DUTY OF FAIR REPRESENTATION

that he would investigate their claim by talking with the motel officials. He never did so though.

After the union processed the drivers' case through arbitration, the arbitration board upheld the discharge. The drivers then sued the union for breach of fair representation. During the court proceedings, the motel employee confessed to having stole the money. The case went to the Supreme Court, with the employer maintaining that the arbitration board's decision was final and binding, even though the employees were innocent of any wrong doing.

The Supreme Court held that in normal circumstances, an arbitrator's decision, whether it be right or wrong, is final and binding on the employees. However, the Court went on to say that an arbitrator's decision is not binding on the employees if the union violated its "duty of fair representation" while processing the case. In *Hines*, the Court said the union had violated its "duty of fair representation" because they processed the grievance in a "perfunctory" manner by failing to investigate the

employees' defense that the motel clerk had stolen the extra money. However, it should be noted that the Supreme Court, in *Hines*, stated that it is the employee's responsibility to prove "perfunctory" treatment.

An important aspect of the *Hines* case is that it requires a union to investigate the merits of a grievance when it is filed. The union's decision whether to proceed, drop, or settle a grievance has to be based on a consideration of the merits of the grievance and the advantages or disadvantages of proceeding. If a union gives a grievance actual consideration and does not handle it arbitrarily, in a discriminatory manner, or in bad faith with the employee, the union's decision, whether it be right or wrong, does not violate its "duty of fair representation."

RESPONSIBILITIES

For a union to avoid violating its "duty of fair representation" an employee must be kept informed of the status of his grievance. Sometimes a fair representation suit is filed because the employee does not know about the union's efforts on his behalf. When a grievance

is dropped, the employee should be told of the union's decision and the reasons for making its decision. The employee should be given the opportunity by the union to present any additional evidence or arguments he may have in his behalf. By doing this, the union can avoid being accused of treating a grievance in a "perfunctory" manner.

Your local is not required to process every grievance that its fire fighters believe shows that contract rights have been violated. Your contract language may be such that the grievance is obviously without merit, or a prior grievance may have been settled which answers the same issue. However, unless it is a clear-cut instance such as one of these, the best thing to do is to file the grievance for the fire fighter, investigate the facts, and then withdraw the grievance, with notice to the fire fighter, if it lacks merit.

As union steward, you should also be aware of the fact that: all fire fighters are entitled to the same treatment and cannot be treated differently because of internal political considerations; a union cannot

charge a fee to a non-union fire fighter for processing his grievance if the other bargaining unit members are not subject to the same charge; and if a union is found by a court to have violated its "duty of fair representation" in processing a grievance, the fire fighter is entitled only to recover the actual losses caused by the union violation of its duty.

HOW TO PREVENT A VIOLATION

Obviously, it is to the advantage of your local to avoid any possibility of being sued for breach of "duty of fair representation." Court costs are substantial, even if your union wins. Of course there is no single way to prevent a member from filing a suit, but there are things that can be done which can reduce this possibility. For example:

- All your union officers and union stewards should know what the standards are for fair representation and the duty it imposes. Your local should also make certain that all of its newly elected or appointed officials receive thorough training and instruction in processing grievances

and “duty of fair representation.”

■ All your union officers and union stewards should be aware of the time limits that exist in your contract concerning the filing of a grievance and following the grievance through the different steps of the grievance procedure. In many of the more recent court cases involving the violation of “duty of fair representation”, the union has lost its case because of its negligence to act in a timely fashion.

■ Good records should be kept about every grievance filed. This is because a majority of “duty of fair representation” suits filed involve claims that the union did not act properly with respect to a member’s grievance. Such records should include the name of the employee who filed the grievance, the date it was filed, and any documents relating to the grievance. Each file should also contain written notes of every action taken at each step of the grievance procedure. For example, if a telephone call is

made on behalf of the grievant, a note should be placed in the file with the date of the call, who was spoken to, and a summary of what was said.

■ Your grievance procedure should include a requirement regarding a grievant’s right to file a written appeal to your union’s decision not to process a grievance further. This requirement should clearly state the time period in which the grievant may file the appeal, as well as the address to which it must be sent.

■ A notification by your union of its decision not to process a grievance further should be mailed to the grievant, with a return receipt requested so that it will have proof that the notice was received by the member. This notice should inform the fire fighter of your local’s decision and of the fire fighter’s right to appeal.



American Federation of Labor — Congress of Industrial Organizations (AFL-CIO) — The United States federation of craft and industrial unions, to which the International Association of Fire Fighters belongs.

Arbitrator — A neutral third party to whom disputing parties submit their differences for a decision.

Automatic Checkoff — A provision whereby the city agrees to automatically deduct union dues or an assessment from a fire fighter's pay.

Automatic Renewal — A provision that calls for the contract to continue automatically in full force after the specified termination date, if no notice of termination is given by the union or the city.

Bargaining Agent — The union or other organization who is recognized by management as the sole and exclusive agent or representative for members of the bargaining unit.

Bargaining Unit — A group of fire fighters joined together to bargain collectively with the city. May cover one local or embrace a series of locals

covering fire fighters of the same city.

Canadian Labour Congress (CLC) — The central labour federation in Canada, which the IAFF helped form.

Central Labor Bodies (CLB) — State, county and city organizations of the AFL-CIO locals.

City Union — A union dominated by the city administration or Fire Chief giving fire fighters no real protection by keeping them from organizing their own union.

Conciliation or Mediation — An attempt to help settle disputes, by an impartial third party, by bringing together the two parties.

Continuation Clause — A clause that allows the agreement to remain in effect unless terminated at the end of the initial contract term or at any time thereafter by proper notice from either party.

Dead End Clause — A clause that terminates an agreement on the specified expiration date and where there is no automatic renewal or extension clause.

Discharge — Dismissal of a fire fighter, usually for breaking departmental rules or policies of the city, incompetence or other good cause. Collective bargaining agreements usually protect fire fighters from arbitrary or discriminatory discharge.

Evergreen (also known as **Bridging** in Canada) — A provision that automatically extends and keeps in full effect a labor agreement until replaced by a successor agreement (not the same as automatic renewal.)

Fact-Finding — A method of arbitration that results in recommendations that are not binding on the parties.

Fair Share Fee — An agreement between the city and local in which a fire fighter must either join the union or pay a sum equal to union fees and dues as a condition of their continued employment. However, the fire fighter is not required to join the union.

Free Rider — A fire fighter who refuses to join the union but freely accepts all the benefits which his fellow fire fighters collectively obtain for him.

Grievance — A fire fighter complaint; an allegation by a fire fighter, union, or city that a collective bargaining agreement has been violated.

Grievance Arbitration — Issues that involve a determination by an impartial third party of a disputed work-related issue, including disciplinary action. In most grievance procedures, arbitration is usually the last and final step.

Grievance Procedure — A method of dealing with a complaint made by an individual or by the union or the city which allows the work place to continue operating without interruption. The procedure generally provides for efforts to resolve the grievance at progressively higher levels of authority, with arbitration being the last step.

Interest Arbitration — Issues that involve a determination, usually by an impartial panel, of an impasse arising during negotiations. A union and its city will each select a panel member and these two individuals will then select an impartial chairperson. In the majority of cases, the decision of this board is final and binding upon both parties.

Maintenance of Membership — A clause requiring all present and future members of a union to remain in the union for the duration of the contract as a condition of employment. The clause provides that fire fighters who are not in the union when the contract takes effect are not obligated to join the union.

“Me Too” Clause — An agreement that guarantees to the bargaining unit members any additional benefits, wages, etc. given other fire fighters after their respective contract has been signed.

Open Shop — A work location in which employment is not contingent on membership in a union.

Past Practices — A way of dealing with a grievance by considering the manner in which a similar issue was resolved before the present grievance was filed. Past practice is often used to resolve a grievance when contract language is ambiguous or contradictory or when the contract doesn't address the matter in dispute.

Preferential Hiring — This is an arrangement where the city agrees that when hiring new fire fighters it

shall give preference to union members.

Provincial Federations of Labour — Established by the CLC to further represent affiliated unions in each province and to coordinate the efforts of local labour councils.

Recognition Election — The method usually used by the city and its fire fighters to determine who will be the bargaining agent.

Right-To-Work — The basis of most “right-to-work” laws is that no person shall be denied or excluded from employment because of membership or non-membership in a union. Thus, these laws prohibit maintenance of membership arrangements. The labor movement is strongly committed to remove these laws from the books in states that have right-to-work laws on their statutes.

Scope — This term is used to decide the extent of range or view, outlook, application, operation or effectiveness of a union.

Seniority — Employment preference based on length of service.

Steward — The union representative of a group of co-workers who carries out duties of the union within an operation, such as handling grievances or recruiting new members. Is either elected by other union members or appointed by higher union officials. The steward remains an employee and handles union business on a part-time basis, usually on the employer's time.

Strikebreakers — One who is willing to work while their fellow fire fighters are on strike. Strikebreakers are also called “scabs” or “finks.” In some cities, professional strikebreakers are hired by city officials intent on busting the union.

Umbrella Clause — This a term used to describe a “catch all” clause in a contract which may include additional conditions not covered elsewhere.

Union Shop — A labor contract clause in which a city agrees that all fire fighters must belong to the union as a condition of employment. New hires must join the union within a specified time (usually 30 days) or lose their jobs.

Work Location – This term refers to the geographic area in which work is performed by the employer.

Workmen's Compensation – An insurance system established by state law, to provide financial benefits to workers who suffer physical injury in connection with their employment.



**APPENDIX A:
GRIEVANCE HANDLING
STEPS BY STATION
STEWARDS**

- Step 1: A member goes to his steward with a grievance.
- Step 2: The steward, the officer in charge, and the grieved member discuss the grievance.
- Step 3: The steward notifies his local union president of a pending grievance. The local union president then notifies the chief of a pending grievance.
- Step 4: The steward examines all the facts, including:
- Where did the grievance occur?
 - When did it happen?
 - Who caused the grievance?
 - Why did it happen?
 - What other members, if any, were involved?
- Step 5: If possible, the steward determines the grievant's past record with the fire department.
- Step 6: The steward contacts the local union's office to determine if any precedence has been set concerning the grievance.

- Step 7: The steward determines if there is a grievance based on:
- A unilateral infraction of the labor agreement by the city; or
 - The city's unilateral disregard of past practice; or
 - The city's disregard for the safety or fair treatment of fire fighters; or
 - An infraction of the law by the city.
- (If none of these infractions occurred, there is probably no grievance. The steward should get the opinion of others and re-check his notes. If necessary, notify the grievant that there is no basis for a grievance and explain why.)
- Step 8: The steward next determines the contract clause that applies.
- Step 9: The steward fills out the grievance form.
- Step 10: The steward supplies the grievance form to the local union officers explaining in detail, the information contained in the grievance.

**APPENDIX B:
GRIEVANCE
INFORMATION FORM**

Local _____ Union _____

Who has grievance?

Name _____ Department _____ Badge _____

Job Class and Title _____ Shift _____

Department Seniority _____ Shift Seniority _____

Where did it happen?

Location in department (if necessary) _____

When did it happen?

Date(s) _____ Time _____ Shift _____

What happened? Describe events, including:

Member's story and explanation _____

Management's position _____

Other people involved, including their names, job titles, seniority, shift and additional useful information

Witnesses and their stories _____

Background information, such as previous accusations, reprimands and events that relate to this problem

Why is it a grievance?

Violation of contract clause(s)

Article _____ Section _____

Past Practice (describe fully)

Unfair Treatment (attach paper with detailed description of evidence)

Demand (what should management do so that the member does not lose rights or benefits?)

Superior's Answer _____ Date _____
Superior's Name _____ Department _____

Check One:

- Agreed with position (describe what is done to correct the situation)

- Refused to accept union position

- Grievance dropped

- Grievance referred to (give union representative's name and title)

**APPENDIX C:
GRIEVANCE FORM**

Employee's Name: _____

Employee's Job Title/Classification: _____

Department: _____

Division: _____

Grievance Presented To: _____

STATEMENT OF GRIEVANCE: (state facts, witnesses, work assignment)

See attached for further information

RULE, POLICY, AGREEMENT, ETC. VIOLATED

See attached for further information

SPECIFIC REMEDY OR CORRECTIVE ACTION REQUESTED

See attached for further information

Signature: _____ Date: _____
(Employee)

Signature: _____ Date: _____
(Party Receiving Grievance)



The most basic labor agreement can provide a seemingly never-ending source of disagreement over its interpretation. In part this results from the complexities of the employment relationship which the contract seeks to govern. No small problem in itself, this original task is made more difficult by the less-than-mathematical precision of the written word. It may then be further complicated by the intentional use of ambiguous language where the negotiators see more precise language as being counter-productive to reaching agreement on an otherwise acceptable contract.

It is a cardinal rule of arbitrators that a party cannot gain in arbitration that which they were unable to gain in negotiations. For this reason, where the clear and unambiguous language of an agreement is found wanting, the arbitrator will reject self-serving arguments of interpretation which are not supported by objective evidence. Evidence of the true intent of a given provision will be sought instead in the record of the negotiations preceding the agreement, in prior arbitrations, or in the

history of how the provision has evolved within the industry or from previous agreements. Not uncommonly, the arbitrator will also look to past practices of the parties themselves as the best evidence in determining the meaning of the issue in dispute.¹

PAST PRACTICE DEFINED

A past practice can be defined as a consistent response to recurring situation over a substantial period of time, which has been recognized by the parties implicitly or explicitly as the proper response. In accepting this definition, however, it is vital to understand the varying weight which may be assigned to a practice under specific circumstances, the uses to which they may be put, and the exacting standards which

arbitrators may apply in recognizing a past practice as binding. Without such an appreciation, an alleged practice may well be viewed in arbitration or labor board hearings as a simple, isolated event.

SUPREME COURT RULING

The validity and importance of utilizing past practice in the interpretation of a labor agreement has been recognized by no less an authority than the U. S. Supreme Court. In quoting Professor Archibald Cox, the Court noted that “It is not unqualifiedly true that ... an employee’s claim must fail unless he can point to a specific contract provision upon which the claim is founded. There are too many people, too many problems, too many unforeseeable contingencies to make the word of the contract the exclusive source of rights and duties.” The Court thereupon concluded that “the labor arbitrator’s source of law is not confined to the express provisions of the contract, as the industrial common law — the past practices of the industry and the shop — is equally a part of the collective bargaining agreement

APPENDIX D: PAST PRACTICE: THE UNWRITTEN CLAUSE IN THE LABOR AGREEMENT*

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¹ For an excellent discussion of the arbitration process see; Arbitration and Collective Bargaining: Conflict Resolution in Labor Relations, by Prasow and Peters, McGraw-Hill, 1979. See also Contract Administration in Public Sector Collective Bargaining, James Gallagher, Institute of Industrial Relations, UCLA, Los Angeles, California, 1976.

although not expressed in it.”²

THE USE OF PAST PRACTICE

Arbitrators may refer to the past practices of the parties in determining a broad range of questions. These functions of past practice and some related questions which past practices may resolve are as follows:

1. Clarifying Ambiguous

Language: A clause which provides for "premium pay for work over eight hours in a day" is one example of ambiguous language. That is, is an employee entitled to premium pay when his or her regular shift ends at midnight and the "overtime" occurs on the following day? Is a day defined as a calendar day or as the 24 hour period following the start of a shift?

2. Implementing Contract

Language: "Just cause" is cited in most contracts in regard to grounds for discipline. What, however, is the definition of what is "just"? Moreover, what standards are to be used in determining "proper" discipline under the agreement?

3. Modifying Apparently Unambiguous

Language: Even well established practices will be insufficient in most cases to overcome clear contract language. Yet, most arbitrators will deny management enforcement of disciplinary provisions and labor will be denied retroactive claim to benefits if either have "slept on their rights" through their own practices. Additionally, an established practice may give definition to contract modifications obtained in grievance settlements or in other agreements entered into subsequent to the contract's adoption.

4. As a Separate, Enforceable, Condition of Employment:

an employer has consistently and routinely given a Christmas

bonus to his employees, which is not mentioned in the agreement. On the basis of the new and higher wage rate, can the employer unilaterally eliminate the bonus over the union's objections?

WHERE PAST PRACTICE CONTROLS

How an arbitrator rules will be determined by his or her view of the evidence submitted. In the examples cited, however, past practice has been found to be controlling by a number of arbitrators in those situations. Where this is so, however, most arbitrators would insist that the practice incorporate the following characteristics:

1. Clarity and

Consistency: To be a sustainable, binding past practice the course of conduct must be clearly defined. It must also be viewed as the invariable response given a specific set of conditions. That is, given "this", the parties have done "that".

2. Acceptability:

Responsible supervisors and employees alike must have knowledge of the practice and accept it as the correct and customary means of dealing with the situation. It is not, for example, something done when only in the presence of lax supervision or in ignorance of management.

3. Unchanged Underlying Circumstances:

A practice which is established solely as a result of a particular set of underlying circumstances is no broader than those circumstances. It cannot be generalized to other situations nor is it immune from repeal should the underlying conditions be changed. Hourly rest breaks given steel plant crane operators solely on the basis of higher temperatures in the crane cabs were, in one case, lost once the cabs were air conditioned.

4. Mutuality:

A practice cannot be said to be binding if it is the product of a discretionary act specifically reserved to management by the agreement or established as such by the

² *Steelworkers v. Warrior Navigation Co.*, 363 US 574 46 LRRM 2416 (1960). *Warrior* is one of three cases decided by the Court concerning arbitration process. The decisions rendered are known as the "Steelworkers' Trilogy".

³ *Ibid.* and *Supra* 1.

parties through their conduct. It must instead be a product of their joint understanding as a condition of employment.

5. Longevity/Repetition:

There is no absolute standard as to how long a practice must exist or how frequently it must be indulged in, in order to be considered valid. If there are no contrary examples, and the situation in question is rare, a single instance may constitute a valid practice. Repetition and longevity will, of course, more firmly establish a practice.

STRENGTHENING A PRACTICE

In the eyes of many arbitrators, past practices are given additional weight when they are shown to bestow a clearly defined benefit which the workers have come to depend upon. At any rate, a practice is strengthened considerably when observance can be shown to have been established under the same contract provisions contained in previous agreements. This is known as the “bridging effect”. That is, as the unwritten basis on which the current bargain was made. This strength-

ening, indeed survival, of a practice is predicated, however, on the absence of a challenge to the practice in negotiations.

ALTERING A PRACTICE

Practices which serve to clarify contract language are applicable only in so far as the agreement’s language remains constant. If changed in negotiations, the new provision may be deemed to invalidate or amend the previous practice. It will, at any rate, necessitate a demonstrable acceptance of the continuation of the previous practice under the new agreement before the practice in question can be said to have the same clarifying effect on the new provision.

TIMELY REPUDIATION

Past practices which establish separate conditions of employment are even more susceptible to change during negotiations than those which serve to either clarify ambiguous language or which implement general provisions. That is, as mutual acceptance is essential to a valid practice, once an objection is raised to its continuance during negotiations, the practice will lose its validi-

ty upon the adoption of the contract. Only a withdrawal of the objection or the adoption of controlling language in the agreement may suffice to save the condition or benefit bestowed by the practice.⁴

CONCLUSIONS

A valid past practice is as much a part of the labor agreement as any written provision. Useful in defining the intent of ambiguous language, it gives focus to general provisions and may also establish independent conditions or benefits of employment. Where it is clearly established over a lengthy period of time, it may also be considered to amend the apparent language of the contract.

Given the potential value of past practices and the ease by which they may be amended or repudiated in negotiations, obvious considerations are raised for bargaining strategy.

1. If a valid and valued past practice exists, do not raise any proposal in negotiations dealing with any of its provisions. If you fail to prevail, that may render it lost or a unilateral prerogative of management.
2. If a past practice has served to satisfactorily interpret ambiguous contract language, resist any attempt to “clean up” or “clarify” the language in bargaining.
3. Review with your stewards and leadership all contract proposals of the union before submission to management and review all management proposals for their implications for established practices.

⁴ See “Past Practice and Administration of Collective Bargaining Agreements” by Richard Mittenhal, *Proceedings of the Fourteenth Annual Meeting, National Academy of Arbitrators, BNA, Washington, DC 1961.*

NOTES



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