SMART
Transportation Division

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Bus Department Chairperson's Manual

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FOREWORD

The purpose of this outline is to keep the local chairperson abreast of the changing times and to give him or her the necessary tools to cope with these changes. The world of work is not what it was ten, 20 or 30 years ago, but instead is a world involved in highly mechanized and automated operations. As the world of work changes, so do contracts, and hence, the duties and responsibilities of local chairpersons and representatives become more and more complex. The method of handling grievances in this day and age is not one where "brute force" and "table pounding" take precedence, but rather it is an age where the local chairperson must be a "learned" individual with full knowledge of the agreement, and armed with the best of skills possible to get the most out of the agreement for the members he or she is privileged to represent.

I hope that the new tools provided in this booklet will serve to sharpen the skills of the local chairperson to make them more aware of their overall responsibilities to the membership and thus provide a better and stronger union for the future.

UTU POLITICAL ACTION COMMITTEE

The United Transportation Union's Political Action Committee (UTU PAC) is "An Investment in the Future."

SMART members, active and retired, need and deserve good government and sympathetic legislators. That's because, compared with others, their jobs, pensions and futures are more directly affected by the actions of state and national lawmakers.

We in the SMART-TD must work for and help those people who we feel are capable, knowledgeable and who recognize the problems that affect railroad, airline, bus and transit workers.

The best way to help elect representatives that understand the concerns of SMART members is by contributing to UTU PAC.

The best way to have a voice, a say, in matters that affect your finances and your family, is by contributing to UTU PAC.

You joined your fellow workers for the fraternal benefits of SMART membership, so why not join them to help elect compassionate state and national lawmakers?

•UTU PAC contributions can be started or increased anytime, and they are deducted automatically from your paycheck.

•UTU PAC contributes to qualified state and national political candidates, regardless of party affiliation.

•UTU PAC protects the interests of active and retired members and safeguards laws, working conditions and pension rights.

•UTU PAC has well-organized advisory committees in 47 states, and an office in Washington, D.C.

•UTU PAC contributions can be made on a one-time basis by check, anytime, by active members, retirees, and all individuals who seek a more responsive government.

•UTU PAC has more than 28,000 members across the country. They welcome your support and investment in the future of our great nation.

So might fires and closures ordered by government agencies.

The 60-day notice is not required if the plant closing or mass layoff is due to any form of natural disaster, such as flood, earthquake or drought. Storms, tidal waves or tsunamis and similar effects of nature are also natural disasters. To qualify for this exception, an employer must be able to demonstrate that its plant closing or mass layoff is a direct result of a natural disaster. Where a plant closing or mass layoff occurs as an indirect result of a natural disaster, the exception does not apply but the unforeseeable business circumstance exception might.

The requirement does not apply at all to a plant closing or mass layoff if the closing of a temporary facility of the closing or layoff is the result of the completion of a particular project or undertaking, and the affected employees were hired with the understanding that their employment was limited to the duration of the facility, project or undertaking.

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er must notify the one to which it pays the highest taxes for the year preceding that in which the determination is made.

When employees are shifted from one employer to another as the result of a sale, WARN's notice requirement is not triggered merely because employees are technically "terminated" by the seller. Under the Act, such an event is not a plant closing and workers do not suffer an employment loss.

In a plant sale of part or all of an employer's business, the seller is responsible for providing notice of a plant closing or mass layoff, up to and including the effective date of the sale. After the date, the purchaser is responsible for providing notice.

Notwithstanding any other provision of WARN, when a business is sold, a person who is an employee of the seller, other than a part-time employee, as of the effective date of the sale is considered an employee of the purchase immediately after the effective date of sale. This preserves the employee's notice rights. Thus, a full-time employee of the seller may not be classified as a part-time employee of the buyer because the employee has not worked for the buyer for six months.

The rights and remedies provided by WARN add to, and do not substitute for, any other contractual or statutory rights and remedies of employees, and are not intended to alert or affect those rights and remedies, except that the period of notification required shall run concurrently with any period of notification required by contract or by other statute.

However, the length of a notice period cannot be reduced by agreement.

Giving notice, if done in good faith compliance with WARN, does not constitute a violation of the NLRA or the RLA.

An employer may order a plant closing or mass layoff without the full 60-day notice if the closing or mass layoff is caused by business circumstances that were not reasonably foreseeable as of the time that notice would have been required. A business circumstance is not reasonably foreseeable if it is caused by some sudden or unexpected action or condition beyond the employer's control. A principal client's sudden and unexpected termination of a major contract, a strike at a major supplier, and an unanticipated and dramatic major economic downturn might be considered reasonably unforeseeable business circumstances.

4. the job titles of positions to be affected, the number of employees in each job classification, and the names of workers currently holding these jobs;

5. a statement as to the existence of any applicable bumping right;

6. an identification of other representatives, if any, of other affected employees at the same site; and,

7. the name, address and telephone number of the company official to contact for further information.

If there is no employee representative, a written notice must be provided to "affected employees" at least 60 days before a plant closing or mass layoff.

Mailing a notice to an employee's last known address or including the notice in the employee's paycheck is considered an acceptable method of fulfilling the obligation to give notice to affected employees. A ticketing notice, such as one preprinted regularly and included in each employee's paycheck or pay envelope does not meet the requirements.

Affected employees due notice under WARN are those who may reasonably be expected to experience an employment loss as a consequence of a proposed plant closing or mass layoff. Employees who will likely lose their jobs because of bumping rights or other factors are "affected employees" to the extent that they can be identified at the time the notice is required. The "reasonably foreseeable" test takes into account, however, that factors, including the possible non-exercise of bumping rights and the difficulty of predicting bumping paths where employees have several options among positions or lines of progression, will make it difficult to predict who will finally be affected as a result of a plant closing or mass layoff.

The written notice must be provided to the state dislocated worker unit designated or created under the Job Training Partnership Act and the chief elected official of the government unit within which the closing or layoff is to occur. For this purpose, a unit of local government is a general purpose political subdivision of a state having the power to levy taxes and spend funds, as well as general corporate and police powers.

If there is more than one affected local government unit, the employ-

The National Labor Relations Act or state laws/acts, as amended, provide for the selection of a labor organization to be the duly designated and certified representative of covered employees. The SMART Constitution sets forth requirements which designate subordinate bodies within the organization to provide representation for employees where the SMART Transportation Division is the duly designated and authorized representative.

The subject of this manual concerns local committees of adjustment representing members, and the following reproduced pertinent provisions of the SMART Constitution govern the handling of grievances and conduct of such committees.

Authority to Represent

Where the SMART-Transportation Division has been certified as the sole and exclusive representative for the bargaining unit, SMART-TD has the authority to present and process grievances on a member's behalf.

Consideration of Grievances

All grievances must be reduced to writing, contain complete information on the subject matter and be submitted to the local committee of adjustment holding jurisdiction. Grievances involving violations of the agreement, reinstatement, safety, or health and welfare shall be given prompt handling with appropriate officials of the employer. A report by the committee will be made at the next meeting.

Local Committees of Adjustment

Each local shall elect a local committee of adjustment, consisting of a chairperson, one or more vice chairpersons, and a secretary. Additional local committees of adjustment may be formed to represent members on a separate seniority district or when employed in a separate craft represented by SMART-TD. Such committeepersons must hold seniority rights in one of the crafts under the jurisdiction of the local committee.

The General President-SMART and President-Transportation Division may grant dispensation for the establishment of separate local committees of adjustment for the members of a local working in one of the various crafts represented by the

SMART-Transportation Division. Each local committee shall be main- tained by dues and/or assessments levied upon the members under the jurisdiction of such committee.

When required, it shall be the duty of the chairperson of the local committee of adjustment to furnish the treasurer of the local and the interested general chairpersons the names of non-members and members who have been taken out of service, or who have been returned to service. Additionally, the chairperson of the local committee of adjustment will assist in furnishing information to the treasurer as to the names of employees working under the jurisdiction of his/her committee.

It shall be the duty of the chairperson of the local committee of adjustment to promptly handle claims and grievances when presented in accordance with Article 79. He/she shall be authorized to file claims and grievances including those where time has not been claimed, or where claims were incorrectly and/or improperly filed. He/she shall report on the handling of all claims and grievances at the next local meeting.

Should the local chairperson fail to satisfactorily adjust any case presented, he/she may refer same to the general chairperson with the complete facts and history of the case including copies of correspondence exchanged with local officials.

It shall be the duty of the vice chairperson to handle matters referred to the local committee when so directed by the chairperson. The vice chairperson of the local committee shall act as chairperson when the chairperson is unable to perform his/her duties, and in case of a permanent vacancy in the office, he/she shall act as chairperson until the office is filled as provided in Article 57. When more than one vice chairperson is elected to a local committee of adjustment, the local committee shall designate the vice chairperson who shall act as required by this paragraph.

Local committees shall not take grievances to the general officers of an employer, except through the general chairperson, and will not be permitted to enter into any agreement or understanding or change an agreement or understanding unless approved and signed by the general chairperson and the designated employer representative.

A general chairperson may not serve as local chairperson, except where there is only one local on a property. Then, the local committee of adjustment shall constitute the general committee of adjustment.

THE WORKER ADJUSTMENT AND RETRAINING NOTIFICATION ACT*

The Worker Adjustment and Retraining Notification Act requires employers to give employees and local governments notice of plant closings and mass layoffs. The statute specifically defines the events triggering the notice requirements and contains numerous exemptions.

The purpose of the statutes are to provide workers and their families with time to adjust to prospective loss of employment, to allow workers to seek and obtain alternative job and enter retraining programs, and to give state employment agencies proper time to prepare for assisting affected employees.

Under WARN, and employer must provide written notice to both employee representatives of affected employees and certain governmental units at least 60 days before it closes a plant or imposes a mass layoff.

Any business enterprise that employs either 100 or more employees, excluding part-time workers, or 100 or more employees in the aggregate work at least 4,000 hours per week, excluding overtime, is an employer subject to WARN's requirements.

A notice to each bargaining representative must contain:

1. the name or an address of the employment site where the plant closing or mass layoff will occur;
2. the nature of the planned action, including whether it is a plant closing or mass layoff and whether it is expected to be permanent or temporary;
3. the expected date of the first separation and the anticipated schedule for making separations;

*Please note that the following provides a general overview of this Act and is not intended as a complete and comprehensive study of the law. This is provided so that you may become familiar with some of the more common issues that arise under this Act. Specific questions concerning the law should always be directed to the Legal Department.

resolve the dispute, the board will defer processing an unfair labor practice case and await resolution of the issues through that grievance arbitration procedure. If the grievance arbitration procedure process meets the board's standards, the board may accept the final resolution and defer that decision. If the procedure fails to meet all the board standards for deferral, the board may then resume processing of the unfair labor practice issues.

An unfair labor practice hearing is conducted before an NLRB administrative law judge in accordance with the rules of evidence and procedure that apply in the U.S. district courts. Based on the hearing record, the administrative law judge makes findings and recommendations to the board. All parties to the hearing may appeal the administrative law judge's decision to the board. If the board considers that the party named in the complaint has engaged in or is engaging in the unfair labor practices charged, the board is authorized to issue an order requiring such person to cease and desist from such practices and to take appropriate affirmative action.

Section 10(b) provides that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made." Normally service is made by sending the charge by registered mail, return receipt requested.

If the regional director refuses to issue a complaint in any case, the person who filed the charge may appeal the decision to the general counsel in Washington. Section 3(d) places in the general counsel "final authority, on behalf of the Board, in respect to the investigation of charges and issuance of complaints." If the general counsel reverses the regional director's decision, a complaint will be issued. If the general counsel approves the decision not to issue a complaint, there is no further appeal.

In Bus Department locals where there is one local on a property, general committees of adjustment and/or officers representing SMART-TD shall not revise or amend general or system sched- ule rules unless authorized to do so by a majority of votes cast by the members of the craft under the jurisdiction of the general committee.

Compensation and expenses for members of the local committee shall be determined by the members of the local under the jurisdiction of the committee. The local committeeperson, when authorized by the general chairperson to perform service in connection with general committee matters, shall be compensated from the general committee fund.

As chairperson of the local committee of adjustment, you are one of the most important officers in the Transportation Division.

Labor research studies have shown that the average worker's image of the union, in general, evolves from the relationship with the local shop steward – the local chairperson. The local chairperson is the union officer in the Transportation Division structure with whom the members have the most contact. The manner in which the local chairperson represents the membership will have a direct correlation on the attitude of the rank and file toward their union. If the members consider the local chairperson to be a well-qualified, honest, fair-minded and hard-working representative, they will feel the same way about their union. The members see SMART-TD as they view the actions of the local chairperson.

The responsibilities of the local chairperson are multi-faceted. The local chairperson must be a leader, and must become an educator, an organizer and an effective negotiator in local grievance handling.

Leader. Because local chairpersons are selected by their peers, they are individuals with the confidence and trust of the members; they are the leaders. An effective leader knows and understands the long-range goals of SMART-TD, sparks the enthusiasm and enlists the cooperation of the members toward achieving those goals. As a leader, the local chairperson must fight for what is right and work hard for the welfare of the group.

A leader will gather all the facts and discuss them with others, seeking advice and help where needed. A leader thinks before acting, giving consideration to all alternatives and consequences of any action – then acts promptly and decisively. A leader listens to others' points of view, discourages factional bickering and develops teamwork.

Because the local chairperson is a leader, through dissemination of factual information and logical discussion of viewpoints on political issues, proposals and the resolution of problems, a local chairperson will influence members' attitudes toward the union, its agenda, progress and accomplishments.

Organization of the NLRB

The rights of employees declared by Congress in the National Labor Relations Act are not self-enforcing. To ensure that employees may exercise these rights, and to protect them and the public from unfair labor practices, Congress established the NLRB to administer and enforce the act.

The NLRB includes the board, which is composed of five members with their respective staffs, the general counsel and staff, and the regional, subregional, and resident offices. The general counsel has final and independent authority on behalf of the board, in respect to the investigations of charges and issuance of complaints. Offices of the board and the general counsel are in Washington, D.C. To assist in administering and enforcing the law, the NLRB has established 33 regional offices and a number of other field offices.

The agency has two main functions: To conduct representation elections and certify the results, and to prevent employers and unions from engaging in unfair labor practices.

The authority of the NLRB can be brought to bear in a representation proceeding only by the filing of a "petition." Forms for petitions must be signed, sworn to or affirmed under oath, and filed with the regional office in the area where the unit of employees is located. If employees in the unit regularly work in more than one regional area, the petition may be filed with the regional office of any of such regions.

The procedure in an unfair labor practice case is begun by the filing of a "charge." A charge may be filed by an employee, an employer, a labor organization, or any other person. Like petitions, charge forms, which are also available at regional offices, must be signed, sworn to or affirmed under oath, and filed with the appropriate regional office-that is, the regional office in the area where the alleged unfair labor practice was committed. Section 10 provides for the issuance of a complaint stating the charges and notifying the charged party of a hearing to be held concerning the charges. Such a complaint will be issued only after investigation of the charges through the regional office indicates that an unfair labor practice has in fact occurred.

In certain limited circumstances when an employer and union have an agreed upon grievance arbitration procedure that will

tional picketing) or acceptance by his employees as their representative (organizational picketing). The object of picketing is ascertained from all the surrounding facts including the message on the picket signs and any communications between the union and the employer. "Recognitional" picketing as used in Section 8(b)(7) refers to picketing to obtain an employer's initial recognition of the union as bargaining representative of its employees or to force the employer, without formal recognition of the union, to maintain a specific and detailed set of working conditions. It does not include picketing by an incumbent union for continued recognition or for a new contract. Neither does it include picketing that seeks to prevent the employer from undermining area standards or working conditions by operating at less than the labor costs which prevail under bargaining contracts in the area.

Examples of violations of Section 8(b)(7) are as follows:

1. Picketing by a union for organizational purposes shortly after the employer has entered a lawful contract with another union (8(b)(7)(A)).

2. Picketing by a union for organizational purposes within 12 months after a valid NLRB election in which a majority of the employees in the unit voted to have no union (8(b)(7)(B)).

3. Picketing by a union for recognition continuing for more than 30 days without the filing of a representation petition wherein the picketing stops all deliveries by employees of another employer (8(b)(7)(C)).

Section 8(e) – Entering a Hot Cargo Agreement

Section 8(e) makes it an unfair labor practice for an employer or a labor organization to enter a hot cargo agreement. This section applies equally to unions and to employers.

Educator. Historically, the local union meeting was the place where officers and members met to be informed about the policies of the organization. As the workplace and lifestyles change, it has become more difficult for members to attend union meetings with regularity. As a rule, only unusual sessions – those dealing with elections, strike votes, contract negotiations or dues increases – draw large turnouts. While this is not intended as an excuse for poor local meeting attendance, we must face reality. These changes have made it more difficult to keep members informed about the issues, policies and decisions of the organization.

Our union has developed workable policies and programs for the guidance of the organization. Understanding these policies and programs, as well as the rationale behind them, is an important responsibility of the local chairperson. However, it is not enough for the local chairperson alone to understand the issues facing the union. This information must be factually transmitted to the rank and file. The role of the local chairperson as a communicator and educator has become increasingly more important. The more the members know and understand about the organization, the less complacency exists in the local and the more interested and active the members become.

Organizer. The majority of SMART-TD members are covered by union shop agreements. But paying dues does not mean members under- stand or actively participate in the affairs of the union. Therefore, one of the basic responsibilities of the local chairperson is to get acquaint- ed with the newly hired workers when they start work and to inform them about the union and its activities. By doing so, the local chair- person will lay the groundwork to develop an active union member. The local chairperson should provide the new hire with a copy of the agreement and explain how it represents benefits negotiated by the union. The local chairperson should also explain it is the chairperson's responsibility and duty to represent any worker whose contract rights have been violated. This is important because it is unlikely the employer will so apprise the new hires of their contractual rights. The local chairperson should also be prepared to give the new hire some sense of what the union has accomplished over the years. It is not enough, however, only to be concerned with the struggles of the past. The new member wants to know what the union's program is for today and tomorrow – not just what it did yesterday. SMART-TD News out- lines current issues facing the union.

Negotiator. Grievance handling is an important function of the local chairperson. When necessary and used effectively, grievances are an effective method to police the labor agreement.

In order to use the grievance procedure to the advantage of the membership, the local chairperson must be an effective negotiator. Following a few simple rules will aid you with the grievance negotiating process:

1. Know and understand the labor agreements. Use logic.
2. Know the time limits of the agreements for grievances and disciplinary actions. Be careful to observe all agreement requirements applicable to grievance handling.
3. Do not progress unsupported grievances. Learn to recognize the value and validity of grievances submitted by the rank and file.
4. Before taking any grievance to the employer, check and carefully document all the facts.
5. Prepare the case so it is clear, complete and to the point.
6. When dealing with management representatives, be businesslike, be polite and be firm. Don't try to bluff, bully or threaten management. Treat employer representatives with respect and demand you be treated the same.
7. Complete all required handling on the local level.

The final provision in Section 8(b)(4) provides that nothing in Section 8(b)(4) shall be construed "to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer." Such publicity is not protected if it has "an effect of inducing any individual employed by any persons other than the primary employer" to refuse to handle any goods or not to perform services.

Section 8(b)(5) – Excessive or Discriminatory Membership Fees

Section 8(b)(5) makes it illegal for a union to charge employees who are covered by an authorized union-security agreement a membership fee "in an amount which the Board finds excessive or discriminatory under all the circumstances." The section also provides that the board in making its finding must consider among other factors "the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected."

Examples of violations of this section include:

1. Charging old employees who do not join the union until after a union-security agreement goes into effect an initiation fee of $15 while charging new employees only $5.
2. Increasing the initiation fee from $75 to $250 and thus charging new members an amount equal to about four weeks' wages when other unions in the area charge a fee equal to about one-half the employee's first week's pay.

Section 8(b)(6) – "Featherbedding"

Section 8(b)(6) forbids a labor organization "to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed."

Section 8(b)(7)– Organizational and Recognitional Picketing by Noncertified Unions

Section 8(b)(7) prohibits a labor organization that is not currently certified as the employees' representative from picketing or threatening to picket with an object of obtaining recognition by the employer (recogni-

3. Urging employees of a building contractor not to install doors that were made by a manufacturer that is nonunion or that employs members of a rival union.

4. Telling an employer that its plant will be picketed if that employer continues to do business with an employer the union has designated as "unfair."

The prohibitions of Section 8(b)(4)(B) do not protect a secondary employer from the incidental effects of union action that is taken directly against the primary employer. Thus, it is lawful for a union to urge employees of a secondary employer supplied at the primary employer's plant not to cross a picket line there. Section 8(b)(4)(B) also does not proscribe union action to prevent an employer from contracting out work customarily performed by its employees, even though an incidental effect of such conduct might be to compel that employer to cease doing business with the subcontractor.

Section 8(b)(4)(B) also prohibits secondary action to compel an employer to recognize or bargain with a union that is not the certified representative of its employees. If a union takes action described in clause (i) or (ii) against a secondary employer, and the union's object is recognition by the primary employer, the union commits an unfair labor practice under this section. To establish that the union has an object of recognition, a specific demand by the union for recognition need to be shown; a demand for a contract, which implies recognition or at least bargaining, is enough to establish an 8(b)(4)(B) object.

Section 8(b)(4)(C) forbids a labor organization from using clause (i) or (ii) conduct to force an employer to recognize or bargain with a labor organization other than the one that is currently certified as the representative of its employees.

Section 8(b)(4)(C) has been held not to apply when the picketing union is merely protesting working conditions that are substandard for the area.

Section 8(b)(4)(D) forbids a labor organization from engaging in action described in clauses (i) and (ii) for the purpose of forcing any employer to assign certain work to "employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class."

DUTIES OF THE LOCAL CHAIRPERSON

1. Know the agreement; study it and know what it means. This requires knowledge and understanding of supplemental agreements, past rulings and awards relative to the labor agreement on your property.

2. Handle grievances promptly. Facts are easier to obtain before grievances get old and stale.

3. Be knowledgeable of the time-limit rules applicable to the agreement, and comply with these rules to the letter.

4. Know the members under the jurisdiction of the local committee of adjustment. Interact with them in order for them to get to know you. Learn to communicate and understand each other.

5. Treat all members alike. Strive to equally represent the interests of all.

6. Know your management representatives. Become familiar with their strengths and weaknesses.

7. Stop rumors injurious to the union and misunderstandings which might occur on the property.

8. When handling time claims or grievances, double check the time limit rules applicable to the agreement to ensure claims and grievances are timely progressed.

9. Attend all union meetings. Encourage all members to do likewise. The local union meeting is where the business should be handled.

10. Know the rights of workers under federal and state laws, such as the national Labor Relations Act, and those regulated by the Federal Transit Administration, National Highway Safety Administration and the Department of Transportation.

11. Know the structure of the union and how the union operates. Know the different departments of your union and

the functions they perform in legislative, protective, insurance and legal matters.

12. Unionize the organized. Carry on a continuing program of education among members within the jurisdiction of the local committee of adjustment. Keep yourself and others informed of changes in agreements, interpretations and applications of state and federal laws and regulations.

Suggestion for chairpersons: keep accurate records and have them well organized. It is necessary for elected officers and committeepersons to turn over all records, etc., of the local or grievance committee (committee of adjustment) to the succeeding elected official for the continued successful operation of the local and for continued protection of the members.

The local chairperson should not:

1. Wait until a member comes to him or her with a claim or grievance.
2. Pretend to know all the answers to all problems, nor give out information of which he or she is not sure.
3. Fail to keep a grievant posted on the disposition of a claim or grievance.
4. Violate the employer's operating rules or the labor contract.
5. Stall workers on an answer to their claims or grievances if one in fact exists, or try to talk members out of a claim or grievance when it is obvious the agreement has been violated.
6. Handle bad claims or grievances feeling it's obligatory to do so, especially without investigating first.
7. Trade claims or grievances or blow up when bargaining with the employer.
8. Use profane language.
9. Bawl out a member in front of a group of members or management.

The NLRB held this to be "coercion and restraint" within the meaning of clause (ii).

Section 8(b)(4)(B) prohibits unions from engaging in clause (i) or (ii) action to compel an employer or self-employed person to join any labor or employer organization or to force an employer to enter a hot cargo agreement prohibited by Section 8(e). Examples of violations of this section are:

1. In an attempt to compel a beer distributor's workers to join a union, the union prevents the distributor from obtaining beer at a brewery by inducing the brewery's employees to refuse to fill the distributor's orders.
2. In an attempt to secure for its members certain stevedoring work required at an employer's unloading operation, the union pickets to force the employer to join an employer association with which the union has a contract.
3. A union pickets an employer (one not in the construction and garment industries), or threatens to picket it, to compel that employer to enter into an agreement whereby the employer will only do business with persons who have an agreement with a union.

Section 8(b)(4)(B) contains the act's secondary boycott provision. A secondary boycott occurs if a union has a dispute with Company A and, in furtherance of that dispute, causes the employees of Company B to stop handling the products of Company A, or otherwise forces Company B to stop doing business with Company A. The dispute is with Company A, called the "primary" employer; the union's action is against Company B, called the "secondary" employer, hence the term "secondary boycott." In many cases the secondary employer is a customer or supplier of the primary employer with whom the union has the dispute. In general, the act prohibits both the secondary boycott and the threat of it. Examples of prohibited secondary boycotts are:

1. Picketing an employer to force it to stop doing business with another employer who has refused to recognize the union.
2. Asking the employees of a plumbing contractor not to connect air conditioning equipment manufactured by a nonunion employer whom the union is attempting to organize.

clauses (i) and (ii) as a means of accomplishing any of the objects listed in the four subparagraphs.

Clause (i) forbids a union to engage in a strike, or to induce or encourage a strike, work stoppage, or a refusal to perform services by "any individual employed by any person engaged in commerce or in an industry affecting commerce" for one of the objects listed in subparagraphs (A) through (D). The words "induce and encourage" are considered by the U.S. Supreme Court to be broad enough to include every form of influence or persuasion. For example, it has been held by the NLRB that a work stoppage on a picketed construction project was "induced" by a union through its business agents who, when they learned about the picketing, told the job stewards that they (the business agents) would not work behind the picket line. It was considered that this advice not only induced the stewards to leave the job, but caused them to pass the information on to their fellow employees, and that such conduct informed the other employees that they were expected not to work behind the picket line. The word "person" is defined in Section 2(1) as including "one or more individuals, labor organizations, partnerships, associations, corporations," and other legal persons. As so defined, the word "person" is broader than the word "employer." For example, a railroad company, although covered by the Railway Labor Act, is excluded from the definition of "employer" in the National Labor Relations Act and, therefore, neither the railroad company nor its employees are covered by the National Labor Relations Act. But a railroad company is a "person engaged in commerce" as defined above and, therefore, a labor organization is forbidden to "induce or encourage" individuals employed by a railroad company to engage in a strike, work stoppage, or boycott for any of the objects in subparagraphs (A) through (D).

Clause (ii) makes it an unfair labor practice for a union to "threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce" for any of the proscribed objects. Even though no direct threat is voiced by the union, there may nevertheless be coercion and restraint that violates this clause. For example, when a union picketed a construction job to bring about the removal of a nonunion subcontractor in violation of Section 8(b)(4)(B), the picketing induced employees of several other subcontractors to stop work. When the general contractor asked what could be done to stop the picketing, the union's business agent replied that the picketing would stop only if the nonunion subcontractor were removed from the job.

ATTITUDES AND ATTRIBUTES OF A SUCCESSFUL LOCAL CHAIRPERSON

Simply stated, a successful local chairperson is one who can most effectively protect the labor agreement and represent the interests of the membership. Accomplishing the most for the membership is the goal. However, the task is not easy and there are no short cuts.

What are the characteristics of a successful local chairperson? There appear to be a number of interlocking factors which make success possible.

Successful local chairpersons must believe the labor movement is essential and beneficial to working men and women, and further, believe he or she is contributing personally to the benefits enjoyed by the members.

The beliefs may be motivated by ambition, personal satisfaction in accomplishment, or desire for the respect of fellow workers. They may be prompted by opposition to the employer's attitudes and policies or they may come from a combination of these factors and others. But it is this overwhelming motivation and interest in his/her work which characterizes the successful local chairperson in handling time claims and grievances, and then following through aggressively on the cases.

These beliefs are also most important during the training years of any local chairperson. During this time, they are faced with many discouragements, making them wonder if they are adequate for the job, if their efforts are appreciated and if the small financial reward can ever compensate for the time and effort involved in representing the membership.

Experience is an important attribute in accomplishing any task. This is especially true in grievance work for two reasons: (1) most bus workers' training has not prepared them for the personal relationship of negotiations with the employer and the leadership of fellow workers; and, (2) history and application of the agreements and work rules are material which must be obtained from multiple sources. Once this knowledge and material are obtained, the local chairperson's responsibilities no longer seem insurmountable.

With experience and knowledge, the local chairperson is capable of

analyzing the consequences of each grievance, identifying the position of the employer, in addition to adopting his/her own proper position, concluding each case with beneficial, not inferior, results. This ability does not require formal education beyond experience and dedication. Rather than formal education, the ability to think clearly and to analyze a problem, arriving at a proper decision that will be continuously upheld, is required for the job.

Additionally, an understanding of contract principles, knowledge of the applicable labor agreements, and familiarity with procedures for handling time claims and grievances from inception to final appeal are important skills that require training.

A successful local chairperson is scrupulously proper and fair in his/her dealings with members and with employer representatives. A local chairperson who conducts himself/herself in this manner will earn the respect of both the members and employer representatives. Once a reputation for honesty and fairness has been established, the local chairperson will be able to accomplish more because he/she will be preceded by such reputation. A solid reputation for dealing with the facts will aid in settlements of time claims and grievances on the local level. The employer representatives will know the opinions and positions of the local chairperson have proven correct in the past and if proper weight is not given the local chairperson's views, handling of cases on appeal may discredit the employer representative.

6. Seeking the discharge of an employee under a union-security agreement for failure to pay a fine levied by the union.

Section 8(b)(3) – Refusal to Bargain in Good Faith

Section 8(b)(3) makes it illegal for a labor organization to refuse to bargain in good faith with an employer about wages, hours and other conditions of employment if it is the representative of that employer's employees. This section imposes on labor organizations the same duty to bargain in good faith that is imposed on employers by Section 8(a)(5).

Section 8(b)(3) is violated by any of the following:

1. Insisting on the inclusion of illegal provisions in a contract, such as a closed shop or a discriminatory hiring hall.
2. Refusing to negotiate on a proposal for a written contract.
3. Striking against an employer who has bargained, and continues to bargain, on a multi-employer basis to compel it to bargain separately.
4. Refusing to meet with the attorney designated by the employer as its representative in negotiations.
5. Terminating an existing contract and striking for a new one without notifying the employer, the Federal Mediation and Conciliation Service, and the state mediation service, if any.
6. Conditioning the execution of an agreement on inclusion of a nonmandatory provision such as a performance bond.
7. Refusing to process a grievance because of the race, sex or union activities of an employee for whom the union is the statutory bargaining representative.

Section 8(b)(4) – Prohibited Strikes and Boycotts

Section 8(b)(4) prohibits a labor organization from engaging in strikes or boycotts or taking other specified actions to accomplish certain purposes or "objects" as they are called in the act. The proscribed action is listed in clauses (i) and (ii), the objects are described in subparagraphs (A) through (D). A union commits an unfair labor practice if it takes any of the kinds of action listed in

3. Fining or expelling supervisors for the way they apply the bargaining contract while carrying out their supervisory functions or for crossing a picket line during a strike to perform their supervisory duties.

Section 8(b)(2) – Causing or Attempting to Cause Discrimination

Section 8(b)(2) makes it an unfair labor practice for a labor organization to cause an employer to discriminate against an employee in violation of Section 8(a)(3).

A union violates Section 8(b)(2), for example, by demanding that an employer discriminate against employees because of their failure to make certain otherwise lawful payments to the union when there is no valid union-security agreement in effect. The section can also be violated by agreements or arrangements with employers that unlawfully condition employment or job benefits on union membership, on the performance of union membership obligations, or on arbitrary grounds. Union conduct affecting an employee's employment in a way that is contrary to provisions of the bargaining contract may likewise be a violation of the section. But union action that causes detriment to an individual employee in the individual's employment does not violate Section 8(b)(2) if it is consistent with nondiscriminatory provisions of a bargaining contract negotiated for the benefit of the total bargaining unit or if it is for some other legitimate purpose.

Examples of violation of Section 8(b)(2) are:

1. Causing an employer to discharge employees because they circulated a petition urging a change in the union's method of selecting shop stewards.

2. Causing an employer to discharge employees because they made speeches against a contract proposed by the union.

3. Making a contract that requires an employer to hire only members of the union or employees "satisfactory" to the union.

4. Causing an employer to reduce employees' seniority because they engaged in anti-union acts.

5. Refusing referral or giving preference on the basis of race, sex or union activities in making job referrals to units represented by the union.

1. Because of the exclusivity of the union's representative status where it is certified for a craft or class, the courts have held that the employees represented are owed a "duty of fair representation." The duty applies whether the employees belong to the union or not. Where there is a union shop or agency provision in the contract, of course, payment is required. But where employees exercise their statutory right not to belong to the union, SMART-TD still owes them the duty of fair representation if they are employed in a craft SMART-TD represents.

2. The courts have made it clear that the union does not have a duty to take every case – not even every discharge case – to arbitration. It does not have a duty to do "everything possible." It does not have the duty to supply excellent, superior or inspired representation to a grievant. It does have the duty to evaluate a grievance, unless the grievance is, on its face value, worthless or improper. If it concludes that a grievance should not be progressed, it should explain why to the aggrieved employee. While the union has no duty to "fight" every case, it does have certain duties which may make it legally responsible. Those duties are to be honest, to act in good faith, to be non-discriminatory, and to have a rational basis for making a decision. This is the duty of "fair representation" the union owes to all those in the crafts it represents.

3. The union is accorded considerable discretion in the handling of grievances; in other words, the union is permitted "a wide range of reasonableness" in deciding whether to prosecute and how to prosecute a grievance.

4. The latitude afforded a union under the law, however, is "subject always to complete good faith and honesty of purpose in the exercise of its discretion."

5. No individual member has an absolute right to insist that his or her claim or grievance be pursued through any particular step of the procedure. A union may screen claims

and grievances, and press only those it concludes should be pursued in terms of benefit to the craft as a whole, and take into account such matters as time, expenses and other legitimate considerations.

6. A union may not drop a claim or grievance based on hostility, discrimination or arbitrariness. It may not arbitrarily ignore a meritous grievance, or investigate or handle it in a perfunctory manner – that is, by merely going through the motions.

7. In other words, a union may abandon a claim or grievance, as long as there is a rational basis for doing so. Mere whim or no reason at all will not support a contention that the union official merely exercised judgment.

   A. The following are some examples of conduct which might lead to an allegation the union breached the duty of fair representation:

      1) Discrimination. An all-male local committee decides not to appeal a meritous discharge grievance of a female within the local that is hostile to the incumbent administration.

      2) Arbitrariness. A general chairperson or a local chairperson withdraws a meritous grievance but, when asked why, can offer no reason.

      3) Hostility. The local chairperson has a personal grudge against the grievant and withdraws a meritous claim or grievance.

      4) Dishonesty. The local chairperson misleads the grievant, or lies to him or her.

   B. The following are examples of conduct which do not violate the union's duty of fair representation:

      1) The local chairperson honestly, but mistakenly, believes the company has not violated the agreement, as he or she interprets it, and withdraws the grievance.

      2) In a merger, a seniority arrangement is agreed to that is in accord with union and industry practice when it has not been chosen by a majority of the employees.

      7. Fining or expelling members for crossing a picket line that is unlawful under the act or that violates a no-strike agreement.

      8. Fining employees for crossing a picket line after they resigned from the union.

      9. Fining or expelling members for filing unfair labor practice charges with the board or for participating in an investigation conducted by the board.

      10. Refusing to process a grievance in retaliation against an employee's criticism of union officers.

      11. Maintaining a seniority arrangement with an employer under which seniority is based on the employee's prior representation by the union elsewhere.

      12. Rejecting an application for referral to a job in a unit represented by the union based on the applicant's race, sex or union activities.

Section 8(b)(1)(B) – Restraint and Coercion of Employers

Section 8(b)(1)(B) prohibits a labor organization from restraining or coercing an employer in the selection of a bargaining representative. The prohibition applies regardless of whether the labor organization is the majority representative of the employees in the bargaining unit. The prohibition extends to coercion applied by a union to a union member who is a representative of the employer in the adjustment of grievances. This section is violated by such conduct as the following:

1. Insisting on meeting only with a company's owners and refusing to meet with the attorney the company has engaged to represent the company in contract negotiations, and threatening to strike to force the company to accept its demands.

2. Striking members of an employer association that bargains with the union as the representative of the employers to compel the struck employees to sign individual contracts with the union.

Section 8(b)(1)(A) – Restraint and Coercion of Employees

Like Section 8(a)(1), Section 8(b)(1)(A) is violated by conduct that independently restrains or coerces employees in the exercise of their Section 7 rights regardless of whether the conduct also violates other provisions of Section 8(b).

Union conduct that is reasonably calculated to restrain or coerce employees in their Section 7 rights violates Section 8(b)(1)(A) whether it succeeds or not in actually restraining or coercing employees.

A union may violate Section 8(b)(1)(A) by coercive conduct of its officers or agents, or pickets on a picket line endorsed by the union, or of strikers who engage in coercion in the presence of union representatives who do not repudiate the conduct.

Section 8(b)(1)(A) recognized the right of unions to establish and enforce rules of membership and to control their internal affairs. This right is limited to union rules and discipline that affect the rights of employees as union members and that are not enforced by action affecting an employee's employment. A union may not fine a member for filing a decertification petition although it may expel that individual for doing so. A rule that prohibits a member from resigning from the union is unlawful. The union may not fine a former member for any protected conduct engaged in after he or she resigns.

Examples of restraint or coercion that violate Section 8(b)(1)(A) when done by a union or its agents include the following:

1. Mass picketing in such numbers that nonstriking employees are physically barred from entering the work site.
2. Acts of force or violence on the picket line, or in connection with a strike.
3. Threats to do bodily injury to nonstriking employees.
4. Threats to employees that they will lose their jobs unless they support the union's activities.
5. Statements to employees who oppose the union that the employees will lose their jobs if the union wins a majority at the work site.
6. Entering into an agreement with an employer that recognizes the union as exclusive bargaining representative

tices in light of apparently applicable law and the facts as the union sees them, although a number of employees are adversely affected.

8. Courts generally require the exhaustion of all effective internal union remedies before suit. In order to rely on a defense of non-exhaustion of such remedies, the union must take care not to mislead the member or place obstacles in the way so that the internal remedy can be said to be meaningless.
9. In these litigious times, the union must strive to avoid even the appearance of bad faith, hostility or arbitrary conduct.
10. Obviously, the local chairperson should recognize the difference between minor and serious grievances. A reprimand or short actual suspension is less likely to lead to litigation than a discharge or the loss of seniority.
11. In the case of a discharge, the presumption must be in favor of appealing and only compelling facts involving the actual case should excuse an appeal. A union representative is, first and foremost, an advocate. Where there are factual disputes, the local chairperson who represents the grievant should accept that person's version of the facts, if credible.
12. Remember the five Ws: "Who? What? Where? When? Why?" The local chairperson should remember to get and record this basic information promptly. We all need to continually keep in mind the necessity of early and thorough investigation and recording of these kinds of basics in every grievance that is being progressed.

1. **Timing in investigations**. Especially in important cases, such as possible discharges, the five Ws should be investigated promptly, and notations and evidence should be kept on file. It is important not only that we conduct a good investigation, but also that we can prove we did and refute the employer's charges.

2. **Non-grievance-filed situation**. What if a serious matter arises such as one involving a discharge, and the local chairperson decides he or she can't win and won't proceed with a grievance because it is not valid or winnable? The chairperson should try to convince the member that the grievance is unwinnable. The local chairperson should also make a written record of the reasons why he or she didn't file the grievance and send it to the person, by certified mail, if feasible.

   In unusual cases where there is a discharge, and the local chairperson is unable to convince the member that his or her discharge should not be appealed, then a grievance should be filed at the grievant's insistence. However, the local chairperson should always try to avoid filing phony grievances.

3. **The settlement of grievances**. Of course, the union has the right to settle claims and grievances as it sees fit, when it sees fit. What should be avoided are any appearances, however inaccurate, that one grievant got a better settlement than another because of who the parties were. Moreover, there should be no wholesale claim or grievance handling, or horse trading whereby one member is "sacrificed" in order to save others, nor should there be even the appearance of such action.

   Multiple grievances should not be filed against company actions, attacking it on a number of grounds, some spurious, with the idea of getting a settlement by offering to withdraw some of the grievances.

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

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

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

4. Announcing a wage increase without consulting the employees' representative.

5. Failing to bargain about the effects of a decision to close one of the employer's plants.

Section 8(e) – Entering Hot Cargo Agreement

Section 8(e), added to the act in 1959, makes it an unfair labor practice for any labor organization and any employer to enter into what is commonly called a "hot cargo" or "hot goods" agreement. It may also limit the restriction that can be placed on the subcontracting of work by an employer. The typical hot cargo or hot goods clause in use before the 1959 amendment provided that employees would not be required by their employer to handle or work on goods or materials going to, or coming from, an employer designated by the union as "unfair." Such goods were said to be "hot cargo."

Section 8(e) forbids an employer and a labor organization from making an agreement whereby the employer agrees to stop doing business with any other employer and declares void and unenforceable any such agreement that is made. It should be noted that a strike or picketing, or any other union action, or the threat of it, to force an employer to agree to a hot cargo provision, or to force it to act in accordance with such a clause, has been held by the board to be a violation of Section 8(b)(4).

UNFAIR LABOR PRACTICES OF LABOR ORGANIZATIONS

Section 8(b)(1)(A) forbids a labor organization or its agents "to restrain or coerce employees in the exercise of the rights guaranteed in Section 7." The section also provides that it is not intended to "impair the rights of a labor organization to prescribe its own rules" concerning membership in the labor organization.

An employer, therefore, will be found to have violated Section 8(a)(5) if its conduct in bargaining, viewed in its entirety, indicates that the employer did not negotiate with a good-faith intention to reach agreement. However, the employer's good faith is not at issue when its conduct constitutes an out-and-out refusal to bargain on a mandatory subject. For example, it is a violation for an employer, regardless of good faith, to refuse to bargain about a subject that it believes is not mandatory subject of bargaining, when in fact it is.

The duty of an employer to meet and confer with the representative of its employees includes the duty to deal with whomever is designated by the employees' representative to carry on negotiations. An employer may not dictate to a union its selection of agents or representatives and the employer must, in general, recognize the designated agent.

The employer's duty to bargain includes to supply, on request, information that is "relevant and necessary" to allow the employees' representative to bargain intelligently and effectively with respect to wages, hours, and other conditions of employment.

Finally, the duty of an employer to bargain includes the duty to refrain from unilateral action; that is, taking action on its own with respect to matters concerning which it is required to bargain, and from making changes in terms and conditions of employment without consulting the employees' representative.

An employer who purchases or otherwise acquires the operation of another may be obligated to recognize and bargain with the union that represented the employees before the business was transferred. In general, these bargaining obligations exist – and the purchaser is termed a successor employer – when there is a substantial continuity in the employing enterprise despite the sale and transfer of the business. Whether the purchaser is a successor employer is dependent on several factors, including the number of employees taken over by the purchasing employer, the similarity in operations of the two employers, the manner in which the purchaser integrates the purchased operations into its other operations, and the character of the bargaining relationship and agreement between the union and the original employer.

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

Of course, when a grievance is settled, the local and claimant should be notified, in writing, by certified mail, if feasible.

4. **Where claim or grievance is dropped or settled**. When it is decided not to press further a very serious matter, such as one involving a large claim or discharge, the local chairpersons should:

   a. make sure they have all the facts; and

   b. make written notice of the reasons for dropping the matter or settling it, and provide the grievant copy of same.

5. **Advice to members**. Of course, the local chairperson should never mislead, confuse or refuse to inform a dissatisfied member of his or her internal union appeal rights and remedies, or their rights under the contract or law.

   Prompt notification to the member, in writing, of any disposition of the claim or grievance should, as a matter of course, be given, regardless of the seriousness of the claim.

Remember: Time limits have to be observed through the grievance process up to the arbitration process.

WEINGARTEN RIGHTS

The Right to Union Representation During an Investigation Hearing

In 1975, the U.S. Supreme Court issued its Weingarten decision. In Weingarten, the Supreme Court upheld the National Labor Relations Board decision (which had been rejected by the Court of Appeals) in NLRB v. J. Weingarten, Inc., that held that Section 8(a)(1) of the National Labor Relations Act was violated if the employer requires the employee to submit to an investigatory interview and denies the employee's request for union representation.

Important Factors of Weingarten Rights

1. Union members have the right to a union representative at an investigation hearing if they reasonably believe that the investigation could lead to disciplinary action.

2. The member must request a representative; the employer has no obligation to inform the employee of that right.

3. Management does not have to call that representative. Instead, the employer can stop the meeting or just issue the discipline.

4. Once a union representative is called, he/she has the following rights:

   • to know the subject of the investigatory hearing;
   • to confer with the member prior to the hearing;
   • to speak/participate in the hearing.

   But, the representative cannot argue the case; this is not a grievance hearing.

5. An employee cannot choose which union representative he or she would like to have represent him/her:

   • the department union representative will be called, if available;
   • if not, the nearest available representative will be called;
   • if the employer is responsible for the representative not

testified at an NLRB hearing. Violations of this section are in most cases also violations of Section 8(a)(3).

Section 8(a)(5) – Refusal to Bargain in Good Faith

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

The duty to bargain covers all matters concerning rates of pay, wages, hours of employment, or other conditions of employment. These are called "mandatory" subjects of bargaining about which the employer, as well as the employees' representative, must bargain in good faith, although the law does not require "either party to agree to a proposal or require the making of a concession." In addition to wages and hours of work, these mandatory subjects of bargaining include, but are not limited to, such matters as pensions for present employees, bonuses, group insurance, grievance procedures, safety practices, seniority, procedures for discharge, layoff, recall, or discipline, and union security. Certain managerial decisions such as subcontracting, relocation, and other operational changes may not be mandatory subjects of bargaining, even though they affect employees' job security and working conditions. The issue of whether these decisions are mandatory subjects of bargaining depends on the employer's reasons for taking action. Even if the employer is not required to bargain about the decision itself, it must bargain about the decision's effects on unit employees. On "nonmandatory" subjects, that is, matters that are lawful but not related to "wages, hours, and other conditions of employment," the parties are free to bargain and to agree, but neither party may insist on bargaining on such subjects over the objection of the other party.

An employer who is required to bargain under this section must, as stated in Section 8(d), "meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party."

tions after a board-conducted election in which the union's authority to maintain a union-security agreement has been withdrawn.

This section does not limit an employer's right to discharge, transfer, or lay off an employee for genuine economic reasons or for such good cause as disobedience or bad work. This right applies equally to employees who are active in support of a union and to those who are not.

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

1. Discharging employees because they urged other employees to join a union.
2. Refusing to reinstate employees when jobs they are qualified for are open because they took part in a union's lawful strike.
3. Granting a "superseniority" to those hired to replace employees engaged in a lawful strike.
4. Demoting employees because they circulated a union petition among other employees asking the employer for an increase in pay.
5. Discontinuing an operation at one site and discharging the employees involved followed by opening the same operation at another site with new employees because the employees at the first site joined a union.
6. Refusing to hire qualified applicants for jobs because they belong to a union. It would also be a violation if the qualified applicants were refused employment because they did not belong to a union, or because they belonged to one union rather than another.

Section 8(a)(4) – Discrimination for NLRB Activity

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

being available, then the supervisor must end the meeting until the representative is available;
•if the union is responsible for the representative not being available, then another representative can be brought in, unless the supervisor chooses to postpone the meeting.

6. Previously, if Weingarten rights were violated, the grievant was made whole and a "cease and desist" order was issued against the employer. In a new NLRB decision, if the employee is disciplined for cause, then there is no "make-whole" remedy, even if information is obtained in violation of the employee's Weingarten rights.

   The only remedy is a cease and desist order. In the NLRB's words: "NLRB is without authority to order make-whole remedy – reinstatement and back pay – where employer's only violation of LMRA is its denial of employee's request for representation at management interview." (Taracorp Industries, December 1984, 107 LRRM 1541.)

   Cases: Board upholds the discharge of an employee for alleged insubordination after unlawfully being denied his right his right to union representation. Discharge was for "cause." (Greyhound Line, January 1985, 118 LRRM 1199)

   Board upholds a union's waiver of the employee's right to representation through contract language. Waiver must be "clear and unmistakable." (Prudential Insurance Co., April 1984, 119 LRRM 1073)

   It should be noted, however, that with the change in presidential administrations, new board members are appointed. These new appointees may view and interpret the act differently from their predecessors.

GRIEVANCE: DEFINITION & PURPOSE

A grievance may be defined by your collective bargaining agreement and may include language about the parties' "disagreement over the interpretation and application of a section of the collective bargaining agreement..."

The grievance procedure also exists to:

- provide a systematic way to resolve problems;
- provide a method for interpreting the contract;
- keep communications open between the parties;
- protect the integrity of the contractual agreement;
- provide either party with the ability to challenge or appeal an activity;
- locate the source of a problem.

What Is/Isn't a Grievance?

1. Has the contract been violated?
2. Has there been a violation of federal, state, or local labor law?
3. Has established past practice been violated?
4. Is it a violation of management's rules?
5. Is it a violation of an arbitrator's decision?
6. Has the worker's health or safety been jeopardized?

A chairperson is likely to get grievances on every aspect of working conditions from comments like "I can't work with people with an attitude" to problems of favoritism, job discrimination, or hazardous work assignments. Many times a chairperson/supervisor must act in the role of "preliminary" arbitrator on such matters, and that takes real leadership. In many cases, the chairperson may have to help decide what the union has the duty to take up as a legitimate grievance, as well as what the union does not have a duty to pursue.

If the chairperson/supervisor can answer "yes" to any of the following questions, it is safe to assume that there is some merit to the complainant's situation and that it can properly be called a grievance:

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

1. Taking an active part in organizing a union or a committee to represent employees.
2. Bringing pressure on employees to support a union financially, except in the enforcement of a lawful union-security agreement.
3. Allowing one of several unions, competing to represent employees, to solicit on company premises during working hours and denying other unions the same privilege.
4. Soliciting and obtaining from employees and applicants for employment, during the hiring procedure, applications for union membership and signed authorization for the check off of union dues.

Section 8(a)(3) – Discrimination Against Employees

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

As previously noted, Section 8(a)(3) provides that an employee may be discharged for failing to make certain lawfully required payments to the exclusive bargaining representative under a lawful union-security agreement.

Even when there is a valid union-security agreement in effect, an employer may not pay the union the dues and fees owed by its employees. The employer may, however, deduct these amounts from the wages of its employees and forward them to the union for each employee who has voluntarily signed a dues "check off" authorization. Such check off authorization may be made irrevocable for no more than one year. But employees may revoke their check off authoriza-

UNFAIR LABOR PRACTICES OF EMPLOYERS

Section 8(a)(1) – Interference with Section 7 Rights

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

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

1. Threatening employees with loss of jobs or benefits if they should join or vote for a union.
2. Threatening to close down the facility if a union should be organized in it.
3. Questioning employees about their union activities or membership in such circumstances as will tend to restrain or coerce the employees.
4. Spying on union gatherings, or pretending to spy.
5. Granting wage increases deliberately timed to discourage employees from forming or joining a union.

Section 8(a)(2) – Domination or Illegal Assistance and Support of a Labor Organization

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

1. Has the contract been violated?
2. Has there been a violation of federal, state or local labor law?
3. Has established past practice been violated?
4. Is it a violation of management's rules?
5. Is it a violation of an arbitrator's decision?
6. Has the worker's health/safety been jeopardized?

Perhaps a worker complains about unfair distribution of overtime work, while the facts show him/her to be mistaken. Sometimes the worker may feel entitled to promotion, although the seniority clauses in the contract prove him or her wrong.

If the worker is mistaken about the facts, it is better for the chairperson to discover this early in the process rather than filing a grievance and then finding out that the worker was wrong. Finding out the facts are contrary to the grievance statement is not helpful to the chairperson, the union, or the worker. In fact, it diminishes the chairperson/union's credibility and future effectiveness.

If the case is borderline, the chairperson should tell the worker that there is some question about the grievability and that he/she will consult with the union general chairperson for determination. If the supervisor/manager has a question regarding the response management should give to a grievance/issue, the supervisor should consult with the labor relations department before hazarding a wrong guess. Local union representatives and labor relations personnel work with grievances and arbitrations every day and they are familiar with criteria for such determinations.

There is nothing wrong with not knowing everything. Chairpersons shouldn't go out on a limb promising victory they may not be able to deliver. Rash promises can boomerang, labeling the chairperson unreliable in everyone's eyes. On the other hand, supervisors should listen and consider carefully issues brought to them by local chairpersons. While the issue may not be a grievance, per se, it could represent a problem that, if not addressed or resolved, can adversely impact employee satisfaction and therefore, customer satisfaction.

If the answer to the above questions is "no," don't be afraid to tell the worker that his/her complaint is not justified. There is a double

danger in trying to make a grievance out of it: the members are led to expect impossible results and the union's credibility is jeopardized, with both its membership and with management.

any particular case the NLRB does not attempt to determine whether the conduct actually interfered with the employees' expression of free choice, but rather asks whether the conduct tended to do so. If it is reasonable to believe that the conduct would tend to interfere with the free expression of the employees' choice, the election may be set aside. Examples of conduct the board considers to interfere with employee free choice are:

1. Threats of loss of jobs or benefits by an employer or a union to influence the votes or union activities of employees.
2. A grant of benefits or promise to grant benefits to influence the votes or union activities of employees.
3. An employer firing employees to discourage or encourage their union activities or a union causing an employer to take such action.
4. An employer or a union making campaign speeches to assembled groups of employees on company time within the 24-hour period before the election.
5. The incitement of racial or religious prejudice by inflammatory campaign appeals made by either an employer or a union.
6. Threats or the use of physical force or violence against employees by an employer or a union to influence their votes.
7. The occurrence of extensive violence or trouble or widespread fear of job losses which prevents the holding of a fair election, whether caused by an employer or a union.

so orders. The election details are left to the regional director. Such matters as who may vote, when the election will be held, and what standards of conduct will be imposed on the parties are decided in accordance with the board's rules and its decisions.

To be entitled to vote, an employee must have worked in the unit during the eligibility period set by the board and must be employed in the unit on the date of the election. Generally, the eligibility period is the employer's payroll period just before the date on which the election was directed. This requirement does not apply, however, to employees who are ill, on vacation, or temporarily laid off, or to employees in military service who appear in person at the polls.

Section 9(c)(3) provides that economic strikers who have been replaced by bona fide permanent employees may be entitled to vote in "any election conducted within 12 months after the commencement of the strike." The permanent replacements are also eligible to vote at the same time. As a general proposition, a striker is considered to be an economic striker unless found by the NLRB to be on strike over unfair labor practices of the employer. Whether the economic striker is eligible to vote is determined on the facts of each case.

Ordinarily, elections are held within 30 days after they are directed. Seasonal drops in employment or any change in operations that would prevent a normal work force from being present may cause a different election date to be set. Normally an election will not be conducted when unfair labor practice charges have been filed based on conduct of a nature which would have a tendency to interfere with the free choice of the employees in an election, except that, in certain cases, the Board may proceed to the election if the charging party so requests.

NLRB elections are conducted in accordance with strict standards designed to give the employee voters an opportunity to freely indicate whether they wish to be represented for purposes of collective bargaining. Any party to an election who believes that the board election standards were not met may, within seven days after the tally of ballots has been furnished, file objections to the election with the regional director under whose supervision the election was held. In most cases, the regional director's rulings on these objections may be appealed to the board for decision.

An election will be set aside if it was accompanied by conduct that the NLRB considers created an atmosphere of confusion or fear of reprisals and thus interfered with the employees' freedom of choice. In

GRIEVANCE HANDLING

There is no more important function to our union than the proper handling of time claims and grievances. To successfully prevail in the handling of claims and grievances, there must be solid facts and data that not only explain the violation but also contain information that will support the union's position. This information can only be developed by the local chairperson.

Many instances occur where a general chairperson will receive a file on a claim or grievance from the local chairperson which lacks sufficient information and data to support the union's position. Both the local chairperson and the general chairperson may be fully convinced an actual violation occurred, but somewhere in the process of the handling on the local level, there was not sufficient information developed. This places the general chairperson and the union in a no-win situation.

If the general chairperson progresses the violation to arbitration without sufficient data, he/she no doubt will receive a denial award. If the denial award only affected the one claim or grievance, the situation would not be so serious. However, in most situations, a denial award could have the effect of losing an important provision in the collective bargaining agreement.

Many contract violations occur as a result of an oversight or complete disregard by the employer of the provisions in the collective bargaining agreement. But others occur because of greed of the employer and/or its dislike of a certain provision in the contract, especially if an arbitrary is involved. In these types of situations, the employer will try to drag out the process as long as possible for several reasons. If the employer has any feasible argument whatsoever in favor of its position, the longer they drag out the dispute, the more likely the members will become discouraged and tired of submitting time claims for the violations. In the meantime, each time a member fails to file a time claim, that is money in the employer's pocket if the employer is eventually found to be in violation of the agreement. The employer can also create discontent among the members toward the union for taking so long to resolve the dispute.

Many members think the purpose of filing a time claim is simply to

increase their earnings. This is not so. A grievance is filed for the purpose of enforcing the collective bargaining agreement. And enforcement of the contract is not only for your benefit, but for the benefit of your fellow union members.

Knowledge of Agreements

It is extremely important that the local chairperson be knowledgeable of the collective bargaining agreements his/her membership is working under. Employers will often test new local chairpersons in order to determine how knowledgeable they are concerning applicable agreements.

If the employer finds a local chairperson who does not fulfill his/her obligations, they will take advantage of them. They will intentionally violate the provisions of the agreements. The longer such violations occur unchallenged, the more damage is done to future attempts to police the agreement with respect to identical or similar violations of the agreements. The employer will build a record relative to the application or practice of applying the agreement. Over time, the employer will expand its application. When claims or grievances are progressed, the employer will then take a position "past practice" prevails.

The collective bargaining agreement encompasses much more than the printed agreement book. Many documents have application to the rates of pay, rules and working conditions of the members. For example:

1. It is possible additional "memoranda of understanding" or side agreements have been entered into between the general committee of adjustment and the employer.

2. At times, agreements covering certain local conditions exist. These, too, are part of the overall collective bargaining agreement.

3. Past practices that are not explicitly contained in a written agreement may become part of the agreement.

When discussing grievance handling, it is important to recognize there are different types of grievances. In general terms, any complaint from the members pertaining to the rates of pay, rules and working conditions is commonly referred to as a grievance. Any grievance arising from application of specific provisions of the collective bargaining agreement generally is handled through the grievance procedure man-

during which the contract is effective as a bar. Petitions filed not more than 90 days but over 60 days before the end of the contract-bar period will be accepted and can bring about an election. State laws which may apply to your property may provide different time periods. Of course, a petition can be filed after the contract expires. However, the last 60 days of the contract-bar period is called an "insulated" period. During this time the parties to the existing contract are free to negotiate a new contract or to agree to extend the old one. If they reach agreement in this period, petitions will not be accepted until 90 days before the end of the new contract-bar period.

In addition to the contract-bar rules, the NLRB has established a rule that when a representative has been certified by the board, the certification will ordinarily be binding for at least one year and a petition filed before the end of the certification year will be dismissed. In cases in which the certified representative and the employer enter a valid collective bargaining contract during the year, the contract becomes controlling, and whether a petition for an election can be filed is determined by the board's contract-bar rules.

The Representation Election

Section 9(c)(1) provides that if a question of representation exists, the NLRB must make its determination by means of a secret-ballot election. In a representation election, employees are given a choice of one or more bargaining representatives or no representative at all. To be certified as the bargaining representative, an individual or a labor organization must receive a majority of the valid votes cast.

An election may be held by agreement between the employer and the individual or labor organization claiming to represent the employees. In such an agreement the parties would state the time and place agreed on, the choices to be included on the ballot, and a method to determine who is eligible to vote. They would also authorize the NLRB regional director to conduct the election.

If the parties are unable to reach an agreement, the act authorizes the NLRB to order an election after a hearing. The act also authorizes the board to delegate to its regional director the determination on matters concerning elections. Under this delegation of authority, the regional directors can determine the appropriateness of the unit, direct an election, and certify the outcome. Upon the request of an interested party, the board may review the action of a regional director, but such review does not stop the election process unless the board

2. The contract has not been ratified by the members or the union, if such is expressly required.

3. The contract does not contain substantial terms or conditions of employment sufficient to stabilize the bargaining relationship.

4. The contract can be terminated by either party at any time for any reason.

5. The contract contains a clearly illegal union-security clause.

6. The bargaining unit is not appropriate.

7. The union that entered the contract with the employer is no longer in existence or is unable or unwilling to represent the employees.

8. The contract discriminates between employees on racial grounds.

9. The contract covers union members only.

10. The contracting union is involved in a basic internal conflict at the highest levels resulting in destabilizing confusion about the identity of the union.

11. The employer's operations have changed substantially since the contract was executed.

Under the NLRB rules, a valid contract for a fixed period of three years or less will bar an election for the period covered by a contract. A contract for a fixed period of more than three years will bar an election sought by a contracting party during the life of the contract, but will act as a bar to an election sought by an outside party for only three years following its effective date. A contract of no fixed period will not act as a bar at all.

If there is no existing contract, a petition can bring about an election if it is filed before the day a contract is signed. If the petition is filed on the same day the contract is signed, the contract bars an election, provided the contract is effective immediately or retroactively and the employer has not been informed at the time of execution that a petition has been filed. Once the contract becomes effective as a bar to an election, no petition will be accepted until near the end of the period

dated by the agreement or practice in effect on your property.

There will be many times that a member will approach the local chairperson about a contract violation or grievance that the local chairperson does not have the answer to. Be honest with the member. Advise the member you will investigate the matter and get back to him or her with the answer. Then follow through. If you cannot find the answer to the member's question, consult with your general chairperson for his/her expertise. The worst thing to do is to tell the member what he or she wants to hear. Be honest with the members.

The most respected local chairperson, by both the membership and the employer, is the local chairperson who is knowledgeable of the agreement and handles claims and grievances with merit and factual information to support them. To handle claims lacking merit or sufficient information sends the wrong message to the membership and employer alike. The members will be given false hope thinking the claim or grievance will produce satisfactory results, when in fact, it will not. Additionally, handling claims with no merit bogs down the system, creating unnecessary work for both the local chairperson and the general chairperson.

Claims and Grievances (Five Important Ws)

As previously stated, probably the most essential element in the handling of a grievance is getting the facts.

In the handling of time claims, the claim should contain the specific facts involved in the grievance as well as reference to the specific rule which allegedly has been violated. Such facts include what actually happened, the date of the occurrence, the persons involved, the vehicle number, etc.

Remember the five Ws:

Who is involved in the claim or grievance? Name(s) of person(s) involved – anyone who can furnish information concerning the claim or grievance. (Don't forget the supervisor or management representative who might have caused the claim or grievance.)

When did the claim or grievance occur? On what day and at what time did the act or omission take place which created the claim or grievance?

Where did this occur? Exact location may be important.

Why is this a claim or grievance? What has been violated? The agreement? Past practice? Law? Prior arbitration awards? In order to have a legitimate claim or grievance, there must be a violation of something. This "W" directs your attention to that specific something which has been violated.

What are the demands? What adjustments are necessary to completely correct the injustice and to place the aggrieved member in some position he or she would have been in had the grievance not occurred?

It is important to remember that many people cannot clearly distinguish opinion from fact. It is important to examine all facts, and make certain they do not contain opinions.

In the handling of disciplinary cases, getting the facts becomes even more important. In such cases, the aggrieved employee is frequently emotionally involved in the grievance – and for good reason, since the employee's job might well be at stake. But it is in the interest of the employee the facts in the case be carefully checked. There is no substitute for thorough preparation of a case prior to investigations involving the discipline of employees.

Gathering Information

The duties of a local chairperson are awesome. The membership frequently does not understand the burdens of the local chairperson's duties. Many of our members are of the opinion it is the local chairperson, and not the member, that is responsible for developing information on contract violations. In some instances, it will be necessary for local chairpersons to inject themselves into the fact-finding process. However, this does not excuse the claimant from furnishing as much information as possible with regard to a claimed agreement violation. The claimant is in a much better position to know the pertinent facts involving violations in which they are personally involved. They, not the local chairperson, stand to gain monetarily should the union be successful in defending their claim. We must all work together.

Time Limits

The handling of disputes is generally governed by time-limit rules established by the agreement. These time-limit rules apply not only to the period within which a grievance can be filed, but also to the period within which a grievance can be appealed by our union. The time-

How a Bargaining Representative Is Selected

The act requires that an employer bargain with the representative selected by its employees. The most common method by which employees can select a bargaining representative is a secret ballot representation election conducted by the board.

The NLRB can conduct such an election only when a petition had been filed requesting one. A petition for certification of representatives can be filed by an employee or a group of employees or any individual or labor organization acting on their behalf, or it can be filed by an employer. If filed by or on behalf of employees, the petition must be supported by a substantial number of employees who wish to be represented for collective bargaining and must state that their employer declines to recognize their representative. If filed by an employer, the petition must allege that one or more individuals or organizations have made a claim for recognition as the exclusive representative of the same group of employees.

When the petition is filed, the NLRB must investigate the petition, hold a hearing if necessary, and direct an election if it finds that a question of representation exists. Regarding the showing of interest, it is the policy to require that a petitioner requesting an election for either certification of representatives or decertification show that at least 30 percent of the employees favor an election. The act also requires that a petition for a union-security de-authorization election be filed by 30 percent or more of the employees in the unit covered by agreement for the NLRB to conduct an election for that purpose. The showing of interest must be exclusively by employees who are in the appropriate bargaining unit in which an election is sought.

Bars to Election

The NLRB has established the policy of not directing an election among employees presently covered by a valid collective-bargaining agreement except in accordance with certain rules. These rules, followed in determining whether or not an existing collective-bargaining contract will bar an election, are called the NLRB contract-bar rules. Not every contract will bar an election. Examples of contracts that would not bar an election are:

1. The contract is not in writing, or is not signed.

unilateral change can be made until the parties have bargained to impasse.

The Employee Representative

Section 9(a) provides that the employee representatives that have been "designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining."

A unit of employees is a group of two or more employees who share a community of interest and may reasonably be grouped together for purposes of collective bargaining. The determination of what is an appropriate unit for such purposes is, under the act, left to the discretion of the NLRB. Section 9(b) states that the board shall decide in each representation case whether, "in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof."

A unit may cover the employees at one location of an employer, or it may cover employees in two or more locations of the same employer. In some industries in which employers are grouped together in voluntary associations, a unit may include employees of two or more employers in any number of locations. It should be noted that a bargaining unit can include only persons who are "employees" within the meaning of the act. The act excludes certain individuals, such as agricultural laborers, independent contractors, supervisors, and persons in managerial positions, from the meaning of "employees." None of these individuals can be included in a bargaining unit established by the board. In addition, the board, as a matter of policy, excludes from bargaining units employees who act in a confidential capacity to an employer's labor relations officials.

Once an employee representative has been designated by a majority of the employees in an appropriate unit, the act makes that representative the exclusive bargaining agent for all employees in the unit. As exclusive bargaining agent, he or she has a duty to represent equally and fairly all employees in the unit without regard to their union membership or activities. Once a collective bargaining representative has been designated or selected by its employees, it is illegal for an employer to bargain with individual employees, with a group of employees, or with another employee representative.

limit rules also apply to the periods in which the employer must respond to a union grievance. In other words, both parties are bound by the limits established in the agreements.

What is the purpose of time-limit rules? They are essentially designed to expedite the handling of grievances. This is based on the idea that if there is delay in handling of grievances, the facts surrounding the grievances become blurred. The expeditious handling of grievances is essential for good labor relations. When it is recognized the purpose of a grievance is to enforce both the contract and protect the membership as a whole, it then becomes quite clear why it is essential to have time limits on grievances.

Rights of Claimants Involved in Continuing Violations

All rights of a claimant involved in alleged continuing violations of the agreement are under this time-limit rule, fully protected by continuing to file a claim or grievance for each occurrence (or tour of duty). With respect to claims and grievances involving an employee held out of service in a discipline case, the original notice of request for reinstatement with pay for time lost is sufficient.

As previously mentioned, in order to protect the claim or grievance within the time-limit period, please keep in mind the right of representatives of SMART-TD to file and prosecute claims and grievances for and on behalf of the employees they represent. We all must work together to protect our agreements by filing and handling claims and grievances within the time limits specified.

Past Practice Under Ambiguous Agreements

Under labor agreements, past practice has developed as an important factor in the interpretation of these agreements.

Past practice or custom is an outgrowth of the principle of interpretation by the parties. Some arbitrators do not distinguish between practice and interpretation by the parties and use the terms interchangeably. Other arbitrators pay little attention to past practice unless it was approved by the authorized union representative. In several incidents in recent years, employers have successfully argued that if a local chairperson was aware of a practice and made no attempt to stop or take exception to the practice, then the local chairperson places his/her approval on the practice. Important rules have been lost as a result of a local chairperson failing to act on a violation.

Most arbitrators will consider past practice when faced with ambiguous agreement provisions. Weight will be given the practice depending upon its generality, duration and mutuality.

Under labor agreements, management uses the prerogative of instituting practices. The union may not have protested the practice for a variety of reasons: the individual member(s) were ignorant of their rights, or fearful of protesting, or the matter was never brought to the attention of the official union representative. However, if the employer can show where the local chairperson was aware of the practice and made no effort to stop it, then we have problems.

The Doctrine of Laches

Even where there is no failure to comply with time limits, sometimes employers assert the Doctrine of Laches in an attempt to defeat a claim or grievance, although this happens very rarely. There have been a few decisions that support the Doctrine of Laches.

The Doctrine of Laches is an equitable doctrine in the courts that can foreclose a request for injunctive relief the same way statutes of limitations foreclosed requests on legal damages. Its elements are: (1) undue delay; (2) unexplained delay; and, (3) injustice to the other party.

While in the courts laches is similar to statutes of limitations, there is a substantial difference between them. Statutes of limitations are concerned with the fact of delay in bringing an action within a specific time period. Laches is concerned with the effect of delay. The mere lapse of time does not constitute laches. Laches demands more than delay. It requires a lack of diligence.

Laches has two basic elements:

1. inexcusable delay in commencement of action; and,
2. prejudice or injury to the respondent as the result of the inexcusable delay.

A party invoking laches must show a delay by the opposing party in asserting a right or claim, that the delay was not excusable, and that there was undue prejudice to the party against whom the claim is asserted. For one to successfully assert the defense of Laches, it must be shown that there was a passage of time combined with some prejudice to the party asserting the defense of Laches, because Laches is an equitable doctrine.

Collective bargaining as defined in Section 8(d) of the Act requires an employer and the representative of its employees to meet at reasonable times, to confer in good faith about certain matters, and to put into writing any agreement reached if requested by either party. The parties must confer in good faith with respect to wages, hours, and other terms or conditions of employment, negotiation of an agreement, or any question arising under an agreement.

These obligations are imposed equally on the employer and the representative of its employees. It is an unfair labor practice for either party to refuse to bargain collectively with the other. The obligation does not, however, compel either party to agree to a proposal by the other, nor does it require either party to make a concession to the other.

Section 8(d) provides further that when a collective bargaining agreement is in effect, no party to the contract shall end or change the contract unless the party wishing to end or change it takes the following steps:

1. The party must notify the other party to the contract in writing about the proposed termination or modification 60 days before the date on which the contract is scheduled to expire. If the contract is not scheduled to expire on any particular date, the notice in writing must be served 60 days before the time when it is proposed that the termination or modification take effect.
2. The party must offer to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed changes.
3. The party must, within 30 days after the notice to the party, notify the Federal Mediation and Conciliation Service of the existence of a dispute if no agreement has been reached by that time. Said party must also notify at the same time any state or territorial mediation or conciliation agency in the state or territory where the dispute occurred.
4. The party must continue in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract until 60 days after the notice to the other party was given or until the date the contract is scheduled to expire, whichever is later. After that date no

picket for certain objects whether the picketing accompanies a strike or not.

COLLECTIVE BARGAINING AND REPRESENTATION OF EMPLOYEES

Union Security

The act permits, under certain conditions, a union and an employer to make an agreement, called a union-security agreement, that requires employees to make certain payments to the union in order to retain their jobs. A union-security agreement cannot require that applicants for employment be members of the union in order to be hired, and such an agreement cannot require employees to join or maintain membership in the union in order to retain their jobs. Under a union-security agreement, individuals choosing to be dues-paying nonmembers may be required, as may employees who actually join the union, to pay full initiation fees and dues within a certain period of time (a "grace period") after the collective bargaining contract takes effect or after a new employee is hired. However, the most that can be required of nonmembers who inform the union that they object to the use of their payments for nonrepresentational purposes is that they pay their share of the union's costs relating to representation activities (such as collective bargaining, contract administration, and grievance adjustment).

Under a union-security agreement, employees who have religious objections to becoming members of a union or to supporting a union financially may be exempt from paying union dues and initiation fees. These employees may, however, be required to make contributions to a nonreligious, nonlabor, tax-exempt organization instead of making payments to a union. Unions representing such employees may also charge them the reasonable cost of any grievances processed at the employees' request.

Collective Bargaining

Collective bargaining is one of the keystones of the act. Section I of the act declares that the policy of the United States is to be carried out "by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

Practical Approach to Claim and Grievance Handling

Claims and grievances properly progressed provide an avenue for the prompt and orderly resolution of disputes. How is this objective to be carried out? The method established in the collective bargaining agreement must be followed. Each collective bargaining agreement is different with different steps and different time limits. That is why it is critical for you to become familiar with your particular agreement. You need to know where to go, who to talk to and when to contact the employer. Each step and level need to be completed so that the matter is ready for arbitration, if necessary.

Factors in the First Step of Claim and Grievance Handling

1. Know who the appropriate employer representatives are and their levels of authority.

2. Working relationship. The secret of successful day-by-day bargaining lies in a good working relationship between the local chairperson and the employer officer.

3. Equal footing. The local chairperson is on equal footing with employer officers when it comes to dealing with working conditions and other contractual issues affecting the employees.

4. Antagonism and personal rivalry. Develop the kind of relationship whereby the employer is willing to cooperate with you and handle claims and grievances quickly and fairly. You can't get this by going out of your way to antagonize them. Never go over the head of the immediate supervisor, or any other employer officer, without telling them that you intend to do so. If you plan to appeal their decision, tell them so.

5. Cooperation. Like all "machinery," the claim and grievance procedures must be properly used to obtain the best possible results. If the number of unresolved claims and grievances reaches such proportions that serious delays occur in disposing of meritous claims and complaints, the machinery is not performing the task for which it was developed. When this occurs, steps must be taken by both parties to reduce the claim and grievance load to a reasonable level.

6. Making empty threats. If you have a real claim or grievance and have the facts to back it up, there is not need to bluff. If you haven't, bluffing won't win.

7. Making "deals." A local chairperson should never do so-and-so if the employer will do this-and-that. Such "dealing" makes a sound claim and grievance procedure impossible. Once a local chairperson is personally obligated to the employer, he or she is no longer in a position to do a decent job.

8. Talking too much. Be a good listener. Many local chairpersons talk themselves out of a case. By knowing when to listen and when to talk, you can keep the discussion on the facts in the particular case.

9. Losing your temper. A local chairperson who blows up and threatens to shut down the employer is asking for trouble. If a wildcat strike is pulled, he or she may be subject to discipline from both the SMART-TD and the company, and possibly subject to prosecution. All reasoning and common sense are lost when your dander is up. You don't mix claims and grievances with lost tempers.

10. Keep your mind on your work and don't be sidetracked – stick to the point. When you talk, stick to the issues. If the employer knows it doesn't have a valid argument, it may bring up subjects that have nothing to do with the case and get the discussion away from the claim or grievance. Agree on all the facts and then explain carefully the exact issue on which you disagree. Stay away from discussing personalities as much as possible. Avoid general arguments and belittling remarks which have nothing to do with the case at hand.

11. Disagree with dignity. If you can't reach a satisfactory settlement, don't think the world will end. That's what the other steps of the grievance machinery are for. Concentrate on the situation you are trying to correct and keep the personal element out of the picture as much as possible.

12. Stick together – keep a united front. When you go into a conference with several members or union representa-

on their part, are entitled to have their jobs back even if employees hired to do their work have to be discharged.

If the board finds that economic strikers or unfair labor practice strikers who have made an unconditional request for reinstatement have been unlawfully denied reinstatement by their employer, the board may award such strikers back pay starting at the time they should have been reinstated.

Employees who participate in an unlawful strike may be discharged and are not entitled to reinstatement.

A strike that violates a no-strike provision of a contract is not protected by the act, and the striking employees can be discharged or otherwise disciplined, unless the strike is called to protest certain kinds of unfair labor practices committed by the employer. It should be noted that not all refusals to work are considered strikes and thus violations of no-strike provisions. A walkout because of conditions abnormally dangerous to health, such as a defective ventilation system in a spray-painting shop, has been held not to violate a no-strike provision.

Strikers who engage in serious misconduct in the course of a strike may be refused reinstatement to their former jobs. This applies to both economic strikers and unfair labor practice strikers. Serious misconduct has been held to include, among other things, violence and threats of violence. The U.S. Supreme Court has ruled that a "sit-down" strike, when employees simply stay in the plant and refuse to work, thus depriving the owner of property, is not protected by the law. Examples of serious misconduct that could cause the employees involved to lose their right to reinstatement are:

1. Strikers physically blocking persons from entering or leaving a struck plant.

2. Strikers threatening violence against nonstriking employees.

3. Strikers attacking management representatives.

The Right to Picket

Likewise the right to picket is subject to limitations and qualifications. As with the right to strike, picketing can be prohibited because of its object or its timing, or misconduct on the picket line. In addition, Section 8(b)(7) declares it to be an unfair labor practice for a union to

to strike, or to affect the limitations or qualifications on that right.

It is clear from a reading of these two provisions that the law not only guarantees the right of employees to strike, but also places limitations and qualifications on the exercise of that right.

The lawfulness of a strike may depend on the object, or purpose, of the strike, on its timing, or on the conduct of the strikers. The object, or objects, of a strike and whether the objects are lawful are matters that are not always easy to determine.

Such issues often have to be decided by the National Labor Relations Board. The consequences can be severe to striking employees and struck employers, involving as they do the questions of reinstatement and back pay.

It must be emphasized that the following is only a brief outline. A detailed analysis of the law concerning strikes, and applications of the law to all the factual situations that can arise in connection with strikes, is beyond the scope of this material. Anyone who anticipates being involved in strike action should proceed cautiously and on the basis of competent advice.

Employees who strike for a lawful object fall into two classes: "economic strikers" and "unfair labor practice strikers."

If the object of a strike is to obtain from the employer some economic concession such as higher wages, shorter hours, or better working conditions, the striking employees are called economic strikers. They retain their status as employees and cannot be discharged, but they can be replaced by their employer. If the employer has hired bona fide permanent replacements who are filling the jobs of the economic strikers when the strikers apply unconditionally to go back to work, the strikers are not entitled to reinstatement at that time. However, if the strikers do not obtain regular and substantially equivalent employment, they are entitled to be recalled to jobs for which they are qualified when openings in such jobs occur if they, or their bargaining representative, have made an unconditional request for their reinstatement.

Employees who strike to protest an unfair labor practice committed by their employer are called unfair labor practice strikers. Such strikers can be neither discharged nor permanently replaced. When the strike ends, unfair labor practice strikers, absent serious misconduct

tives, never disagree before the employer. If you quarrel among yourselves, you will immediately lose the respect of the employer. The employer will take advantage of your differences. If you see that some real differences of opinion have developed among the members or union representatives, ask for a recess and straighten out your differences in private.

Summarizing Your Case at the Claims or Grievance Conference

1. Avoid personal rivalry; don't antagonize or ridicule the employer representatives.
2. Cooperate, but don't be conciliatory.
3. Keep personal elements out of the picture.
4. Hold your temper; be calm; don't shout, keep your head.
5. Use a positive approach and stick to the point.
6. Don't be sidetracked; keep your mind on the job to be done.
7. Have the employer take the burden of proof, especially if it is a discipline case.
8. Learn to ask "Why?"
9. Listen to the other side of the story.
10. Don't bluff.
11. Don't talk too much.
12. Don't make deals.
13. Demand the same respect from the employer as you have given them.
14. If you intend to appeal, tell them so.
15. Disagree with dignity.
16. Stick together when dealing with management representatives.

How Local Chairpersons Can Help Themselves to Better Handle Claims and Grievances

We shall deal with the handling of grievances in two parts. First, with the handling of time claims:

1. Familiarize yourself with the local chairperson's records when you assume office.
2. Know your contract and any local or special agreements, interpretations, etc., modifying or revising rules.
3. Each local chairperson should study each claim for agreement violations. In the appeal to the employer, they should then support the position of the committee by citing the agreement section considered violated.
4. Check for prior settlements of identical or similar claims in your files.
5. Do not advise members that claims not supported by the labor agreement can be collected. You will only force yourself into admitting later the time is not valid. If you know a claim lacks support, tell the member that the claim does not have merit under the agreement and explain the reasons for lack of support by quoting the article and/or section to the member. Do not merely state the claim is no good.
6. When in doubt, give your general chairperson all of the facts. Cite the article or section of the agreement, prior settlements and respect his/her greater experience and judgment.
7. Keep other local chairpersons posted on significant changes or developments which may help them in their work.
8. In negotiating with the employer, stick to the language of your rules and settlements, and insist upon compliance with them while doing the same on your part. This will gain you the respect of the employer and bring you better results.
9. The most important thing to remember is: Appeals must be made in writing in order to be a matter of record under

bargain collectively, and to strike, if necessary.

During World War II, focus on the act diminished while the country's attention turned to the war effort. However, once the war was over, those who wished to gut or repeal the act continued their earlier efforts. Those interests, however, met a union movement that had grown. Since 1935, the union movement had increased from three million members to 15 million. In some industries, four of five employees were covered under a collective bargaining agreement.

However, in 1946, a mid-term election gave Republicans a majority in both houses of Congress and within the first week of the new Congress more than 200 bills were introduced to counter unions' growing presence and power. As a result, in 1947 the Labor Management Relations Act was passed (also known as the "Taft-Hartley Amendments"). This act amended the NLRA to now include union unfair labor practices. Also the amendments placed prohibitions on secondary activity, featherbedding, excessive or discriminatory fees and interfering with an employee's right not to engage in protected activity. Further, the right of the employer to file a representation petition and employees to file decertification petitions, and Section 14(b) which gives states' "right-to-work" laws precedence over the union shop proviso, were also added.

Since that time, the act has been amended to address particular concerns, but no amendment has been as broad or significant.

The Protection Provided

What does the act protect? How does it function?

Under Section 7, employees are guaranteed the right to form, assist and join a union, go on strike or to refrain from such activity.

The Right to Strike

Section 7 of the act states in part, "Employees shall have the right ...to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." Strikes are included among the concerted activities protected for employees by this section. Section 13 also concerns the right to strike. It reads as follows:

> Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right

NATION LABOR RELATIONS ACT*

Each of you and your fellow workers come under the protection of the National Labor Relations Act (NLRA) or a state or local equivalent, that gives you the right to organize and join a union and to bargain collectively. Because of the vast number of laws that cover our different members, it would be extremely difficult and time-consuming to list and go through every labor act. That is not the purpose of this manual. Rather, this manual is to provide a framework for you to understand the general principles involved. Even though labor laws differ, most state or local labor provisions are modeled after or based on the NLRA. Accordingly, the following provides a general review of the NLRA. Should you have specific questions or need help with certain matters, you should contact your general chairperson or the director of the Bus Department at the International. If necessary, they will refer the matter to the International's Legal Department.

Rise of the NLRA

While unions and unionism in this country date back to the early 1800s, most union activity was outlawed until the early part of the 1900s. Because of employee fatalities, hazardous working conditions, low pay, oppression and various other factors, the union movement continued to grow as a fight for fairness, safety and respect. Civil unrest became the order of the day as employees tired of the oppressive and dangerous working conditions they were forced to endure. After decades of struggle, where many paid with their lives, Congress finally enacted the NLRA in 1935. The act did not have an easy time in passage as many big business and industry interests tried to defeat it. Fortunately, those efforts failed and the act remained. The act sought to correct the great imbalance between management and labor and to level the playing field. The act created the National Labor Relations Board, an agency with the power to enforce the act and stop the employer's overreachings. The labor board was to protect the employees' right to organize and join unions free from employer interference, and their right to

*Please note that the following provides a general overview of this Act and is not intended as a complete and comprehensive study of the law. This is provided so that you may become familiar with some of the more common issues that arise under this Act. Specific questions concerning the law should always be directed to the Legal Department.

existing time limits. Do not fall into a trap set by an employer officer who says, "Don't appeal that claim, I will check it for you." If you wait for the reply and the time limit expires, the claim will be procedurally dead under the time-limit provisions.

Basic Steps in the Initiation and Progression of Claims and Grievances

(NOTE: The following are only suggested steps. The labor contract always applies.)

1. Presentation of claim or grievance. The first step is the presenting of the claim or grievance. It should be noted, however, a local chairperson can file a claim or grievance on behalf of an individual without consent of the individual involved, if such local chairperson believes the agreement is being violated. Most, if not all, time limit rules read in part, "all claims or grievances must be presented in writing by or on behalf of the employee involved…" This point or provision emphasizes the need to recognize all claims or grievances are designed primarily to protect the contract.

2. Get the facts clearly and comprehensively stated. Lack of facts, or a conflict or error in the facts, can defeat a claim. The claim or grievance must include the specific facts involved and state the schedule rules to support the claim. A copy of the claim or grievance and all supporting documentation should be retained by the claimant and the local chairperson, and should be submitted according to the provisions of the labor agreement on your property. Under the time limit on claims rule, all claims or grievances must be presented in writing by or on behalf of the employee involved, within a stated amount of time, which is set forth in the collective bargaining agreement on each property. To avoid losing a claim because of delay in filing, the day on which the violation(s) or grievance(s) occurred should be counted as day number one.

3. Move matter through the various steps. Generally, the grievance procedure will have various steps or levels that the claim must be progressed through before the matter is ready for arbitration. Make sure each step is completed in a timely and proper manner.

Arbitration

When the case is ready for arbitration, you must follow the arbitration provisions of the collective bargaining agreement. Generally, that provision will provide certain time limits and the method for selecting an arbitrator.

Generally, arbitration is conducted in the same manner as a trial. Each side presents its case. Each side can make opening statements, present documents, examine and cross-examine witnesses, make arguments and objections, and make closing statements. An arbitrator may also require briefs after the arbitration hearing is completed, in lieu of a closing statement.

Because of the varied nature and different practice on each property and interpretation, it is impossible here to provide a detailed, authoritative guide to every arbitration. An excellent source for specific as well as general questions is Elkouri and Elkouri's How Arbitration Works, 5th Edition, which was written by arbitrators and is considered a valuable resource tool by many in the field. The book is available in most public libraries and can be purchased from the Bureau of National Affairs.

Below are some general principles to keep in mind:

1. Did the employer forewarn the employee of the probable disciplinary consequences of the employee's conduct?
2. Was the company's rule or order reasonable in relation to the orderly and safe operation of the company's business?
3. Did the company make an effort to discover if the employee actually violated a rule or disobeyed an order?
4. Was the company's investigation fair and objective?
5. Did the employer obtain sufficient evidence of proof?
6. Has the company applied its rules and penalties without discrimination to all employees?
7. Was the penalty appropriate for the alleged offense?

Union's Duty of Fair Representation

In one of the most recent cases regarding a union's alleged failure to fairly and properly represent an employee in the prosecution of a grievance on discipline, on appeal the United States Court of Appeals in the Third Circuit held that the union's conduct in relation to plaintiff's grievance did not constitute a violation of its duty of fair representation. The court went on to say a union's duty of fair representation did not confer upon its members the right to force the union to press every claim through every step of the grievance process. It furthermore said, a union has an obligation not to press grievances it believes in good faith do not merit such action. The court stressed an employee is subject to the union's discretionary power to settle a grievance even where the employee's claim is meritous as long as the union does not act arbitrarily. Neither negligence not poor judgment on the part of a union is sufficient to support a claim of unfair representation.

The court of appeals held that the union did seek in good faith to obtain plaintiff's reinstatement and that evidence did not establish that its subsequent decision to abandon the claim was made in in bad faith or in an arbitrary manner.

The court also held that failure of the union to notify plaintiff of its decision not to proceed with his or her case does not establish unfair representation because of the absence of proof of any prejudicial effect.