

Steward News...

A PUBLICATION FOR CUPE ACTIVISTS IN ALBERTA

VOLUME 1, NUMBER 1

Welcome to the first edition of our newsletter for Shop Stewards. As CUPE's Education Representative here in Alberta, I meet many stewards throughout the province at Effective Stewarding workshops. Often, the same questions are asked again and again – how to help employees who get disciplined, what to do about co-workers who can't seem to get along together, how to read certain provisions of the contract, how to involve more members in union activities to name but a few. Hopefully, you will find this newsletter helpful in dealing with some of these issues.

*Please feel free to send me your ideas and suggestions for future newsletters by fax at 403-569-0032 or email at jarmstrong@cupe.ca.
Judi Armstrong, Editor.*



Discipline Issues

Stewards often attend meetings with Management where an employee is being disciplined. Here are some things that a steward should know in order to help an employee who is being disciplined:

Insubordination

Sometimes, employees can run into trouble because they refuse to carry out an instruction given to them by their supervisor or manager. This is called insubordination. Here are the main elements that must be present in order for an accusation of insubordination to be upheld:

- an order was in fact given
- the order was clearly communicated to the employee
- the order was given by someone in a position of authority
- the employee actually refused to comply

Work Now, Grieve Later Rule

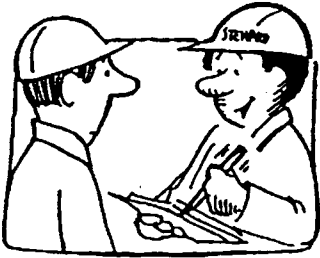
When an employee fails to carry out a reasonable order that is given by a supervisor and is clearly understood, they are at risk of being found to be insubordinate because of the "work now, grieve later" rule. An employee is expected to carry out the order and use the grievance procedure to settle any dispute. The exceptions to this rule are:

- following the supervisor's instructions would endanger the employee's health and safety
- the employee would be required to perform an illegal act
- the employee would be exposed to potential legal liability

- the employee must prove that he or she told the supervisor the reasons for refusing to carry out the order

How many times have we heard, "It's not in my job description...can they make me do that?" Well, the short answer is, "Yes they can if it isn't unsafe or illegal." It is then up to

the employee or the union to grieve management's action. In order to settle such a grievance, the employee might ask for more pay for working in a higher classification or the union might ask for a temporary job to be posted which would be open to all employees to bid for. It will depend on the circumstances and your contract language.



The bottom line is...

stewards should advise employees that rather than refusing to carry out an instruction from a supervisor, they should carry out the order and then use the grievance procedure to challenge the supervisor's action.

Just Cause

Most of our contracts require that there be "just cause" for discipline or discharge. This means that management must show that the employee's conduct warranted some form of discipline and that the penalty imposed was appropriate.

The first element... whether the employee actually did something that warranted some form of discipline is pretty straightforward...did they do it or didn't they? Where it gets interesting is the second element...was the disciplinary penalty imposed appropriate?

Factors to consider when deciding whether "the penalty fits the crime":

- What is the previous record of the employee?
- What is the employee's length of service (seniority)?

- Was the offence an isolated incident?
- Was there any provocation?
- Was the offence committed on the spur of the moment or was it preplanned?
- How serious was the offence?
- Are employer rules or policies circulated to employees, clear and precise, and uniformly enforced?
- In the case of insubordination, were all the elements present?
- Did the employer permit the employee to explain the alleged offence prior to discipline being imposed?
- Did the penalty imposed create a special economic hardship for the employee in light of their personal circumstances?
- Did the employee apologise and accept responsibility for the misconduct?
- Did the employee have the opportunity to have a steward or union representative present at the disciplinary meeting?



The good news is...

stewards should advise employees that even when someone has made a mistake, our union is often able to reduce or get the discipline removed because the employer has not imposed a penalty which fits the crime!

Progressive Discipline

The purpose of discipline is to correct misconduct, not to punish an employee.

Many contracts contain provisions for progressive discipline. Even where the collective agreement is silent, most employers use a step by step approach beginning with verbal warnings, followed by written warnings if there is further misconduct. If the misconduct continues, then suspensions and finally discharge may result. This does not mean that an employer will not immediately discharge an employee if the alleged misconduct is serious enough.

Culminating Incident (The Straw That Breaks the Camel's Back)

If an employee does not challenge discipline when it is imposed, a record of warnings and suspensions can build up in their personnel file. Unless your contract contains a provision that clears an employee's personnel record after 12, 18, or 24 months, the employer can use the employee's entire record to justify the severity of future discipline. This is called the "doctrine of culminating incident".

What this means is that if an employee commits a relatively minor infraction that on its own would not warrant severe discipline, the employer may be able to argue that they are entitled to impose a "penalty that does not fit the crime" because of an employee's previous disciplinary record.



The downside is...

if discipline is imposed and it is not grieved, the employee is assumed to have accepted it and will not be allowed to challenge it after the fact when the employer uses it later as part of the employee's disciplinary record.



The best advice...

a steward can give a employee is to check with their union before refusing to obey a direct order.....or..... work now and file a grievance afterwards.

When it comes to discipline, stewards should encourage employees to grieve the discipline for two reasons:

- even when the employee has made a mistake, often the employer has imposed a penalty that does not fit the crime
- disciplinary letters or suspensions that are not challenged by the employee can come back later to haunt them when the employer uses them to justify future discipline



Watch for our
next issue...

**“Resolving Conflict
in the Workplace”**