

Steward Notes

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UNION STEWARDS ARE THE FRONT LINE OF DEFENCE FOR UNION MEMBERS IN THE WORKPLACE. STEWARDS PLAY ONE OF THE MOST IMPORTANT ROLES IN THE LABOUR MOVEMENT.



Investigating the Investigators:

Union Assessment of Workplace Inquiries

When confronted with a discipline grievance, the union must trace the disciplinary action in question to its roots. The basis for such discipline will frequently be found in an employer's investigation of that employee's conduct. Unfortunately, as representatives, MSOs and stewards know all too well, one cannot assume that such investigations are always entirely fair or, frankly, even logical. Therefore, it may be helpful to have a strategy for assessing such investigations and also a better understanding of their potential consequences.

As is often the case, one of the first steps in assessing the appropriateness of an investigation is to make reference to the collective agreement. There may be provisions in the collective agreement that have a bearing on disciplinary investigations. For example, Article 28.02 of AUPE's Master Agreement with the Government of Alberta provides members the right to have a Union Representative or Union Steward attend a disciplinary interview ("An Employee who is to be interviewed with respect to disciplinary action as referred to in Clause 28.01 shall be notified of the time and place of the interview and if desired by the Employee may arrange to be accompanied by a union representative or Union Steward."). Of course, prior to assessing whether or not a union representative or Steward is to be present, one must determine if

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Investigating the Investigators *Continued*

the interview/investigation is potentially disciplinary. Simply put, such an investigation is disciplinary in nature if it could potentially lead to discipline for the employee being interviewed.

Once an investigation has been evaluated with respect to the Collective Agreement, the union may also look to the Employer policies to determine if a member's rights have been respected in the course of the inquiry. The Employer may have policy in place to structure its investigation processes in terms of timing or procedure and a union member should receive the full benefit of such policies.

Finally, after assessing whether or not the employer has respected a member's substantive rights pertaining to an investigation under the Collective Agreement and according to Employer policy, the investigation may also be assessed with respect to certain statutory requirements (where applicable) or in relation to principles of fairness more generally. As noted by Brown and Beatty, "employers of public servants and persons who hold public offices are obliged to exercise their disciplinary powers fairly and in accordance with principles of natural justice." (7:2100)

The following quote, which touches on an employee's rights in the context of an investigation, was cited with approval

by the Supreme Court of Canada: "... the investigating body is under a duty to act fairly; but that which fairness requires depends on the nature of the investigation and the consequences which it may have on persons affected by it. The fundamental rule is that, if a person may be subjected to pains or penalties, or be exposed to prosecution or proceedings, or deprived of remedies or redress, or in some such way adversely affected by the investigation and report, then he should be told the case against him and be afforded a fair opportunity of answering it" (Re Nicholson and Haldimand-Norfolk Regional Board Commissioners of Police, 88 D.L.R. (3d) 671 (S.C.C.) at 682). This may give rise to a number of other parameters that guide the investigation. Red flags to be mindful of include:

- prejudgment or bias by the investigator;
- consideration by the investigator of irrelevant, prejudicial or unnecessary factors;
- failure on the part of the investigator to consider relevant factors; and
- failure by the Employer to inform the employee of the purpose of the investigation.

If, for example, the employer is investigating the employee for theft, this

should be made clear—the employee cannot be hauled in to an investigation under false pretenses!

In all likelihood, potential deficiencies found in the investigation, as outlined above, will only be relevant in the event that the investigation in question leads to a disciplinary penalty for the member. However, in such cases, flaws in an investigation can have serious consequences and many arbitrators have gone as far as determining that a shortfall such as failure to allow union representation can render the discipline in question void (Flamboro Downs Ltd. and SEIU, Local 2 BGPWU (Re) (2010), 194 L.A.C. (4th) 416, 101 C.L.A.S. 433 (Trachuk), pp. 424-425). Alberta courts also appear to support the view that a breach of a union representation clause will typically result in a finding that the discipline imposed is null and void, as set out in Alberta Health Services (Calgary Area) v. HSAA (Paramedical/ Technical Unit) (2009), 187 L.A.C. (4th) 129, appn. for judicial review dismissed (2010), 198 L.A.C. (4th) 1.

Given these potentially high stakes, it is indeed very important that stewards, MSOs and union reps carefully analyze employer inquiries and take time to investigate the investigations.

Steward Training

Members take part in a Union Steward Level 1 course in Edmonton on June 20.



Time is of the essence

As AUPE continues to grow, so too does the number of grievances being handled by the union. Union stewards are a vital part of the grievance handling process and are important in resolving complaints and grievances quickly at the lowest level.

However, when an issue arrives at the worksite, all AUPE collective agreements give a number of days in which a member can file a grievance. Usually, the clock starts ticking once a member first becomes aware of the concern at hand.

It's vital that the member immediately informs the union steward, who in turn must inform the Membership Services Officer to start the official grievance filing process, should it come to that point.

Communication at this level is an integral part of the process. AUPE Membership Services Officer Carol Anne Dean notes that it's important union stewards and members are aware of this communication, and that stewards are aware of their boundaries as stewards.

Level 2 and Level 3 union stewards are able to – and encouraged to – handle

workplace grievances. However, as AUPE education policy 3-3, Policy on Grievance Handling for Union Stewards states: As Union Stewards, it is important that you do not exceed your authority as you may be exposing yourself or the Union to liability.

Without the steward informing the MSO in a timely fashion, precious time may be gone, and the ability to file a grievance could be jeopardized.

As complaints and grievances come in, union stewards must be aware of the tight timelines that may restrict the MSO's ability to file it. When it comes

to dealing with grievances, know the timelines involved in filing grievances. This information can be found in your collective bargaining agreement.

By communicating quickly and clearly with your MSO, you can help ensure members' grievances are dealt with properly. Remember, when dealing with the filing of a grievance, time is of the essence.



**HAVE QUESTIONS?
CONTACT YOUR
MEMBER SERVICES OFFICER
CALL 1-800-232-7284**



Have your local/chapter number and worksite location ready so your call can be directed quickly.

Labour Education

Upcoming courses and training

For information on any of these courses or to register please call **1-800-232-7284**

Edmonton

Introduction to Your Union

Sept 13
Oct 30
Dec 11

Union Steward Level 1

Sept 20 & 21
Nov 7 & 8

Union Steward Level 2

Oct 24 & 25
Nov 21 & 22

Contract Interpretation

Oct 2
Nov 1

OH&S Advocate Level 1

Sept 25 & 26
Nov 13 & 14

OH&S Advocate Level 2

Oct 10 & 11
Dec 5 & 6

Respect in the Workplace

Oct 4
Nov 16

Union Officer Training

Nov 27 & 28

Calgary

Introduction to Your Union

Sept 13
Oct 30
Dec 11

Union Steward Level 1

Sept 20 & 21
Nov 7 & 8

Union Steward Level 2

Oct 24 & 25
Nov 21 & 22

Contract Interpretation

Oct 2
Nov 1

OH&S Advocate Level 1

Sept 25 & 26
Nov 13 & 14

OH&S Advocate Level 2

Oct 10 & 11
Dec 5 & 6

Respect in the Workplace

Oct 4
Nov 16

Union Officer Training

Nov 27 & 28

Red Deer

Introduction to Your Union

Sept 27
Nov 14

Union Steward Level 1

Oct 2 & 3
Nov 27 & 28

Union Steward Level 2

Oct 30 & 31

Contract Interpretation

Oct 10
Dec 11

OH&S Advocate Level 1

Oct 23 & 24

OH&S Advocate Level 2

Nov 7 & 8

Respect in the Workplace

Oct 11
Dec. 6

Union Officer Training

*Register in
Edmonton or
Calgary
(whichever
location is closest
to your home)*

Mobilizing Course This ad hoc course is offered as part of AUPE's Mobilizing Campaign. The course will be provided for Locals, Chapters, regions and workplaces who are interested in engaging their members and taking action. Contact Internal Organizing for course availability.

Steward Notes is published by the Alberta Union of Provincial Employees to provide information of technical interest to AUPE Union Stewards, worksite contacts and other members. Topics deal with training for union activists, worksite issues, disputes and arbitrations, health and safety, trends in labour law, bargaining and related material. For more information, contact the editor.

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The goal of Steward Notes is to help today's AUPE union stewards do their jobs effectively. To help us, we encourage readers to submit story ideas that deserve exposure among all AUPE stewards.

Story suggestions for Steward Notes may be submitted for consideration to Communications Staff Writer Tyler Bedford by e-mail at t.bedford@aupe.org or by mail. Please include names and contact information for yourself and potential story sources.

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