

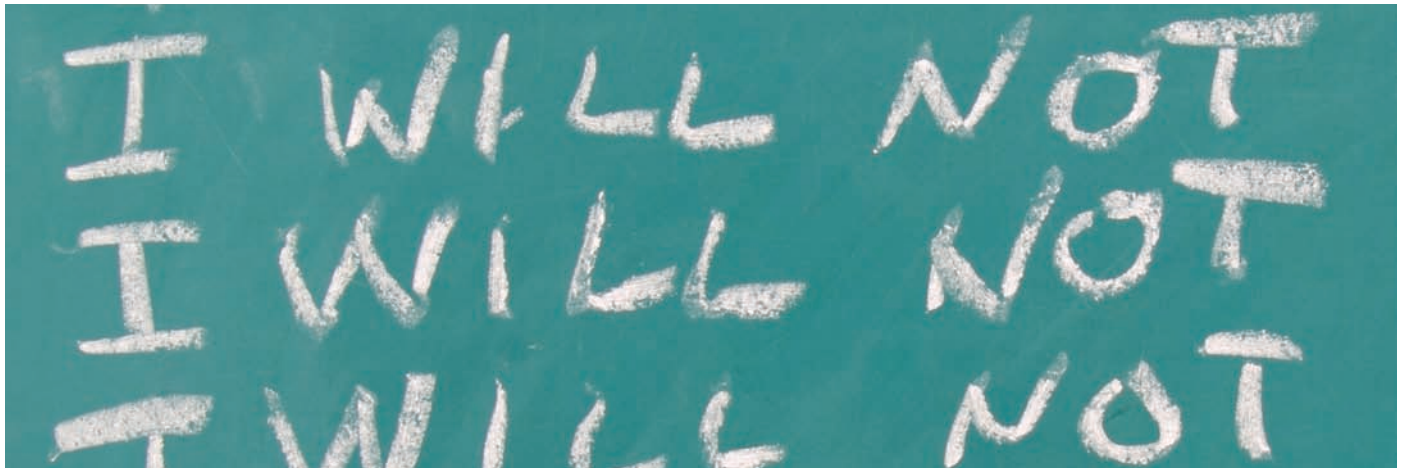
STEWARD NOTES

Vol. 1 • Issue 2 • October 2008

A behind-the-scenes look at what happens at a judicial review pg 3

Union Rep underlines importance of records in WCB claims pg 5

The power of words: interpreting your collective agreement pg 7



The principles of discipline

One of the most difficult but important tasks a Steward faces on the worksite is representing members facing discipline.

To be an effective representative for a fellow union member facing discipline, a Steward must be open-minded, diligent in keeping accurate notes and records, and communicate clearly with the employer, employee and Membership Services Officer (MSO). But all those skills can go to waste if the Steward doesn't understand the basic principles of discipline.

For those Stewards that are also parents, the word discipline may bring to mind the image of a child being grounded or sent to the corner for breaking the rules. Both examples represent forms of discipline, and can provide a starting point for thinking about the principles of discipline.

To start with, we can think about the reason a child gets disciplined: typically it is punishment for breaking a rule set out

by the parent. But discipline isn't just punishment for the sake of punishment; the goal is to deter the child from the breaking the rule again. The definition of discipline found in Black's Law Dictionary, which is "correction, chastisement, punishment, penalty. To bring order upon or bring under control," would make perfect sense to any parent.

Put simply, discipline has three goals: correction, punishment and deterrence. In a disciplinary case, it is the Steward's job to ensure representation for a member and to try to determine if there is just cause for the discipline. If just cause exists, the Steward needs

(continued next page)

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The principles of discipline *continued*

to ensure that the discipline is limited to meeting these three goals.

Just Cause

Discipline has always been a management right and employers once had the unilateral right to terminate a worker's employment or impose any discipline they chose.

However, unions have managed to prevent some management abuse of that right by introducing the concept of "just cause" for discipline. Just cause language can be found in either the Discipline or Management Right Article of every AUPE contract.

To determine whether just cause exists, the steward must determine whether there was a factual basis for the penalty – in other words, proof that the member did something wrong and, taking into account all the circumstances of the infraction, if the kind of penalty the employer chose was justified.

Three questions to help determine "just cause"

1. Did the employee do something wrong?
2. Did the employee know they were doing something wrong?
3. Was the punishment appropriate to the infraction?

To establish just cause, it is first up to the employer to prove that the employee is guilty of an infraction. It is the union's job – through the steward – to thoroughly investigate the alleged infraction and establish whether the facts support the employer's allegation of wrongdoing.

The employer's second requirement is to show that the employee knew he or she did something wrong. The 1965 KVP ruling laid out this requirement with the following standards for a rule unilaterally introduced by the employer and not subsequently agreed to by the Union (see Steward Notes Vol. 1, Issue 1 for a full discussion of KVP):

1. It must not be inconsistent with the collective agreement
2. It must not be unreasonable
3. It must be clear and unequivocal
4. It must be brought to the attention of the employee affected before the employer can act on it.
5. The employee concerned must have been notified that a breach of such a rule could result in discharge if the rule is used as a foundation for discharge.
6. The rule must have been consistently enforced by the employer from the time it was introduced

Note however that not all rules have to be written. Committing theft or assault, for instance, could provide grounds for dismissal, even if it isn't written explicitly into the collective agreement.

Finally, the employer's punishment must fit the crime. There are a number of methods to determine whether the punishment is appropriate, but to do so first requires an understanding of the principle of progressive discipline.

Progressive Discipline

Considering how a parent chooses the way they punish a child can help make sense of progressive discipline. The first time a child calls someone a name, a parent might firmly remind their child that such behaviour is not allowed, and that there are consequences for such behaviour. The second time the child calls someone a name, she may be given a short "time out" alone in the corner. The third time the rule is broken she may be given a time out, grounded, and put to bed early. As the offence becomes greater, either for its severity or repetition, so too does the discipline. This is the principle of progressive discipline.

The same principles apply on the worksite. Repeat offences are viewed as more serious than first-time offences, and mitigating factors are considered that might reduce the seriousness of the offence. It is also important to remember that the employer determines the level of discipline. Based on the nature of the offence, they may use extreme discipline up to and including

termination. In such a case, the union will argue that the level of discipline is too severe. It is essential that stewards catalogue the circumstances of the offence and the employee's good record in an effort to help the union minimize discipline.

Mitigating Factors

The circumstances of an offence are key to arguing why the level of discipline chosen by an employer should be reduced. Some factors to consider include:

1. The employee's good record
2. The employee's long service record
3. Whether the offence was an isolated incident in the employee's service record
4. If the employee's was provoked
5. If the penalty created exceptional economic hardship for the employee
6. If the employer's rules of conduct have been uniformly enforced, or enforced in a discriminatory way

Having a record of mitigating factors is extremely important if an employee grieves their discipline to the level of an arbitration hearing. While arbitrators don't have the right to modify a collective agreement, they do have the right to reduce the level of discipline chosen by the employer if the circumstances justify doing so.

Steward Notes

October 2008

FAQ >

FAQ is a regular feature that gives AUPE stewards the opportunity to get advice from their union. Something have you stumped? Send your question to stewardquestions@aupe.org.

Q:

What happens at a judicial review?

A: Many stewards and members are familiar with the various levels of grievances set out in their collective agreement but are confused about the process of judicial review. Judicial review is the last chance to appeal a grievance that has already received a decision from an arbitrator. It is often incorrectly viewed as a chance for the grievor to have his or her case made again from scratch. In reality judicial review is more limited in scope.

When a case goes to judicial review, there are no new witnesses, no new testimony, and no opportunity to introduce new facts. Anything that pertains to the case must have been introduced at the original hearing. All the judge reviews are the notes from the case and the written decision of the arbitrator.

The “standard of review” the court uses to make their decision during a judicial review

was clarified in the March 2008 Supreme Court of Canada decision, *Dunsmuir vs. New Brunswick*. In that decision, the court condensed multiple, complex standards of review that had previously existed into just two: correctness and reasonableness.

By default, when the case is about “fact, discretion or policy” the standard of review is reasonableness. According to the court: “Reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision making process and with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

For the vast majority of cases “reasonableness” will be the standard of review. In practice meeting the standard of “reasonableness” is not difficult, so most decisions brought forward for judicial review are not overturned.

The Supreme Court has set a very limited scope for the other standard, “correctness,” which is reserved “for a question of law that is of central importance to the

legal system as a whole and outside the specialized area of expertise” of the Alberta Labour Relations Board or the arbitrator. Cases that could be reviewed using the “correctness” standard would include those involving Charter issues like discrimination based on sexual orientation, religion, or race, for instance.

What this all means to the grievor is that the reviewing judge will typically only consider whether the original decision took into consideration all the relevant facts that were presented at the time the case was originally heard, and if a sound decision was made on the basis of those facts. According to the Supreme Court decision the judge’s role is only “to identify the outer boundaries of reasonable outcomes within which the administrative decision maker is free to choose.”

Because the standard of review provides so much deference to the administrative decision maker (ie. the Alberta Labour Relations Board), most challenges to arbitrators’ decisions won’t succeed at a judicial review.

SNAPSHOTS



AUPE members attended the Introduction to your Union course held Sept. 25 at AUPE Headquarters in Edmonton.

STEWARD PROFILE



Val Whelan

Acute Care LPN and Union Steward
Local 043/007 Lac La Biche Healthcare Centre

Basic Steward, Advanced Steward, Introduction to Occupational Health and Safety, Organizing, Lobbying, Effective Communications

Best Advice: Consistency and determination is key. You have to keep reminding members of what's happening on the worksite, and what they could be doing. Get them to chapter meetings and keep them informed.

How did you become a steward?

I've been active since getting involved at my first job in Bonnyville. I've served as a Worksite Chair, Chapter Chair, on Local Council, the Pay Equity Committee and as Area Council Chair.

How do you handle grievances on the worksite?

We manage to get most issues settled on the worksite without having to go through grievance procedures. Whatever I can't handle I pass on to our Membership Service Officers, who are great. We share whatever works time-wise, keep in touch and organized and aware of where everything is at.

For the most part we are able to settle things with the employer on the first meeting. We don't have a union-unfriendly site. We can usually work things out, so we haven't had to go too far with many grievances.

So how does that affect your role as a steward?

Mostly it is just keeping people aware of what their rights are, to keep them aware of what's going on and keep them active. I try and get them to read their collective agreement and defend the collective agreement.

Is that a challenge, getting members to understand it's more than a piece of paper that gives them a pay increase?

Yes. You have to make sure that they don't make side agreements that are outside of the collective agreement. The collective agreement doesn't mean as much to someone who doesn't know the process that goes into getting a collective

agreement. Yes there are some things in it that we don't like and maybe there's something we wanted last time it was negotiated and we haven't gotten it, but we still have to defend the agreement as it stands, otherwise we're nowhere.

So a major problem is getting people to stand up for their rights.

Yes, and getting them to let you know when they have a problem. There are times, because of the personal part of it, that a member's feelings get hurt over something and it takes them a while to let you know what happened. Sometimes that puts you past the deadline [to grieve]. We still often try to go through it, but I had something come to me the other day that happened over two years ago – she had been given a vacation day when someone in her immediately family had just died.

Many members are so unaware of what their rights are, that something like that can happen. That's why we organized our support workers. They still haven't quite got it that there is someone there to stand up for them. So you keep going back and talking to them, because so many really don't realize when they've been wronged.

Do you think it has something to do with Albertans' tendency to self-reliance?

We do have a real "tough" attitude in this province that means a lot of people don't get it. They pay the dues and say "that darn union doesn't do anything for me." They don't realize what the union is about until it really steps in and helps them out directly. Then they realize the value. So you just keep banging away at that attitude and working on them.

How does that attitude affect what members do on the worksite?

It unfortunately means that sometimes people get hurt and they don't say anything. People don't realize that even if you think you got hurt you have to write a WCB (Worker's Compensation Board) claim.

Workers often end up working short and they do stupid things; they'll lift people by themselves that they usually don't, or try to run faster, and it's because they want the elderly to be cared for. It's tied directly to our staff ratios in long-term care.

I've seen people working, even if they're hurt. I ask them, "why are you still here?"

SNAPSHOTS



AUPE members took part in a group exercise as part of the Introduction to your Union course held Sept. 25 at AUPE Headquarters in Edmonton.



WCB advice:

Union Representative urges members to report recurring problems

Since joining AUPE last spring, Randy Corbett, Union Representative for Workers Compensation Board appeals, says he has seen some “troublesome” trends with the way members treat WCB claims. In a nutshell, the problem is that members are not reporting or tracking injuries until it’s too late.

The problem is especially apparent in the health sector, where the majority of members’ claims originate.

According to Corbett, a high number of the WCB appeals he handles are due to members shrugging off these seemingly minor problems as a fact of life, or just part of

“When that happens, WCB says they can’t tie the injury to the work because there’s been no history of problems recorded anywhere, or that it is all due to a pre-existing condition. I often don’t have any evidence to show the board that they’ve made the wrong decision,” Corbett explained.

He added that “we can take these decisions to appeal, but we can’t win if we don’t have any evidence establishing a history of the injury that links it to the workplace.”

One example Corbett frequently sees is Licensed Practical Nurses experiencing rotator cuff problems. Such an injury can develop over 20 years before symptoms start to cause problems at work. A short-handed LPN might perform a lift she would normally do with another person by herself, just to get the job done. Her injury flares up a little, but she works through the pain, and recovers. Eventually the injury is pushed too far, and the member requires time off or modified duties, but there is no record of these events.

“Without recording all the minor events leading up to the major problem, she can’t validate her claim with WCB,” Corbett says.



Many members are not reporting injuries when they occur, and they’re not recording them in an incident report. General work aggravations – chronic strains or repetitive injuries – are not being recorded on an ongoing basis.

Randy Corbett, Union Representative for Workers Compensation Board appeals, AUPE

“Many members are not reporting injuries when they occur, and they’re not recording them in an incident report,” he explains.

“General work aggravations – chronic strains or repetitive injuries – are not being recorded on an ongoing basis,” says Corbett.

the job. Eventually many of those unreported recurring sore shoulders and aching backs develop into debilitating injuries that prevent the member from working.

The injury is only reported once it has developed into a problem that cannot be ignored.

Steward Notes

October 2008

There are a number of simple steps members should take to avoid WCB problems down the road:

- 1) Report all injuries or symptoms, even if they don't have to take time off.
- 2) Report the injury or symptom to their worksite supervisor, and what they think caused it.
- 3) Make sure the supervisor makes a record of the injury accident as required by law (Section 9(1) of the Workers Compensation Regulation and Section 182 of the Occupational Health and Safety Code).
- 4) Make their own record of the injury, including the date, place and time of the injury, the time it was reported to the employer, the cause of the injury, a description of the injury, and any medical treatment.
- 5) Report the injury to their family doctor as soon as possible, even if no time is lost from work.
- 6) Tell their co-workers about the injury.

This may seem like more trouble than it's worth but the consequences of not taking these steps can be much greater and more costly if a claim is denied later on.

"If the supervisor has notes, and the member has notes, and there's a doctor's record behind the claim, that's something I would love to take to appeal," Corbett says.

"If more people were open about their injuries, they may not ever need my help. With the right documentation to back them a claim should go through without any problems," he says.

Corbett doesn't want members to get the impression that every minor bump needs to be recorded, but in jobs that require repeated tasks that lead them to notice recurring pain in specific areas of the body – for instance back muscles or shoulder joints – he encourages them to be diligent about recording their symptoms and injuries.

"The WCB doesn't need any help or encouragement on how to deny a member their entitlement to compensation," says Corbett.

POST IT Notes

DID YOU KNOW...

that no lost-time claims should always be reported immediately to ensure coverage if the injury progresses or reoccurs at a later date?

A no lost-time claim means:

- Haven't lost time from work
- Haven't had to change the work you do
- Don't have a permanent disability

Contact WCB at
1-800-661-1993
Edmonton (780) 498-3999
Calgary (403) 517-6000
www.wcb.ab.ca

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DID YOU KNOW...

employees and employers must file a report to Workers Compensation as soon as they become aware of an illness or injury ?

Contact WCB at 1-800-661-1993
Edmonton (780) 498-3999
Calgary (403) 517-6000
www.wcb.ab.ca

AUPE
Alberta Union of Provincial Employees

AUPE provides posters that members can place on their worksite bulletin boards to remind members and employers of their duty to file a Workers Compensation report as soon as they are aware of an illness or injury. The posters can be downloaded from AUPE's features page at www.aupe.org/features.php

More than words: interpreting your collective agreement

Successfully interpreting your collective agreement takes a keen eye and focused attention. The reason is simple – every written word matters and has meaning. Knowing this is key to interpreting and then successfully using your collective agreement on the worksite to defend members' rights.

It can be hard to believe that every word has meaning, given how lengthy collective agreements can be, but it's a principle that's recognized by arbitrators, courts, unions and employers. If you don't read the agreement as carefully as the other side does, it's you and your fellow union members that will pay the price.

This is another key principle for interpreting your collective agreement, and one that has developed over years of arbitrations cases: the words in the collective agreement should be understood in terms of their common or ordinary meaning.

It's easy to be confused by this when words or phrases are similar, but not exactly the same. When in doubt, consider the context, and give similar words a similar meaning. As an example, Maruca says that when a collective agreement refers to a "position description" or "job description" in the same context, they can be given the same meaning.

"Often, when the word 'days' isn't clearly defined, people get caught – especially if an article says you have 10 days to file a grievance, you have to know whether it means calendar days, workdays, or days exclusive of statutory holidays," says Maruca.

Even though the terms all sound similar, each is referring to a very different thing. Not knowing the difference between them, or which one applies to filing a grievance could destroy a grievance before it goes anywhere.

This advice is condensed in a basic rule for interpreting your collective agreement – that different words are given different meanings.

Don't count on the employer to tell you how much time you have to file a grievance – consult your collective agreement first, apply the principles, and see if you can determine what you need to know by yourself. If you have the slightest doubt, contact your Membership Services Officer.

Taken at face value, these three rules – giving every word a meaning, giving similar words similar meanings, and giving different words different meanings – may seem overly simplistic, but it is essential to keep them in mind when reading your collective agreement. These rules have developed out of actual labour cases over years of arbitration practice in Canada, and are now accepted as the norm by employers, arbitrators, courts, and unions alike.

Read your collective agreement carefully, read it often, and when in doubt, don't be afraid to contact your union for help.



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Greg Maruca, Union Representative, Education, AUPE

There are two obvious places to look for the meaning of the words in your collective agreement. The first is in the definitions section that appears in every agreement. (Yes, pretty obvious!) If a word or term is explicitly defined here, don't second guess it's meaning elsewhere in the agreement.

"A definition in the definitions section of a collective agreement generally applies to the entire agreement," explains AUPE Representative Greg Maruca. But that's not the only place you will find a definition.

"Definitions can also appear in specific articles. When you see a definition in an article, you should only use the definition in that particular article," Maruca cautions.

The second place to look for definitions is in the common language you use every day.

"Using common sense, we can see that both terms are referring to the same thing," he says.

Taking another slightly more complex example, if an article heading in your collective agreement talks about "Struck Work" and later in the agreement talks about "work performed in an office where employees are on strike" you should understand the two phrases are referring to the same thing. In this instance, the article heading gives the context for the interpretation of the later phrase.

People sometime apply this rule incorrectly by not paying close enough attention to the context. Stewards need to exercise caution that they are not giving similar meanings to words or phrases that are actually talking about quite different things.

Steward Notes

October 2008

STEWARDS TRAINING



Upcoming courses and training

AUPE is offering the following courses and training seminars throughout 2008. Contact your regional office to register or get more information.

Lethbridge

October 28-29, 2008 Union Steward Course Level 1
November 25-26, 2008 Union Steward Course Level 2

Calgary

November 6-7, 2008 Union Steward Course Level 1
November 20-21, 2008 Union Steward Course Level 2
January 22, 2009 Mobilizing
February 12-13, 2008 Union Steward Course Level 1

Red Deer

November 6-7, 2008 Union Steward Course Level 2
December 5, 2008 Contract Interpretation
February 11, 2009 Introduction to Your Union

Camrose

February 13, 2009 Introduction to Your Union

Edmonton

November 13, 2008 Introduction to your Union
November 13-14, 2008 Union Steward Course Level 2
November 17-18, 2008 Union Steward Course Level 1
November 27-28, 2008 Union Officer training
January 23, 2009 Introduction to Your Union
January 27, 2009 Mobilizing
February 10, 2008 Contract Interpretation
February 17-18, 2009 Union Steward Course Level 1

Athabasca

November 1, 2008 (Cold Lake) Introduction to your Union

Peace River/Grande Prairie

November 5, 2008 Contract Interpretation

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.

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The role of the Union Steward is among the most important in the labour movement. Stewards are the front line of defence for union members in the workplace.

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 Mark Wells by e-mail at m.wells@aupe.org or by mail. Please include names and contact information for yourself and potential story sources.

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