Steward Resource Guide

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International Federation of Professional
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Dedicated to

Anna Livia Plurabelle Vargo

1951-2005

- Active Local 17 Member
- Attentive Steward
- Consistent Regional Executive Committee (REC) Delegate
- Workplace Safety Advocate

Anna believed in unions and insisted on advancing workers' rights. She modeled the best qualities of an effective member leader and Steward. She will be missed.

From the Executive Director

Through your union you have a voice on the job. As a Steward you make that voice effective and powerful. You give vitality and meaning to your union contract. You are the key to achieving respect and fair treatment for your co-workers. You help build a strong, growing, respected union.

Joseph L. McGee
Local 17 Executive Director

It's a big job. We hope this *Steward Resource Guide* assists you in carrying out these challenging duties. It describes your responsibilities and explains the laws regarding unions, Stewards and members.

By being active in your union you are part of a historic and noble tradition. You are part of the labor movement, which stands for democracy in the workplace, economic justice and a better life for all. Being active in your union these days also means being a part of the last line of defense for good middle-class jobs with pay and benefits that make quality family life possible.

On behalf of the officers and staff of Local 17, I thank you for your involvement and support. Together we can take Local 17 to new levels of success and achievement so that our members, and all workers, can enjoy the benefits of true economic and social justice.

In unity,

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CHAPTER 1:

YOUR UNION

Unions:

- a voice for workers
- power for workers
- democracy on the job

"The objectives of this organization are to elevate the economic status of its members by establishing higher standards of skills, improving the general working conditions, and securing, by legal and recognized means, adequate and proper compensation."

Public employee unions serve the public interest by fighting to preserve an employment environment that attracts and retains highly qualified and highly motivated people.

With a union, workers bring power and democracy to the workplace. Unions allow employees to enjoy the many legal protections afforded to employees who come together to collectively bargain wages, benefits, and working conditions. That is why when people think of union jobs, they think of jobs with good wages, medical and dental insurance, pensions, holidays, seniority protections, decent working conditions, and due process rights that provide protection against unfair discipline.

Union members get these benefits because of decades of hard work. In our society of checks and balances, workers who have collective or group power become a force that can influence employer and legislative decisions. And only with collective power will their voice make a lasting difference.

Unions Give Workers a Voice

In the absence of a union contract, employers have the legal right to force workers to accept what they unilaterally impose on them. If an employee independently tries to argue for a wage increase, the employer has no obligation to even discuss the matter with the employee.

But if the employees have a union, it is illegal for the employer to refuse to discuss and bargain about wages and many other important work-related issues. Unions, through regular contract negotiations, keep employee issues on the front burner when most employers would just as soon arbitrarily set wages, benefits and working conditions or simply ignore the issues as they arise.

Unions and Public Employees

Public employees, who are organized in unions, have the leverage and power to keep the politicians from turning public employment into a low wage, low skill work environment that attracts only the least qualified. Public employee unions serve the public interest by fighting to preserve an employment environment that attracts and retains highly qualified

Local 17 is working people coming together to improve and maintain a quality work life that makes a quality home life possible.

and highly motivated people. As political rhetoric becomes increasingly anti-public employee, public employees need unions even more.

What is IFPTE Local 17?

Local 17 represents more than 8,000 professional, technical, managerial, and administrative employees who serve the citizens of Washington State.

Its members work at the Washington State Departments of Transportation, Licensing and State Patrol; Clark, King, Pierce, and Spokane Counties; the Cities of Tacoma and Seattle; and health districts and departments in Benton-Franklin, Bremerton-Kitsap, Chelan-Douglas, Seattle & King, Skagit, Snohomish, Spokane, Whatcom and Yakima counties.

Local 17 was established by a small group of City of Seattle engineers in 1918 for the purpose stated in the union's constitution:

> "The objectives of this organization are to elevate the economic status of its members by establishing higher standards of skills, assisting in the securing of employment, improving the general working conditions, and securing, by legal and recognized means, adequate and proper compensation."

Local 17 at a Glance:

- Local 17 is working people coming together to improve and maintain a quality work life that makes a quality home life possible.
- Local 17 fights for secure wages and beneficial working conditions.
- Local 17 has a solid record of achievement as a progressive labor union.

A Few Accomplishments at the Bargaining Table Include:

Local 17 works hard to gain and maintain beneficial contract language in every bargaining unit across the state. Historically, here are some achievements.

• In 1999, Washington State Department of Transportation Engineers and Technicians received a 13 percent raise to lift their salaries closer to prevailing wage rates in a recruitment and retention effort. Local 17 accomplished this through research, legislation, negotiation and a favorable ruling through the State Personnel Resources Board. Local 17 has consistently made persuasive arguments to the State Personnel Resources Board that resulted in better salary survey recommendations and salary adjustments.

• One City of Seattle contract brought members a five percent pay increase in a period when the Consumer Price Index increase was 4.2 percent—keeping up and providing a margin of economic security for the term of the agreement.

• At King County, over a three-year period, Local 17 bargained for increased wages and reclassification of roughly 1,100 employees in the Classifcation/Compensation project, which resulted in increased wages and retroactive pay dating back to 1998.

A Few Accomplishments Through Arbitration and Courts Include:

• Local 17 preserved public employees' constitutional rights to free speech by going to court and winning a ruling in favor of an employee who was disciplined for a letter he wrote off-duty.

• Local 17 prevailed through years of legal battles as two public employers (Metro and Clark County PUD) tried to manipulate the laws and the courts to weaken public employee rights. The union won at every hearing and trial in these disputes.

• Local 17 won back pay plus interest worth thousands of dollars for City of Seattle employees who were first penalized by working outside their job classifications without compensation, and then harmed by the employer's excessive delay in issuing retroactive pay due from the settlement of the work out of class grievance.

Accomplishments Through Political Action

• Local 17 represented IT professionals challenged the overuse of contractors with the City Council. Local 17's analysis of the City of Seattle's budget found that it was actually costing the City more money to hire contractors than it would be to hire and train from within the City. Result: 32 previously contracted out jobs converted to full-time positions. Additionally, Local 17 City IT professionals also fought successfully for better language and wider access to training funds.

• Local 17 successfully lobbied for a "farthest first" salary appropriation for state employees which gave many Local 17 members from 2.5 percent to 16 percent more than the scheduled 1991 across-the-board raise.

• To protect members from endless delays, Local 17 persuaded the King County Council to pass an ordinance requiring interest to be paid to employees on the retroactive pay due in salary settlement agreements, if the settlement is not transmitted to the Council for adoption within 45 days.

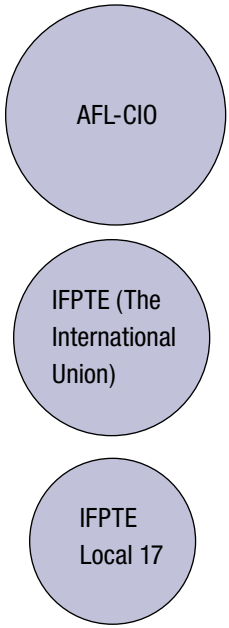
• Local 17 was a prime mover of the 1994 Transportation Safety Act, which has had a major impact on the improvement of safety standards and protections for those who work on Washington roadways.

• After the murder of a Local 17 member killed in the line of duty, Local 17 successfully lobbied for the inclusion of a state budget provision that provided a $150,000 death benefit to the families of state employees who are killed on the job. Additionally, Local 17 lobbied for changes in the state pension system that benefitted the families of employees killed in the line of duty.

A Record of Achievement

Above are just a few of Local 17's accomplishments. Local 17 has won consistent victories for its members at the bargaining table, in court and arbitration hearings and through political action.

Union Structure



AFL-CIO

Headquarted in Washington, D.C. with regional offices throughout the United States and Canada, the American Federation of Labor and Congress of Industrial Organizations, AFL-CIO is a voluntary federation of over 100 international unions, including the International Federation of Professional and Technical Engineers, the central roof under which most of North American labor is gathered.

International Federation of Professional and Technical Engineers (IFPTE, the "International" Union)

Local 17 is part of the IFPTE, which is made up of 85 local unions. Local 17 is one of the largest. Local 17 is chartered by the International union and must comply with its rules, which are contained in a constitution. This constitution can be changed at a convention that occurs every three years, and the number of votes Local 17 has at the convention is in proportion to its membership numbers.

Between conventions, the International Union is run by a President and Secretary-Treasurer who oversee a staff.

These officers, in turn, report to the Executive Council, whose members are elected by locals in each region of the United States and Canada. Local 17's Executive Director and President are among the 14 members of this council. With the AFL-CIO, the

Chapters at the time of printing include:

Aberdeen; Bellingham; Chelan-Douglas Health, Chehalis, Clark County, Department of Licensing-PRFTA, Department of Licensing-LSR, Tacoma, Everett, Inland Empire, Kelso, King County, Kitsap, NW Regional, Pasco, Peninsula Public Health, Pierce County, Port Angeles, Richland, Seattle, Sea-Vue, Spokane Health, Spokane County, Tacoma, Thurston County, Vancouver, Washington State Patrol-CO, Washington State Patrol-CVEO/CVO, Wenatchee, and Yakima.

International performs important governmental liaison functions that promote and protect the interests of all workers.

Local 17

This local union is the second largest in the IFPTE and wields considerable influence. Local 17 is operated in accord with the rules defined in its constitution and policies. Constitutional changes are made by a membership wide vote. Policies are enacted by the appropriate governing or administrative entities of the local.

Union Governance

Regional Executive Committee (REC)

The REC is the union's primary policy-making body. It is composed of delegates who are selected by union members at the chapter level, in numbers proportional to the number of members within each chapter's jurisdiction.

Executive Board

This body is the equivalent of the union's board of directors. The Executive Board makes policy decision between REC meetings and exercises financial oversight of union operations.

Involvement in the International Union

Local 17 Executive Director Joe McGee (top) and Local 17 President Allan Yamaguchi represent the Northwest Region on the IFPTE Executive Council. McGee was first elected in 1994 and Yamaguchi joined the Board in 2003. International conventions are held every three years.

Regional Executive Committee - The Main Policy Making Body

Former Local 17 Vice-President Dee Gilmore speaks at an REC.
The REC is composed of representatives or delegates from each chapter based on a ratio of one delegate per 75 members.

This Board consists of a President, Vice-President, Secretary-Treasurer, and three trustees. Each is elected by a membership-wide vote and serves a three-year term of office. The Executive Board meets monthly.

Executive Director

The Executive Director is responsible for the day-to-day administrative and financial operations of the union, and may develop policies necessary to facilitate these functions.

The Executive Director hires and supervises the union's staff and serves, personally or through designated staff members, as the official representative of the Local in all labor relations and business matters. The Executive Director is hired by the REC.

Union Administration

Staff

The union staff is structured by the Executive Director and reports to the Executive Director. It is organized as follows:

Union Representatives

These are the labor relations professionals who are responsible for assisting members with contract negotiations and administration, including grievance processing, and representation at meetings and hearings, including arbitration and agency proceedings.

Program Directors

Thse are staff specialists in defined areas of expertise responsible for specific strategic activities such as communications, legislative affairs, training and organizing.

Administrative/Financial Specialists

These are staff employees responsible for performance of specialized internal tasks such as membership administration, accounting, financial reporting, accounts payable, document processing, information technology functions, etc.

Stewards

Member-leaders selected through election or appointment to assist in the day-to-day administration of bargaining collective agreements and to serve as critical links in the union's communications network.

Stewards are agents of the union and are vital links in keeping the union strong and moving it forward. The steward network is structured by bargaining unit and typically there is one steward for each department or work unit. Stewards may be removed by the Executive Director if their actions are not in accord with the union's policies and goals or consistent with its legal obligations.

Chapters

Through chapters, which are ideally structured by so that members of each chapter have a common employer, members have a forum to discuss issues pertaining to their workplaces and their collective bargaining agreements. Chapters provide member access to union governance through the election of delegates to the REC. Chapters can be established or dis-established by the REC.

Advisory Bodies

Negotiating Committees

Negotiating committees are composed of members selected by each bargaining unit to coordinate contract negotiation efforts with staff union representatives. Negotiating committees sometimes continue after new agreements are ratified to advise on matters between contract negotiations.

Policy Committees

Policy committees are comprised of members selected to discuss, advise, and coordinate with staff union representatives on an ongoing basis on issues of unit-wide significance. They seek to achieve consensus on a wide variety of issues that affect unit members and serve as an important adjunct to the union's staff representation functions.

Department of Licensing Policy Committee

Chapter 2

So, You're a Steward

Brett Thompson, Steward at WSDOT

Stewards are the front line of the union. Stewards know the workplace as well as anyone and are the conduit through which the membership, union staff, and management communicate. As a Steward you will be an organizer, communicator, contract interpreter, and grievance handler. Being a Steward is a tough job, but one that can be intensely rewarding.

The Many Roles of a Steward

The Steward as Advocate

The Steward is an advocate for all employees in the bargaining unit. Just as an attorney represents a client, the union Steward represents members. Stewards advocate for member interests, articulate their needs, and help find solutions.

The Steward as Communicator

The Steward is the most effective communications link between the members, union officers, management and Local 17 staff. It is the responsibility of the Steward to communicate messages up and down the line. As the members' union representative in the department, the Steward is the person to whom employees can turn to for information. One of the most important Steward responsibilities is to educate co-workers about the rights they have as union members.

The Steward as Contract Enforcer

The contract represents the law of the workplace. It defines the working relationship between employees and management and establishes the contract terms and working conditions. It also spells out the ground rules about how disputes are handled. The Steward must understand the contract and know how it is interpreted.

The Steward as Counselor

When it comes to differences among employees in the department, the Steward might play a role of mediator or peacemaker. Also, a Steward occasionally may play a vital role in helping a co-worker with a personal or social problem. While Stewards need not be "Dear Abby" or have all the answers, they should know the types of counseling referrals that are available through community resources or an "Employee Assistance Program."

The Steward as Grievance Handler

The Steward may initiate grievances on behalf of employees or the union. Responsibilities include recognizing grievable issues, investigating and verifying facts, consulting with management and union staff, and presenting the grievance. Ideally, the Steward should look for opportunities to proactively resolve issues before they become formal grievances. It is usually best to settle issues at the lowest possible level.

"When Stewards are informed about political issues, they can advise co-workers about them—not to tell them how to vote, but to tell them what the union's position is and how it will benefit the membership."

The Steward as Political Activist

Politics are crucial to determining the wages, benefits, and working conditions of public employees. Local 17's political action activities give members a voice in the workplace and in the community. Union members must work together on political issues, encourage members and their families to vote, and support candidates who work for the good of working people.

When Stewards are informed about political issues, they can advise co-workers about them—not to tell them how to vote but to tell them what the union's position is and how it will benefit the membership. They can also let other members know how they can participate in Local 17's lobbying efforts (i.e., contacting legislators, attending rallies) after hours.

Steward's Rights

Federal and state labor laws guarantee Stewards the rights and freedoms to perform the job responsibly. Other rights are spelled out in the contract.

Equals with Management

When Stewards are performing union functions which are spelled out in the contract or acting in their official capacities, Stewards are considered **equals with management**. The National Labor Relations Board (NLRB) has determined that Stewards must be free to challenge management statements without censorship.

The NLRB described this relationship as: "a relationship between [employer] advocates on one side and union advocates on the other side, engaged as equal opposing parties."

"When Stewards are performing union functions which are spelled out in the contract or acting in their official capacities, Stewards are considered equals with management."

Stewards act in an official capacity when they:

- Investigate grievances (See Grievances, Chapter 8)
- Request information
- Present a grievance
- Communicate with management in the role of Steward
- Act as a *Weingarten* representative (See Chapter 4)
- Participate in a labor-management meeting

By contrast, Stewards act in their individual capacities when they discuss their own work assignments, performance or evaluation.

Greater Leeway Allowed

The Steward is allowed much greater leeway than the average employee in discussions with management because the Steward is acting in an official capacity as a representative of Local 17. As a consequence, the Steward should be as forceful as necessary to make any point that must be made, without fear of reprisal from the employer.

A vigorous or heated argument between an employee and a supervisor might lead to a charge of insubordination against the employee. If the same argument were between a Steward and a supervisor regarding a union matter, the Steward should not be disciplined. If Stewards had to live by the traditional rules of employee conduct, they would be placed in a difficult predicament: either forego their role as union advocates or risk almost certain discipline.

If the Steward is acting in his or her official capacity, such as in a grievance meeting, and it doesn't disturb office operations, loud arguing or even shouting during such meetings is protected by federal and state labor laws.

In staff meetings, so long as management has not clearly prohibited all employee comments, Stewards have a legal right to speak up (but not be disruptive), including criticizing employer policies.

Access to the Workplace

Management may determine when a Steward may be released for union business, but not whether it can be done. The Steward has the right to speak with members and move around the workplace to investigate and process grievances. However, management should be notified before the Steward leaves the work area so that the work of the bargaining unit is not unduly interfered with.

For example, a Steward who is a project engineer with a full construction schedule may have to delay investigation of a grievance until a later time or get the help of another Steward. Know your contract: in some agreements, the Steward must receive permission from a management official prior to leaving the work area for Steward

duties. Some contracts extend a Steward access to office equipment. These specifically state that Stewards are permitted reasonable use of office equipment, telephone, and/or email for Steward duties. It may also be a past practice in your office.

"Local 17 contracts do not limit the number of paid hours that Stewards are allowed to spend handling grievances or administering the contract. They may spend a "reasonable amount of time" working as a Union Representative."

Paid Time to Process Grievances

Local 17 contracts do not limit the number of paid hours that Stewards are allowed to spend handling grievances or administering the contract. They may spend a "reasonable amount of time" working as a union representative. The limits of what is considered "reasonable" would depend on various factors and the Steward's particular circumstances.

Occasionally, management will raise concerns about the amount of time a Steward is devoting to union-related matters.

If management believes that a Steward is spending an unreasonable amount of time on union business, in many cases, management must notify the union of its concerns and give the union an opportunity to investigate and/or rectify the situation. Check your contract to see what language (if any) addresses this. If there is no language, consult with your Union Representative.

Communication

The Steward's Role

Problem solving and grievance handling are important, but the most consistent and common activity for a Steward is to be a communication link and information resource. Stewards should remember that the goals of communicating are to understand, to be understood and, ideally, to make a difference.

Multilevel Communication

Stewards must communicate on three levels:

- With fellow union members
- With the Local 17 staff
- With management

Basic Skills

Let your co-workers know that you are a Local 17 Steward.

Encourage members to come to you with problems. Question them about their concerns regarding working conditions. Help them to see you and the union as a resource for solving problems.

Be a good listener.

Sometimes members just want to be heard. Ask what they want from Local 17. Remember to use diplomacy.

Know the contract.

Stewards are emissaries for the union. You must be a positive voice for your union by defending the union and the union contract.

Actively distribute information.

Post notices, legislative updates and other news. Keep union bulletin boards current. Work with your Local 17 Union Representative to create bargaining unit newsletters.

Introduce yourself as a Steward to new employees.

Bring a new member packet (copy of the contract, information on Weingarten rights, membership packet, etc.) to new employees to orient them.

Check on questions they may have regarding Local 17 and offer to provide answers.

Be an early warning system.

Tune in to what is happening above you and pass it on to the union staff to protect the integrity of your rights, contract, and job.

Communicate with management as an equal.

When dealing with management as a Steward, you are in the role of an equal, not a subordinate. Some reminders to management about your status may be in order.

Some Stewards wear a Local 17 button to meetings. Others make a point of noting their Steward status at the beginning of a meeting, memo, or email message, with a statement such as: "I am presenting this in my role as a Local 17 Steward."

Work to maintain credibility with management.

The relationship the Steward develops with management is key to effectively functioning as a Local 17 representative.

Perform your Steward duties in a way that causes management to respect you even though they may not agree with you. If you can build some degree of trust with management representatives, you will likely become a more effective Steward.

Keep in mind that although labor relations are often contentious, there is little to be gained by jeopardizing relationships in the pursuit of today's issues. There will always be other issues tomorrow.

Posting of Union Information

Paul Berry, Steward at the City of Seattle

Most Local 17 contracts set aside bulletin board space for union materials.

Posting this information is an important Steward function and an essential way to disseminate information about contract talks, union policies, and training opportunities. If you need help getting a bulletin board started, contact the Local 17 office for a starter kit.

Keeping in Touch

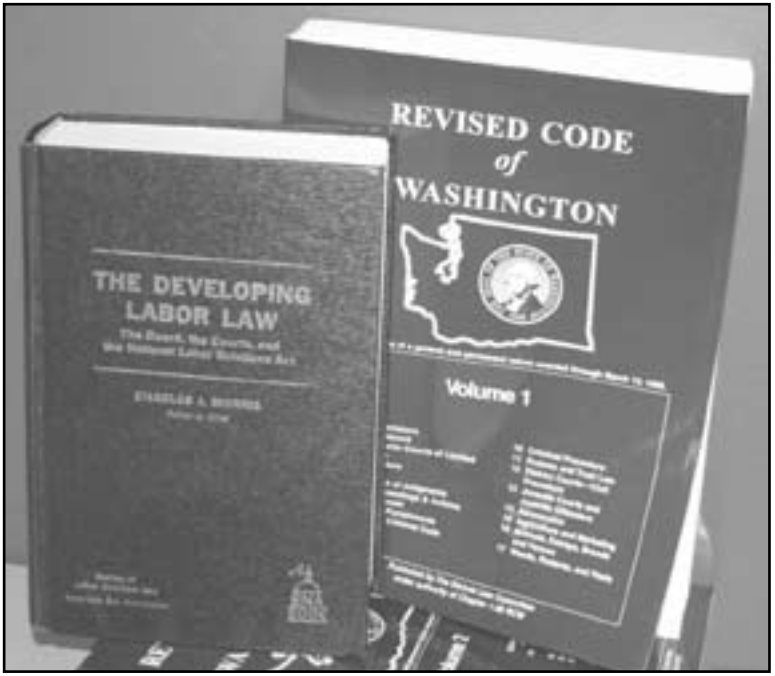
Because communication is a primary Steward duty, it is imperative that Stewards know the Local 17 resources available to them.

Key resources include:

- Bulletin Boards
- InSight (Local 17's bimonthly magazine),
- Local 17 website, www.ifpte17.org
- The Steward Statement (a monthly newsletter)
- Hotlines
- Legislative Updates (a legislative bulletin mailed to members interested in legislative affairs during the session)
- Bargaining unit websites, email lists, electronic bulletin boards
- Bargaining unit newsletters (Stewards can publish bargaining unit specific newsletters, contact your Union Representative.)
- Union Representatives (A complete list of staff phone numbers is printed on page two of each inSight and also appears on the Local 17 website)

CHAPTER 3

LABOR LAWS



Currently, collective bargaining is predicated on a series of federal, state and local laws established in the past 70 years. While there is plenty of debate about whether these laws hurt or help workers, they form the basis of an employee's right to organize and bargain collectively. The most significant of these laws are the:

- National Labor Relations Act
- Public Employee Collective Bargaining Act
- State Civil Service Law

National Labor Relations Act (NLRA) and the NRLB

During the early part of the century, workers in the United States did not have the most basic workplace rights. Union activity was treated as conspiratorial activity, and union organizers and many members were targets of criminal actions.

During a time of great industrial unrest in the 1930s, Congress passed the NLRA, the first law recognizing the right of workers to join labor unions and bargain collectively. The NLRA:

- Protects workers against discharge for union activity.
- Gives employees the right to choose a union.
- Provides basic procedures for collective bargaining.
- Establishes the administrative agency that enforces the law: the National Labor Relations Board (NLRB).

The NLRA was amended in 1947 by the Taft-Hartley Amendments. Taft-Hartley placed limitations on the power of unions, especially by eliminating their ability to pressure employers who were not directly involved in a labor dispute (secondary boycotts). But it also enhanced collective bargaining by granting federal courts the authority to enforce contracts.

In 1959, the Landrum-Griffin amendments were added. These amendments regulated internal union affairs, severely limited the picketing of unorganized workplaces, and required formal union recognition procedures.

The NLRA does not cover public sector employees. Although there are a few differences, the public sector labor laws largely track the provisions of the NLRA.

Public Employment Relations Commission (PERC)

The Washington state counterpart of the NLRB is the Public Employment Relations Commission (PERC). The state Legislature created PERC in 1975 to provide for "uniform and impartial...efficient and expert" administration of state collective bargaining laws, to "ensure the public of quality public services." (Mission Statement, RCW 41.58.005(1)).

Employees covered by collective bargaining by PERC have the right to form and join organizations which represent them for the purpose of bargaining with their employers.

An "exclusive bargaining representative" of employees must:

- Be a lawful organization whose origins, structure and leadership can be established by evidence, if questioned;
- Be formed and controlled by employees, without control or domination by any employer; and
- Have a purpose of representing employees in collective bargaining with their employers.

Employees covered by collective bargaining by PERC have the right to form and join organizations to represent them for the purposed of bargaining with their employers.

Employees covered by the PERC-administered state collective bargaining laws have:

- The right to self-organization.
- The right to form, join or assist labor or employee organizations.
- The right to bargain collectively through representatives of their own choice.
- The right to refuse to pay dues or agency fees to a union unless the union is selected by a majority of the employees in an appropriate bargaining unit and the employer agrees to union security provisions in a collective bargaining agreement.

State laws and PERC rules are designed to protect employees in the free exercise of their statutory rights, and certain types of employer and union conduct are prohibited. Examples of improper conduct include:

- Threats of loss of jobs or benefits, or threats of physical force or violence, if made by an employer or union to influence an employee's choice concerning union representation or involvement in union activities.
- Discharge of any employee to discourage or encourage union activity, or a union causing an employee to be discharged to discourage or encourage union activity.
- Promising or granting changes of employee wages, hours or working conditions while a representation petition is pending before the Commission.
- Misstatements of important facts by an employer or union while a representation case is pending before the Commission, where the other party does not have a fair chance to reply.
- Making campaign speeches to assembled groups of employees on the employer's time within 24 hours prior to

the opening of the polls for on-site elections, or after the issuance of ballots in a mail ballot election. This prohibition continues through the tally of ballots.

• Suggesting or implying that the Commission or its procedures favor any choice to be made by employees concerning union representation.

• Failure or refusal of the employer and/or exclusive bargaining representative to meet with one another at reasonable times and places for the purposes of collective bargaining.

• Breaches of good faith by either an employer or union in negotiations with one another.

All parties are expected to comply with the law. Improper conduct will not be permitted. Violations may result in setting aside an election or other appropriate remedies, including reinstatement and back pay for employees fired from their jobs.

Public Employee Collective Bargaining Act – RCW 41.56

There are several important sections of RCW 41.56. Some of the sections outlined in this law include critical language regarding determination of a bargaining unit, certification of a bargaining representative, etc.

The most important section is RCW 41.56.040—the right of employees to organize and designate representatives without interference.

"No public employer, or other person, shall directly or indirectly, interfere with, restrain, coerce, or discriminate against any public employee or group of public employees in the free exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining, or in the free exercise of any other right under this chapter."

Additionally, RCW 41.56.100 is also important:

"A public employer shall have the authority to engage in collective bargaining with the exclusive bargaining representative and no public employer shall refuse to engage in collective bargaining with the exclusive bargaining representative: PROVIDED, That nothing contained herein shall require any public employer to bargain collectively with any bargaining representative concerning any matter which by ordinance, resolution or charter of said public employer has been delegated to any civil service commission or personnel board similar in scope, structure and authority to the board created by chapter 41.06 RCW."

The RCW says that upon the failure of the public employer and the exclusive bargaining representative to conclude a collective bargaining agreement, any matter in dispute may be submitted by

either party to the Public Employment Relations Commission.

The law reads that if a public employer implements its last and best offer where there is no contract settlement, allegations that either party is violating the terms of the implemented offer shall be subject to grievance arbitration procedures if and as such procedures are set forth in the implemented offer, or, if not in the implemented offer, if and as such procedures are set forth in the parties' last contract.

In 2002, Washington State Legislature passed sweeping civil service reform measures for state employees. The reform changed the personnel system that has been in place for nearly 50 years.

The State Public Employment Act — Title 41 RCW

In 2002, Washington State Legislature passed sweeping civil service reform measures for state employees. The reform changed the personnel system that has been in place for nearly 50 years. This reform includes:

- Overhauling of Merit System Rules governing state employees (41.06);
- Revamping of the Classification and Compensation systems (41.06.139);
- Mandating ability of represented (unionized) employees to bargain wages and work rules, including those regarding layoff and contracting-out (41.80);
- Eliminating of current contracting-out provisions;
- Reassigning various agencies the responsibility for work rule creation, modification, and enforcement.

All new Merit System Rules, the classification and compensation System, and collective bargaining agreements were subject to legislative approval during the 2005 Legislative Session.

Questions and Answers for State Employees

Who is entitled to bargain?

Any state employee who is a member of a labor organization that represents over 500 state employees is entitled to collective bargaining rights.

What about other state employees?

State employees who are not represented by a labor organization, those who are classified under the Washington Management Service (WMS), confidential employees, and internal auditors, etc. are not eligible for collective bargaining rights.

The Department of Personnel Director will be responsible for rule creation/modification that will apply to unrepresented employees. Their wages and benefits will continue to be set at the discretion of the legislature.

What is open to collective bargaining?

Wages, hours, and working conditions are mandatory subjects of bargaining. This includes the dollar amount provided for insurance benefits.

Other bargaining subjects include: grievance procedures; union security agreements; collective negotiations on all personnel matters over which the appointing authority of the appropriate bargaining unit of such agency may lawfully exercise discretion; and other terms and conditions of employment.

Some subjects are excluded from bargaining, such as: pensions; size of the workforce; financial basis for layoff; directing and supervising staff; and inherent managerial policy such as agency functions, programs, budget, organizational structure, and use of technology.

CHAPTER 4

EMPLOYEE RIGHTS

Lois Watt, Steward at King County

All employees covered by Local 17 contracts have specific rights, both spelled out in their contracts and guaranteed to them by federal, state and local laws.

On the following pages are outlines of key employee rights and what you as a Steward can do to ensure they are enforced.

Union Representation

Weingarten Rights

One of the most important employee rights is the right to union representation if an employee is required to attend an investigatory interview that may result in discipline.

This is known as the Weingarten right, named after the 1975 U.S. Supreme Court decision, in National Labor Relations Board v. Weingarten, Inc. The meetings are commonly referred to as investigatory meetings or Weingarten meetings.

All bargaining unit employees have the right to union representation regardless of whether they are union members and even if there is no mention of the right in the union contract.

While employees have this legal right, most of the time, the employee must request it. Many employers don't automatically inform the employee. However, some Local 17 contracts do extend the Weingarten Right even further, making it similar to the Miranda Right. (The right to remain silent during an arrest).

For example, the City of Seattle contract has more specific language regarding the Weingarten Right. Check your contract.

If the supervisor or manager denies the Weingarten Right and continues with the interview, it is considered an Unfair Labor Practice and the union can follow up by bringing charges before the appropriate boards. However, most managers will choose to reschedule for a time when the employee's Steward is able to join the meeting.

It's also important to note that the employee may still invoke Weingarten Rights during the actual meeting, if he or she believes that a disciplinary action may result.

When does the Weingarten Right Apply?

- when the employer orders an employee to attend an investigatory meeting
- when the purpose of the meeting is to obtain facts that might support disciplinary action

All bargaining unit employees have the right to union representation regardless of whether they are union members and even if there is no mention of the right in the union contract.

The key word is "may." Employees can request representation at any time in the meeting. Members should use language similar to below to request representation.

"If this discussion could in any way lead to my being disciplined or terminated, I respectfully request that my Steward or Union Representative be present at the meeting. Without representation present, I choose not to respond to any questions or statements."

Once representation is requested, the meeting will be delayed until:

- the Union Representative or Steward arrive;
- the manager denies the request, but ends the meeting at once, or;
- the manager or supervisor gives the employee the chance to go ahead without representation. (This is considered an Unfair Labor Practice and the union can follow up with charges.)

Urge all employees called to investigatory meetings to have a Union Representative present to assist them. Having an advocate and observer puts the employee in a stronger position.

Non-disciplinary Meetings

Employees, however, do not have a right to union representation at meetings to discuss performance evaluations, work schedule changes, safety issues, and the like unless the employee reasonably believes such a meeting may result in discipline. If the supervisor or manager assures the employee that the meeting is not investigatory, the employee must rely on that assurance and attend, otherwise the employee may be charged with insubordination.

However, know your contract language. Some bargaining agreements expressly provide a right for representation in circumstances other than an investigatory meeting.

If Discipline Becomes an Issue

There are times when a meeting called to discuss an evaluation or other non-disciplinary matter may change into an investigatory meeting. If that occurs, an employee should ask that the meeting be interrupted so that a Steward or Union Representative can attend to assist the employee.

The Steward's Rights

Rights Prior to the Weingarten Meeting

Once the Steward has been asked to represent an employee, the Steward has two rights:

1. To know the subject matter of the meeting. The Steward cannot adequately represent an employee without knowing what the meeting is about. Management is not required to give a complete explanation, but must explain the major subjects or concerns.

2. To confer with the employee before the meeting begins. Talk privately with the employee about the issues. Ask the employee to explain what he or she knows about them and probe for mitigating factors or additional information you might want to raise.

When the Steward Arrives . . .

- The supervisor must inform the Steward of the subject matter of the interview, i.e. theft, lateness, drugs, etc..

- The Steward must be allowed to take the worker aside for a private pre-interview conference before questioning begins.

During the Interview . . .

The U.S. Supreme Court's 1975 decision and subsequent federal and state decisions have all emphasized that the Steward's role is "more than a passive observer," note-taker or witness.

The Steward is present to assist and counsel the employee being interrogated. When assisting an employee in a Weingarten

The Steward's Rights

During the Weingarten Interview

interview, the Steward can request that the supervisor clarify a question so that the worker can understand what is being asked.

• After a question is asked, the Steward may give advice on how to answer.

• If the Weingarten rules are complied with, Stewards do not have the right to tell workers not to answer questions, or to give false answers. Workers can be disciplined if they refuse to answer questions.

• May not interrupt if the employee is asked to give an initial version of events.

• May not be required to hold all comments until the end of the interview. Should not transform the interview into an adversarial contest or a collective bargaining confrontation.

• Once questioning starts, may raise valid objections or advise an employee about a privilege* she or he has a right to assert. Otherwise, the Steward may not instruct an employee to refuse to answer.

• May assist the employee by asking the interviewer to clarify ambiguous or misleading questions.

• May object when questions could reasonably be viewed as harassing or intimidating. (However, repeating or rephrasing a question is a common investigatory technique that cannot reasonably be described as harassment.)

• May offer additional information or mitigating circumstances to be taken into consideration by management.

*Employee "privileges" may include the right against self-incrimination (See "Garrity rights"), or the right of certain employees (social workers and nurses) to withhold confidential client information.

Loudermill Right: Public employees who are faced with termination are entitled to oral or written notice of charges against them, an explanation of the employer's evidence and an opportunity to present their version of what happened before disciplinary action is taken.

If Discipline Has Already Been Decided

If discipline has already been investigated and the meeting is called solely to inform the employee of what action is being taken (for example, giving a letter of reprimand), then there is no right to representation. (However, certain jobs in law enforcement may have different rights, consult your Union Representative if you have questions).

Pre-Determination Hearing - Loudermill Rights

In 1985, the U.S. Supreme Court ruled in a case involving a public school security guard that non-probationary public employees faced with termination are entitled to oral or written notice of charges against them, an explanation of the employer's evidence and an opportunity to present their version of what happened before disciplinary action is taken.

The case was Cleveland Board of Education v. Loudermill, and this is now known as a public employee's Loudermill right, a constitutional right guaranteed under the due process clauses of the Fifth and Fourteenth Amendments. Public employees are protected even if there is no mention of this right in union contracts.

There are five major elements of the Loudermill right:

1. *Property Right*

   An employee who has a property right to his or her job (a non-probationary employee) can be terminated by law or contract only for cause. This right has been applied by the courts since the 1985 decision to suspensions and demotions, but not to reprimands.

Loudermill Elements

1 Property Right

2 Due Process

3 Employee's Case

4 Before Final Decision

5 Hearing Check Against Mistakes

2. *Due Process*

The property right can be taken away only with procedural due process: "notice and an opportunity for hearing ... before he is deprived of any significant property interest."

3. *Employee's Case*

The hearing is an opportunity for an employee to present his or her version, not to cross-examine witnesses. In cases of suspension or demotion, courts have generally allowed written explanations by employees in lieu of a hearing.

4. *Before Final Decision*

The hearing or written explanation is the employee's opportunity "to invoke the discretion of the decision maker ... before the termination (or suspension or demotion) takes effect."

5. *Hearing Check Against Mistakes*

The courts have made it clear that the hearing need not be elaborate. It is an initial check to see if "there are reasonable grounds to believe that the charges against the employee are true and support the proposed action." Suspensions, demotions and terminations involve complex legal issues; contact your Union Staff Representative if a Loudermill hearing has been scheduled.

Garrity Rights Against Self-Incrimination

In 1967, New Jersey police officers were questioned about alleged ticket fixing and ordered to answer investigators' questions. They were told that a refusal to respond would result in their discharge. The officers answered the questions, and later their answers were used to convict them in criminal prosecutions.

The U.S. Supreme Court ruled in Garrity v. New Jersey that the use of the officers' statements in criminal proceedings violated the Fifth Amendment's guarantee that citizens cannot be compelled to be witnesses against themselves. The choice imposed on the officers was between self-incrimination and job forfeiture, a choice the court termed coercion. Statements a public employee is compelled to make under threat of job loss cannot subsequently be used against the employee in a criminal prosecution.

Requirements Under Garrity

The Garrity rule requires that before a public employer questions an employee, the employer must:

- Order the employee to answer the questions.
- Ask questions that are specifically, directly, and narrowly related to the employee's duties or fitness for duty.
- Advise the employee that answers to the questions will not be used against the employee in criminal proceedings.

Employees asserting their Fifth Amendment right against self-incrimination may not be disciplined for refusing to answer questions without first being ordered to answer. Washington law is unclear whether an employer must assure immunity before the employer can demand answers. However, a majority of courts have held that an employer must give an affirmative guarantee of immunity and warn the employee that failure to respond could lead to discipline for insubordination.

If the employee is given immunity from prosecution

- Refusal to answer job-related questions when ordered can result in discipline for insubordination.
- Public employees may be dismissed if they refuse to account for their performance in a situation that does not involve an attempt to coerce them to give up constitutional rights.
- Statements made after Garrity rights are complied with can be used in disciplinary actions, but not criminal proceedings.

Personnel Files

Personnel files are important documents affecting employees' career development, performance, and work history. By contract and state law, employees have the right of access to their files. This generally includes the right:

- To be told when materials are added to the file.
- To submit positive commendations.
- To challenge materials inserted in the file.

If there is no provision covering personnel files in the contract, then an employee's right of access to her or his file is covered by state law (RCW 49.12.240). This law grants employees the right to inspect their personnel file at least annually. If an employee believes that material in the file is irrelevant or erroneous and the employer refuses to remove such information, the employee may place a rebuttal or correction in the file.

Off-Duty Activities

Most Local 17 contracts state that what an employee does on non-work time shall not be the basis for discipline if the activity is not related to the employee's work. One Local 17 contract provides:

"The off-duty activities of employees shall not be cause for disciplinary action unless said activities are a conflict of interest or are detrimental to the employee's work performance or the program or image of the agency."

Arbitrators generally have taken this view, ruling that to regulate off-duty conduct:

"would constitute an invasion of the employee's personal life by the employer and would place the employer in the position of sitting in judgment on neighborhood morals." Menzie Dairy Co., 45 LA 283

However, arbitrators have upheld management's right to discipline employees for off-duty conduct if the conduct has a direct and harmful effect on the job or on the employer's business.

Discrimination-Free Workplace

By contract and federal, state and local law, bargaining unit members are entitled to a workplace free of discrimination. Local 17 contracts have non-discrimination clauses by which the union and the employer agree they will not discriminate against any employee on the basis of protected statuses such as race, color, age, sex, marital status, religion, national origin, disability, etc., and may also include sexual orientation as a protected status.

The union and its Stewards must play an active role in eliminating discrimination from the workplace. The union has a further responsibility because it has a duty to represent all bargaining unit members in a non-discriminatory manner.

CHAPTER 5

LABOR RELATIONS CONCEPTS

Chris Zilar, Steward at Spokane Regional Health District

This chapter of the Steward Resource Guide outlines some key labor relations concepts that are important for Stewards to know. These include:

- Duty of Fair Representation
- Unfair Labor Practices
- Strikes and Slowdowns
- The Right to Information
- Just Cause and Discipline
- "Comply Now, Grieve Later"

Unfair Labor Practices (ULPs)

An unfair labor practice (ULP) is an activity on the part of employers to discourage legal labor union actions. ULPs can also be committed on the part of labor unions to discourage legal nonunion employee actions.

According to the Public Employment Relation's Board (PERC) an allegation of an unfair labor practice (ULP) must be filed and served within six months of the occurrence. Your Union Representative can file the charge. A copy of the charge will be served to the employer.

After the charge is filed, the PERC director will review the case and issue a preliminary ruling. If the case is ruled to have merit, it will be assigned a hearing.

Right to Information

Once a union such as Local 17 is certified by a state or federal agency as the "exclusive bargaining agent" of a group of employees, the U.S. Supreme Court has ruled that:

"an employer has a statutory duty to turn over to the union information that is needed for the proper performance of its duties." NLRB v. Truitt Mfg. Co. (1956)

This has become known as the right to information, and it covers:

- Investigating possible 2
- Decision-making about whether to drop or move a grievance
- Preparing for grievance meetings or arbitration
- Contract administration
- Preparing for contract negotiations

If an employer refuses to supply relevant information, it may be an unfair labor practice (ULP).

The types of information that the employer would be obligated to provide include but are not limited to: personnel files, attendance records, disciplinary records, evaluations, employer memos, inspection reports, job assignment records, payroll records, and seniority lists.

Good Faith Requests – Not Fishing Expeditions

Once a good faith demand is made for specific, relevant, and necessary data, the information must be made available promptly and in a useful form. Coordinate with your Union Representative to find out what the best procedure would be in your unit.

The types of information that the employer would be obligated to provide include but are not limited to: personnel files, attendance records, disciplinary records, evaluations, employer memos, inspection reports, job assignment records, payroll records, and seniority lists.

No limits are set on the obligation to provide relevant information, but the Union may have to pay reasonable costs of reproducing it.

Determine what relevant information is necessary for investigating or processing a grievance. If the information is not available to the union, make a written request of management, and send a copy to your Union Representative. (See sample letter on the next page. Make sure to "cc" your Union Representative on your letter). Contact your Union Representative with any questions or difficulty getting the information.

Sample Information Request

Date: August 1

To: Jane Smith, Human Resources Manager

From: John Jones, Local 17 Steward

Re: Reprimand of Nancy Member for Abuse of Sick Leave

Dear Ms. Smith:

In order to prepare for next week's grievance meeting concerning the reprimand of Nancy Member, as the Steward of the engineering section, I am requesting the following information:

1. A copy of Nancy's personnel file, including her sick leave records for the past three years.

2. The sick leave records of all bargaining unit employees in the engineering section for the past three years.

3. The names of any department employee disciplined for sick leave abuse within the past three years, with dates and descriptions of each discipline, and the amount of sick leave use that led to each discipline.

Please supply the information to me within one week from today so that the Union has plenty of time to prepare for the upcoming grievance meeting.

Sincerely,

John Jones

Steward

cc: Nancy Member,

Local 17 Union Representative

Right to Information

- Investigating possible grievances
- Decision-making about whether to drop or move a grievance
- Preparing for grievance meetings or arbitration
- Contract administration
- Preparing for contract negotiations

Just Cause and Discipline

Just Cause and Progressive Discipline

Local 17 contracts include provisions that require employers to use progressive discipline and have just cause before they administer discipline. The emphasis in disciplinary action should be to correct employee behavior or to help a person rehabilitate and improve, not to punish or penalize.

In most disciplinary actions the level of discipline should be progressive, starting with a verbal or written warning and progressing through suspension or demotion before termination is considered.

There are exceptions to these progressive steps; each case has to be examined on its own merits. There are circumstances, such as theft, fighting or serious cases of harassment, when an employee may be terminated without progressive discipline or suspended pending an investigation.

Most Local 17 contracts require that an employer have just cause before administering discipline. However, none of the contracts define the term just cause. It has been called "what a reasonable person would consider a fair and equitable basis for discipline."

But Stewards who are trying to determine whether an employer has just cause for disciplining a co-worker need a more precise set of standards. The traditional tests were developed 30 years ago by labor arbitrator Carroll Daugherty. Since then, they have been used by countless unions, employers, and labor arbitrators. His seven tests of just cause are applicable to any discipline case.

Seven Tests of Just Cause

1. Prior Notice

Did the employer give the employee forewarning of the possible or probable consequences of the employee's conduct? (Some offenses such as fighting and theft may not require notice).

2. Reasonable Rule or Order

Was the employer's rule or order reasonably related to (a) the orderly, efficient, and safe operation of its business, and (b) the performance that the employer might properly expect of the employee?

3. Investigation

Before administering discipline to the employee, did the employer make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?

4. Fair Investigation

Was the employer's investigation conducted fairly and objectively?

5. Proof

At the investigation, did the "judge"—a disinterested third party—obtain substantial evidence or proof that the employee was guilty as charged?

6. Equal Treatment

Has the employer applied its rules, orders, and penalties even-handedly and without discrimination to all employees?

7. Appropriate Penalty

Was the degree of discipline administered reasonably related to (a) the seriousness of the employee's proven offense, and (b) to the record of the employee's service with the employer?

"Comply Now, Grieve Later"

"I won't do it. It's not in our contract."

As a Steward, you may occasionally hear the above words as members express their concerns about a supervisor who is directing an employee to do something that the person may feel he or she is not obligated to do under the contract.

It is common for the employee to be inclined to refuse to follow the supervisor's direction. However, you can help ward off insubordination trouble and help get the situation resolved more quickly if you follow the rule of thumb: "comply now, grieve later."

As plausible as the member's concerns about the specific directive may be, a Steward and other union advocates should advise to first comply with the directive and worry about the grievance later.

According to the of the "Grievance Guide" (Bureau of National Affairs © 2003), "Violations of clearly expressed orders typically constitute insubordination and provide grounds for discipline."

It is always better to follow up on an issue with management regarding a "grievable" directive as a contract violation, rather than turn the issue into a disciplinary matter. This rule of "comply now, grieve later" is long established in the arbitrator community. (Continued right >)

Exception: There is one exception. The exception occurs when an employee has reasonable cause to believe that management's directive is unusually dangerous or may result in a safety hazard. In this case, an employee's refusal to follow the directive is generally found to be protected if the employee expresses a reasonable concern for safety.

Although it is not acceptable to fail to follow a directive, it is acceptable for a member to "get on the record" with management by writing a letter, memo or email explaining that the member feels the directive is not in compliance with the union contract.

The correspondence should be copied to the Local 17 Union Representative and Steward. Union leadership can then work with the member in directly addressing the issue rather than spending time developing a discipline defense for insubordination.

Questions and Answers

Can a Steward be penalized for refusing a management order or telling a co-worker not to obey a supervisor?

Follow the universal rule of "comply now, grieve later" or the Steward may be subject to discipline. Some Local 17 contracts address this issue. The City of Seattle contract states that "under no circumstances shall Stewards countermand orders of or directions from the city officials or change working conditions."

How about an order to do something unsafe?

Answer these questions before you refuse an order you believe is unsafe:

1. Do you have a reasonable belief that there is a real danger of death or serious injury?

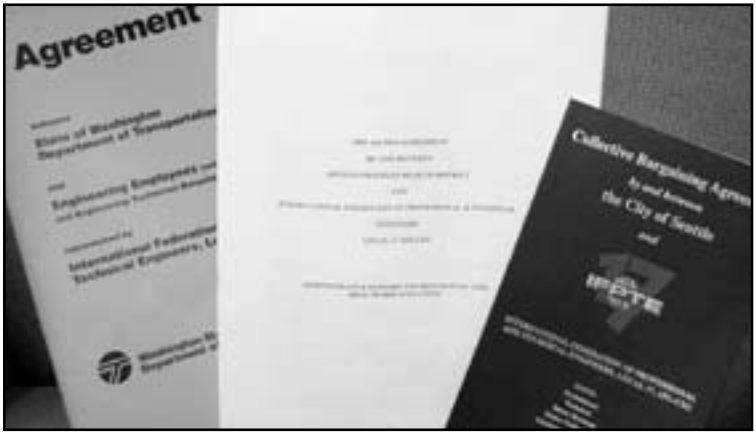
2. Did you ask management to eliminate the danger and they refused to do so?

Is the danger so urgent you cannot wait for a WISHA inspection?

Is there no reasonable alternative?

CHAPTER SIX

COLLECTIVE BARGAINING AND THE LABOR AGREEMENT



This chapter of the Steward Resource Guide details information about the contract or collective bargaining agreement including:

- An introduction to bargaining
- Subjects of bargaining
- Past practice
- Union recognition and unit description

Introduction to Bargaining

Q: What are negotiations?

A: Contract negotiations, or "bargaining," is a process in which representatives of the union sit down with employer representatives at the "bargaining table" to discuss and try to agree on changes to the contract or the wages, hours, and working conditions to which the contract applies. Each side tries, by using discussion, persuasion, and documentation, to make changes most favorable to its interests.

Q: How long do negotiations take?

A: This is difficult to predict and can be influenced by many factors such as the number of issues each side wants to discuss, the willingness of the parties to actively seek compromise, the frequency and length of bargaining meetings, etc.

Q: How long is a contract good for and why can't we just have one that lasts for, say, 10 years?

A: Under current public employment labor laws, contract cannot exceed three years in duration. There are advantages to "locking in" your deal for a reasonable period of time. It's nice to have the certainty and peace of mind that important benefits and working conditions are secure, but it's also good to have the opportunity to periodically revisit the conditions the contract protects to try to improve them. Generally, Local 17 favors a three-year contract term verses a shorter term.

Q: Who speaks for members at negotiations?

A: Union members serve on the union's bargaining committee with members of Local 17's staff who have specialized training in labor relations, the negotiating process, and labor law coordinate with the bargaining committee.

Bargaining (continued)

Q: How does the union bargaining committee know what members want?

A: The union members who will serve on the committee will be employees. They will review input in the chapter or from member meetings or may conduct a survey.

Q: Once the union committee identifies the key issues, how does it convey these to the employer?

A: The union's demands are put into writing and given to the employer as a proposal. Most employers will, in turn, have a proposal for Local 17.

Proposals and counter-proposals are exchanged, explained, defined, refined, discussed, dismissed, rejected and revisited over and over until, ideally, some consensus is reached and the parties reach "tentative agreement" on an issue. Sometimes one side or the other will simply withdraw certain issues.

Q: Why do the union and the employer reach "tentative agreement"? When is the agreement firm and final?

A: The parties agree tentatively because both the employer and the union have to seek approval for what they have accomplished at the bargaining table. For instance, as a union member, you get to vote on the tentative agreement. This vote is usually referred to as a "ratification vote."

Near the end of the bargaining process other members can expect to be notified that a tentative agreement has been negotiated and will be presented to them for consideration. After the details of the tentative agreement or offer have been reviewed by members, they vote to accept (ratify) or reject it. Members' votes are the final authority on whether to ratify or reject the contract.

Subjects of Bargaining

Mandatory Subjects of Bargaining

Mandatory bargaining subjects are those subjects over which both union and management are obligated to bargain in good faith. These subjects are generally described as "wages, hours, and working conditions." They vitally affect employees and bear a "direct, significant (rather than a 'remote or incidental') relationship" to job terms and conditions. Mandatory subjects include but are not limited to:

- Hours of work
- Seniority
- Grievance and arbitration procedures
- Health, welfare and insurance plans
- Union-security provisions
- Hiring halls
- Drug and alcohol testing
- Safety and health
- Conditions for negotiations
- Partial closure, sale or merger of a business.

Permissive or Voluntary Subjects of Bargaining

Permissive subjects are non-mandatory subjects that may lawfully be proposed by either union or management for inclusion in the contract. Insistence on bargaining to impasse over permissive contract provisions may violate the duty to bargain in good faith. Permissive subjects include but are not limited to:

- Internal union affairs
- Management rights

Illegal Subjects of Bargaining

Illegal subjects are those which neither a union nor an employer may require the other to bargain over because they are unlawful under state or federal laws. Illegal subjects include but are not limited to:

- Closed-shop clauses
- Any rules or regulations that are unlawful
- Proposals in conflict with the union's duty of fair representation, e.g., requiring the separation of employees on the basis of race or gender.

Negotiations: The Steward's Role

Stewards can play a critical role in the union's preparation for negotiations because of their role as grievance handlers and negotiators during the term of the contract. They can help:

- Build strong communication among bargaining unit members about the Local 17's needs and goals;
- Educate the bargaining unit about key issues;
- Gather information and data to support the union's position;
- Collect financial and operating data about the employer; and
- Maintain good communication during the entire bargaining process.

Guidelines for Contract Interpretation

Certain common guidelines have evolved that are followed by most labor arbitrators when they are interpreting the provisions of a contract.

- Clear and unambiguous language will be given its expressed meaning unless there was a mutual mistake or error.
- Specific language will usually supersede more general clauses.
- Mention of certain items and not others usually means that the excluded were not meant to be covered.
- Context of words and phrases may determine their meaning.
- Contract as a whole will be examined, assuming that all parts have some meaning and effect.
- Ordinary meaning will be given to words unless they are clearly used otherwise. That meaning will be used throughout unless agreed to the contrary.
- If the contract is silent or unclear the arbitrator will try to determine what the parties meant when the contract was written.
- History of negotiations may be studied as an aid, including meeting minutes and oral testimony.
- Ambiguous language will be applied so that it is reasonable and equitable to both parties.
- Reasonable results are sought, not ones that lead to harsh or nonsensical results.

Labor agreements can also be amended by an arbitration decision. For example, the union may take a grievance over an ambiguous contract provision to arbitration.

Arbitration Decisions - Unwritten Contract Provision

Labor agreements can also be amended by an arbitration decision. For example, the union may take a grievance over an ambiguous contract provision to arbitration. The arbitrator's decision is final and binding on the union and the employer.

Mid-contract and Modifications

Local 17 contracts are re-negotiated every one, two or three years. (Most are three years).

Between contract talks, events sometimes intervene that result in agreements to change the terms of the contract. These are referred to as Memoranda of Understanding (MOU), Contract Addenda, or Letters of Agreements. These agreements or modifications are as binding as any other section of the contract.

These modifications may be agreed for the following reasons:

- New Contract Language

Union and management agree that a section of contract language is ambiguous and agree to rewrite the language to make it clearer.

- External Law Changes

A law changes that requires the union and the employer to renegotiate a contract provision if it is in conflict with a local, state or federal law.

- New Classifications Added to Unit

A new job classification is added to the bargaining unit and the parties agreed to add an addendum to the contract after they have negotiated its wages and conditions.

- Issues Not Finalized in Negotiations

Sometimes there is not sufficient time in negotiations to investigate new issues or gather information to reach an informed decision. Such issues are set aside to be completed subsequently. If resolved during the term of the contract, it could be a memorandum of understanding (MOU) incorporated into the contract.

Past Practice

Co-workers often approach Stewards to complain that the employer has unilaterally changed a past practice. A unilateral change in past practice without bargaining may constitute an unfair labor practice.

A past practice has been called "a well-known, long-continued, mutually-accepted course of conduct."

If it's been done that way for years, a change or "crackdown" may violate past practice. Such a practice does not have to be written down in a contract. It can arise on the basis of regular, repeated action, or inaction, on the part of the employer.

Generally, the practice has been clear and applied consistently, is not a one-time exception, and the practice has existed for a substantial period of time. A unilateral change in past practice could result in an unfair labor practice (ULP).

Every bargaining unit has past practices; some have been in effect for years. Past practices can include wash-up time at the end of a shift or extra time to return from breaks off-site.

When is a past practice binding?

For a past practice to be binding on the union and management it must be:

(1) unequivocal;

(2) clearly enunciated and acted upon; and

(3) readily ascertainable over a reasonable period of time as a fixed and established practice accepted by both parties.

It is important to be able to identify true past practices because the elimination of a legitimate past practice might have a negative impact on an entire bargaining unit, and past practices are as binding as the provisions of the contract. Therefore, there must be:

- A meeting of minds on their essential terms.

Both sides must believe that what has been done in the past will be continued in the future in the same situation.

- Consistency and repetitiveness

For conduct to ripen into an established past practice, it must be followed with such consistency and over such a period of time that employees reasonably expect the practice to continue.

When Problems Arise

Past practices generally become an issue in three situations:

• Contract language is unclear or ambiguous.

Disputes arise over the interpretation of a contract provision and the parties look to past practices for guidance. (Clear and unambiguous language is considered an undisputed fact and takes precedence over past practice).

• Contract or other written policies are silent on the issue.

Because it is nearly impossible to address every eventuality, it is often necessary to fill in the gaps by looking at day-to-day conduct in similar circumstances.

• Circumstances change or emergencies arise.

Management may unilaterally change or eliminate a past practice because technology has made the practice unnecessary, or when there is a legitimate emergency.

As you are attempting to establish whether a past practice has been violated, review the following elements to evaluate the situation:

• Longevity: the pattern of conduct must have a history and have been well-established when the current agreement was signed.

• Repetition: a past practice must occur on a number of occasions for a number of employees. Conduct that occurs only a few times or is restricted to a single employee is rarely sufficient.

• Consistency: The alleged past practice must be a clear and consistent response to the same underlying facts or conditions.

• Knowledge: officials of both the union and management must understand it. If either side lacks knowledge, the conduct is not a past practice.

Union Recognition & Unit Description

The union recognition and unit description provision of contracts defines the employees for whom the union is the exclusive bargaining representative. With most Local 17 bargaining units, the state labor relations agency that certified the union confirmed the definition of the unit. This usually happens in one of two ways:

1) An election in which the majority of unit employees vote for union representation; or
2) A voluntary agreement with an employer to recognize the union.

Most Local 17 contracts list the recognized job titles in a contract addendum. For example, an addendum to the King County contract covering the Department of Natural Resources and Parks, Department of Transportation, and the Department of Development & Environmental Services lists more than two dozen classifications in the three departments for which Local 17 is the exclusive bargaining representative.

Union Membership and Dues

Most Local 17 contracts have union security clauses. These require that all employees either become union members and maintain their membership as a condition of continued employment or pay an agency fee— the equivalent of dues and fees.

Union security clauses are designed to keep the union viable as an organization by providing a reliable flow of funds. These provisions also prevent abuse by employees who might take advantage of benefits of union representation without paying for the privilege since the union is required to represent all employees.

If the contract has a union security clause and an employee refuses to pay dues or an agency fee, the union will contact the employer who must terminate the employee.

Hudson Procedure

Every union must have a procedure that shows the calculations of the representation fee. This is referred to as a "Hudson Procedure" and is named after a U.S. Supreme Court decision. A procedure has been adopted by the IFPTE Local 17, regarding the protection of rights of persons employed in agency shop bargaining units who object to expenditure of any portion of their dues for the purposes not related to collective bargaining, grievance adjustment

and contract administration, or to the collective bargaining responsibilities of Local 17.

If you receive an inquiry from a co-worker, contact the Local 17 office to have a copy of the procedure sent to him or her.

Union Shop

Most Local 17 union security clauses state that new employees must join the union as a condition of employment within a specific period of time by law, not less than 30 days. For example, the Snohomish Health District agreement's clause is a typical union shop provision:

"All members of the employee unit shall become members of the union on the first day of the month following completion of a full month's service with the district, and shall maintain membership as a condition of employment. The district will inform all prospective employees of the unit of this requirement. Employees who fail to comply with this requirement will be discharged by the district within 30 days after receipt of written notice to the district from the union."

Agency Shop

Under union security provisions, employees not wishing bona-fide union membership may be classified as "agency fee payers," who are not required to join the union. However, they must pay an agency fee as a condition of employment. For example, the City of Tacoma agreement provides for the payment of an agency fee:

"a service charge equivalent to regular union dues and initiation fees to the union as a contribution towards the administration of this agreement."

Religious Exemption from Union Security

Federal and state law allow employees who have bona fide religious beliefs in opposition to unions to be exempt from the requirement to join the union or pay union dues.

This is termed the "right of non-association." If the contract has a union security provision, these employees must pay a fee similar to an agency fee, except that it is directed to a charitable organization agreeable to the union.

An employee seeking an exemption must write to the union office stating his or her reasons for claiming exemption. If the union agrees, with the employee and the union can mutually decide on a charity.

If the union does not believe the employee has bona fide religious beliefs prohibiting union membership, the union informs the employee and the employee may file a petition with the appropriate governmental labor relations agency (Usually, it is the Public Employment Relations Commission, PERC or the National Labor Relations Board, NLRB.). The agency has authority to conduct a hearing and make a final and binding decision.

Management Rights

In addition to the union's rights and employees' rights, bargaining agreements spell out the exclusive rights of management. Included are areas such as hiring and disciplining of employees, purchasing new equipment and scheduling work. Most labor arbitrators agree that management retains all its rights that are not expressly bargained with the union or forbidden by law.

A typical management rights clause might state:

"The right to hire, appoint, promote, discharge for just cause, improve efficiency, and determine work schedules and the location of employer facilities are examples of management prerogatives. It is understood that the employer retains its right to manage and operate its divisions except as may be limited by an express provision of this Agreement."

With a union contract, important limitations and parameters are placed on management's unlimited rights to control your workplace.

CHAPTER 7
DISPUTE RESOLUTION

Fred White, Steward at King County

Collaborative problem solving in simple, informal discussions will often resolve workplace problems. This can be done by the Steward on behalf of workers, or depending on the circumstances, a better strategy might involve a group of workers and their Steward meeting with a manager.

If Stewards are unable to resolve disputes directly with members, co-workers and management through informal discussions, they can evaluate the usefulness of additional dispute resolution processes. This chapter explains the dispute resolution processes and techniques available to the Steward and Local 17.

Negotiations

Because negotiation is the process most frequently used in labor-management relations, union Stewards often must engage in negotiations. Stewards may negotiate:

- in meetings with supervisors or managers, to resolve problems informally before they become grievances.
- in formal grievances.
- in contract negotiations, as members of a bargaining team.
- in labor-management committee meetings, as members of the union's committee.

Mutual Gain Negotiations

Negotiations rarely lead to an absolute victory for either side because each side has different interests or concerns. Participants should actively seek to negotiate an outcome that addresses both parties' needs. The Harvard Negotiating Project offers tips on mutual gain negotiations:

- Communicate. Otherwise, there is no negotiation. Seek to understand even if you disagree. Pay close attention and clear up ambiguity.
- Focus on interests (i.e., real concerns) and not on positions.
- Use a legitimate standard of fairness to justify a decision (e.g., an expert opinion, precedent, or the Consumer Price Index(CPI).
- Generate a range of alternatives rather than one single, correct solution.
- Separate people from the problem, and try to preserve the relationship.
- Develop workable options, in case agreement cannot be reached.

Grievances

The grievance procedure is the formal problem-solving process found in the contract, and it is one method of resolving disputes. Grievances can be useful, and they are often necessary to timely challenge violations of the bargaining agreement. (Chapter 8 discusses grievances in more detail).

A grievance often involves only one Steward and one worker confronting management. Since unions find their strength in numbers, the grievance process does not necessarily utilize the union's power to the fullest.

Limitations

On the other hand, grievances do have some limitations:

- The relatively adversarial nature of the grievance process is not always the most constructive way to address problems.

- Many problems are not covered by the contract, and they therefore do not fall within the jurisdiction of the grievance procedure.

- It takes time to process a grievance through the steps of the procedure. The length of time varies depending on many factors, but in some cases, it may take as long as a year for a grievance to move through all of the steps.

- A grievance often involves only one Steward and one worker confronting management. Since unions find their strength in numbers, the grievance process does not necessarily utilize the union's power to the fullest.

Because of these limitations, it makes sense to consider whether another problem-solving method will better suit your needs in a particular situation.

Mediation

Mediation is an Alternative Dispute Resolution (ADR) process. A mediator may be called in when parties are not able to resolve their differences. Mediation is recommended when emotions or positions have restricted the ability of two or more individuals to negotiate or communicate with each other.

The mediator functions as a neutral third party who has no stake in the outcome. He or she has no decision-making authority but helps to generate solutions by:

- Facilitating communication between parties,
- Providing a safe setting to discuss disputed issues
- Helping the flow of information between the parties
- Enabling them to reach settlement

Frequently, mediators are used to facilitate collective bargaining. If union and management reach an impasse in negotiations, they may call in a labor mediator to assist them in reaching a final agreement. These are individuals who are knowledgeable, skilled, and experienced in the labor relations field.

Mediation is particularly valuable in the workplace when people want to preserve their ongoing relationships. Mediation can be used for grievance resolution or to resolve other workplace problems. The mediation process often uncovers underlying issues and can help reduce the recurrence of disputes.

Choosing to pursue mediation does not require the parties to waive other rights they may have to grieve or litigate a dispute.

Frequently, mediators are used to facilitate collective bargaining. If union and management reach an impasse in negotiations, they may call in a labor mediator to assist them in reaching a final agreement.

Arbitration

When no agreement can be reached by union and management and all other dispute resolution processes (e.g., problem solving, negotiations, grievances, mediation) have failed, the parties may take the dispute to arbitration. It is usually the last step in the grievance procedure.

In arbitration, the dispute is presented to a neutral third party who hears testimony provided by both sides, and issues a final and binding decision. The arbitration hearing is similar to a court hearing, although it is less formal.

Decision to go to Arbitration

Because arbitration hearings are time-consuming, expensive and may result in adverse decisions, Local 17 carefully considers a number of factors before proceeding to arbitration.

Factors to Consider:

- the importance of the issue to the grievant and to Local 17;
- the severity of the case (e.g., a written reprimand versus a termination);
- the costs for the arbitrator, staff, witnesses, etc.;
- the chances of winning; and
- the potential effect of a negative decision.

Based on the considerations listed above, the Union Representative makes a decision on whether or not to pursue an issue through arbitration. Any disagreement with the decision of the Union Representative about pursuing a matter to arbitration may be appealed by the member to Local 17's Executive Director and finally the union's Executive Board.

If a grievance does go to arbitration, a Steward's effective work at the early steps will assist the Local 17 Union Representative when the case comes before the arbitrator. Thorough investigation and good notes are particularly crucial. Also essential are your continued support for the grievant and communication with your co-workers on Local 17's progress.

Used wisely, arbitration may win back a member's job or rights in the workplace, clarify confusing contract issues, or settle bitter disputes. But arbitration is not a cure-all, and not every case can go to arbitration. The goal is to settle at the lowest possible level.

Pointers for Testifying as a Union Witness

- Tell the truth.

- Always remember that as a witness your purpose is to give the facts as you know them. Never try to explain or justify your answer. Attempts to apologize or justify those facts may raise doubts about the accuracy or authenticity of your testimony.

- You are only to give information which you have firmly in mind. Do not guess or estimate your answer. If you do not know certain information, do not give it. If asked, state that you do not know.

- Do not answer a question unless you thoroughly understand it.

- Answer each question completely and to the best of your ability, but do not volunteer more than is asked.

- If the union's representative begins to speak, stop speaking, and allow the representative to make a statement.

- If the union's representative is making an objection to a question you were being asked, do not answer the question until after objection has been made, and the arbitrator or hearing officer advises you to complete your answer.

- Because testifying can be challenging and intense, be careful to avoid getting angry, sarcastic or discourteous.

Contrary to popular belief, few workplace disputes actually have a grounds for a lawsuit.

The Legal System

Contrary to popular belief, few workplace disputes actually have grounds for a lawsuit. Nevertheless, from time to time, unions must utilize litigation to resolve a matter through the court system.

Disputes can be heard by a jury or a judge in the state superior or federal district courts and their decisions are binding, subject to appeal. In the appeals courts and the supreme courts, a panel of judges hears the appeal and issues a ruling.

Court cases are presented in an adversarial manner, and they are extremely costly and time-consuming. Sometimes a decision is made by the union to take or appeal a dispute to court when it desires a final decision on the interpretation or application of the law or when it is important to establish a legal precedent.

Local 17's Litigation Policy

Local 17 has adopted a policy to follow when its Executive Director is making a decision about filing a lawsuit on behalf of Local 17 or one of its members. Prior to employing outside counsel for litigation involving individual members' interests, Local 17 will:

- Examine its obligation to defend and assert its member's rights in an employment context and its obligation to the local as a whole.

- Consider the administrative procedures that are available along with the remedies that those procedures could provide.

- Compare the remedies that are available under legal proceedings to those available under administrative proceedings.

- Identify any benefits that may accrue to the local as a whole under a legal proceeding that are not available under administrative procedures.

- Compare the costs associated with the litigation with those of administrative procedures, while considering the possibility of cost recovery as well.

CHAPTER 8
GRIEVANCES

Siv Balachandran, Steward at WSDOT

Grievances can be overrated and misunderstood. As one experienced labor relations expert said:

"Grievances are like CPR; you should know what to do, but it's not a skill that's needed every day."

What is a Grievance?

This sounds like an easy question, but often there is confusion about what constitutes a grievance. First, look in the contract. Most grievance procedures begin with a definition of what the union and management have agreed is a grievance.

For example, one Local 17 contract provides that any dispute "concerning the interpretation, application, claim of breach, or violation of the express terms of [the] Agreement shall be deemed a grievance."

Categories of Grievances

Although grievances could be filed on hundreds of subjects, they fall into three general categories.

1) Contract Violations or Disputes Over Interpretation

The union alleges that a specific provision of the contract has been violated or misinterpreted. For example:

- The contract calls for overtime after a standard shift, but the employer pays overtime only after 40 hours.
- The grievance procedure provides that the supervisor shall respond to a grievance within five days. The union believes it is five calendar days; management believes it is five working days.
- The contract requires just cause for discipline. An employee is disciplined without just cause.

2) Violations of Past Practice

Even when the contract is silent and there is no written precedent, a grievance can be based on a change in an established "past practice." Examples include:

- Management consistently has paid mileage reimbursement for all work-related use of a personal vehicle. Without negotiating the issue, human resources unilaterally implements a new rule permitting reimbursement only for work-related travel outside the county.
- For years, employees have received an extra five minutes to travel to and from the lunchroom so that they have a full 15-minute break; a new manager ends the practice.

3) Violations of Written Precedent

The union contends that an employer's policy or a settlement from a prior dispute has been violated.

The Grievance Process

Contracts typically contain four grievance steps (Check your contract for more specific steps):

- Step One: The supervisor and the Steward and/or employee meet for informal discussions and consult with the Union Representative.
- Step Two: The Steward presents a written grievance to which the supervisor or manager must reply within a defined period of time.
- Step Three: The Union Representative advances an unresolved grievance in a meeting with higher management and/or a personnel officer.
- Step Four: If there is no resolution, the union will evaluate whether or not to proceed to arbitration. Many contracts also include an option to mediate the dispute prior to pursuing arbitration.

Investigating an Issue

Who-What-When-Where-Why-How: This memory aid will help you focus on the important facts you need to determine whether there is a grievance and what steps you need to take:

1. WHO is involved?

- Name the grievant, department, and job classification.
- Has a similar grievance been filed on this issue?
- Who is the management official?

2. WHAT is the grievant's story?

Collect all the facts. Ask probing questions; small details are often critical.

- What is the employer's position?
- Are there any witnesses?
- Are there records that might support the grievance?

3. WHERE did the grievance take place?

Identify the exact location, department, area, etc.

4. WHEN did the incident occur?

- Gather dates and times as accurately as possible.
- Be mindful of contract time frames for grievance filing.

5. WHY is this a grievance?

- Which contract provision has been violated?
- Which of the three grievance categories does it fall within?
- Is a grievance the best way to address the situation?

6. HOW should the issue be remedied?

- What adjustments will correct the problem?
- What would return the grievant to the same position he or she was in prior to the violation?

Presenting a Verbal Grievance

After determining that the complaint is grievable, the next step typically involves verbally presenting the grievance to the supervisor or management official. (If you are not certain, check your contract to confirm that the first step of the process does not require a written grievance.) Review each of these topics before your presentation to ensure that you are prepared.

Cause of a Grievance

• What really caused the grievance? Employer policy? Mistake? Poor communication? Something else?

Would problem solving help find the cause?

Personality

• What do you know about the people involved in the grievance? Are you being given credible information and/or interpretations of the alleged violation? What do you know about those who are receiving the grievance? Can this knowledge help you settle the grievance?

Unity

• How will this grievance affect the work group or bargaining unit? How can it be handled to increase union support?

Anticipate

• What are the employer's likely responses? What potential settlement would be preferable for all concerned?

Strategy

• Based on your knowledge of all involved and your experience in similar situations, what grievance handling strategy is best?

• Does the case warrant consultation with other Stewards and/or your Staff Representative?

RESULT

• If the grievance is successful, how will you publicize it to bargaining unit members if appropriate?

How to Write a Grievance

If the grievance is not resolved informally with the supervisor or management official, or if it must first be put in writing, follow this step-by-step procedure:

1. CONSULT THE CONTRACT

- What information is required? Section(s) violated? Remedy?
- Is there a grievance form to be used?
- To whom should the grievance be presented or copied?

2. LIMIT THE DETAILS

- Identify the basic problem, the violations that occurred, and the appropriate remedy.

3. DO NOT LIMIT VIOLATIONS OR REMEDIES

- When citing specific sections of the contract, use a phrase such as "including but not limited to ..."
- Allow room to bargain or compromise in resolving the grievance. Use a phrase such as "make whole in every way, including but not limited to . . . ."

4. AVOID PERSONAL OR DISPARAGING REMARKS

- State Local 17's position, not the grievant's or yours.
- Avoid opinions about management officials involved.

5. CONSULT THE GRIEVANT

- Review the written grievance.
- Explain the requested remedy.

Confirm that the grievant understands and agrees.

6. SIGN THE GRIEVANCE

7. KEEP UP TO DATE

Follow up on the grievance. Keep the grievant informed of any progress. You may have to take the grievance to the next step if management does not respond in a timely manner.

8. KEEP YOUR UNION REPRESENTATIVE POSTED

Sample Grievance Letter 1

DATE: September 1

TO: Ann Smith, Accounting Unit Supervisor

FROM: Marge White, Local 17 Steward

RE: Step 2 Grievance

FACTS: On August 25, 2002, Engineering Aide John Doe was told that his scheduled vacation (September 5-23) had been cancelled. Mr.. Doe submitted his request for vacation prior to April 1, as required by the contract. On May 15, he learned that it had been approved.

SECTIONS VIOLATED: Management's action violates the contract, including but not limited to Article 11, Section 11.1.

PROPOSED REMEDY: Local 17 requests that John Doe be allowed to take his scheduled vacation. If it is cancelled, Local 17 requests that John Doe be made whole in every way, including but not limited to reimbursement for any non-refundable vacation deposits or tickets.

cc: Kate Maple,

Local 17 Union Representative

John Doe, Grievant

Sample Grievance Letter 2

DATE: September 20

TO: Sam Jones, Utilities Division Director

FROM: Marge White, Local 17 Steward

RE: Step 3 Grievance

FACTS: On August 25, 2002, engineering aide John Doe was told that his scheduled vacation (September 5-23) had been cancelled. Mr. Doe submitted his request for vacation prior to April 1, as required by the contract. On May 15, he learned that it had been approved.

On September 1, he filed a Step 2 grievance with Ann Smith, Accounting Unit Supervisor. On September 9, Ms. Smith denied the grievance because of "work load requirements."

Mr. Doe missed his long-awaited vacation.

SECTIONS VIOLATED: Management's action violates the contract, including but not limited to Article 11, Section 11.1.

PROPOSED REMEDY: Local 17 requests that John Doe be made whole in every way, including but not limited to reimbursement for any non-refundable vacation deposits or tickets and his choice of vacation periods before the end of the year.

cc: Carmen Diaz, Utilities Personnel Manager

Kate Maple, Local 17 Union Representative

John Doe, Grievant

Sample Request

DATE: September 20

TO: Sam Jones, Utilities Division Director

FROM: Marge White, Local 17 Steward

RE: Information Request

The following is a Public Disclosure Request pursuant to RCW 42.17.010. I am requesting that the following records be made available for inspection:

1) Copies of all email sent by account (manager@employee.gov) since 2-6-02 to date of receipt of this request which mention any of the following words: “union”, “Smith”, “discipline.”

2) Copies of any documents generated by the department since 2-6-02 that mention the words/phrases “privatization”, “contracting out”, or “layoff.”

cc: Carmen Diaz, Utilities Personnel Manager

Kate Maple, Local 17 Union Representative

John Doe, Grievant

Concerns and Problems – but Not Grievances

- A personality conflict between co-workers
- A disagreement or conflict between a worker and a supervisor
- An employee having trouble at home
- A dispute over a union policy that has nothing to do with the employer

These situations may not be grievable, yet if they are not resolved, they could escalate and lead to more serious, time-consuming, and costly problems. Below are some ways that you can help co-workers resolve their complaints without filing a grievance.

Member-to-Member Problem

If you are familiar with mediation, offer to mediate. (Many Stewards have found mediation training invaluable.) If you are not a mediator, contact someone with Local 17, your agency, or an outside mediator who can help.

Employee-to-Supervisor Conflict

Evaluate what informal problem solving techniques might improve the situation. Consider proposing mediation.

Personal Troubles

Review any employee assistance program (EAP) resources. If applicable, contact a local social service agency; pass along information to the employee.

Union Policy

Talk to the Local 17 Union Representative, and, where appropriate, inform the member as to how he or she can appeal to the Local 17 Executive Board.

Helpful Tools: Making a Public Info. Request

Having enough information to make good decisions can make the difference between successful or failed grievances and negotiations.

Consult with your Union Representative before making such a request to determine if this is the appropriate action. Fortunately, Washington state law provides Stewards with two powerful tools for gathering information. While the Public Employees' Collective Bargaining Act is useful for requesting information pertinent to contract negotiations, the state Public Disclosure Act (PDA) can be used to find information that you suspect may be present, but aren't sure specifically what to request. The PDA is often under-used. It's a good idea to consult with your Union Representative before making such a request to determine if this is the appropriate action.

The Washington state Public Disclosure Act (RCW 42.17.010) creates an affirmative assumption that all documents created by the government are available to state residents, i.e. e-mails, unless those documents fall into a limited number of exceptions found under RCW 42.17.310. The agency receiving the request must respond within five business days.

The Washington state Public Disclosure Act (RCW 42.17.010) creates an affirmative assumption that all documents created by the government are available to state residents, i.e. e-mails, unless those documents fall into a limited number of exceptions found under RCW 42.17.310.

There are two notes of caution when making a public disclosure request. Remember to request that the documents be made available for your review instead of requesting copies of the documents.

If you request that the documents be made available for review, the agency must provide you with an opportunity to review the documents yourself and decide which if any you really need copies of.

The second caution goes to the scope use. If you start requesting the email records of management without a purpose, you may find management doing the same thing to you and your fellow workers. Be careful not to open a process which results in members being disciplined for violating agency policies.

CHAPTER 9

EMPLOYMENT LAWS

Stewards should know that unions, management, and employees are subject to the provisions of employment laws regardless of

Pam Davis, Steward at Clark County

whether the laws are specifically mentioned in the bargaining agreement.

Stewards should refer members to their Union Representative for further information and resources. There are federal, state and local laws that cover the following areas:

- Discrimination
- Disability and reasonable accommodation
- Health and safety
- Wage and hour
- Family medical leave laws
- Whistleblower

There are other important laws that can affect union members including unemployment and workers' compensation. However, you can refer to your Union Representative for more information.

Discrimination Laws Against Protected Classes

Unions exist because individual workers discovered they had little power to influence working conditions without joining with other workers.

Unions have a strong role to play in today's civil rights battles whether taking a stand for voting rights, fighting against hate crimes and racial profiling or protecting the rights of immigrant workers. As a Steward, you are on the front lines of the battle against unlawful discrimination and the promotion of equal opportunity.

Unions exist because individual workers discovered they had little power to influence working conditions without joining with other workers.

Why is Protecting Diversity in the Workplace Important to Your Employer?

Creating an inclusive work environment is not about being "politically correct"—it is about good business. The workplace continues to become more diverse as our society's demographics change.

When this manual was published, six of the eight largest metropolitan areas in the U.S. had a population that was less than half Caucasian.

The Law Is On Your Side

Under various state and federal laws including, but not limited to: the Americans with Disabilities Act (ADA), Age Discrimination and Employment Act (ADEA), Title VII and the Washington State Human Rights Act, it is illegal to discriminate in any aspect of employment based on your membership in a protected class. (See protected class list on the next page).

This would include harassment based on your membership in a protected class, retaliation for filing a charge of discrimination or participating in an investigation.

Preventing Discrimination: Your Role as a Shop Steward:

As an agent of the union it is important that co-workers see you as a beacon of safety in the workplace where they can turn for support and protection from unlawful discrimination.

Under these laws, an employer may not base employment decisions on stereotypes or assumptions about the abilities, traits, or performance of the member of a protected class. Employment opportunities cannot be denied to a person because of marriage to or association with a member of a protected class. Title VII prohibits discrimination based on participation in schools or places of worship associated with a protected class.

Examples of Protected Classes

Race, religion, national origin, disability, ethnicity, sex, age and marital status. (Additionally, some jurisdictions include sexual orientation as a protected class.)

What Protections Does an Employee Have Against Unlawful Discrimination?

There are many state, federal, county, city, and civil protections available to employees when their rights are being violated in the workplace.

Your Collective Bargaining Agreement

Most local 17 contracts prohibit the employer from engaging in unlawful discrimination and provide a neutral third party to determine redress if settlement cannot be reached. If an issue of illegal discrimination arises in your workplace, contact your Union Representative to help you work through these important issues.

As a Steward you can work with your Union Representative to investigate the patterns of behavior. Use the union as a resource.

Discriminatory Harassment

Anti-retaliation provisions

It is against the law for an employer to retaliate against a person for challenging illegal discrimination. If you believe your employer has retaliated against you, you may have the basis to file a complaint with the Human Rights Commission.

Sexual harassment

Sexual harassment is a very real problem in the workplace and can come in many forms including sexual comments or jokes, unwelcome invitations to sexual activity, unwelcome touching and pressure to engage in sexual activity as a condition of employment or promotion.

As a Steward you can work with your Union Representative to investigate the patterns of behavior. Use Local 17 as a resource.

What to do

Here are some suggestions on how a Steward can help a member determine if he or she is being sexually harassed.

• Tell the member to say “no” clearly, and to ask harasser to stop.

• Inform your employer of the situation and follow any complaint procedures the employer provides. Once you notify management of the problem, you’re putting them on notice. Don’t be afraid to follow up, and make sure they actually investigated your complaint.

• Write down what happened. Record the date, time and place of the incident. Include what the person said to you and if the person touched you. Write down all of the specifics including who was there. Keep a copy of these notes at home. They can be useful if you decide to file a charge against the employer or the harasser.

• Keep records of your work. Keep copies of your performance evaluations, memos or commendations about your work and even letters from the public. Often harassers may question your job performance as a way to defend their behavior.

• Get support from family, friends and co-workers. Access any employer assistance programs. Find and use your support network.

Under WLAD, a person may be considered disabled if he or she has any sensory, mental, or physical abnormality that is:

(1) medically cognizable or diagnosable;

(2) exists as a record or history; and

(3) is perceived to exist whether or not it exists in fact.

This definition includes temporary disabilities, such as a broken arm.

Disability Law and Reasonable Accommodation

The laws on disability in employment, such as the Americans with Disabilities Act (ADA) and the Washington Law Against Discrimination (WLAD), are among the most important laws that affect Stewards.

These laws prohibit employers from discriminating against disabled employees and applicants. Although the ADA is better known, the WLAD provides broader protections for employees. For example, the WLAD's definition of protected individuals and conditions is far less restrictive. Consequently, it grants rights to employees who would not be covered under the federal law.

If a disability has a substantially limiting effect upon an employee's ability to perform his or her job, the employer may be required to provide a reasonable accommodation. A reasonable accommodation is any modification or adjustment to a job or work environment that will enable an otherwise qualified applicant or employee with a disability to participate in the application process or to properly perform the job duties.

Reasonable accommodations come in many forms. Examples include making schedule adjustments, restructuring work sites, providing adaptive equipment, modifying job duties, and granting a leave of absence. To be eligible for accommodation, the employee must be qualified for the position. Consult with your Union Representative for more information.

What Stewards can do:

1. Advocate for the rights of union members who have disabilities;

2. Provide representation when seeking a reasonable accommodation from management;

3. Educate bargaining unit members and management about the rights of workers with disabilities;

4. Assist members if they wish to file a discrimination complaint with the Washington State Human Rights Commission or similar enforcement agency.

Under WLAD, a person may be considered disabled if he or she has any sensory, mental, or physical abnormality that is:

(1) medically cognizable or diagnosable;

(2) exists as a record or history; and

(3) is perceived to exist whether or not it exists in fact.

This definition includes temporary disabilities, such as a broken arm.

Although the ADA is better known, the Washington law provides broader protections for employees.

Agencies and Offices Which Enforce the Laws

Here are some agencies or offices which help enforce specific laws. Look up your local office for specific contact information.

- U.S. Equal Employment Opportunity Commission
- Washington State Human Rights Commission
- King County Civil Rights & Compliance
- Seattle Office of Civil Rights
- Tacoma Human Rights Department
- Spokane Human Rights Office

Health and Safety

The Occupational Safety and Health Act (OSHA) and Washington's Health and Safety Law (WISHA)are enforced by the Department of Labor and Industries (L&I).

It requires that safe and healthy working conditions prevail in all workplaces in the state. L&I has adopted a wide range of health and safety standards and trains employers and unions in safe workplace practices.

Stewards can help ensure a safe workplace by gathering specific information about hazardous or unsafe conditions and contacting the L&I office for assistance. State inspectors have the right to enter workplaces unannounced to investigate possible hazards and to issue citations and fines for violations.

- Occupational Safety & Health Act, (OSHA, federal law); Enforcement Agency: U.S. Department of Labor
- Washington Industrial Occupational Safety & Health Act, (WISHA, state law); Enforcement Agency: Washington State Department of Labor & Industries

Wage & Hour Laws

The federal Fair Labor Standards Act (FLSA) requires that employees, unless specifically exempted—such as managers, certain sales employees and professionals—must be paid overtime if they work more than 40 hours in a week.

The overtime rate must be one-and-one-half times your normal rate of pay, unless your contract specifies a greater amount.

The overtime rate must be one-and-one-half times your normal rate of pay, unless your contract specifies a greater amount. The FLSA also prohibits the overtime requirement from being waived, even by agreement of the employer and employee.

The overtime law is enforced by the Wage and Hour Division of the U.S. Department of Labor.

For more information on this complex subject, go to the Department of Labor website: www.dol.gov.

Family Medical Leave Act (FMLA)

Covered employers must grant an eligible employee up to a total of 12 work weeks of unpaid leave during any 12-month period for one or more of the following reasons:

- for the birth and care of the newborn child of the employee;
- for placement with the employee of a son or daughter for adoption or foster care;
- to care for an immediate family member (spouse, child, or parent) with a serious health condition; or
- to take medical leave when the employee is unable to work because of a serious health condition.

This law is enforced by the U.S. Dept. of Labor, Wage & Hour Division. Go to the Department of Labor website, www.dol.gov, for the latest information.

Washington Family Leave Act

Washington employers with 100 or more employees must also comply with the Washington Family Leave Act, Chapter 49.78 RCW.

Under that statute, employees are entitled to 12 workweeks of unpaid family leave during any 12-month period to care for:

- a newborn or adopted child under six;

• a terminally ill child under 18 years of age.

Like the FMLA, the statute includes notice, return to work, and anti-discrimination provisions.

Unlike FMLA, the Washington Statute leave is in addition to any leave for sickness or temporary disability because of pregnancy or childbirth.

Also, an employee returning from leave is entitled to a position within 20 miles of the employee's workplace when leave commenced. (The FMLA requires return to "the same or a geographically proximate worksite.")

This Washington statute is administered and enforced exclusively by the Washington Department of Labor and Industries Employment Standards Office.

Unlike FMLA, the Washington Statute leave is in addition to any leave for sickness or temporary disability because of pregnancy or childbirth.

Whistleblower Laws

The Whistleblower Program, enacted by the Washington State Legislature in 1982, provides a means for state employees to report suspected improper governmental actions.

These are any actions by a state employee or officer that violate state laws and rules, are an abuse of authority, are of substantial and specific danger to the public health or safety, or are a gross waste of public funds. Personnel actions and related complaints, including employee grievances, are not considered improper governmental actions under the act and the State Auditor is not authorized to investigate them.

All Washington state employees, in all branches of state government, may report a suspected improper governmental action through the Whistleblower Program. This includes temporary employees, classified and exempt civil service employees, and elected officials.

Every local government agency should have a whistleblower procedure similar to the state auditor's, with a local person to whom employees can report improper governmental actions

Public employees in Washington are encouraged by state and local laws to disclose improper governmental actions in any of these areas:

- violation of federal, state, or local laws or rules
- abuse of authority
- substantial danger to public health
- gross waste of public funds

Whistleblower laws do not cover personnel actions such as grievances, reassignments, performance evaluations, discipline, violations of the civil service laws or labor agreements.

Protection Against Retaliation

One of the most important aspects of the state and local laws is the broad protection it gives employees who submit information. Whistleblowers concerned about possible reprisal should watch out for the following signs:

- Denial of adequate staff to perform duties.
- Frequent staff and undesirable office changes.
- Refusal to assign meaningful work.
- Unwarranted discipline or unsatisfactory performance evaluations.
- Superiors encouraging co-workers to behave in a hostile manner to the whistleblower.

RCW 42.40 - State Whistleblower Law

Under the state whistleblower law, information is filed with the state auditor's office. State employees should send their information in writing.

Whistleblower Laws for Local Governments

When the legislature passed the whistleblower law for state employees, it passed a similar law covering local government employees to encourage them to disclose improper governmental actions and to protect them if they blow the whistle.

Every local government agency should have a whistleblower procedure similar to the state auditor's, with a local person to whom employees can report improper governmental actions.

Local government whistleblower policies should be posted, and employees must be given a copy upon request.

GLOSSARY OF LABOR TERMS

Accretion — The addition or consolidation of new employees to or with an existing bargaining unit.

Across The Board Increases — A raise in wages, in terms of dollars or a percentage, given at one time to all employees, or to a large group of employees. This is distinguished from a raise that gives different rates of increase to different groups of employees.

Administrative Agency — A neutral agency that is charged with administering certain laws. For example, in Washington, the Public Employment Relations Commission (PERC) administers the public sector labor relations laws.

Agency Shop — A union security provision in a collective bargaining agreement that calls for non-union employees in a bargaining unit to pay to the union an "agency fee." (See Union Security Clauses.)

Agent — A person who acts on behalf of either the union or the employer. Any illegal actions the agent commits, such as unfair labor practices or discriminatory conduct subject to court litigation, may implicate the employer or union he or she represents, even if the illegal act was not authorized or approved. Stewards who are officially appointed by the union are the union's agents.

Alternative Dispute Resolution (ADR) — The use of dispute resolution techniques as an alternative to the courts or federal regulatory agencies. Examples of such techniques include mediation, fact-finding, and arbitration.

American Federation of Labor - Congress of Industrial Organizations (AFL-CIO) — A federation of unions created in 1955 by the merger of two more specialized federations - the American Federation of Labor and the Congress of Industrial Organizations. The AFL-CIO is not in itself a bargaining agent. Its primary functions are: education, lobbying, and assisting constituent unions in organizing. The International Federation of Professional and Technical Engineers (IFPTE) is affiliated with the AFL-CIO.

Arbitration — A method of settling a dispute by having an impartial third party hold a hearing, take testimony, and render a decision. The decision is usually binding upon the parties.

Arbitration, Grievance — The arbitration of disputes that arise through a grievance filed under the existing collective bargaining agreement.

Arbitration — Arbitration is used to settle a negotiation impasse. It is usually employed after mediation and/or fact-finding have failed to resolve the conflict.

Arbitrator — An impartial third party to whom disputing parties submit their differences for a decision.

Back Pay — A remedy that compensates an employee for unpaid wages. For instance, an arbitrator may award back pay to an employee whose discharge lacked just cause.

Bargaining Unit — A group of positions determined by job title, classification or duties, with sufficiently common interests to be legally represented by a union.

Bumping — The exercise of seniority rights by longer-service employees to displace junior employees when economic conditions require temporary lay-offs or the discontinuance of departments. Bumping rights also may be granted to obtain preference in choice of shifts, dates of vacation periods, length of vacation, and retirement benefits.

Call-Back Pay — Compensation, typically at higher pay rates, for workers called back on the job after completing their regular shifts. Contracts can call for workers to receive a minimum amount of pay when called back to work, regardless of the number of hours they actually work.

Closed Shop — A union-security arrangement — illegal under federal and state labor laws — where the employer is required to hire only employees who are members of the union.

Coalition Bargaining — The joint or cooperative efforts of a group of unions to negotiate contracts with the employer. The unions and or bargaining units usually sit together at the bargaining table to negotiate one agreement or a set of identical agreements.

Collective Bargaining — A method of determining wages, hours and conditions of the employees. The results of the bargaining are set forth in a collective bargaining agreement. Collective bargaining is to be distinguished from individual bargaining, which applies to negotiations between a single employee and the employer.

Collective Bargaining Agreement (CBA) — A written agreement or contract that results from negotiations between an employer and a union. The CBA sets out the working conditions of employment (wages, hours, and working conditions that are permissible under the law) and ways to settle disputes and grievances. Collective bargaining agreements run for a definite period of three years or less.

Community of Interest — A criterion used to decide whether a group of employees who want to be represented by a union make up an appropriate bargaining unit. A community of interest exists if there is similarity of skills and duties, common supervision, common hours, wages, and working conditions.

Complaint — The document that initiates formal proceedings in an Unfair Labor Practice (ULP) case. The complaint sets forth all allegations

and information necessary to bring the case to hearing.

Confidential Employee — An employee whose unrestricted access to confidential personnel files or to knowledge or information pertinent to the labor relations activity of the employer makes him or her inappropriate for membership in a union.

Consumer Price Index (CPI) — A measure, compiled by the U.S. Department of Labor, of the average change in prices paid by urban consumers for a "market basket" of goods and services, including food, clothing, shelter, transportation and prescription drugs. The items in the index are averages that relate to their importance in overall spending. The increase in the CPI is what most people think of as the "inflation rate." CPI data is widely used in collective bargaining agreements to specify adjustments in wages.

Coordinated Bargaining — Multiple unions negotiate simultaneously at different locations, attempting to refrain from settlement until all are ready to settle on substantially the same terms. (See also Coalition Bargaining).

Cost-of-living Adjustment (COLA) — An annual adjustment in wages to offset a change (usually a loss) in purchasing power, as measured by the Consumer Price Index (CPI).

Demotion — Moving an employee to a position lower in the wage scale or in rank. It may be in the form of a disciplinary penalty, or it may be voluntary to avoid layoff.

Disability — The inability of individuals to perform their ordinary or customary work or routine because of injury. Also, under the Americans With Disabilities Act, a "disabled" person has a physical or mental impairment that substantially limits a major life activity, has a past record of impairment, or is regarded by others as having an impairment.

Discharge — Dismissal of an employee, usually for breaking specific rules or policies, incompetence, or some other justifiable reason. Collective bargaining agreements protect employees from arbitrary or discriminatory discharge.

Discipline — The action taken against an employee for misconduct, rules infraction, or dissatisfactory job performance.

Dues Check-Off — A system by which union dues are deducted from employees' paychecks, either automatically or on specific employee authorization.

Dues, Union — The monthly or yearly sum paid by union members to their local unions. The amount of dues is set by the local constitution. Dues are used to finance the labor relations activities and union administration. A portion of the dues is sent to the international union in the form of a per capita tax.

Duty of Fair Representation — A union's obligation to represent fairly all bargaining

unit members in negotiations and in the administration of the agreement, without discrimination or arbitrary conduct.

EEOC — Equal Employment Opportunity Commission, a federal agency charged with enforcing the federal anti-discrimination laws.

Employee Benefits — Any form of employee compensation other than direct wages, such as a pension plan or a health and welfare plan. Commonly known as "fringe benefits."

Fair Labor Standards Act — A federal statute, the FLSA was enacted in 1938 and sets minimum hourly wages and maximum daily and weekly work hours after which overtime must be paid to nonexempt employees. However, in 2004, some of these laws were changed. Go to the U.S. Department of Labor's website (www.dol.gov) for the latest rules.

Fair Share — A fee paid to the union by members of a bargaining unit who have not joined the union. The fee covers the services of the union in negotiating a contract and grievance arbitration procedures. See Agency Shop, Union Security Clauses.

Federal Mediation & Conciliation Service (FMCS) — The federal agency supplying mediators and arbitrators to union and management to solve negotiating impasses or to settle strikes. The agency staff also provides training on a variety of topics, such as interest-based bargaining.

Good Faith Bargaining — The legal obligation of both union and management to make reasonable efforts to settle grievances and negotiations. Lack of good faith bargaining may be an unfair labor practice.

"Grandfather" Clause — A contract provision stipulating that those employees on the payroll before a specified time will not be subject to certain terms of a new contract.

Grievance — A problem or complaint as defined by the collective bargaining agreement.

Interest Arbitration — Arbitration used to settle a negotiation impasse. The arbitrator makes a decision on what will be contained in the agreement. It is usually employed in limited situations after mediation and/or fact-finding have failed to resolve the conflict.

Illegal Bargaining — Items which by federal or State law may not be bargained. For example, a closed shop and clauses promoting discrimination are barred.

Informational Picketing — Picketing to publicize either the existence of a labor dispute or information concerning the dispute.

Interest-Based Bargaining — A collective bargaining approach in which group problem-solving, open communication, cooperation, and the mutual interests of the union and the employer are emphasized.

International Union — The national or "international" organization of a labor union.

(The term "international" is used because many unions have affiliates in Canada.) It is financially supported by a per capita tax on all its members. Its functions include: chartering local unions and conducting education and research. Local 17's international union is the International Federation of Professional and Technical Engineers (IFPTE).

Investigatory Meeting (Interview) — A meeting in which the employer requests to meet with an employee to examine the employee's conduct on the job. (See Weingarten Rights). An employee may be represented by the union at an investigatory interview with the employer when the employee reasonably believes that the interview may lead to disciplinary action.

Local Union — The basic unit in union organization, a local, such as Local 17, has its own constitution and by-laws, elects its own officers, and is chartered by an international union. Local 17 is affiliated with the International Federation of Professional and Technical Engineers, AFL-CIO.

Lockout — The shutdown of a facility by the employer to discourage union membership or activity or to enforce economic demands.

Loudermill — A U.S. Supreme Court decision in 1985, Board of Education v. Loudermill. This decision established what have come to be called "Loudermill Rights" for public employees. Loudermill Rights apply to incidents of involuntary termination.

Prior to being terminated, "the . . . tenured public employee is entitled to oral or written notice of the charges against him (or her), an explanation of the employer's evidence, and an opportunity to present his (or her) side of the story."

Maintenance of Membership — A form of union security requiring anyone who is a member of the union at the time the contract is signed to remain a member. This does not require nonmembers or new employees to join.

Make Whole — The remedy for an employee who was illegally discriminated against by an employer. For example, an employee discharged for union activity is "made whole" by being reinstated, receiving back pay, seniority and benefits he or she would have enjoyed if there had been no discrimination.

Management Rights — Rights reserved by management that are not mandatory subjects of bargaining. They include such things as hiring of employees, methods of production, and scheduling of work.

Mandatory Bargaining — Those items included under "wages, hours and working conditions" over which the union and employer must bargain in good faith.

Mediation — The use of a third party to end negotiating impasses or workplace disputes. The mediator, usually from the

Inter-Local Conflict Resolution Group, FMCS, or PERC, may make suggestions or seek compromises but does not require union and management to accept suggestions.

Mediator — An impartial third person who acts as a facilitator or go-between, suggesting possible avenues for resolving disputed issues.

Merit Increase — An increase in employee compensation awarded on the basis of that person's performance.

Merit System — An employment scheme, common in civil service, in which the selection of an employee for entry-level positions, promotions or pay raises are based on the employee's capabilities and experience.

National Labor Relations Act (NLRA) — The federal law passed in 1935 that created the National Labor Relations Board, guaranteed employees the right to organize and join unions and to bargain collectively. The NLRA was later amended by the Labor Management Relations (Taft-Hartley) Act of 1947 and the Labor-Management Reporting and Disclosure (Landrum-Griffin) Act of 1959. (This act applies only to private sector employees).

Negotiation — The process whereby the union and the employer meet to reach agreement on wages, hours and working conditions and on methods for administering the agreement.

No-Lockout Clause — A provision in a collective bargaining contract in which the employer agrees that the employer will not close down the operation in order to force the employees to accept terms for a collective bargaining agreement.

No-Strike Clause — A provision in a collective bargaining contract in which the union promises that during the life of the contract the employees will not engage in strikes, slowdowns, or other job actions.

Open Shop — A workplace in which union membership is not required as a condition of obtaining or retaining employment.

OSHA (Occupational Safety and Health Act) — The federal law that establishes workplace health and safety standards.

Overtime — Premium pay consisting of an amount over an employee's regular daily or weekly pay. Although bargaining agreements may grant employees more generous rights to overtime pay, the Fair Labor Standards Act (FLSA) establishes the requirements under the law.

Past Practice — A reasonably uniform response to a recurring situation over a substantial period of time which has been recognized by management, the union and the employees implicitly or explicitly as the proper response. For example, employees are allowed a few minutes returning from breaks because the break room is distant from their workplaces.

PERC (Public Employment Relations Commission)

— The State labor relations agency empowered under RCW 41.56 to administer the public sector collective bargaining statute.

Permissive Subject of Bargaining — Those items over which union and management are not required to bargain but may do so if they both agree.

Picketing — Patrolling outside the premises of an employer to organize employees, gain recognition as a bargaining agent, or publicize a labor dispute.

Post-hearing Brief — A persuasive document that summarizes the arguments made at an arbitration. It is submitted to the arbitrator after the hearing is completed.

Premium Pay — Additional money is paid to an employee for certain types of work. (E.g. night shifts, overtime or hazardous work.) Premium pay is paid in addition to the regular pay to compensate employees for the special effort required, the unpleasantness of the work, or for the inconvenience of the time during which the work takes place.

Public Employment Relations Commission (PERC) — See PERC above.

Refusal to Bargain — Findings made by an administrative agency indicating that either the employer or the union has failed to bargain in good faith. The refusal to bargain may be indicated by specific actions (such as adding new demands during negotiations) or by the overall behavior of the union or management during negotiations. See Good Faith Bargaining.

Reinstatement — the restoration of employees to their former or substantially equivalent positions without the loss of seniority or other benefits. Reinstatement may result from an arbitration decision regarding an employee's improper discharge or a decision involving unfair labor practices. Reinstatement may occur with or without back pay.

Re-opener Clause — A provision in a collective bargaining agreement stating circumstances under which wages and other issues can be renegotiated while other terms of the agreement remain in force. Often called a "re-opener."

Retroactive Pay — Income due to employees when a new contract provides for a wage increase for work completed prior to the effective date of the contract, often dating back to the expiration of the previous agreement.

Right to Strike — The right to stop work for the purpose of gaining concessions from the employer, available to employees in the private sector under federal laws. Washington State law does not grant public employees a right to strike, but it also does not forbid it.

Scope of Bargaining — The range of issues that management and unions bring to negotiations. Disputes over whether a demand is an appropriate subject matter for bargaining are resolved by administrative agen-

cies and the courts. See mandatory and permissive subjects of bargaining.

Seniority — an employee's status determined by length of continuous employment, used to determine which employees should secure advantages at the workplace (e.g., promotion, shift assignment, or layoff survival), and to measure employee entitlement to benefits. Example: Seniority clauses may determine which employees will be laid off and recalled. (See Bumping.)

Seniority List — A list of individual employees ranked in order of seniority.

Severability Clause — A collective bargaining agreement may also incorporate a severability or "savings" clause so that if part of the agreement is held to be invalid or unenforceable, the rest of the contract will remain in effect.

Steward — The member-leader who carries out union duties (e.g., handling grievances) and who is elected by union members or appointed by union staff.

Strike — Stopping work for the purpose of gaining concessions from the employer.

Subcontracting — A procedure to sublet certain work to subcontractors rather than have bargaining unit employees perform the work, frequently on the asserted grounds that the work can be performed more efficiently and at less expense. Many negotiated agreements specify the conditions under which work previously performed by the bargaining unit employees may be subcontracted.

Supervisor — A person possessing the employer's authority to hire, transfer, suspend, promote, layoff, recall, discharge, assign, reward, or discipline other employees, or to effectively recommend such action. Typically, supervisors either are excluded from union coverage or placed in separate bargaining units.

Title VII (Civil Rights Act of 1964) — Often referred to simply as "Title VII," this federal law prohibits employers, unions, and employment agencies from discriminating against any employee or job applicant on the basis of race, color, sex, religion, national origin, or pregnancy.

Unfair Labor Practice (ULP) — Conduct on the part of either union or management that violates provisions of federal or state labor laws. For example, management may commit a ULP by refusing to bargain in good faith.

Uniformed Services — Public employees, usually police, firefighters and transit workers, who are covered under different labor relations statutes than other public employees. If impasse is reached in negotiations with uniformed personnel, by statute they are barred from striking and must use the interest arbitration process.

Union Security Clause — A contract provision designed to protect the union as an organization by requiring that all

employees in a bargaining unit contribute to costs of collective bargaining. May be an agency fee or maintenance of membership clause.

Union Shop — A bargaining unit covered by a union security clause stipulating that the employer is free to hire whomever it chooses, but new employees must join the union as a condition of employment within a specific period of time (by law, not less than 30 days) after their date of hire and retain union membership as a condition of continued employment.

Weingarten Rights—The employee's right to union representation. The rights of employees to have present a Union Representative during investigatory interviews were announced by the U.S. Supreme Court in a 1975 case (NLRB vs. Weingarten, Inc. 420 U.S. 251, 88 LRRM 2689).

These rights have become known as the Weingarten rights. Employees have Weingarten rights only during investigatory interviews. An investigatory interview occurs when a supervisor questions an employee to obtain information, which could be used as a basis for discipline or asks an employee to defend his or her conduct. If an employee has a reasonable belief that discipline or other adverse consequences may result from what he or she says, the employee has the right to request union representation.

WISHA (Washington Industrial Safety and Health Act) — The State law governing workplace safety and health. WISHA and its administrative agency, the Department of Labor and Industries, set standards for safe workplaces, monitor workplace conditions and investigate health and safety complaints.

Work to Rule — A job action in which workers cause a slowdown by doing only the minimum amount required by the rules of the workplace

Workers' Compensation Programs — State-mandated insurance programs requiring the payment of benefits to workers suffering from occupational diseases or injuries sustained on the job.

Zipper Clause — A contract provision that states that the contract is the complete agreement of union and management and that nothing is agreed to unless it is in writing and signed by both parties as part of the contract. The zipper clause is intended to stop either party from demanding renewed negotiations during the term of the contract and to thwart the successful enforcement of past practices. (See Re-opener Clause.)

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