

The Member Is First

NATIONAL LEAGUE OF JUSTICE
AND SECURITY PROFESSIONALS



National League of Justice and Security Professionals

Stewards Manual
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Stewards Rights and Responsibilities.

So you and your co-workers decided to organize. This is great. But you have voted in or appointed as a steward and you have accepted the position. Now you are having second thoughts. You are not sure what a steward does, what makes a good steward, and you don't know where to turn. you have found a good place to learn.

A steward's job is to protect your fellow co-workers, ensure the work sight is safe, maintain the validity of the contract, build the union, and many other duties that we will address in detail as we go. We will also discuss pitfalls that many new stewards make. We will discuss what to do in specific situations.

Before your first day as a steward you should read the contract over and over until you are familiar with it. You do not need to memorize it but have a general idea of the whole contract. No one can know it all but by doing this reading you will have prepared yourself.

You have bought a small note pad so you are ready to write down any questions members may ask you, that you don't have the answer for so you can look it up

later and let them know the answer later. You will also use this note pad often for other reasons.

You have read and understand Weingarten rights. You know that any member who is asked to meet with a supervisor or company representative has the right to have a union representative attend the meeting, if that meeting may result in any form of disciplinary action. That they have a right to meet with the union representative before the meeting or to ask to discuss the matter with the union representative before the meeting continues.

You understand the employer does not have to offer these rights, that it is up to the member to invoke his Weingarten rights. You have prepared yourself to educate the members on these rights. So what do you do if the meeting has already started? Knock on the door and ask the supervisor to inform the member that a steward is available if the member would like a union representative. If the supervisor refuses to do so, record this fact in your trusty note pad and ask the supervisor to sign it.

You may have even purchased the book, "The Legal Rights of Union Stewards" by Robert M. Schwarts. If not you at want to consider this purchase.

You have read the Collective Bargaining Agreement(CBA) and have a decent handle on it so that you can protect it and the members from any violation of the contract by management. It is your duty to bring any violations of the contract to the attention of the management and the union so that the violations can be either stopped or if management refuses, to follow the grievance process outlined in the CBA.

You understand as a union steward that when acting in that position you have equal footing as the company representative. That you can act freely in the

defense of the contract or co-worker. You realize that you have to act professionally, refrain from having an argumentative attitude, posturing or anything that will be detrimental to presenting your case.

You may even have to re-up on labor laws. Understanding your legal rights will be beneficial to yourself and those you are representing as a steward.

Your position as a steward is strengthened by having a strong united union membership. By having a strong backing of the members of your union, you can approach situations knowing that if the company tries to discipline you for union activities that the members will have your back and support your efforts for them.

A strong contract forbids discrimination against union activities and guarantees time for union business.

Federal and state labor laws prohibit interference with legitimate union activities. We will discuss what those activities are in detail a little later.

Your first day as a steward has arrived. Nervous? You shouldn't be. By now you have studied the CBA. You may not fully understand it but keep studying it and you will get there. You know your Weingarten rights. You have come prepared with a note pad.

You have contact information with you if you need assistance. You now you can call another more experienced steward or union officer if you need to. So just relax.

The first day can be very nerve racking, but you must establish yourself on the first day. Demonstrate to the members that you can get the job done. You must assure the members, make them comfortable coming to you to resolve work related issues. Be aware that your supervisor and other management personnel are going to watch you and maybe even test you.

If the union has assigned stewards to specific work sites, departments, or any form of division, be aware that members may go to other stewards. Especially if they have more experience, or they may go to other union officers. They should be encouraged to speak with their assigned steward. Employees may speak with their immediate supervisor to solve problems informally, especially if this was common prior to organizing. Whenever possible, you should encourage the member to bring along his/her steward to make sure that the employee gets treated fairly. Employees are often unaware of their rights and aspects of the contract.

Bring the union to the forefront for the members, especially with new hires, who typically are unaware of what the union has done for the employees. Often thinking that the benefit's and wages are just common practice for the company to give. Unaware of the struggle that went into establishing the current wages and benefits that he/she receives.

Introduce yourself to new hires as soon as possible. Make sure you introduce yourself as a steward, and if possible explain some of your duties to them. If they have never been in a union before they may not know what the role of the union or steward is. Be sure to use the word we when talking about the membership or union. Use the word they when discussing the company or management.

We all make mistakes, so here are a few that you can easily avoid by being aware of them:

Do not walk around the work-site with a chip on your shoulder.

Do not violate company rules.

Do not violate any part of the contract.

Do not wait until a member comes to you with a grievance.

Do not be a "know it all", if you don't now an answer to a question that is fine, let them know you will find out for them.

Do not use profane language to intimidate the boss.

Do not miss union meetings.

Do not forget to inform the union of issues you are dealing with.

Do not spread rumors or pass on information that is false.

Do not forget to keep members informed on grievances you have filed on their behalf.

Do not talk members out of filing grievances unless the issue is not grievable.

Never file a grievance unless it is a grievable issue.

Do not argue a grievance with personal issues or using personal remarks towards a supervisor.

Do not put off a member when they call you, deal with it immediately if at all possible, and if not as soon as you can.

Do not lose your temper when dealing with a supervisor or any one for that matter.

-Do not let co-workers push you around.

Never try to manage your co-workers or allow a supervisor to use you as a means of doing his/her job by enforcing company rules or calling workers on minor abuse of privileges negotiated by the union.

Ok that is a few misstates that you should never allow yourself to make. And if you do, learn from the mistakes by not doing it again.

The biggest part of your job as a steward will be the grievance process. You can limit the time you spend doing this duty by being aware of what really constitutes a grievance. So a grievance is any violation of the terms of the contract, interpretation, or application of the contract. But we can better interpret this, most often it is a violation of an employee's right on the job, usually, but not always defined by the contract.

Every union officer must go back to the contract first when a member comes to them with a complaint or a problem. This is one reason why you must know and understand the contract.

Secondly you must look to see if the company or employer is violating the law.

Thirdly you then can look to see if it is a change to what is now as a “past practice”. This is defined as a practice that both parties are aware of and has been accepted so frequently that it appears to a reasonable person that both parties have agreed informally to conduct business in this manner. If you are thinking of filing a grievance base on past practice it is advisable to speak to a union officer prior to filling he grievance.

A large number of grievances that you will file will be based around disciplinary actions. It is very important that you and your members understand your Weingarten rights, if a steward is to prevent management from intimidating employees. No where is this more important than in closed-door meetings when supervisors are trained in interrogation techniques. Or attempt to coerce employees into confessing to wrong doing.

The rights of employees to the presence of a union representatives during investigatory interviews was announced by the U. S. Supreme Court in 1975in NLRB vs J. Weingarten, Inc. Since that case involved a clerk being investigated by the Weingarten company, these rights have become known as Weingarten rights.

Unions should encourage workers to assert their Weingarten rights. The presence of steward can help in many ways. For example:

- The steward can help a fearful or inarticulate employee explain what happened.
- The steward can raise extenuating factors.
- The steward can advise an employee against blindly denying everything, Thereby giving the appearance of dishonesty and guilt.
- The steward can help prevent an employee from making fatal admissions.

- The steward can stop an employee from losing his or her temper, and perhaps getting fired for insubordination.
- The steward can serve as a witness to prevent supervisors from giving a false account of the conversation.

When a supervisor calls a member into his or her office to announce a warning or other discipline, this is not an investigatory interview, since it is announcing a disciplinary action and not questioning the employee. It can turn into one if the supervisor begins to ask questions to support the decision.

Under the supreme court's Weingarten decision, when an investigatory interview occurs, the following rules apply:

Rule 1. The employee must make a clear request for union representation before or during the interview. The employee can not be punished for this request.

Rule 2. After the employee makes the request, the employer must choose from among three options. The employer must either:

- A. Grant the request and delay questioning until the union representative arrives and has a chance to contact privately with the employee' or
- B. Deny the request and end the interview immediately' or
- C. Give the employee a choice of:
 - a) Having the interview without representation or
 - b) Ending the interview.

Rule 3. If the employer denies the request for union representation, and continues to ask questions, it commits an unfair labor practice and the employee has the

right to refuse to answer. The employer may not discipline the employee for such a refusal.

The supreme court has acknowledged that a steward's right to assist and counsel members during the interview. Based on decided cases the following procedures are accepted.

1. When the steward arrives, the supervisor must inform the steward of the subject matter of the interview, i.e., the type of misconduct for which discipline is being considered, (theft, lateness, drugs, etc.).
2. The steward must be allowed to talk to the employee alone for a private pre-interview conference before questioning begins.
3. The steward must be allowed to speak during the interview. However, the steward does not have the right to bargain over the purpose of the interview.
4. The steward can request the supervisor clarify a question so that the employee can understand what is being asked.
5. After a question is asked the steward can give advice on how to answer.
6. When the question ends, the steward can provide additional information to the supervisor.

It must be emphasized that if the Weingarten rule are complied with, stewards have no right to tell workers not to answer questions, or to give false answers.

Workers can be disciplined if they refuse to answer questions.

Again remember that supervisors do not have to inform members of their rights. It is up to the member to invoke their rights. This is why it is so important to educate your members on their rights and to remind them to politely refuse to answer questions until they have union representation. The simplest thing for the

member to say is the following: "With out representation, I choose not to answer any questions."

Here are some basic guidelines:

Q. If I see a employee being interviewed in a supervisor's office can I demand to attend the meeting?

A. Yes. A steward has a protected right to demand admission to a disciplinary investigatory interview. However, once the request is made, the employee being interviewed must indicate a desire for your presence. If the employee states that he or she wishes to be interviewed alone, the steward must leave.

Q. An employee was summoned to an interview with his foreman and asked for his steward. In response, the foreman said, "You can request your steward, but if you do, I will have to bring in the plant manger, and you know how temperamental she is. If we can keep it at this level we are at, things will be a lot better for you." Violation?

A. Yes. The foreman is threatening greater discipline to coerce the employee into abandoning his Weingarten rights. This is an unfair labor practice

Q. An employee was ordered by her foreman to the personnel office for a "talk" about her attitude. She asked to bring a union representative but the foreman said she would have to make her request when she got to the office. Can she refuse to go to the office?

A. No. Weingarten rights do not begin until the actual interview begins. The employee must go to the office and repeat her request to the official conducting

the interview. Only if a supervisor makes clear in advance to the employee that he or she intends to conduct an investigatory interview without union representation, does an employee have a right to refuse to go to a meeting.

Q. Thee company is recalling workers from a layoff nd is insisting on a medical examinations for those out of work for three months or more. Can the workers demand a steward's presence during the examination?

A. No. Medical examinations are not investigatory interviews, Weingarten rights do not apply.

Q. Does Weingarten rights apply to polygraph Examinations?

A. Yes. An employee has a right to a union representative during tis pre-examination interview and the examination itself.

Q. If management asks a employee to submit to a urine test for drugs, does Weingarten rights apply?

A. Yes and No. Since a urine test is not questioning, an employee does not have a right to the presence of a steward during the actual test. Management must, however, allow the employee to consult with a union representative to decide whether or no to take the test.

Q. Can management order an employee to open a locker without a steward being present?

A. Yes. Locker searches, car searches, or handbag searches are not interviews. Employees do not have

Q. An employee was given a written warning about poor attendance and that he must participate in absence counseling sessions with a member of the personnel department. Does the employee have a right to demand the presence of a union representative at the counseling sessions?

A. This depends on whether the employee has a reasonable fear that the counselling sessions could result in further discipline. If notes from the sessions are kept in the employee's permanent record, or if other employees have been disciplined after counseling sessions, the employee's fear would be reasonable and would entitle him or her to bring a steward. But if the employer gives firm assurances that the meetings will not be used for further discipline and promise that the conversations will remain confidential, Weingarten probably would not apply.

Q. If an employee is given a warning slip for misconduct and is asked to sign the slip to acknowledge receipt, must the employer permit her to consult her steward before signing?

A. No. Since the employer is not questioning the worker, Weingarten rights do not apply.

Q. Can an employee insist on the presence of a lawyer before answering questions at an investigatory interview?

A. Where employers simply announce disciplinary actions, no. However, if the employer starts asking questions or tries to make the employee admit guilt,

Weingarten rights would apply and the employee can insist on the presence of a steward or other union representative before answering.

Q. If a employee's steward is out sick, can he worker insist that the interview be delayed until the steward s available?

A. No. Management does not have to delay an investigation if other union representatives are available to assist the employee at the interview.

Q. If I am called in by my foreman to discuss my work record, do I have the right to a union representative?

A. Yes. Union stewards have Weingarten rights. If you fear discipline or other adverse actions, you have the right to the presence of a union representative.

Q. Suppose a employee's request for a steward is denied. If the supervisor continues to ask questions, can the employee walk out of the office to get a steward?

A. In some cases, yes. According to the NLRB decisions, when an employee is entitled to union representation and the employer denies the employee's request, an employee can refuse to participate in the interview, even to the point of walking out to see a union representative. However, if the employee is told to wait while management gets the steward, the employee must stay in the office until the steward arrives.

Q. If the company calls a meeting to lecture employees about job performance, do the employees have a right to demand the presence of a union representative before attending the meeting?

A. No. Holding a meeting on work time which does not involve interrogation is not a Weingarten issue. There is no right to a steward unless the employer begins asking questions of the employees in a manner that creates a reasonable fear of discipline.

Q. If management refuses an employee's request for union representation,, gets the employee to confess to theft, and then fires the employee, will the NLRB order the worker to be reinstated?

A. Probably not. The NLRB used to order the reinstatement of employees who were fired as a result of admissions during an illegal interview. But in 1984 the board ruled that such a penalty was unwarranted "windfall" for the guilty workers. The standard Weingarten penalty is now limited to a bulletin board posting in which the employer promises not to repeat it's violations.

Using your union's legal right to acquire information from the employer can help you defend your rights and win grievances and arbitrations. This right is established by the National Labor Relations Act. Unfortunately, many members don't know about this right, and many union representatives don't use it unless members specifically ask them to.

This book outlines some of the basics of the right to information and how to use it. You will need more detailed information to effectively put this into practice. You can order two books fro TDU that outline your rights under the grievance procedures in more detail.

The union may request information to:

- A. Monitor the employer's compliance with the contract.
- B. Investigate whether a grievance exists.

- c. Prepare for a grievance meeting.
- d. Decide Whether to drop or prioritize a grievance
- e. Prepare for an arbitration hearing.

What can you request? The obligation of an employer to provide information is extremely broad. It includes relevant documents, data, and facts. Information is considered relevant if it might be useful to the union or could lead to the identification of useful information. Information requests can be quite general. For example, employers must respond to broad inquiries such as: "Please supply all documents or records which refer to or reflect the factors causing you to reject this grievance." "Please supply all factual bases for the company's decision." Or "Please supply all documents, reports, and other evidence utilized in making the decision to discipline the employee."

Management may complain that such information requests are "fishing expeditions," but this language has been upheld by the NLRB which has ordered employers to comply. These kinds of requests can be extremely useful in nailing down management's position so that they can not shift their argument later in the grievance procedure or at arbitration. Other information requests can be very specific. The union is entitled to a wide variety of specific documents.

If management refuses to provide information or unreasonable delays violate Section 8(a) (5) of the National Labor Relations Act. The union can file an unfair labor practices charge with the NLRB if the company refuses to cooperate with an information request.

Only stewards and union officers can request information from the company. Although shop stewards can request information, if the employer is intent on blocking the request or stalling, the backing of the union officers can be crucial to winning an NLRB charge. So whenever possible, it is best to get your union officers on board with a information package.

Many Union Officers aggressively use the information requests as a tactic to win grievances. If you are worried that your union officers might not be eager to request the information, ask them to request the information from the company and explain specifically in writing what information you would like them to request.

The union can challenge certain rules or their application. We may argue that a member is being disciplined without "Just cause" or he or she is suffering from disparate treatment. Simply stated that they are being treated unfairly. Always go with the contract violation first.

When you are approached by a member with a grievance. Your job starts immediately. You will need to interview the member to see if the issue is something that is grievable or not. The issue may not be a grievable issue in which case you need to be honest and tell the member so. But your job as a steward does not end there. You need to think of another way to solve the issue. You may be able to solve the issue by a meeting between the supervisor, the member and yourself.

If it is a grievable issue you should investigate the problem further. At this point you need to find out exactly what happened.

Just like a journalist investigating a story, you must ask the five W's. Who is involved, get the names of the employees, titles, seniority, and employee numbers. Get as much information as you can. When did the incident occur? Make sure you get dates and times as accurate as you can. What happened or didn't happen? What did the employee(s) do or not do? What did the employee(s) say. What did management do or not do? What did management say? What has happened in the past when this issue occurred? Where did this incident take place? Be as accurate as possible. Why did the incident occur? This may be different from each

person interviewed. Take each statement as given, and then sift this one through it later to try to determine the facts.

Remember you bought that note pad for a reason, this is one time you really need to have that note pad. You will never remember every detail given to you in an interview. You never know what little detail may become a big factor down the road.

Your local may have supplied you with a grievance investigation forms. If so this is the time to use it. These can be used as a record for the union to ensure that the issue or discipline is fair for everyone. It also is a record of what happened while the issue is fresh in members and witness' minds. This preserving the incident in case further action in the grievance process occurs.

As the interviewer you must practice good listening skills.

- You need to focus on the interviewee.
- Take notes, get as much as you can down.
- Not your head to show you are listening to them.
- Do not interrupt the interviewee you take notes to clarify any confusion later.
- When the person is done, read over your notes.
- Clarify any confusing or misleading statements up.
- Get as many facts as you can, it's ok if they give their opinion, just make sure that it is clear to any future readers what's fact and what is opinion.
- If you need to ask them to give more details, do so.
- Remember listening is not always about what's said but sometimes what is not said.
- Pay attention to body language.
- Don't judge what is being said.

- Don't take sides, you are here to get information at this moment, not to decide who is right or wrong at the moment, that will come later.
- Sometime reflective listening is important, so use it as a tool. Reflective listening is putting what they said in your own words and asking them if that is what they are saying.
- Ask them what they would like to see the resolution to the issue to be.
- Make sure that they understand that you can make them no promises to what the resolution will be.
- After the interview with the person(s) with the issue, make sure that you let them know you will be in touch with them to follow up and let them know what is going on with the grievance, and make sure you do.

After you have conducted all the interviews you need to think about how this issue can be resolved. If the person(s) have suggested a resolution, you need to look at how it will affect the union membership as a whole.

Now that you have done this work you need to let the other stewards know what is going on. They need to be informed, especially if several members are involved so that they don't start working on the same issue as you are. This is even true on issues that are not grievable, you don't want the member going to other stewards in the hopes that one of them will start a grievance that should not be started.

Let's discuss what to do if the member does not have a grievable issue. You must be honest with the member and tell him that it is not grievable. Do not give the impression that you can achieve something with the grievance process that it is not designed to do. Filing a grievance that is not a grievable issue loses you credibility with management. You will also destroy your credibility with the members when the grievance is lost. To resolve a grievance issue, you need the cooperation of both sides.

You should explain to the member the reasons the issue is not grievable. You should be sympathetic to the member's problem and explain the process of

grievance to them. Some members may become belligerent when given this bad news. If so remain professional and end the meeting.

You should always take good notes whenever you are conducting union business, this is especially true even if there is no grievance. Having to tell a member that an issue is not grievable is difficult but necessary. Good notes can save you a lot of hassles down the road by being able to provide the reasons you did not grieve an issue if asked at a later date.

You will not win every grievance you file, no one expects you to, not even the members. All they are really asking you to do is give them a fair shake. If you do your job to your best ability and with credibility in a fair and professional manner you will earn the respect of your fellow members.

If you do the following you will have a good lead on grievances. Get to know the members you are the steward for, what their job is, but also get to know them by name, situation, and a little about their family.

Encourage them to submit all grievances to their representatives in a timely manner. If an issue is not grievable, explain to the member why it is not grievable. They will appreciate the time you spend explaining it and better understand the process. Let them know that the other stewards will say that it is not grievable and repeat why if need be.

Make sure you do not make any promises you can not keep. You will lose all credibility if you do. Separate any personal vendettas from real grievance issues. Plan and prepare your grievance, step by step. Try to settle the grievance as early on in the process as you can and as quickly as you can. Let the member know that he should not discuss the grievance with management. Make sure your members know that they should not process their own grievance or settle privately with

management, this ensures that the contract is maintained and all member's interest are looked after. You don't have to have a grievant to file a grievance, but if you and they don't want to file one, make sure to ask them why.

Now that you have completed the interviews, and decided that there is a grievance the job is not over. Most contracts provide for the steward or representative from the union to write the grievance on behalf of the member. This allows the union to better track the issue and control the grievance process. The member is better represented in the process because of the experience of the steward or representative. The grievance form is the first step of the process. Meeting with the member and his supervisor comes next. Your goal is to resolve the issue as early as possible. Ake a note pad with you Take notes of each participants statements. If you are unable to settle the issue let the supervisor know that you will need a verbal response by he second working day after the grievance was presented. If the grievance is denied, complete the grievance form, be sure to include the company's responses and turn it in to the local president with a copy of the investigations form and notes.

The Local president will proceed to submit a second step grievance notice to the company. Usually this must be done within ten(10) working days or within the allotted time in the contract, if not the grievance will be considered settled in favor of the company.

The grievance should contain the basic information, just enough to identify the grievance so that management can understand the problem, what violations have occurred and how the problem should be fixed.

A grievance notice should be brief. You are not obligated to disclose the results of your investigation. State the union's position clearly and concisely. A grievance is a statement of an injustice so you need to include a remedy, but do not limit it. You should word the remedy so that it is not limited by using the phrase, "the

grievant should be made whole in every way including.....” and ask for what you want. Do not leave it at just the above statement but include specific remedies that you want met.

So you have investigated the grievance, interviewed everyone involved and met with the supervisor. The grievance was denied and you have passed the information on to the local. What do you do when the member comes to you and asks why the grievance has not been resolved? You wonder that yourself at times. But being familiar with the process you know that it starts with the member and the steward and should end there. And if you can resolve it before step two and three all the better. Here is why, members who see results and in a quick manner see an effective union. As the old saying goes justice delayed is justice denied. By resolving issues early you build a good relationship with the supervisors you have to deal with. It also can build confidence in solving other issues in the future. If a grievance is put in written form it can force both sides to become inflexible. Finally grievances can be costly to both union and the company.

Does this mean we shouldn't file grievances, NO, we need to treat every issue as if it will go to arbitration But if we can work with the company to resolve the issues fairly and quickly we all win.

We can not stress enough how important it is to write everything down. Not just in interviews, but in grievances, informal meetings, and union meetings. No one's memory is perfect and in arbitration and grievances your memory may be brought into question. But your notes can not be questioned.

At the end of any meeting that result in a resolution of the problem make sure that you get the resolution in writing. This prevents any misinterpretation of the resolution by either party down the road.

When you get to the point of meeting with the company for a grievance you will be presenting the union's case. You should have prepared for this before hand. You should have all the facts in writing. Have organized all your notes. Prepared your grievant and any witness', and though out the companies arguments.

If you need to discuss any issues regarding the grievance or resolution with the grievant, other stewards or union officers, you should do this away from any management. It is perfectly fine to take a short recess. You can do this if the grievant or any witness is damaging the case, take the time to let the person calm down.

Stick to the issue or issues. If management wants to discuss other issues, firmly but politely offer to set up a meeting at another time to discuss those issues.

Listen to the company's issues and try to look for solutions. Use your listening skills discussed earlier for he real issue and solutions.

You can disagree with them and still be professional. The advantage will go to the side that remains calm. Don't be goaded into anger, this is a tactic that a company will use especially if they know they are wrong.

Be prepared to settle the grievance as soon as you can if a reasonable solution is offered. If a postponement is reasonable allow it, but if it just a stall tactic then you should deny the delay.

In a disciplinary case, it is up to the supervisor to prove his case. Let him show that the action he is taking I the correct one. Attempt to show where he or she is wrong and why.

Do not bluff about anything, if you do not follow through on your bluff the company will never believe any future statements of action that you will take. It will also only be a matter of time before your bluff is called. Advise the grievant not to bluff either. A common bluff from a grievant is that the company will be hearing from his/her attorney.

A tactical retreat is sometimes in order when you have been proven wrong. But never retreat until you have been clearly proven wrong.

Now that you have a good idea what to do in a grievance meeting we must tackle the issue of witness'. The investigation you have done, the documentation you have prepared can only help you win a grievance. A witness can destroy all that work if you have not done your work with the witness.

You should know what your witness' will say when questioned. You can only do that if you have spent time with them going over what happened, questioning them as you will in the meeting, and preparing them to answer the questions the company is likely to ask them. This practice session of question is not designed to put words in their mouth, always tell them to simply tell the truth. This session has the purpose of getting them comfortable with answering question, and to help you to think through your case.

Remind your witness' to answer the questions in brief statements and not to argue. That they should not be evasive but that if they don't know the answer to a question it is perfectly acceptable to say so. That an answer of I don't know or I don't recall is an answer.

They should use confident sounding words when they know the answer, and therefore should avoid starting answers with, "I remember, I think, I believe."

Remind the witness' that they should remain calm during the cross examination. If you need to take a recess to keep a witness calm it is better to do so then let them get to upset. If a witness becomes emotional they may become careless confused, or argumentative and lose credibility.

When you prepare a witness be as thorough as possible. Take them through the process step by step., describe the room and the process to them.

Make sure your witness' know to admit if asked, that they have spoken to you ahead of time. Make sure that they know your expectations of them, is that they will tell the truth and that preparing them for testimony is just part of the process.

A great deal of your time will be spent on disciplinary issues. They can be long and difficult processes, but very rewarding at the same time.

The very first thing you need to do is educate your members about their Weingarten rights. So let's go over that in a little more detail.

Whenever a member is asked to talk with a supervisor and they believe that the discussion could lead to a disciplinary action they have the right to have a union steward or other representative attend the meeting. The United States Supreme Court has ruled that you have a right to refuse to answer any questions until the union steward is there, that you have a right to first discuss the issue with the steward. This right includes if you were called on the phone.

Once the steward arrives you are required to answer the questions truthfully. The supervisor does not have to tell you of these rights. You must invoke these rights for yourself. Once you have asked for the steward, management must stop questioning, if they fail to stop, they are in violation of the law. If they try to

pressure you into answering questions this is also a violation of the law. You do not have a right to have a steward at every meeting but if you have a reasonable belief that the meeting can result in you being disciplined then you have every right to have a steward in attendance.

Preparing for a disciplinary case is not much different than preparing for a grievance. Disciplinary can result from a violation of company's rules or policies and procedures, poor job performance, absenteeism, insubordination, or inappropriate behavior at work.

Credibility is huge in disciplinary hearing and grievances based on disciplinary actions. The case must be built so that if it goes to arbitration, the neutral arbitrator will believe the union's side of the issue. As in all cases you need to make sure to check the story from every aspect. Have them repeat the incident repeatedly and question every aspect of it. Explain to the member that you are doing this just as the company will so that he is prepared. Interview all witnesses including any management that may have been involved.

Get the employee's personal records, this will provide you with information about previous disciplinary actions he/she was involved in. If you can't get these records prior to the hearing, ask for a postponement. Make sure that the records are accurate. If expired documentation exists in the file request it to be removed.

You need to verify what the contract and the company's policy and procedures manual says in regard to the alleged violation. Remember that if there is a violation, the fight is not over. The rule must be reasonable, known and there may be mitigating circumstances. Lastly we must look to see if other co-workers have done the same thing or worse and not been disciplined or received a lighter penalty. Discipline can not be discriminatory or arbitrary.

The nature and procedures of disciplinary hearings are governed by law, contracts, and/or procedures. In general, the steward should follow these guidelines at a hearing;

1. Speak to the member prior to the hearing. If it is a formal disciplinary hearing with a notice, check the notice and proceed with an investigation of the alleged infraction. If you are called in at the last minute, seek a postponement so that you can make a proper investigation. If the meeting is informal, make sure the member has time to talk with you ahead of time or take a recess to get some understanding as to what happened.
2. Prior to the hearing, inform the member who will be present, how the meeting will be conducted, and what he/she should expect.
3. Get as much information as you can before hand. Do not let the employer withhold information. If they do, speak to your local union. Document any denials of information in writing and get it on the record.
4. If there are any witness' at the meeting or hearing you should question them as you see fit. In most formal hearings, the process of questioning the company's witness is called cross-examination. You have a right to ask these witnesses questions to determine the accuracy of their testimony and their biases. Your right to question should not be interfered with by management. If you are denied that right, make sure that such denial is entered on the record.
5. It is perfectly proper for members to answer questions with, "yes", "no", or "I don't know". Once the member has answered a question, he/she is under no obligation to elaborate.
6. At most hearing the steward can take as active a role as he/she sees fit.
7. You can stop the meeting at any time to speak privately with the member.
8. Take notes or bring in a second person to take notes.
9. Do not rely on the supervisor's notes.

The written record is important. It documents what actually was said, not what was allegedly said. Cases have been won and lost on the accuracy of the record. The bottom line is to make sure that the member is treated as fairly as possible under

the circumstances that are heavily weighted against him/her. You must handle all discipline as if the case will go to arbitration. Remember, even if the investigation does not go the way you had hoped, you can challenge the discipline, how management conducted itself through the process, or the just clause section of your contract by appealing through your grievance procedure.

One of the most difficult to defend disciplinary actions is for insubordination. Many contracts have the language that an employee can be disciplined and/or discharged for insubordination. Insubordination will be dealt with quickly, harshly, and with little to no forgiveness. Arbitrators have for the most part dealt with insubordination ruling that you should, "obey now grieve later".

Insubordination is usually defined as the failure or refusal by an employee to perform a task or comply with an order given to him/her by a supervisor. Usually this order will have to be reasonable and basic to the conduct of the employer's business. This is such a serious issue that insubordination is considered a terminal offense.

Let us consider some issues that will effect the results of insubordination in a disciplinary hearing. Some people work in very noisy work environments so the order would have to be heard before insubordination could be considered. Was the order clear? Could the member have misunderstood what the supervisor meant? Was the member given an order or was it instructions, suggestions or advice? Did the supervisor give the member a warning of the consequences for failing to comply with the order? Was the order a reasonable order?

Was the order the member thought would endanger himself/herself or his/her co-workers? The Occupational Safety and Health Act(OSHA) provides for employees to refuse to follow an order that is dangerous. If the work is unsafe, he employee must report it and ask that it be made safe. Not just refuse to do the work. The other side of this is that the order should be reasonable and necessary

to the safe, orderly, and efficient operation of the business. It should not violate the contract, work rules, past practices, past arbitration decisions, or the law.

Was the member aware that he/she was being given a direct order? Was the member provoked by the supervisor? Was there an ongoing dispute between the supervisor and the member? Could the member have been set up by a supervisor who had previous conflicts with the member?

Most importantly did the insubordination occur when the member was performing a duty for the union as an officer, Representative, or steward in the union? Remember the steward, officer, or representative acting as such is protected and considered equal when performing the duties of their union position.

Remember and educate your member that it is best to obey any order, then grieve it later.

There are a lot of labor laws on the books, but probably the most important one is the National Labor Relations Act of 1935. Before this act employers could freely interrogate, fire, discipline, and even spy on employees. During the great depression workers went on strikes, battled police, and security forces.

The NLRA forbids employers from discriminating against workers who join unions, exercise leadership, or engage in strikes.

The NLRA has 41 sections. The most important are sections 7, 8, and 9.

Stripped to its essentials, Section 7 reads: Employees shall have the right to self-organizations, to form, join, or assist a labor organization, to bargain collectively through representative of their own choosing, and engage in other concerted

activities for the purpose of collective bargaining or other mutual aid and protection.

Section 8(a) Defines employer violations. There are known as “unfair labor practices” or “ULP” Five types of conduct are prohibited:

- Interference, restraint, or coercion directed against union or other collective activity (Section 8(a) (1))
- Creation or domination of a labor organization (Section 8(a) (2))
- Discrimination against employees to discourage support for a union (Section 8(a) (3))
- Retaliation for filing a ULP charges or cooperating with the NLRB (Section 8(a) (4))
- Refusal to bargain in good faith with union representatives (Section 8(a) (5))

Threats and interference in union activity violates Section 8 (a) (1).

Dischargers and suspensions violate sections 8 (a) (1) and (3) Unilateral changes, refusals to supply information, and denials of union assistance during investigatory interviews violate sections 8 (a) (1) and (5).

Section 8 (b) proscribes union unfair labor practices, including unfair representation, bargaining in bad faith, and secondary picketing.

Section 9 Sets out procedures for union certification elections.

The National Labor Relations Board(NLRB) enforces the NLRA. The NLRB has 52 regional and sub-regional offices. A five-person board heads the NLRB. The president of the United States, with senate consent, appoints board members to a staggered five-year terms(one member's term expires each year). The President also appoints a General Counsel, who is in charge of prosecuting unfair labor practices.

ULP Charges:

Union attorneys, officers and steward can file unfair labor practice charges. The charges must be filed within six months of the event or conduct that forms the basis of the charge. Charge forms can be requested from the NLRB office or downloaded from the NLRB website: www.nlr.gov. A ULP charge can be hand written or typed. The easiest method is to fill it in on the NLRB website. Print it and sign it, then mail, fax, or hand deliver the charge to the Regional office with jurisdiction over the work site. The NLRB will serve a copy on your employer. The union should do this itself if near the end of the six-month limitation period. Board agents investigate ULP charges by interviewing witness' and reviewing documents. When the investigation is complete, the agent and his supervisor make a recommendation to the Regional Director to issue a complaint, defer, or dismiss the charge.

Complaint:

If the Regional Director concludes that a complaint is warranted, the board agent will inform the employer and attempt to bring about a settlement. If these efforts fail, a complaint will be issued and the matter will go to a hearing before an administrative law judge(ALJ). An NLRB attorney will prosecute. The ALJ can order the employer to cease its illegal conduct, make up for any harm, and post a notice promising not to commit further

violations. The ALJ can not impose imprisonment or issue a fine. The employer or the union(or both) can appeal an ALJ decision to the five-member board in Washington, DC. Further appeals can be taken to a U.S. Circuit Court and the U.S. Supreme Court.

Deferral to Arbitration:

Under a policy called “deferral”, Regional Directors hold up investigation of UPL charges if the matter appears resolvable under the parties’ grievance and arbitration procedures. The NLRB justifies deferral as a way of conserving resources. Unions contend that the policy takes away their right to have ULP’s rectified by the NLRB and forces hem to incur arbitration expenses for matters that may not be covered by the contract. The NLRB applies its deferral policy to most ULPs by employers that occur while a contract is in effect.

The following are exceptions:

1. Refusal to furnish requested information.
2. Violations of Weingarten rights.
3. Retaliation against employees for filing NLRB charges. Deferral may also be withheld if the deadline for a grievance has expired and the employer refuses to allow a late filing. If the employer has exhibited hostility to the grievance and arbitration process. Or if animosity between the union and the grievant could affect the union’s handling of a matter. There are several reasons to file ULP charges

4. The NLRB's preliminary investigation may induce the employer to rectify the violation.
5. If the charge is deferred, the union grieves, and the case is taken to arbitration, the arbitration will be more likely to apply NLRB precedent when deciding the matter.
6. If the arbitrator rules against the grievance, the union can ask the Regional Director to revoke deferral reopen the ULP investigation, and issue a complaint.

Dismissal:

In addition to lack of merit, a Regional Director can dismiss a ULP charge because the violation is technical, minor, or of limited duration, and no other meritorious ULP charges have been filed against the employer for the past several years.

Wow, this is a lot of information to take in at one time. I would suggest that you download the pdf copy of this document and print it out so that you can read it again and again. You can get a copy from www.nljsp.us enter the site and go to the stewards page. This is available also on, "Labor: know your rights" podcast which can be found on iTunes. You can also use both as a reference when you have a question or you are not sure what to do in a situation.

Just keep the following items in mind and you will do fine.

1. Keep yourself informed on union affairs.

2. Serve as an example to your members.
3. Keep the members informed on union policies and union activities.
4. Attend union meetings and union affairs. Encourage and bring the members from your department. Don't chide members for missing meetings. Think of other ways to communicate with them.
5. Meet the new members early, inform them, educate them, and help them become members. Make your members more than dues payers.
6. Get your location to act as a union. Have them stick together.
7. Act as a leader. Do not let personal likes or dislikes prejudice your actions as a union representative.
8. Fight discrimination, whether it be overt or very discreet. Discourage prejudice of any kind.
9. Keep accurate and up-to-date records. Write t down.
10. Do not promise, if you can not deliver.
11. Encourage political action on the part of your members.
12. See to it that they are registered to vote.
13. Be active politically. Encourage members to exercise their right to vote, and to vote for labor friendly candidates.
14. Know how to refer to the union contract, by-laws, and international constitution. If you are not sure, seek help so that you can become familiar with the documents.
15. Encourage and support the union's activities on behalf of organizing the unorganized.

16. Inform the membership of union services. Encourage them to take advantage of not only the services the union sponsors outright, but those that the union helps subsidize. If your local does not already have a community services representative encourage the local in creating one.
17. Fight, whenever you meet it the anti-union element. You can best do this by being informed and being dedicated to the labor movement.
18. Do not hesitate or stall. If you do not now, admit you do not now. Then try to get the answer.
19. Keep your members informed on sources of information. Give pertinent information whenever members wants it.
20. In dealing with management, remember that you are he elected or appointed representative of your fellow members. Never consider yourself to be inferior to management representatives. You are always their equal.
21. Be proud of your position. Remember you are a union representative of your union which has the full support of members bound together in an international union, with the support of other union members.
22. Wear your union button and encourage your co-workers to wear it.
23. Investigate every grievance as if it were your own. Keep the members informed. Make sure you keep your deadlines. There is no excuse for missing a time limit. Research every grievance as if were going to arbitration, but try to resolve it as the lowest possible level. Keep your union officers informed of the status of each grievance.
24. Attend and encourage attendance at any labor education program that might be available to you and your members.

25. Remember your goal is to be the best steward/representative you can be. Always strive for his goal. Excellence has no substitution.

Now you have a good idea of what being a steward is about, what you need to study up on, you know your contract. You know what to do in disciplinary meetings. You have studied what to do when approached with a grievance, how to investigate it, and how to handle a grievance hearing. So relax a little, you need to remember to take time out for yourself every so often. Now get out there and start performing like a rock star!!!