

# TAMI

E D U C A T O R

Update for Stewards Vol. 7, No. 1

# Canada

## Being a Steward in Tough Times



# Being a Steward in Tough Times

**T**he economic collapse across North America presents a lot of stewards with a challenging responsibility: helping union members protect themselves in turbulent times. In the process, members can be shown that their union, and their union contract, is such an important protection. That way a steward can actually try to build unionism — even when the going is rough.

When layoff rumours start to circulate, the first thing you as a steward should do every morning is drink an extra glass of tenacity: the gloom and doom that permeate a workplace as layoffs are negotiated will push every workers' morale — including yours — to record lows. A steward has to recognize the financial and emotional strains among the members and try to keep everything as positive as possible.

A steward should initially challenge any discussion by the boss about layoffs, demanding to see proof, such as loss of orders or other work or revenues, before accepting any reduction in force. In normal grievances, a steward never simply accepts the employer's versions of the "facts." Employ the same scepticism when layoffs are first discussed.

## A Test of Skills

The layoff, if it finally happens, then becomes a test of a steward's skills, because there are now two areas of concern. The first is within the workplace, with the wide range of contract issues. The second is for the members who are pushed out of their jobs and scattered around the landscape. A member is still a "member," even when on layoff, and may need the help and support of a steward and union even more.

Here's a checklist for some of the areas of steward activity inside the workplace:

**1** Know your contract, every clause of it, so that the rights of every member are protected. If there is bumping language in the contract, the

steward has to be knowledgeable about all the complicated procedures. You want to make sure that employer "pets" are not somehow protected beyond the contract. If there are challenges from members about the bumping procedures, a steward must deal tactfully — these are, after all, conflicts among our own members, each of whom is desperately trying to hang on to a job. Be fair, be reasonable, and set aside your personal friendships by simply demanding that everyone live by the terms of the union contract.

**2** It is also important to appreciate the super-seniority provisions in some union contracts, negotiated to protect a steward in case of a layoff so that there will be experienced union representation on site to help the survivors in a difficult time. Members who are being laid off suddenly discover that a union official, with lesser seniority, is staying on the job and may become zealous defenders of strict seniority. Hold your ground that the contract cannot be changed and that there are good reasons for protecting the union structure.

**3** If there is a layoff, it is crucial for a steward to make certain that all the contract protections are enforced. Many contracts allow continuation of employer health insurance. If the employer doesn't continue to pay for coverage, sometimes we can negotiate to allow workers to keep it in place if they can pay out of their own pocket. How about accrued vacations or holidays? Make sure that the employer settles up in full before your member goes out the door.

**4** If workers are being laid off, a steward must beware the Monty Hall syndrome, from the old television show — let's make a deal! The boss will often ask a steward to relax enforcement of some contract articles: "Don't be so tough on us when times are bad." You may even see the union itself

being blamed for the layoffs. You can see this play out in the discussions about the problems of the major auto companies. Anti-union politicians — and even some others who should know better — step up to blame various provisions in the United Auto Workers contract for the companies' financial problems. The battle for the hearts and minds of your members and their communities is one that a steward needs to take part in.

**5** A steward should be continuously vigilant when the boss tries to cut corners. Most union contracts, for example, have language to prevent subcontracting if it results in the loss of bargaining unit work. But mere words are a small obstacle when money is involved. This is a great time to implement your "thousand eyes" strategy: after explaining to your members the contract language on subcontracting, they must be constantly looking around for new faces, and be ready to report back if they see something. Not only does this campaign help protect your work but it also builds an internal organizing program that every member should be eager to join.

**6** And of course a good steward keeps up the pressure on the employer to recall workers, even if just a few at a time. It is easy for a shrewd employer to shift work around so that fewer workers are putting out the same production. Don't let this happen or the workers on layoff will never come back. In one of the most controversial areas, the steward has to work with the local union officers to block any overtime assignments — remember that every hour of overtime is one hour less for a potential recall. If a workplace regularly had overtime, solidarity would be severely tested, but there may be contract language to help you out. Otherwise, it's a fight worth having: the return to work of even a few co-workers means restoration of their benefits.

The economic crisis will be a major test for every union and every steward, but unionism has survived tough times before and a steward must offer leadership to show that the tougher the times, the greater the need to pull together.

— Bill Barry. The writer is director of labour studies at the Community College of Baltimore County.

# Handling Promotion Grievances

**I**t's the rare steward who hasn't at some point been confronted by an irate member with this complaint: "That promotion should've gone to ME!"

Maybe, and maybe not. The question is, was the member treated fairly? A good contract can help a lot in guaranteeing fair treatment, but the rules are seldom spelled out well enough to make a clear-cut decision as to who should get any given promotion.

Where there are no unions, employers have the sole right to decide who is going to be promoted (unless the decision is based on discrimination because of race, sex or other illegal criteria). Unions have for the last half-century fought for a way to determine who gets the job, and employers have sought to give themselves as much advantage as they can get to make promotion decisions.

The bottom line is, it's important to know what your contract says on seniority and promotion language.

## Seniority as a Factor

Here are the basic approaches to how seniority can be a factor in considering promotions:

- **Strict Seniority.** Seniority is the sole basis for determining who gets the job. In some cases, the senior employee may be entitled to a trial period to prove he or she can handle the duties of the position.

Generally, management retains the right to take the worker off the job if performance is not up to par.

- **Seniority if Possessing Relative Ability.** Here, the senior employee gets the job if he or she has equal fitness or ability compared to the junior employee. This type of clause requires that both ability and sen-

iority be taken into account. Ability doesn't have to be "exactly" the same, but approximately or nearly equal. But if the junior employee is substantially superior, then he or she can be given preference.

- **Sufficient Ability.** This wording generally provides that the senior employee gets the job if he or she possesses "sufficient ability" to perform the job in question. Compared to the "relative ability" clauses, this gives the senior employee the advantage. In this case, a junior employee who may be head and shoulders superior to the senior bidder still won't get the job.

- **Multiple Considerations.** Here, the contract may require that length of service, aptitude and ability all be taken into account when making the promotion decision. This involves considerable judgment,

which may be less easy to document, and the steward needs to be sure to investigate the basis on which aptitude and ability were measured. Of the various types of clauses, this one gives the least advantage to the most senior bidder.

The preceding four clauses illustrate the weight given seniority in different contracts. Usually your agreement will contain a clause similar to one or the other of them but won't be exactly the same.

## Ability as a Factor

Who determines "ability to perform the job?" Determining that, of course, is a lot harder than figuring out seniority, which is simply how long someone has been on the job. In general, management makes the initial determination of ability, but arbitrators expect the decision not to be arbitrary, capricious, impulsive, or discriminatory. In general, the union can ask for an explana-

tion of the decision and for the evidence on which they measured ability. Some of the measures that management typically uses to determine ability include the following:

- **Experience and Education.** These measures look at the worker's specific experience or formal training that bear on specific aspects of the job to be performed. Seniority alone does not necessarily equal experience.

- **Job Testing.** Tests can be used to determine ability, but they must specifically relate to the requirements of the job, be fair and reasonable, administered in good faith and without discrimination, and properly applied. Arbitrators like to see the use of tests to determine ability, so it is up to the union to make sure those tests meet these criteria.

- **Trial Period.** Some contracts and past practices provide for a trial period to determine fitness for the job. Employers prefer to promote workers who are ready to perform the work without a trial period.

- **Supervisors' Ratings.** Supervisors' assessments of ability may appear useful to arbitrators, but objective evidence is needed too.

- **Performance Reviews.** These bear some weight with arbitrators, but the more closely the ratings focus on skills of particular jobs, the better, and these must view objectively measurable attributes.

- **Production and Attendance Records.** These can be used to demonstrate that a person can handle the duties of the job in question, or at least indicate what future performance might be.

Each promotion case has to be judged on its merits, and "ability" is not necessarily the same for all jobs. Remember that the employer must prove that its measures of ability can be documented, and they can be challenged by the union if necessary.

— George Hagglund. The writer is Professor Emeritus at the School for Workers, University of Wisconsin - Madison.

**Seniority and ability are the key factors in weighing promotions.**

# Dealing with Co-Worker Sexual Harassment

**C**o-worker sexual harassment is one of the most difficult situations a steward can be faced with. Look at what happens:

■ The union may be put in the no-win position of defending both the harassed worker and the harasser.

■ When co-workers harass each other they diminish solidarity and create a divided workplace environment.

■ The harassed worker may be shunned by other co-workers for making a complaint, while the alleged harasser may feel betrayed because he or she did not believe that anything was wrong.

Nearly half of all sexual harassment complaints involve a co-worker. Stewards have an important role in creating a work environment where sexual harassment is not tolerated and where victims feel comfortable turning to the union for assistance.

## Three Things to Keep in Mind

There are three important things to keep in mind when dealing with this difficult issue.

First, it's important to understand what sexual harassment is: any unwelcome sexual advance, request for sexual favours or any other verbal or physical conduct of a sexual nature. Sexual harassment is also anything that creates a hostile, offensive or intimidating environment. Thanks to laws that have been passed to protect people from sexual harassment, it is grievable even if your contract does not have specific language on the issue.

Second, be sensitive to the fact that sexual harassment involves strong emotions and the misuse of power. The vic-

tims, in most cases, are overwhelmingly women — can feel anxious, powerless, shameful and guilty.

Third, any information the steward gathers about the incident, the victim(s) and the harasser should be kept confidential, as should details of the investigation itself. Outside discussions may only make the situation worse for all involved, including the union.

## Your First Step

If a co-worker harassment situation is brought to your attention, you can begin by simply talking with the harasser about the fact that his reported behaviour is inappropriate — and illegal. The union member should be told that his or her actions undermine worker solidarity and make things more difficult for everyone.

If the harassment continues, the union can file a grievance. Management has the responsibility to provide a harassment-free workplace, so harassment from a union member or from the general environment is still, legally, the employer's responsibility. The grievance would claim that the employer has failed to protect the victim.

The difficulty, of course, is that by writing a grievance, the union's action may give management a tool that could be used to discipline or even fire a union member. If the employer disciplines the harasser, the union may choose to file a grievance for him as well. This puts the steward in an awkward position, but it may be possible to find a resolution acceptable to all parties.

One common solution is for the union to arrange for the harasser to be counselled and then placed in another job in an area away from the victim.

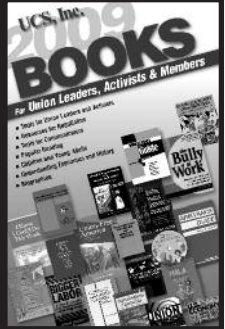
**Nearly half of all sexual harassment complaints involve a co-worker.**

## Prevention is Key

The best way to stop co-worker sexual harassment is to prevent it from happening in the first place. We need to educate workers about the issue before incidents occur. Training, contract language, and policies can all help to educate members and give a formal signal that sexual harassment will not be tolerated.

Stewards will hear from co-workers that they are just "joking" or that the women "just can't take it." Remind these workers that if the woman in question was their daughter, wife, aunt, mother, or sister, they wouldn't want her treated like that in her workplace and they'd demand that something be done to stop it.

— Heather Hauck. The writer was the director of the Coalition of Labour Union Women (CLUW) Center for Education and Research from 1993 to 1998.



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# I'll Get to It... Eventually

**T**here isn't a steward alive who hasn't had the experience of putting off and putting off some task. And then, putting it off for a while longer. Anyone who's been a steward for any length of time knows how common an occurrence it is for some tasks to get left undone.

What's behind these self-created delays? Odds are, one of the following:

- Sometimes you don't know the answer to a question, or don't know how to address a particular problem in a grievance (or don't even know whether you need to file a grievance or to do something else). You wish you knew more than you do, but are reluctant to let others see that.

- Sometimes (make that always?), between your full-time job and your full-time job as a steward, you're just too jammed for time to get to everything.

- Some problems (or some people, like the member requesting assistance or the supervisor on the other side) just aren't the types you enjoy dealing with, so they keep getting pushed to the bottom of the list.

- Sometimes the problem is one you've attacked before, and you've been defeated. You're not looking forward to yet one more demoralizing experience.

These are all understandable problems. But easy as it is to fall into the trap of just not getting to something, it's dangerous, too. Stewards who miss a "filing" deadline on a grievance, or who don't respond in a timely way to a request for guidance, may run the risk of being on the wrong side of a **Duty of Fair Representation** legal action. At the very least, members reasonably expect timely answers to their questions.

So how to deal with those tasks you've put off?

## Abandon Pride

Nobody is an expert on everything. There's no shame in acknowledging that you need guidance on something you're not all that knowledgeable about. Find someone who knows about the area you're unfamiliar with, but don't hand the task over to that person; better to work as a team on this one, so that next time around you'll be comfortable enough to tackle it yourself. And if something that you're not comfortable dealing with keeps coming up, it may be worthwhile for you to explore more formal training opportunities. Perhaps your union runs training sessions for member/activists.

Or perhaps with financial support from your union or your employer you can take workshops or even college courses (in local labour education programs) that will make you at least a mini-expert in a new area.

## Abandon Pride (Some More)

Maybe the reality is that the employer has gotten the better of the argument in times past, and this time they will again. Better to fight the good fight, though, than to leave a member hanging. (And you may find that you're older and wiser this time around, and you may come up a winner.)

## Try a New Tack

If you're reluctant to lose again, take a step back and take a fresh look at the problem. It might point to a different approach, like filing an equal employment

opportunity complaint this time instead of another grievance.

## Deal with Reality

Why do you keep not getting to a particular task or set of tasks? If you've truly got more on your plate than you can deal with, you need to delegate. No good comes from agreeing to do too much, and then disappointing people.

## Organize, Organize, Organize

Set up a system to help you keep up with your steward responsibilities, whether it's a computerized calendar of things to do, reminders in your date book, or stick'em notes on your desk, at your workstation, or some other appropriate place. Setting firm deadlines and making sure each one stares you in the face may help you keep up with all your responsibilities, not just the easy ones!



## The Bottom Line: Priorities

It may be that no matter what changes you or your union make in how you process members' complaints, there's just no way to do everything for

everyone. Rather than hap-hazardly put your effort into the cases that come up first, or most often, you (and your union) should periodically take a step back and figure out what the union's priorities should be. It may be that one type of problem just isn't likely to get solved right now, no matter what the union does, and that the smarter course of action is to wait until contract negotiations open the door to a solution. You're not doing a service to your members (or to your mental health) by trying to tackle every problem, every time.

— Michael Mauer: The writer is a labour lawyer and author of *The Union Member's Complete Guide*.

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OFFICE OF THE INTERNATIONAL PRESIDENT

Dear Brothers and Sisters,

As we begin the new year, there is a new spirit in the United States and Canada. A spirit that embodies all of our hopes and dreams for peace and economic security for our families. But as the world watched Barack Obama take the oath of office as the first African-American president, our hopes for a better tomorrow were tempered by the economic shockwaves rumbling through our communities.

In 2009 we must ensure that the great progress we made in 2008 results in real accomplishments for working families. Even with new allies in legislative halls and the White House in the United States and a anti-labour Conservative government on the defensive in Canada, nothing can be taken for granted. As both countries prepare to dig out of an economic mess not seen in generations, we must mobilize our members to make sure the programs they adopt put working families first and not just bail out the people who created this nightmare.

In the United States, we must work for the passage of the Employee Free Choice Act so that more Americans can join unions and re-enter the middle class with better wages, benefits and pensions. In Canada, we must work together to force the Conservative government to take bold measures to pull the economy out of recession. Both nations badly need investments in infrastructure, skills training, shoring up state and federal budgets and giving workers who lose their jobs real relief in unemployment insurance and other benefits.

The road ahead is difficult, but easier to navigate because of the work Stewards like you do to educate our members and get the message out.

As we work together to meet the enormous challenges ahead, your day-to-day efforts representing IAM members continues. This edition of the *IAM Educator* tackles the tough issues of making time to do all the tasks asked of you, handling grievances about promotions, dealing with sexual harassment claims between co-workers and strategies for navigating the tough economic times.

Thank you for the work you do as Shop Stewards and helping create a new spirit in 2009.

In Solidarity,

R. Thomas Buffenbarger  
International President

