

TAM

E D U C A T O R

Update for Stewards Vol. 4, No. 4

Canada

GSI: Grievance Scene Investigation



So here's the story. You're representing a member in a hearing where disciplinary action could result.

You've done your homework. You've talked to the member, gotten management's version, and read witness statements. You've reviewed applicable contract articles, your employer's regulations and relevant past precedent cases. You've done everything possible to thoroughly prepare.

Right?

Maybe not. Not if you didn't conduct a **GSI**. That is, a grievance scene investigation.

Why the need?

Because a thorough grievance scene investigation can provide a clearer picture of what happened and corroborate or refute witness statements and evidence. It can even uncover new witnesses and evidence that will help the grievant.

Just like the crime lab personnel on the popular television program *CSI: Crime Scene Investigation*, and all its spin-offs, a steward's visit to the scene of any alleged incident, accident, confrontation or rules infraction can provide a real feel for what actually took place.

Some Basic Realities

Keep some basic realities in mind:

- For most management personnel, conducting an investigation and/or issuing discipline is just one of their many responsibilities. Quick and simple confirmation, not a lengthy and thorough investigation, is their primary concern. Wrapping things up and getting back to their other duties takes priority.
- The credibility of witnesses can come into question on many levels: proximity to the scene, relationship to those involved, peer pressure, management pressure, personal involvement, and so forth.
- The grievor's initial statement or response to questioning both can be adversely affected by the runaway emotions that usually accompany any unusual experience.

So you can see the importance of conducting a grievance scene investigation.

GSI: Grievance Scene Investigation

Investigation Tips

To conduct a GSI you don't need the elaborate equipment used by the forensic evidence gatherers on the *CSI* programs. A little diligence, adequate observation powers and simple attention to detail will usually do the job. It wouldn't hurt to go just a little high-tech: sometimes a camera (if allowable on the premises) can prove helpful for recording and preserving certain evidence and scene conditions. For this purpose some stewards carry cell phones with photo taking capability, or your local may have a camera.

A crucial part of your scene investigation is *when* to do it. Some stewards aren't assigned to cases until well after the fact — hours, even days. You should always attempt to do your GSI on the same day and time as when the incident occurred. Closely duplicating original scene conditions better your chances for corroborating or refuting existing, and discovering new, evidence.

When possible, take the grievor with you. The grievant can give you an insightful review of what originally happened, and possibly refresh their memory concerning anything previously omitted or forgotten.

It's also helpful to review available evidence and witness statements prior to your GSI, better enabling you to form an opinion about its validity.

Three GSI Outcomes

- An employee was accused of hitting and damaging another company's vehicle. Though he denied being involved, management informed him that there was

physical evidence and an eyewitness confirming his guilt.

After the steward assigned was given the specifics of the physical evidence (area of damage and paint scratches matching the height and color of the vehicle driven by the accused) and the identity of the eyewitness, he conducted his GSI. It revealed that in the area at the time there were four vehicles of the same height and color that could have caused the damage, and that the view of the alleged eyewitness was obstructed by a building. When management came back with a "corrected" identity and location of the eyewitness, a return review of the scene showed that new viewpoint to be obstructed as well.

Refuting the existing evidence and demonstrating enough reasonable doubt caused the case to be dropped. The grievant returned to work without further issue, a direct result of a good GSI.

- Failure to conduct a grievance scene investigation can hinder a union's ability to provide adequate representation and waste time, money and resources. In one situation an arbitration case was into its third day when the grievant suddenly realized that management's depiction of the occurrence scene was inaccurate. This severely damaged the employer's case, shifted blame elsewhere, and resulted in exoneration. If a GSI had been conducted the flaw in management's case could have been discovered prior to arbitration, saving the union tremendous expense — and the grievant more than a few anxiety-filled days and sleepless nights.

- Finally, even when your GSI corroborates management's findings, and things look ugly for the grievant, having this information can help prevent a bad situation from getting worse: it can be used to convince the grievant that settlement and mitigation should be sought.

So, add grievance scene investigation to your representation arsenal, and better arm yourself for your daily representation battles.

— David Bates. The writer is a 22-year member and former steward and president of a Transport Workers Union local in Florida.

Avoiding Surprises In Arbitration

Arbitrations can be won or lost based on what the steward or union representative did — or did *not* do — before and during the grievance process. Here are six things to consider when handling grievances that might go to arbitration.

1 Get written documentation from everyone about everything. Leave nothing to chance. Make sure your documentation is legible, dated and signed, and includes all relevant dates, times and places with as much detail as possible about the item or issue being grieved. Essentially, make sure it says exactly what the witnesses would say when they give testimony. This is critical for three reasons:

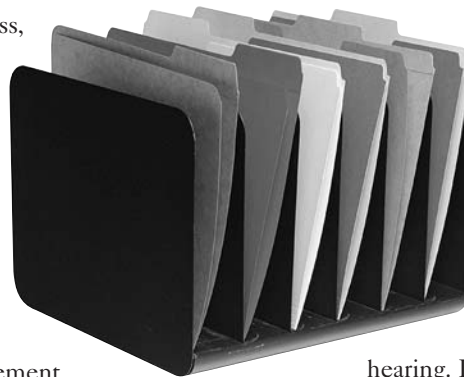
- Over time we forget details and it can sometimes take a year or more to get from the first step of a grievance to the arbitration.

- A key witness may quit or move away, leaving no way of being contacted.

- A witness can pass away before the case reaches arbitration, leaving no supporting documentation as to what he or she might have said.

In the last two examples the union may have to settle for something less than had been merited, for fear of going forward with the arbitration and losing even more. On the other side, if the union had the witness statements and those statements had previously been accepted by the other side throughout the grievance process (even if there were still disputes about the content) the union would stand a better chance of getting them admitted at arbitration (and

their being given appropriate “weight”). The alternative would be the potential of dealing with an objection from the other side over surprise evidence or due process, since management can’t cross-examine a document. If the union had brought all of the same information up during the grievance process through written statements, management would have had ample opportunity to question the individual’s information — and even the person — throughout the grievance process.



Being careful and thorough now can help prevent disaster if you go to arbitration

2 Don’t waive or skip grievance steps, no matter how good a case you feel you might have. Use each step to repeatedly confirm management’s position, evidence, documents and arguments.

Get to know the theory and details of their entire case as well as you know your own (maybe even better) so the union and its lawyers can be prepared for anything. This will also help in the event management starts changing its story.

3 Avoid surprise evidence. Make sure everything you are going to use (hard evidence or documents as well as who will testify and what their potential testimony will be) has been introduced either directly in grievance meetings or through and during the grievance process, usually by letter, before the request for arbitration has been made. This way you can keep the other side

from claiming that it is surprise evidence and asking the arbitrator to exclude it from the hearing.

4 Keep careful records of what management has introduced during the grievance process. Management may try to introduce some new document, testimony or other form of evidence at the

hearing. If they do, then it will be your turn to raise the surprise evidence rule and ask the arbitrator to exclude their material or witness.

5 Document all grievance meetings. Whether they are mutually agreed upon minutes or just your notes, they need to be dated, signed, accurate and legible.

6 Avoid credibility issues! It is imperative you and your side always keep your story straight, and deal only with the facts that can be proven (preferably through documentation). If any of your team “elaborates,” presumes facts not in evidence, or just plain fabricates a fact — or even a whole story — you will set yourself up for the cross examination question at arbitration “...and which time were you telling us the truth?” If you think this will be bad for you and your witnesses, just imagine what it will do for your case, especially when it comes down, as so many of these cases do, to your word against theirs!

— Bob Oberstein. The writer is the labor relations administrator for the City of Phoenix, Arizona. He is a former arbitrator, mediator and director of the Labor Management Studies program at Ottawa University.

One of the steward's many roles is to look out for the health and safety of co-workers, and the threats don't always come from dangerous equipment, toxic chemicals, foul air or the like. According to statistics, there are 1.9 million — 2.3 million job-related deaths worldwide each year, an estimated 928 workplace deaths (2004) in Canada. In 2004 in B.C., health-care and social service workers filed 5,657 traumatic injury reports. While more than 60 per cent were related to accidents like falls and overexertion, 275 were the result of assaults and violent acts. Teachers filed a total of 1,865 compensation claims — 45 were for assaults and violent acts.

It's a dangerous world out there, but stewards can make it safer by staying alert and using the power of the union to educate bosses, members, criminal justice authorities, and the public.

Understand the Distinctions

What can you do?

First, look at the kinds of violence that occur in your work setting. There are four types:

- **Criminal intent.** The violent person is a stranger who has no legitimate relationship to the worksite and is engaged in criminal activity, such as a robbery.
- **Customer/client/patient.** This is the predominant type of violence in healthcare, social services, and the public sector, and involves patients, inmates, and clients who assault staff.
- **Co-worker.** It is a myth that this is the predominant form of workplace violence. It comprises a small percentage of workplace homicides and assaults, but it gets the most attention from employers: they can blame workers rather than examining their own procedures. Where this blame game is occurring it should not be ignored by stewards and unions.
- **Personal.** This refers to domestic violence, perpetrated by an acquaintance or family member that spills into the workplace.

Each type of violence calls for a different response from stewards. One of the first steps is to speak with your health and safety committee members and become familiar with the frequency and extent of violence in your specific setting. Examine injury and illness records: they can provide helpful information on the extent of reported assaults, including what department they are occurring in and the amount of lost time — if any — they are causing. This information can be used to get management to take the problem seriously. But be careful: under reporting is common in many worksites with frequent assaults, and other methods may be useful, such as worker surveys, inspections, or interviews of injured members.

What Next?

Once you've established there's a problem, what kind of measures can you look to institute to make your workplace safer?

Develop access control systems in buildings frequented by customers, clients, and patients.

Where money is an attraction, as in convenience stores, look at drop safes, increased lighting, and security cameras. Have at least two staffers on duty late at night.

Stewards and Workplace Violence

Get training on recognizing and intervening with potentially violent customers, clients, and patients.

Implement effective emergency response systems and programs to bar unruly customers and clients from the worksite. Develop conflict resolution programs and threat assessment procedures for dealing with disputes within the workforce.

Get training in the recognition of domestic violence in the workplace, and systems to assist affected workers by developing specific safety plans and other supports.

The Occupational Safety & Health Administration does not have a standard on workplace violence prevention, but it does offer guidelines and other resources.

The OSHA guidelines call for management commitment and worker involvement; a comprehensive risk assessment; implementation of prevention measures; training, and periodic evaluation of the program. Check with your union leadership to determine if your employer has a written, comprehensive violence prevention program. Beware: often, implementation of such programs lacks union and worker involvement and many of the important steps in the policy are never carried out. Stewards can help address this by providing feedback to the leadership.

If there is no program to address workplace violence, consider making a presentation to your executive board or health and safety committee, proposing that the union raise the issue with management. And you can propose that contract language be negotiated requiring workplace violence prevention programs.

Investigate incidents in which a member is subjected to violence and consult with the union leadership on how to pursue your findings. Possible union follow-ups include filing a grievance, raising the issue at the health and safety or labour/management meeting, creation of a workplace violence task force, or approaching management to implement preventive measures discovered in the investigation.



Talking vs. Communicating

There is a saying, “When all is said and done, more is said than done.” Stewards who attend union meetings to decide how to handle an issue or grievance sessions with management probably agree. Why is it so difficult to get past the talk and make decisions, agreements and, well, get things done?

One reason is that when people talk to each other they often fly by like jets headed in different directions. Their arguments and the points they make don't connect, so they never get past just repeating them to each other or throwing up their hands in frustration.

Below are four examples of common ways people talk past each other and what you can do about them to make your interactions more productive.

Impact vs. Intention

One person argues strongly that she was insulted by something you said. You insist with equal strength that you did not mean to cause offence. She is focusing on the impact of your remark and you are focusing on the intent of your remark.

The deadlock can be broken and a better discussion can follow if she says something like, “You may have meant well, but the effect of your remark was insulting” and/or if you say something like, “I didn't mean to insult you but I hear you telling me that you were offended by what I said.”

This is not just good advice to improve communication: it's important because on issues like sexual harassment the courts look at the impact of statements regardless of the intentions of those who said them.

Either/Or vs. Yes/And

At a labour-management meeting, management says union members are taking outrageously long breaks. The union

responds that in fact supervisors are constantly pushing members to work through their breaks.

If both sides weren't stuck in an either/or argument (either members abuse breaks or supervisors abuse members) they might admit that *yes*, some members take their time getting back to work after coffee *and* some supervisors do deprive members of their rightful breaks. From there the two sides can move to getting more specific about how often each happens and then work on ways to reduce abuse surrounding breaks by supervisors or members as appropriate.

Process vs. Content

You have a great idea, but your fellow union members are angry. It's not that the idea isn't great; it's that you didn't consult anyone before you presented it to the group. You might get defensive because no one is giving credit for your hard work and good idea while the members are angry because you left them out of the process.

Things like this happen because you are so focused on coming up with a good idea you didn't remember that even the

greatest idea can get lots of opposition from people who believe they have a right to be in on the process of developing the idea from the beginning.

Concept vs. Specifics

A steward floats an idea at a meeting to plan a social event for members to build solidarity, and suggests perhaps a picnic. Instead of discussing whether having some kind of event is a good idea, some people start debating specifics, such as will the weather be good enough, or what should be on the menu. Other people stay out of the discussion or are negative on all specifics because they are not convinced a picnic is a good idea.


To get this discussion on track the group needs to first discuss and reach agreement on the concept of having a social function and what the goals of the event should be. Then they can have a good discussion on the specific details.



By being more aware of these dynamics and avoiding their pitfalls you should be able to find more common ground with people as you communicate. You may not always agree, but it will be much clearer that you disagree over real differences rather than on miscommunications, misunderstandings and missed opportunities.

— Ken Margolies. The writer is on the Labour Extension faculty of Cornell University.

New!
Steward
Training
CD!



From the editors of Steward Update newsletter

The UCS Introductory Steward Training Course offers everything a new steward needs to get up and running, and it's a great brush-up and refresher for veteran stewards as well.

The CD comes complete with audio, cartoons, a series of Skills Checks and Scenarios to help you master the material, even a Certificate of Completion when you finish.

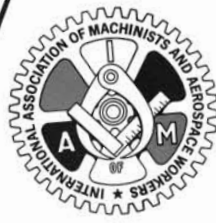
Includes:

- The basic responsibilities of a steward
- The rights of a steward
- Explaining what a union does and why it matters
- Introducing new workers to your union
- Using your collective bargaining agreement and its grievance procedure
- Rallying members around bargaining or other issues,
- Duty of Fair Representation requirements

Send \$69.95 +\$4 S&H to:

UCS Steward Training
165 Conduit St., Annapolis MD 21401
Or order online at www.unionist.com
Also check online for info on an online version and special features available to sponsoring unions.

International Association of Machinists and Aerospace Workers



9000 Machinists Place
Upper Marlboro, Maryland 20772-2687

Area Code 301
967-4500



OFFICE OF THE INTERNATIONAL PRESIDENT

Brothers and Sisters,

Union members live better, it's a fact. The average union worker makes more in wages and benefits than a non-union worker. But in today's economy, both union and non-union workers lose if their wages don't keep up with inflation. Union-represented workers lead the way for many non-union workers. What this means is that many non-union workers get the similar wages and benefits as unionized workers because employers are concerned their workers will join unions. But that gets harder to do if the number of union workers isn't growing. In Canada our union density is dropping (union density is, generally, the percentage of unionized workers in the total workforce).

As stewards, you can help do something about it. Help your co-workers understand that they have a stake in organizing. As union density is on the decline we have to organize. With more organized workers, we have the power to negotiate better wages that won't leave families struggling to catch up. And we will have a stronger voice within government.

We ask that you ask the members for "non-union" contacts, that you can pass onto your organizing committee.

Winning real raises is just part of the fight. We need to organize our workplaces. We have members who just do their job and go home, and we have members who need the "collective voice". It's our job to give representation to *everyone*.

This edition of the IAM Educator features articles designed to help you be a better steward — articles on dealing with workplace violence, preparing for arbitrations, communicating more effectively and doing proper grievance investigations.

Keep up your outstanding work as shop stewards for this great union. You are leaders in this union and we need your help *now more than ever*. Join us as we grow the IAM and to improve the lives of Machinists and all workers across North America.

In appreciation and solidarity,

R. Thomas Buffenbarger
International President



The IAM Educator Update for Stewards is published six times a year by Union Communication Services, Inc. (UCS), Annapolis, Md., in partnership with the IAM's William W. Winpisinger Education and Technology Center, 24494 Placid Harbor Way, Hollywood, MD 20636. For information on obtaining additional copies call 301-373-3300. Contents copyright © 2006 by Union Communication Services, Inc. Reproduction outside IAM in whole or part, electronically, by photocopy, or any other means without written consent of UCS is prohibited. David Prosten, editor and publisher.

