IBEW LOCAL 160

STEWARD MANUAL

Prepared By Williams & Iversen, P.A.
1611 West County Road B, Suite 208
St. Paul, MN 55113
651-848-0280
Congratulations on your selection as an IBEW Local Union 160 Steward!

You are taking on one of the most essential and challenging roles in our Union. That’s because in the eyes and minds of your co-worker, you are the Union. The Steward is the one Union person they see day in and day out, acting as a representative, as an organizer, as a communicator, as a leader. Based on the steward’s performance and effectiveness, members and non-members alike form their opinions on how well the Union is doing its job of protecting and defending workers’ rights. These opinions, of course, become the basis for decisions on whether to become more active in the Union.

Yes, the Steward takes on a huge responsibility. But you are certainly not alone when you accept that challenge. That’s why we have prepared this handbook. Although your situation may be very different from another Steward’s situation in our large and diverse IBEW family, these pages contain helpful guidelines and pointers for everyone. Talk over problems and issues with your fellow Stewards, your business representative and your local’s officers. By working together as a team, you can lay a sturdy foundation for building a strong, dynamic local.

By diligently performing your Steward tasks, you will gain the confidence and respect of your coworkers. You will also earn management’s respect. In so doing, you will make collective bargaining a living process that is constantly working on behalf of our members.

By taking up this tough challenge, you can feel satisfaction and a great deal of pride in helping our Union—your Union—grow even stronger and more effective in the fight for dignity for all IBEW members.

Thank you and good luck!

In solidarity,

The Officers and Staff of Local 160

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DUTIES OF A UNION STEWARD

A steward has four major roles:

1. Leader
   • Spark the enthusiasm of fellow employees
   • Enlist their cooperation
   • Build a more active union

2. Representative
   • Speak to management on behalf of your co-workers
   • Watch for violations of the agreement or established working conditions
   • Convey concerns of your members to local leadership Organizer--
   • Build the union team -- sign up new members
   • Activate those who are members
   • Monitor Workplace injury and safety laws (Work Comp- OSHA)

3. Communicator
   • Keep members informed
   • Explain union goals
   • Convey union policies and programs to the rank and file; express your co-workers’ needs and concerns to the union leadership

4. Duty to Represent

Leader
As the union representative for your workplace, strengthening the union and building support for its programs are major objectives. Talk to the employees about the union’s activities to build understanding of union goals. Since you are the most visible part of the union, members and non-members alike will judge IBEW by what you say and do. Be an activist! Being a leader doesn’t mean you have to do everything yourself. A leader isn’t necessarily someone who does things, but someone who gets things done. Encourage the membership to take part in union activities such as political action, community action, preparation for negotiations, organizing, employee assistance programs, and other local activities. You’re in a unique position. You can recruit future leaders in the union.

Representative
Probably your most visible role is that of being an employee representative. Because you are a steward, your fellow workers will bring many of their problems to you. They will expect you to be understanding; they will also expect you to be assertive on their behalf in front of management. It is your responsibility to speak to management on behalf of the employee about grievances, contract violations, or other problems as effectively as you can. Some employees may be afraid to bring their problems to you; they may fear that may get them in trouble with management. As a steward, create a climate of trust so employees can feel comfortable bringing their problems to you and are confident that you will handle them effectively. Finally, you are also the employees’ representative in conveying their concerns to the union leadership. Attend union meetings and meetings with other stewards in the local and report on the activities in your department. Your local union officers depend on you to be their eyes and ears in the workplace. Being an effective union representative is important not only in protecting workers’ rights, but is also an excellent organizing tool. Confidence in the union increases when people see you, the union steward, acting on their behalf.

Organizer
Signing up new members is one of your most important tasks. New members, with their energies, enthusiasm, and new ideas, are IBEW’s lifeblood; the union depends on your organizing efforts. An organized workforce has many advantages: it bargains better contracts and has more success in settling grievances. The stronger the union, the less time management will spend testing the union’s strength. Management meets new employees
long before you will. Since both management and the union are competing for their allegiance, one of the best ways to recruit is to greet them their very first day on the job. Introduce yourself and welcome him or her on behalf of IBEW and the other workers. Tell the employee about your union and give him or her a dues card to sign. You'll find it much easier to sign up new members when they first report to work rather than after they settle in. They might become so settled that they will decide there's no reason to join (if this is permitted under your contract). Non-member employees who have been around for a long time and agency fee payers are harder to organize. It's important for you to know who these people are and learn why they haven't joined.

People don't join for a number of reasons from "...nobody ever asked me..." to "...why should I join? I get all the benefits without having to pay dues..." to "I don't need a union. I have my own voice and can do better on my own..." After learning the reason(s) you must try to address them. Explore reasonable responses with other stewards and your local leadership. Be sure to keep new employees and non-members informed about the union is doing. Too often workers assume that their salaries and benefits are the product of management's generosity. It is important for all employees to understand that their job conditions are a result of the strength of their union. Clearly, a strong union will have a greater influence in setting wages and working conditions than a weak union. Organizing around issues which affect everyone, such as health and safety, is often the most successful way of uniting a group of employees.

Communicator

The steward is a key link in the union's communication system. An effective steward keeps the members informed about everything and listens carefully to their concerns. While this includes conveying union policies and programs to the rank and file, it also includes transmitting your co-workers' concerns to the union leadership and to management. Communication can be in many different forms such as flyers, newsletters, lunch time get-togethers, more formal meetings, or one-on-one conversations. Since being a communicator is one of your major roles, it is in everyone's best interest that you learn to practice the art of active listening. People with whom you are communicating will get a sense that you really care about what they are saying and you will get both the most accurate information possible and a greater understanding of the problem at hand. Finally, be a source of information for the members. Read the LOCAL UNION NO. 160 newsletters and IBEW JOURNAL magazines. Be informed on the major news which may affect the membership. An informed steward not only builds his or her own credibility, but the credibility of the union itself.

Duty of Fair Representation

The "Duty Of Fair Representation" is a term with which all stewards should become familiar. It is defined as:

"A union's obligation, as the exclusive representative of a group of employees, to represent fairly all employees in its bargaining unit."

What this means to you as a steward is that every grievance you handle must be taken through the grievance process based on the merits of each case, and must not be denied the process through any discrimination, obvious negligence, or by any arbitrary or capricious decision to drop the case. However, not every problem you handle will be a valid grievance, and not every grievance must be pursued all the way to arbitration.

In deciding the merits of a grievance, you should determine:

• whether a violation of workers' rights has occurred
• whether there is sufficient proof that a violation did occur

By adhering to the following checklist, you can be confident that you have fulfilled the Duty of Fair
Representation requirement:

☐ Follow the steward handbook for the investigation, documentation, preparation and presentation of grievances.
☐ Process all valid grievances
☐ Observe the contract provisions for grievance processing.
☐ Keep the worker informed about the progress of the grievance.
☐ Pay close attention to time limits and be prepared to extend them to allow for appeals or additional investigation.
☐ Always allow the grievant to submit more evidence or arguments for the grievance.
☐ Keep records.
☐ Assure that the grievant is informed of any internal appeal rights available if he/she is dissatisfied with the manner in which the grievance was handled.

For stewards and union representatives, the close attention of the courts to the matter of the duty of fair representation should not be a source of anxiety or doubt about their ability to help workers with grievances. There is no secret method for processing grievances known only to "competent professionals" to fulfill the duty of fair representation. Nor is there a legal trap ready to be sprung for the unwary grievance representative who steps over an imaginary line in a maze drawn by the courts. By following these recommendations, a steward, business representative, grievance committee, or anyone who works with grievances on behalf of the union can be confident that they will fulfill the duty of fair representation:

THE ROLE OF A STEWARD AS A LEADER

"Pray for the dead—and fight like h*** for the living!"

— Mother Jones, union organizer and agitator.

This simple, earthy phrase captures the essence of the local union leader's primary job: to fight for decent wages and working conditions, and for respect and fair treatment on the job for union members. This has always been the purpose of unions. The way local leaders go about meeting this responsibility will have a large impact on how well the local union achieves its objectives.

A Definition of Leadership
One basic definition of leadership is: A union leader influences and motivates others to take action toward achieving the union's goals and objectives.

A CHECKLIST: Leadership Principles
• Maintain high standards of honesty and integrity.
• Treat everyone with respect and dignity.
• Recognize and respond to the needs of the membership; be available to members and other officers.
• Communicate and educate.
• Build solidarity and pride in the union.
• Encourage ALL members to be involved in union activities.
• Maintain a positive, "can-do" attitude.
• Delegate tasks, responsibility, and authority.
• Be a good listener.
• Insist on excellence, for yourself and for others; develop yourself to your highest potential.

Job Description For A Local Union Leader
A local leader's job description would contain two sections. The first would cover union maintenance
responsibilities—the day-to-day jobs that go into administering the local union and keeping it running smoothly.

The second section would include union building responsibilities—the many tasks that a leader needs to perform in order to build a strong, effective local.

**Local Leader Job Description**

*Union Maintenance Responsibilities*
- Enforcing the contract
- Handling grievances—formal and informal
- Participating in labor-management meetings

*Union Building Responsibilities*
- Organizing new members into the local.
- Keeping members, and potential members, informed and up-to-date
- Educating members on issues and problems affecting the union
- Recruiting members to become involved in the union's work and activities
A Checklist: The Organizing Mode!

- Leaders stimulate member involvement in problem solving and collective action.
- Leaders seek creative solutions, outside the grievance and negotiations processes.
- Leaders have a strong commitment to communication and education, and an active membership.
- Leaders develop and depend on members' skills and abilities.
- Leaders share information with the membership.
- Leadership is decentralized, through member involvement and the use of committees.
- Leaders are mainly proactive, independent of management's actions.

Strategic Planning

Every local union officer has his or her own specific constitutional responsibilities. But the local union Executive Board has the collective responsibility to provide guidance and direction for the local. To effectively carry out this task, the Executive Board should make strategic planning an essential part of its leadership role.

The benefits of strategic planning are numerous. A local can improve the way its resources (time, money, etc.) are used. Issues can be addressed in a timely, consistent, and systematic fashion. Local leaders can educate and involve the membership in the achievement of the local's goals.

A Checklist: Successful Planning

- Develop realistic, reachable goals and objectives.
- Examine the local's strengths and weaknesses
- Don't expect a "quick-fix" for the local's problems
- When devising tactics and strategies, involve the members in the planning as well as the actions
- Constantly monitor and evaluate progress toward the established goals
- Be willing to discard, change, adapt, or modify strategies

Involving The Membership

Union leaders should recognize that union members have different reasons for becoming involved in the union. Some are motivated by a sense of belonging. Some want the chance to use their talents and abilities. Others see a particular problem and want to help solve it. Many gain a sense of accomplishment from a worthwhile activity. And some just want to "help other people."

Through planning, creative thinking, and consistent effort, union leaders can tap into the rank and file membership—which is, after all, the source of the union's power.

In some cases, members participate in one union activity (e.g. signing a petition, wearing a button, stuffing envelopes). Very often, members who take part in a specific activity will then want to become even more involved. When this happens, leaders can delegate an assignment and more responsibility to a member. The most common example of delegating is asking a member to chair or serve on a committee in the local.

There are three significant rewards for local leaders who involve the membership:

1) they can manage their own time more efficiently;
2) they cultivate future leaders; and
3) through increased activities, they are building a stronger local.

A Checklist: Increasing Participation

- Ask the member in person.
• Let the member know his or her help is needed.
• Tell the member a definite beginning and definite end to the job.
• Ask the member to do something he or she does well.
• Give the member a choice of jobs.
• Tell the member how his or her job is part of the union's overall effort to reach a particular goal.
• Maintain accountability—encourage the member to ask questions and communicate about how the job is going.
• Explain how the member's work contributes to building a more effective local.

A Checklist: Delegating
• Choose a member who is capable of performing the task, a person who has the right amount of knowledge, experience, and eagerness to handle the assignment.
• Explain the objectives of the assignment, including the purpose of the job; the results expected, the role and authority being delegated, and any timetables involved.
• Provide the member the resources and authority needed to carry out the assignment.
• Keep in contact with the member—to monitor progress, evaluate results, establish accountability, and give the member a way to provide information and feedback.
• Give credit and praise for a "job well-done."
COMPLAINT □ OR GRIEVANCE REPORT □ Check One
Local Union 160, International Brotherhood of Electrical Workers
MINNEAPOLIS, MINNESOTA

NAME
ADDRESS
Classification
Man in Charge
Job location
Weather conditions (inside or outside)
Stale equipment involved
Witnesses and attach signed statements
Give detailed report of Complaint or Grievance

Must be signed by Steward with his comments and Article violated

Record of action by Union

Complaint taken by              Date
Assigned to              Date
GOALS OF A UNION STEWARD

• Keep yourself informed on union affairs.

• Serve as an example to your members.

• Keep the members informed on union policies and union activities.

• 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.

• Meet the new members early, inform them, educate them, help them become members - make them more than dues payers.

• Get your location to act as a union - have them stick together.

• Act as a leader - do not let personal likes or dislikes prejudice your actions as a grievance representative.

• Fight discrimination, whether it be overt or very discreet. Discourage prejudice of any kind.

• Keep accurate and up-to-date records. Write it down.

• Do not promise, if you cannot deliver.

• Encourage political action on the part of your members. See to it that they are registered and vote.

• Be an active politically. Encourage members to exercise their right to vote, and to vote for labor friendly candidates.

• Know how to refer to the union contract, by-laws, and international constitutions. If you are not sure, seek help so that you can become familiar with the documents.

• Encourage and support the union’s activities on behalf of organizing the unorganized.

• 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.

• Fight, whenever you meet it, the anti-union element. You can best do this by being informed and being dedicated to the labor movement.

• Do not hesitate or stall. If you do not know, admit you do not know. Then try to get the answer.

• Keep your workers informed on sources of information. Give pertinent information whenever a worker wants it.

• In dealing with the management, remember that you are the elected or appointed representative of your fellow members. Never consider yourself to be inferior to management representatives. You are always their equal.

• Be proud of your position. Remember you are a union representative of your local union which has the full support of tens of thousands of members bound together in an international union, with the support of millions of other union members.

• Wear your union button and encourage your coworkers to wear it.

• Investigate every grievance as if it were your own. Keep the member informed. Make sure you keep your deadlines so that time lines are not missed. Research every grievance as if it were going to arbitration but try to resolve it at the lowest possible level. Keep your local union informed of the status of each grievance.

• Attend and encourage attendance at any labor education program that might be available to you and your members.
ESTABLISHING YOURSELF IN THE ROLE OF STEWARD

Establish your position
Sometimes the employee may speak with the immediate supervisor to solve problems informally. Whenever possible, we should encourage the member to bring along his/her shop steward to make sure that the employee gets treated fairly. Often, when members go into meetings with their supervisors they are unaware of their rights and the stipulations of the contract. As a steward you cannot assume that the membership will automatically respect your abilities. Respect must be earned by showing the members that you will apply your skills and knowledge of the contract to represent all the members to the best or your ability.

KEEP THE LINES OF COMMUNICATION OPEN BETWEEN YOURSELF AND OTHER UNION REPRESENTATIVES.

Management's test
Remember that if you are a new steward, management will often test you to see how well you represent the member. That test may be in the form of denying you reasonable time to do your job or giving you an extension of a time limit on a first step grievance. Your supervisor may try to interfere with your investigation of a grievance by denying access to records. Or the supervisor may simply say no at your grievance meeting even though your member's grievance is a clear case of injustice and a breach of the agreement. Expect to be tested. Don't get angry or frustrated. Supervisors are often trained to incite a steward so that they will blow the grievance meeting. Don't lose your cool.

Establish the Union
When they hire in, new workers are often given expensive "orientation" from management, but may not be exposed to the union view. Not realizing the struggle that went into winning these gains, many of them may believe that wages and conditions they enjoy come from the goodness of someone's heart. Get those new members early. Even if they are on probation, a friendly piece of advice and support will be long remembered.

Represent the rank and file
Always treat the member with respect and dignity. Work with the member. It is a sign of empowerment and the strength of the union as a group. The operative word is always "we" not I. The word "they" is always reserved for the company or management, not the local union or the international. Always tell the truth. Sometimes you will have to say "no" and then try to convince the member that you are right. Have a reason for the decision and have some alternative strategy for the member if the situation merits it. You have to keep favoritism out of the grievance procedure and avoid letting your personal feeling about a member cloud the way you represent him or her. When one group of members is pitted against another, and while those who are favored might think small advantages are worth fighting for, everyone loses.

Build solidarity
Being situated right in the middle of the structure amid the union, management and the rank and file, the grievance representative can do a lot to build unity. In everything you do, you are setting an example to the rank-and-file that they have power and that power is the union. Your actions every day build the union.
UNDERSTANDING FEDERAL LAWS THAT APPLY IN THE WORKPLACE

NATIONAL LABOR RELATIONS ACT (NLRA)

The NLRA was enacted by Congress in 1935. It was hailed at the time and for many years after as the Magna Carta of America labor. Previously, employers had been free to spy on, interrogate, discipline, discharge, and blacklist union members. A great strike wave in 1933 and 1934 included citywide general strikes and factory takeovers. Violent confrontations occurred between workers trying to form unions and the police and private security forces defending the interests of anti-union employers. Some historians believe that Congress adopted the NLRA primarily in the hopes of averting greater, possible revolutionary, labor unrest. The NLRA guaranteed workers the right to join unions without fear of management reprisal. It created the National Labor Relations Board (NLRB) to enforce this right and prohibited employers from committing unfair labor practices that might discourage organizing or prevent workers from negotiating a union contract. The NLRA's passage galvanized union organizing. Successful campaigns soon followed in the automobile, steel, electrical, manufacturing, and rubber industries. By 1945, union membership reached 35% of the work-force. In reaction, industrialists, and other opponents of organized labor sought to weaken the NLRA. They succeeded in 1947 with the passage of the Taft-Hartley Act, which added provisions to the NLRA allowing unions to be prosecuted, enjoined, and sued for a variety of activities, including mass picketing and secondary boycotts. The last major revision of the NLRA occurred in 1959, when Congress imposed further restrictions on unions in the Landrum-Griffin Act.

Key Provisions

The most important sections of the NLRA are Sections 7, 8, and 9. Section 7, is the heart of the NLRA.

It defines protected activity.

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection.

Section 7 applies to a wide range of union activities. In addition to organizing, it protects employees who take part in grievances, on-the-job protests, picketing, and strikes. Section 8 defines employer unfair labor practices.

Five types of conduct are made illegal:

- Employer interference, restraint, or coercion directed against union or collective activity (Section 8(a)(1))
- Employer domination of unions (Section 8(a)(2))
- Employer discrimination against employees who take part in union or collective activities (Section 8(a)(3))
- Employer retaliation for filing unfair-labor-practice charges or cooperating with the NLRB (Section 8(a)(4))
- Employer refusal to bargain in good faith with union representatives (Section 8(a)(5))

Threats, warnings, and orders to refrain from protected activities are forms of interference and coercion that violate Section 8(a)(1). Disciplinary actions, such as suspensions, discharges, transfers, and demotions, violate Section 8(a)(3). Failures to supply information, unilateral changes, refusals to hold grievance meetings, and direct dealings violate Section 8(a)(5). Section 8 also prohibits union unfair labor practices, which include, according to legal construction, failure to provide fair representation to all members of the bargaining unit. Section 9 provides that unions, if certified or recognized, are the exclusive representatives of bargaining unit members. It prohibits the adjustment of employee grievances unless a union representative is given and opportunity to be present, and
establishes procedures to vote on union representation. The NLRA sets out general rights and obligation. Enforcing the Act in particular situations is the job of the NLRB.
DUTY OF FAIR REPRESENTATION

Experienced stewards know that there are many categories of both grievants and grievances. There is the employee who always seems to have a bone to pick with the boss; the timid grievant who wants to grieve, but is afraid of what the boss will say; aggressive grievants who not only want to pursue their grievances to the hilt, but will add any details necessary to strengthen their case, proven or not. There is the loyal union member who grieves to protect his or her livelihood and family after being suddenly laid-off, as opposed to the non-union “fair-share” employee who wants to file a grievance “just to see what the union will do about it.” The list can go on and on. Just ask any longtime IBEW steward for a “war story” or two and you’ll hear the remarkable variety, first-hand. Whether your grievant or grievance fits into any particular category or not, there is one important thing to remember: Your course of action in any grievance case will be determined by the merits of the grievance, not by the merits of the grievant. It is when the latter becomes a determining factor in grievance handling that a breach of the duty of fair representation (DFR) suit can occur.

Determining the Merits
When we speak of the merits of a grievance, we are actually referring to two things: First, whether a violation of workers’ rights has occurred; and second, whether there is sufficient proof that the violation did occur. It is the duty of the steward, business representative, grievance committee, or any other union body involved in grievance handling to determine whether these two things exist, and to take appropriate action either to pursue the grievance, or to drop it. The key to the duty of fair representation as viewed by the courts: The courts require a grievance be taken through the grievance process by the union representative based on the merits of the case, and must be denied the process through any discrimination, obvious negligence, or by any arbitrary or capricious decision to drop the case. Courts also recognize, however, no obligation to pursue grievances which are totally lacking in merit or where the prospects of success are remote.

Errors and Responsibility
This does not mean that union representatives cannot make mistakes. The courts leave room for our human failings, even when they sometimes adversely affect our members. What the courts have determined is that we cannot be selected in good faith as the representative of the workers, and then disregard our responsibilities for no real reason. Nonetheless, members do become dissatisfied with union representation, and sometimes take their dissatisfaction to the courts in the form of a breach of the duty of fair representation (DFR) suit. Although there is no foolproof way to avoid a lawsuit, the concepts outlined above significantly protect stewards and other union representatives against successful DFR suits. Please note that these are merely guidelines and suggested-approaches. Each local must, of course, develop and utilize a program which is best suited to its own internal structure and the provisions of the various collective bargaining agreements which it must negotiate and administer.

OVERVIEW OF FMLA
The Family and Medical Leave Act (FMLA) provides to workers at employers with 50 or more employees with up to 12 weeks of unpaid, job-protected leave per year. It also requires that group health benefits be maintained during the leave. The FMLA is designed to help employees balance their work and family responsibilities by taking reasonable unpaid leave for certain family and medical reasons. It also seeks to accommodate the legitimate interests of employers, and promotes equal employment opportunity for men and women. A covered employer is obligated to establish and FMLA policy and communicate it to its workers. This policy may require an employee to use up all sick leave and vacation pay during FMLA leave. However, a covered employee cannot be refused FMLA leave because he/she has no vacation or sick leave available. FMLA leave can be used for injury or illness of a family member of a covered employee.

THE FAIR LABOR STANDARDS ACT'S (FLSA)

Basic requirements:

- Payment of the minimum wage:
- Overtime pay for time worked over 40 hours in a workweek;
- Restrictions on the employment of children; and
- Record keeping.

There are a number of employment practices which the FLSA does not regulate. For example, the FLSA does not require:

1. vacation, holiday, severance, or sick pay;
2. meal or rest periods, holidays off, or vacations;
3. premium pay for weekend or holiday work;
4. pay raises or fringe benefits;
5. a discharge notice, reason for discharge, or immediate payment of final wages to terminated employees;

These requirements only exist as a result of a union contract or in some cases state law.

The FLSA does not provide wage payment or collection procedures for an employee's usual or promised wages or for commissions in excess of those required by the FLSA. Also, the FLSA does not limit the number of hours in a day, or days in a week, an employee may be required or scheduled to work, including overtime hours, if the employee is at least 16 years old. Again, these are protections that are often times in a union contract. However, some states do have laws covering some of these issues, such as meal or rest periods, or discharge notices.

FEDERAL EQUAL EMPLOYMENT OPPORTUNITY (EEO) LAWS

I. What Are the Federal Laws Prohibiting Job Discrimination?
- Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits employment discrimination based on race, color, religion, sex, or national origin;
- the Equal Pay Act of 1963 (EPA), which protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination;
- the Age Discrimination in Employment Act of 1967 (ADEA), which protects individuals who are 40 years of age or older;
- Title I and Title V of the Americans with Disabilities Act of 1990 (ADA), which prohibit employment discrimination against qualified individuals with disabilities in the private sector, and in state and local governments;
- Sections 501 and 505 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified individuals with disabilities who work in the federal government; and
- the Civil Rights Act of 1991, which, among other things, provides monetary damages in cases of intentional employment discrimination.

The U.S. Equal Employment Opportunity Commission (EEOC) enforces all of these laws. EEOC also provides oversight and coordination of all federal equal employment opportunity regulations, practices, and policies.

Discriminatory Practices

II. What Discriminatory Practices Are Prohibited by These Laws?
Under Title VII, the ADA, and the ADEA, it is illegal to discriminate in any aspect of employment, including:
- hiring and firing;
- compensation, assignment, or classification of employees;
- transfer, promotion, layoff, or recall;
- job advertisements;
- recruitment;
- testing;
- use of company facilities;
- training and apprenticeship programs;
• fringe benefits;
• pay, retirement plans, and disability leave; or
• other terms and conditions of employment.

Discriminatory practices under these laws also include:
• harassment on the basis of race, color, religion, sex, national origin, disability, or age;
• retaliation against an individual for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices;
• employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals of a certain sex, race, age, religion, or ethnic group, or individuals with disabilities; and
• denying employment opportunities to a person because of marriage to, or association with, an individual of a particular race, religion, national origin, or an individual with a disability. Title VI also prohibits discrimination because of participation in schools or places of worship associated with a particular racial, ethnic, or religious group.

Employers are required to post notices to all employees advising them of their rights under the laws EEOC enforces and their right to be free from retaliation. Such notices must be accessible, as needed, to persons with visual or other disabilities that affect reading.

**OCCUPATIONAL SAFETY AND HEALTH**

**The Occupational Safety and Health Act of 1970 (OSH Act)**

**Who is Covered**
In general, the Act covers all employers and their employees in the 50 states, the District of Columbia, Puerto Rico, and other U.S. territories. Coverage is provided either directly by the federal Occupational Safety and Health Administration (OSHA) or by an OSHA-approved state job safety and health plan. Employees of the U.S. Postal Service also are covered.

The Act defines an employer as any "person engaged in a business affecting commerce who has employees, but does not include the United States or any state or political subdivision of a State." Therefore, the Act applies to employers and employees in such varied fields as manufacturing, construction, long shoring, agriculture, law and medicine, charity and disaster relief, organized labor and private education.

**The Act does not cover:**
• Self-employed persons;
• Farms which employ only immediate members of the farmer's family;
• Industries in which other federal agencies, operating under the authority of other federal laws, regulate working conditions. This category includes most working conditions in mining, nuclear energy and nuclear weapons manufacture, and many aspects of the transportation industries; and
• Employees of state and local governments, unless they are in one of the states with OSHA-approved safety and health plans. Minnesota is such a state.

**Basic Provisions/Requirements**
The Act assigns OSHA two regulatory functions: setting standards and conducting inspections to ensure that employers are providing safe and healthful workplaces. OSHA standards may require that employers adopt certain practices, means, methods or processes reasonably necessary and appropriate to protect workers on the job. Employers must become familiar with the standards applicable to their establishments and eliminate hazards. Compliance with standards may include ensuring that employees have and use personal protective equipment when required for safety or health. Employees must comply with all rules and regulations that apply to their own actions and conduct.
Access to Medical and Exposure Records:
OSHA requires the employer to grant the employee access to any medical records the employer maintains with respect to that employee, including any records about the employee's exposure to toxic substances.

Personal Protective Equipment:
OSHA has established standards for each segment of industry except agriculture, requiring employers to provide employees with personal equipment designed to protect them against certain hazards. This equipment can range from protective helmets to prevent head injuries, to eye protection, hearing protection, hard-toed shoes, special goggles for welders, and gauntlets for iron workers and protective rubber gloves for linemen.

Record Keeping:
Every employer covered by OSHA who has more than 10 employees, except for employers in certain low-hazard industries in the retail, finance, insurance, real estate, and service sectors, must maintain OSHA-specified records of job-related injuries and illnesses. Employers with 10 or fewer employees and employers in statistically low-hazard industries (listed in 29 CFR 1904, Subpart B) are exempt from maintaining these records. Industries currently designated as low-hazard include: automobile dealers; apparel and accessory stores; eating and drinking places; most finance, insurance, and real estate industries; and certain service industries, such as personal and business services, medical and dental offices, and legal, educational, and membership organizations.

Employee Rights
The Act grants employees several important rights. Among them are the right to complain to OSHA about safety and health conditions in their workplaces and have their identities kept confidential from employers, to contest the amount of time OSHA allows for correcting violations of standards, and to participate in OSHA workplace inspections. Private sector employees who exercise their rights under OSHA are protected against employer reprisal. Any employee who believes he/she is a victim of reprisal must notify OSHA within 30 days of the time they learned of the alleged discriminatory action. OSHA will then investigate, and if it agrees that discrimination has occurred, OSHA will ask the employer to restore any lost benefits to the affected employee. If necessary, OSHA can take the employer to court. In such cases, the worker pays no legal fees.
GRIEVANCE HANDLING

Having a collective bargaining agreement unfortunately does not guarantee the delivery of its contents. Management resists change and sometimes tests the strength of the union by violating the contract to see what the union will do. This is often the reason grievances arise.

What Is A GRIEVANCE?
As an IBEW steward, your most visible responsibility is to handle grievances for the workers you represent; therefore, you have to understand what constitutes a grievance. While you should check the precise definition of a grievance in your contract, a grievance can be considered to be some form of a complaint by an employee based on a violation by management.

The key to this definition is "violation by management." In determining if there has been a violation, you should ask yourself the following questions:

- Did management violate the contract or work rules?
- Did management violate a "past practice"?
- Did management treat a worker unfairly?
- Did management violate a health and safety regulations or standards, a state or federal law?
- Did management fail to provide a harassment free work place?

Understanding your role in grievance handling and problem solving is the first step toward becoming an effective steward.

Know your time limits:
Every grievance procedure has different time limits for processing grievances. You should not only know limits on all steps, but also know the process by which you can extend them. Grievances can be lost because time limits are not properly followed. Keep management to their time constraints.

Resolve grievances at the lowest possible step:
This saves time and frustration, and helps build better relationships in the workplace. Most importantly, it increases co-workers' respect for the steward as an effective union leader and problem solver.

Keep the grievant informed about the status of the grievance:
A failure to communicate with the grievant regarding his or her case may be misinterpreted as a lack of effort on your part in resolving the problem.

Publicize grievances:
While it's important to respect requests for confidentiality, publicize grievances in general terms whenever possible. Not only will this show your local in action, but it may encourage other employees to come to you with their problems. Use bulletin boards if available. In addition, see that grievance settlements and arbitration decisions are posted and that grievances are reported in your local union's newspaper or newsletter.

Keep written records of all grievances (including the Grievance Fact Sheet and the grievance form):
In similar grievances, you can refer to the records to help formulate your arguments, strategies, and approaches.

Understand the value of grievances beyond the correction of immediate injustice:
When your local wins a grievance, both members and non-members have living proof of the union's value. A lost grievance underscores the need for unity and the anticipation of winning a better contract. Use grievances to build and strengthen your local. In addition, when it comes time to bargain your contract, a review of the local's grievances will help pinpoint what subjects and issues the union should address.
BASICS FOR GRIEVANCE HANDLING

1. Follow and enforce the contract in all provisions regarding grievances. Time limits which are clearly stated in the contract, as well as the steps involved in the grievance procedure must be followed strictly. If any agreement is made by the parties to alter, extend, or otherwise affect the provisions of the contract, it should be put in writing, and the grievant informed. Although many stewards and union representatives enjoy a casual relationship with the employer regarding meeting time limits of the grievance procedure, this can be risky for both, even if it is advantageous in resolving grievances.

2. Always keep the worker informed about the status of his or her grievance. The grievance representative should always keep a written record of the progress of a grievance, noting dates, contacts, decisions regarding the grievance and reasons for the decisions. A good practice is to ask the grievant to sign or initial the record or grievance form at each significant stage of the process. This practice will ensure that the appropriate contact is maintained with the grievant and will confirm the contact in writing. If the union decides to drop a grievance for lack of merit, or any other reason, the grievant should be notified of this in writing, be informed of the reasons for the decision, and told the procedure for appealing this decision. Some unions use certified mail for this purpose in order to guarantee that the grievant acknowledges receiving the notice. In all cases, documentation of the notice to the grievant should be made.

3. The union should always allow a worker the opportunity to submit additional evidence or further arguments in support of his/her grievance at any stage in the grievance procedure. Affording this opportunity to the grievant demonstrates the willingness of the union to investigate the grievance fully as to its merit. At the same time, by listening to the grievant and considering those aspects of the case which are important to him/her, the union representative can offer the grievant a measure of satisfaction and a feeling of being part of the process. It may also make the investigation process easier and more accurate for the union representative.

Writing a Grievance
One of the most difficult jobs of any grievance representative is writing a grievance. Many of our contracts provide for the steward or representative to write the grievance on behalf of the member. By having the steward write the grievance, the union is better able to track the issue and control the grievance procedure. The member is better represented and the process is used to build solidarity in the local union.

Your grievance form
The first step of the grievance process is an informal meet and discuss meeting involving the member, steward, and first line supervisor. Your goal is to settle issues early. In order to be effective towards this goal you must make advance preparation. Take a pad and pencil with you when you meet with the supervisor for the first step grievance meeting, and take notes of each participant’s statements. If you are unable to resolve the issue at this meeting, let the supervisor know that you will need a verbal response by the second working day after the grievance was presented. If the grievance is denied, complete the first step grievance form including the company’s response and submit it to the Business Manager. Include a copy of any investigation notes and relevant documents. The Business Manager will assign a number to the grievance and submit a 2nd step grievance form to the company.

Be timely
You must be timely in the presentation of your grievance. That means you should file it within the proper amount of time that is stipulated in your contract. Be careful of contract language. Working days and calendar days are different. Filing after the knowledge of the occurrence is different from having to file after the date of the incident. When you write the grievance, limit the statement to basic information. Provide only enough information to identify the grievance so that management understands what the basic problem is, what violations have occurred and how the problem should be fixed.
Be brief
You are not obligated to tell management in a grievance all of the results of your investigation. Don't do their work for them. Omit the union's arguments, evidence and justification for its position. You should save that for the grievance meeting. You don't need to tip your hand before you get to that grievance meeting. Avoid personal remarks. State the position of the union not opinions. Opinion words include "I think," or "I believe." Avoid them. When stating why there is a grievance use the phrase "management's action is in violation of the contract including Article VIII, Section 4 and 5 and all other applicable provisions." This allow for the possibility that there could be other violations.

The remedy
You need a remedy in every grievance. You've got to tell them what you want. When you write your remedy, don't limit it. In grievances that involve money, benefits, or protests of discipline, use the phrase "the grievant should be made whole in every way including . . . ." Then ask for what you want. The general phrase "made whole in every way," means that the grievant should receive any and all losses due to management's action. The word "including" allows you to add specific remedies later on in writing or in oral discussion with management. Just because you use the phrase "made whole in every way," does not mean that management or even an arbitrator will search out the specific benefits management has denied your grievant. It is up to you to list verbally or in writing any remedies not noted in the original grievance. Keep the grievant up to date on the process of the grievance. Your job doesn't end when the form is filed.

What Does "No" Really Mean?
Many stewards hear the word "no" more often than they would like. It might happen like this. A member comes to you with what seems like a clean grievance. They have been bypassed for overtime and according to your investigation they were at the top of the list, but were never asked. Simple? You decide to meet and discuss the issue with management because it appears that the supervisor committed some oversight here. But when you get into the supervisor's office, he begins to talk about emergency work and needing to assign an available employee without going to the list. Your jaw begins to drop, the muscles tighten and it takes all your effort not to explode. You have just entered the world of grievance denial.

Bad decisions
Chances are the supervisor on duty made a poor decision and management is now using the emergency work excuse as a cover. Of course the member has been wronged, but management doesn't like to admit it made mistakes. So it compounds the mistake and gets the union members angry. Here's another scenario. Your shop has enjoyed a practice for many years. There is nothing in the contract that deals with the practice but a new supervisor decides to end it. You protest through the grievance procedure and are told the grievance is denied. When you ask why, the supervisor reads you the management rights clause of the agreement.

Don't take no for an answer
We have to live with bad answers and grievance denials but that doesn't mean the process ends. Your first move is to explain the grievant what just happened and make it clear that the union will not allow management to play games with his/her grievance. Next, you must research and document the grievance thoroughly, if you have not already done so. Make sure that your notes of the first level meeting go into the union's file in case the second step appeal is handled by a Business Representative. Insure that record is complete. Always consider the reason for the denial but your rebuttal is not necessarily the primary argument. If a member is passed over for overtime and there was no real emergency, stick to your guns about the bypass. If the supervisor hides behind the management rights clause—and they often will—insist that the employer consider the practice as part of the unwritten agreement between both sides. Show that the practice has been ongoing for a long enough time period that it appears to reasonable people that this is the way both sides conduct their business.

What about no answer?
Let's take a variation of this case. Suppose the supervisor doesn't answer your written grievance within the time limits set out in the agreement. The union must then choose to move the grievance up on appeal to the next step. The space on the form for management's reply, write in that still empty space, "not answered in a timely manner," and appeal to step 2. Do not miss out on the time limits. When a supervisor does not reply to a grievance, it is usually
because he or she is overworked, negligent, can't make a decision or won't make a decision. I have heard senior management complain that their worst nightmare in the grievance process is to go to arbitration where their lower people did not answer the appeals and the union progressed the grievance. Most of the time, they would settle the grievance to save face. Employers will go to the issue of time limits first when responding to a grievance. And the language that justifies a rejection of the grievance on the basis of missing the time limit is usually found in the labor agreement. Good grievances—grievances with merit—can be lost when management sees that the union has missed time limits.
REPRESENTING MEMBERS

"Weingarten Rights"
(Union Representation During Company Investigatory Interviews)

The rights of employees to the presence of union representatives during investigatory interviews was announced by the U.S. Supreme Court in 1975 in NLRB v. 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 a steward can help in many ways.

- 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.

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

Investigatory interviews usually relate to subjects such as:

- absenteeism
- accidents
- damage to company property
- drinking
- drugs
- falsification of records
- fighting
- insubordination
- lateness
- poor attitude
- sabotage
- theft
- violation of safety rules
- work performance
- Shop-floor conversations.

Not every management initiated discussion is an investigatory interview. For example, a foreman may talk to a worker about the proper way to do a job. Even if the boss asks questions, this is not an investigatory interview because the possibility of discipline is remote. The same is true of routine conversations to clarify work assignments or explain safety rules. Nevertheless, even an ordinary shop-floor discussion can change its character if the supervisor is dissatisfied with the employee's answers. If this happens, the employee can insist on the presence of a union representative before the conversation goes any further.
Disciplinary announcements. When a supervisor calls a worker to the office to announce a warning or other discipline, is this an investigatory interview affording the worker a right to union representation? The NLRB says no, because the employer is merely answering a previously arrived-at decision and is not questioning the worker. Such a meeting, however, can be transformed into an investigatory interview if the supervisor begins to ask questions to support the decision. Note: An employer that has followed a past practice of allowing stewards to be present when supervisors announce discipline, must maintain the practice during the contract term. Refusing to allow a steward to attend would constitute an unlawful unilateral change.

Weingarten Rules
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 cannot be punished for making 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: (1) having the interview without representation or (2) 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.

Rights of Stewards
Employers often assert that the only role of a steward as an investigatory interview is to observe the discussion; in other words, to be a silent witness. The Supreme Court, however, clearly acknowledged a steward's right to assist and counsel workers during the interview.

Decided cases establish the following procedures:
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 take the worker aside 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 that the supervisor clarify a question so that the worker can understand what is being asked.
5. After a question is asked, the steward can give advice on how to answer.
6. When the questioning ends, the steward can provide additional information to the supervisor.

It must be emphasized that if the Weingarten rules 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.

WEINGARTEN RIGHTS: QUESTIONS AND ANSWERS

1. Demanding to attend meeting
Q. If I see a worker 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 Weingarten 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.

2. Coercing employee to drop request
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 manager, and you know how temperamental she is. If we can keep it at the level we're 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.

3. Employee refuses to go to meeting
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.

4. Medical examination
Q. The company is recalling workers from a layoff and is insisting on medical examinations for those out of work 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.

5. Lie detector test
Q. Does Weingarten apply to a polygraph examination?
A. Yes. An employee has a right to union representation during the pre-examination interview and the examination itself.

6. Urinalysis
Q. If management asks a worker to submit to a urine test for drugs, does Weingarten 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 not to take the test.

7. Locker search
Q. Can management order a worker 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 a right to insist on the presence of a steward.

8. Counseling session
Q. An employee was given a written warning about poor attendance and told he must participate in absence counseling sessions with a member of the personnel department. Does the worker have a right to demand the presence of a union steward at the counseling sessions?
A. This depends on whether the employee has a reasonable fear that the counseling 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 fears would be reasonable and would entitle him to bring a steward. But if the employer gives firm assurances that the meetings will not be used for further discipline and promises that the conversations will remain confidential, Weingarten probably would not apply.
9. Request to sign warning slip
Q. If a worker 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.

10. Disciplinary Meeting
Q. Can a worker insist on the presence of a steward before answering questions at meeting held to impose discipline?
A. Not where employers simply announce discipline. However, if the employer starts asking questions or tries to make the employee admit guilt, Weingarten would apply and the employee can insist on the presence of a steward or other union representative before answering.

11. Steward not at worksite
Q. If a worker's steward is out sick, can the worker insist that the interview be delayed until the steward is available?
A. No. Management does not have to delay an investigation if other union representatives are available to assist the employee at the interview.

12. Steward's right to representation
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 action, you have the right to the presence of a union representative.

13. Walking out of interview
Q. Suppose a worker's request for a steward is denied. If the supervisor continues to ask questions, can the worker walk out of the office to get a steward?
A. In some cases, yes. According to 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 seek 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.

14. Shop meeting
Q. If the company calls a meeting to lecture workers 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 meeting. There is no right to a steward unless the employer begins asking questions of employees in a manner that creates a reasonable fear of discipline.

15. Penalties for Weingarten violations
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 an unwarranted "windfall" for guilty workers. The standard Weingarten penalty is now limited to a bulletin board posting in which the employer promises not to repeat its violations.
WEINGARTEN LANGUAGE

I believe this discussion could lead to my being disciplined. I therefore request that my union representative or officer be present to assist me at the meeting. I further request reasonable time to consult with my union representative regarding the subject and purpose of the meeting. Please consider this a continuing request; without representation, I shall not participate in the discussion. I shall not consent to any searches or tests affecting my person, property, or effects without first consulting with my union representative.
ENFORCING THE CONTRACT

Imagine yourself driving down a street and coming upon a stop sign. Do you stop? If you are like many people, the honest answer would be "it depends." It depends on whether or not there are any other cars coming, of course. But it may also depend on whether you think there is a police officer around who might give you a ticket for not stopping. You see, the written law by itself is not enough. Society recognizes the need for law enforcement; hence, we have police officers.

As an IBEW steward you perform a similar role, ensuring that the employer abides by the collective bargaining agreement. Without you, the contract would eventually become worthless. Contract enforcement is the process by which your local establishes and protects your rights. Regular and systematic enforcement is crucial to you and to your union for the following reasons:

1. It ensures that all the benefits and protections written into your contract at the bargaining table are extended to everyone covered by the contract.
2. It gives meaning to the contract. No matter how carefully it is written, no contract can anticipate every question that arises under it. Its application and enforcement in these unforeseen circumstances give added meaning to the contract.
3. It helps improve your contract. Contract enforcement reveals the strengths and weaknesses of your contract. Unresolved grievances should point out the contract's deficiencies. Properly publicized, they can build support for future negotiations.
4. It helps organize your workplace. Workers are more likely to support the IBEW's goals if they see the contract being enforced.
5. It gains the respect of management. When management knows that your local is determined to enforce the contract, it thinks twice before violating it. This gains respect for the local as an organization.
6. It maintains the loyalty of your members. Even the best contract is only a set of promises. By seeing that management fulfills those promises, local leadership will win the members' support on other issues and build a stronger, more effective union.

Every violation that goes unchallenged is a threat to your contract; therefore, no union can afford to stand by and wait for contract violations to be reported. In fact, they may not be reported at all. Every union must take the initiative in enforcing its contract. It can do this only by actively policing its contract every day, in every department, on every shift.

That's where you as an IBEW steward come in. You are IBEW's police officer, guarding against violations of your union contract, work rules, or any applicable laws.
UNDERSTANDING PAST PRACTICE

What makes something a past practice? The practice must be a customary way of doing things in your workplace that, while not spelled out in the contract, has been done for a long time, has been done consistently, and has been done with the knowledge and acceptance of both your boss and the union.

Cases involving employee benefits or privileges make for strong past practice grievances. But, in most situations, it's much harder to argue "past practice" when employers change methods of operations or introduce new technology. Other contract language may be helpful (like a requirement to give the union notice about changes), but the argument that "we've always done it that way" probably would not work in those cases.

Being aggressive—and timely—in defending your contract can help stop management from using past practice as a defense against a union grievance. If workers wait years to file a grievance against a new management policy that isn't directly addressed in the contract, management may argue that it has become a past practice. This is why it is very important to challenge management actions right away when you think they may violate your rights.

Many situations aren't cut and dried, and this area of labor law can be very complex. But this should not stop you from discussing the problem with coworkers and seeking advice from your steward or local union officials if you think your employer has violated your rights by changing the rules in the middle of the game.

REMEMBER: If you suspect your employer has engaged in a violation of the collective bargaining agreement by changing a past practice CONTACT YOUR BUSINESS REPRESENTATIVE to discuss the possible violation. You are the first line of defense. If a contract violation exists for a extended period of time without the union acting on it, the NLRB may find that the union acquiesced in the employer's changed practice which means that the union "OKAY'D" the employer's action. If that occurs the there is nothing the union can do.

Past Practices Victories

Examples of past practices not written in a contract but enforced by arbitrators because employers had allowed them for a long time include:

- lost time pay while seeing the company doctor
- the right to swap shifts
- the right to receive sick pay during layoffs
- the right to use company vehicles to commute to work
- yearly company picnic
- discounts on company products
- free meals and coffee
- pay for travel time
- considering the lunch period as paid time
- Christmas bonus
CHECKLIST: GRIEVANCE HANDLING

• Did management violate the contract or work rules?

• Did management violate a “past practice”?

• Did management treat a worker unfairly?

• Did management violate a health and safety regulations or standards, a state or federal law?

• Did management fail to provide a harassment free work place?

• Did you conduct any investigation?

• Did you speak with a Business Representative at the Local Union regarding your perception that a violation of the contract occurred?

• Did you or speak with a member of management regarding the violation?
  o Remember you don’t have to take NO for an answer
  o If you know it’s a violation or the Business Representative knows it’s a violation file a grievance

• Did you follow and enforce the contract in all provisions regarding grievances?

• Are you aware of the time limits to file a grievance under the contract?

• Did you fill out a grievance form?
  o Be brief: You are not obligated to tell management in a grievance all of the results of your investigation. Don’t do their work for them.
  o Avoid personal remarks.
  o Omit the union's arguments, evidence and justification for its position.
  o When stating why there is a grievance use the phrase "management's action is in violation of the contract including Article VIII, Section 4 and 5, and all other applicable provisions" This allows for the possibility that there could be other violations.
  o You need a remedy in every grievance
    • "the grievant should be made whole in every way including...."

• Are you keeping the worker (s) informed about the status of his or her grievance?
CHECKLIST: REPRESENTING MEMBERS IN INVESTIGATORY MEETINGS THAT MAY LEAD TO DISCIPLINE (WEINGARTEN RIGHTS)

• Do your members know their Weingarten rights?
  o "I believe this discussion could lead to my being disciplined. I therefore request that my union representative or officer be present to assist me at the meeting. I further request reasonable time to consult with my union representative regarding the subject and purpose of the meeting. Please consider this a continuing request; without representation, I shall not participate in the discussion. I shall not consent to any searches or tests affecting my person, property, or effects without first consulting with my union representative."
  o The employer does not have to tell an employee about Weingarten Rights.
  o The employee MUST ASK for union representation.
  o TELL YOUR members that they MUST ASK for REPRESENTATION.

• Is it an Investigatory Interview?
  o An investigatory interview occurs when a supervisor questions an employee to obtain information which could be used as a basis for discipline or asks an employee to defend his or her conduct. If an employee has a reasonable belief that discipline or other adverse consequences may result from what he or she says, the employee has a right to request union representation.
  o Investigatory interviews usually relate to subjects such as:
    • absenteeism
    • accidents
    • damage to company property
    • drinking
    • drugs
    • falsification of records
    • fighting
    • insubordination
    • lateness
    • poor attitude
    • sabotage
    • theft
    • violation of safety rules
    • work performance
    • Shop-floor conversations.

• Do you know the rules that apply when an investigatory interview occurs?
  o Rule 1. The employee must make a clear request for union representation before or during the interview. The employee cannot be punished for making this request.
  o 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: (1) having the interview without representation or (2) ending the interview.
  o 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.

• Is it a Disciplinary Announcement?
  o When a supervisor calls a worker to the office to announce a warning or other discipline, this is NOT an investigatory interview affording the worker a right to union representation.
Such a meeting, however, can be transformed into an investigatory interview if the supervisor begins to ask questions to support the decision. 
- **IF A SUPERVISOR BEGINS QUESTIONING DURING A DISCIPLINARY MEETING THE MEMBER HAS THE RIGHT TO REPRESENTATION. INFORM YOUR MEMBERS OF THIS RIGHT.**

NOTE: An employer that has followed a past practice of allowing stewards to be present when supervisors announce discipline, must maintain the practice during the contract term. Refusing to allow a steward to attend would constitute an unlawful unilateral change.

- Are the these procedures being followed in an Investigatory Interview?
  - 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.).
  - The steward must be allowed to take the worker aside for a private pre-interview conference before questioning begins.
  - 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.
  - The steward can request that the supervisor clarify a question so that the worker can understand what is being asked.
  - After a question is asked, the steward can give advice on how to answer.
  - When the questioning ends, the steward can provide additional information to the supervisor.
  - 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.
CHECKLIST: COMMON CONTRACT VIOLATIONS

- Vacation Scheduling
- Job Assignment
  - Crew complement
  - Jurisdiction
- Supervisors/Non-Bargaining Unit Employees Working
- Overtime Assignments
- Subcontracting / Contracting out of Bargaining Unit work
- Safety Violations
- Promotions
- Seniority
- Job Change/Qualifications
- Insurance
  - Health
  - Liability (Insurability)

REMEMBER: IF YOU BELIEVE THAT THERE MAY BE A CONTRACT VIOLATION CONTACT YOUR BUSINESS REPRESENTATIVE. IF A VIOLATION OCCURS FOR AN EXTENDED PERIOD OF TIME THE UNION MAY BE FOUND TO HAVE "OKAY'D" THE VIOLATION. THIS IS PARTICULARLY TRUE WITH RESPECT TO PAST PRACTICE SEE THE NEXT SECTION.
CHECKLIST: COMMON PAST PRACTICE ISSUES

CONTRACT SILENT
• Seniority
  o Job selection or Shift selection
  o Overtime opportunities

• Vacation Scheduling
  o Limitations on number of people permitted to be on vacation during premium vacation periods
  o Company’s right to cancel or reschedule vacation.

• Clean up time while on the clock

• Breaks

• Discipline Policy

• Job Assignments (Jurisdiction/Contracting Out)

CONTRACT LANGUAGE DEFINED BY PRACTICE OR MUTUAL AGREEMENT
• What Is an Emergency (Ex. Needs of the Service)

• Manning Requirements
  o Equipment
  o Task
  o Qualification

• Premium Pay (Triggers)

• Scheduling Shift Changes

• Grievance Arbitration Issue
  o Timeliness
  o Arbitration Panel

• Holidays
  o Pay Requirements
    ▪ Ex. Working the day before and after a holiday in order to receive holiday pay.
  o Schedule Changes
    ▪ Ex. Overtime on Weekend if took holiday off during the week.

• Leaves of Absence

REMEMBER: IF YOU BELIEVE THAT THERE MAY BE A PAST PRACTICE VIOLATION CONTACT YOUR BUSINESS REPRESENTATIVE. IF A VIOLATION OCCURS FOR AN EXTENDED PERIOD OF TIME THE UNION MAY BE FOUND TO HAVE “OKAY’D” THE VIOLATION. BE AWARE THAT IN MANY CASES THE UNION MAY HAVE SIDE AGREEMENTS THAT MAY APPLY TO THE VIOLATION.
CHECKLIST: COMMON DISCIPLINARY ISSUES

• Attendance
  o Tardiness
  o Absence
  o Leaving early
  o Extended Lunch/Break
  o Employment Reliability

• Sick Leave Abuse
  o Pattern of Monday/Friday Illness
  o Frequent late/sick calls

• Substance Use
  o Under the influence on the job
  o Liquor or Drugs on Company property
  o Attendance problems that are substance related
  o Tardiness
  o Absent because of Incarceration (DWI)

• Dishonesty
  o Time Card Fraud
  o Theft of Company Property
  o Disappearing on Shift
  o Conducting personal business on Company time without permission

• Email/Internet Abuse

• Gross or Repeated Carelessness causing damage or creating a risk of injury to co-employee

• Violation of Safety Procedures/Rules

• Loss of Driver's License / Loss of Insurability

• Fighting / Assault

• Harassment / Creating a Hostile Work Environment

• Insubordination

• Repeated Violation of Rules after Warning and Progressive Discipline

REMEMBER: THE BURDEN IS ON THE EMPLOYER TO ESTABLISH JUST CAUSE FOR DISCIPLINE/DISCHARGE. SOMETIMES DISCIPLINE GRIEVANCES ARE PURSUED BECAUSE THE EMPLOYER DID NOT FOLLOW THE ESTABLISHED PROCEDURES EVEN THOUGH A VIOLATION OCCURRED. THIS IS TO INSURE THAT ALL MEMBERS' RIGHTS ARE PROTECTED.
Agency Shop
A union security contract clause requiring employees covered by the contract who decline to join the union to pay a service fee to the union equal to a percentage of the union dues. This fee is intended to compensate the union which, by law, must give full and equal representation to all bargaining unit members, regardless of membership status.

Arbitration
(see "Interest Arbitration" and "Grievance Arbitration")

Bargaining Unit
A group of employees in a given workplace that has sufficient commonality to constitute a unit for purposes of collective bargaining. A bargaining unit is usually defined by the National Labor Relations Board or similar federal, state, or local agencies.

Boycott
Collective economic pressure to discourage the public from buying, patronizing, or supporting unfair employers, companies, or oppressive institutions.

Business Representative
A full-time, paid representative of a local union. Responsibilities may include negotiating contracts, administering existing contracts, handling grievances, and organizing.

Certification
Official recognition by some impartial labor relations board that an employee organization is the exclusive representative for all the employees in an appropriate bargaining unit for the purpose of collective bargaining.

Checkoff
An arrangement under which an employer deducts the amount of union dues or voluntary political contributions from an employee's pay and forwards it to the union.

Collective Bargaining
A method of determining wages, hours and other conditions of employment through direct negotiations between the union and the employer. Normally, collective bargaining results in a written contract which covers all employees in the bargaining unit.

Collective Bargaining Agreement, or Contract
A formal written agreement over wages, hours, and conditions of employment entered into by an employer and the union representing the employees in the bargaining unit.

Company Union (or Association)
A union organized, dominated, or financed by the employer.

Contracting-out
(see subcontracting)

Corporate Campaign
Sometimes called a "comprehensive" campaign, it combines the traditional qualities of one-on-one organizing with "secondary" pressure on allies of the "primary" target. Research into financial, regulatory and community issues reveals methods of applying leverage against the target company or employer's principal suppliers and sources of capital.

Cost of Living Adjustment (COLA)
Negotiated periodic pay adjustments based on changes in the Consumer Price Index which measures inflation.

Discrimination
Unequal treatment of workers because of race, religion, nationality, sex, appearance, union membership, political affiliation or some other unfair basis. Discrimination may occur in hiring, types of jobs given, rates of pay, promotion and transfer, layoffs, or other areas. Some classes are protected by law while others are not.

Duty of Fair Representation
The legal obligation on the part of the union, as exclusive representative of a bargaining unit, to represent all of the employees, members and non-members alike, fairly without discrimination, obvious negligence, or through arbitrary or capricious decisions.

Employee Assistance Program
A confidential information, support and referral service designed to help employees cope with personal problems which negatively affect their lives and, subsequently, their workplace productivity. Such programs often provide assistance in the following situations: emotional stress, family disintegration, financial and legal difficulties, alcoholism, drug abuse, and marital disruption.

Exclusive Representative
The employee organization that, as a result of certification by a labor board, has the right to be the sole collective bargaining agent of all employees in an appropriate bargaining unit.

Fact Finding
Identification of the major issues in a particular impasse, review of the positions of the parties and resolution of factual
differences by one or more impartial fact-finders, and the making of recommendations for settlement of the impasse. Sometimes, this is also called advisory arbitration.

**Fair Fee** - (see Service Fee)

**Free Rider**
A term applied to an employee who refuses to join the union but gets, without cost, the benefits of a contract obtained through efforts of the dues paying members.

**Fringe Benefits**
A term used to encompass items such as vacations, holidays, insurance, medical benefits, pensions, and other benefits that are given to an employee under his employment or union contract in addition to direct wages.

**Grievance Arbitration**
A dispute resolution process whereby a neutral third party—the arbitrator—hears a grievance and makes a decision which is usually both final and binding on both parties. This process is used when the grievance procedure fails to produce a resolution of a grievance.

**Grievance Mediation**
A voluntary and less formal method of dispute resolution whereby a neutral party serves as a facilitator in the decision making process. The ultimate acceptance, rejection, or modification of a resolution rests with the parties.

**Interest Arbitration** — (Impasse Arbitration)
In the event of a negotiation deadlock between management and the union, wages and other conditions of employment, depending on the scope of bargaining, are decided by a third-party neutral person, an arbitrator. This method of resolution is often an alternative to the strike.

**Just Cause**
A common law or contractual definition of standards against which the appropriateness or fitness of the discipline or discharge of a worker is tested.

**Lockout**
The denial of employment by the employer to workers during a labor dispute, in order to pressure the union to accept the employer's terms.

**Maintenance of Membership**
A union security provision in a collective bargaining agreement usually requiring members to remain in good standing during the term of the contract as a condition of employment.

**Mediation**
Efforts by a neutral third party to get a union and management to come to an agreement when there is a dispute or an impasse in negotiations. The mediator tries to find a basis on which both the union and the company can agree. However, the mediator cannot force either side to accept the recommendations.

**National Labor Relations Board**
Quasi-judicial agency set up under national or state labor relations acts. Its duties are: to issue and adjudicate complaints charging unfair labor practices, and require such practices be stopped; and to certify bargaining representatives for employees in their dealings with-employers.

**Open Shop**
Where employees are declared by the employer or by law to be free to join or not join any union.

**Past Practice**
Three conditions must be present in order for a practice to be considered a past practice: 1) It has been a consistent activity occurring for a significant period of time; 2) The contract is silent or ambiguous on the issue, and 3) Both parties have knowledge that the practice exists. A grievance can sometimes be based on a violation of a past practice if these three conditions are met.

**Pay Equity**
A term covering the idea that female-dominated jobs or professions have been traditionally undervalued, based on levels of responsibility and required education, and that pay for these jobs should be raised to pay levels of comparable jobs which are traditionally held by men.

**Picketing**
The carrying of signs or the passing out of literature protesting the conditions of work or actions taken by the employer. Picketing occurs either during a strike or in the form of an informational picket (mostly employed by workers not entitled to the right to strike).

**Real Wages**
Real wages measure changes in earnings as compared to inflation. They are usually calculated by dividing the increase in current wages by the rise in the cost of living from a given year in the past, so as to measure how much of the increase in wages is to offset inflation and how much is real progress—hence the term real wages.

**Reopener**
A provision for negotiating the current contract at a specific time on specific subjects such as wages, pension benefits, health
insurance, etc.

**Representation Election**
A vote conducted by an appropriate labor board or agency to determine whether a majority of the workers in a previously established bargaining unit wish to be represented by a given union.

**“Right-to-Work” Laws**
This term has been used by opponents of unions to describe state laws banning the union shop and other maintenance of membership provisions.

**Seniority**
Preference accorded employees, based on length of service with an employer, in such areas as layoff, recall, promotion, transfer; vacation accrual, scheduling, etc.

**Service Fee**
An assessment of non-members in a bargaining unit to help defray the union's costs in negotiating and administering the contract (see Agency Shop).

**Severance Pay** (dismissal, termination, separation pay)
Payment by the employer to a worker who is terminated permanently through no fault of his or her own.

**Sexual Harassment**
Any unwarranted and repeated sexual comments, looks, suggestions, or physical contacts that create an uncomfortable working environment for an employee.

**Shift Differential**
Added pay for second or third shift; the third-shift differential is frequently higher than the second-shift differential; expressed as a percentage of base pay or as extra cents per hour.

**Sick Leave Benefits**
Benefits paid a worker while he or she is out sick. Sick pay may be provided under the union contract, or, in some states, by state law.

**Strike**
A concerted act by a group of employees, withholding their labor in whole or in part for the purpose of effecting a change in wages, hours, or working conditions. It may also be used for the purpose of obtaining recognition of a union as a collective bargaining agent for a group of employees.

**Subcontracting (Contracting-out)**
Practice of employer having work performed by an outside contractor and not by regular employees in the unit.

**Unfair Labor Practice**
An employer or union practice forbidden by the National Labor Relations Board, the Civil Service Reform Act (for federal workers), or state and local laws, subject to court appeal. It often involves the employer's efforts to avoid bargaining in good faith.

**Union Security**
Negotiated contract clauses requiring the establishing and continuance of a union shop, maintenance of membership, agency shop, payroll deduction of union dues, or similar provision that guarantees the existence of the union status during the life of a collective bargaining agreement.

**Work to Rule**
A decision by workers to perform their work in strict accordance with the requirements of work rules; a form of slowdown.
**LOCAL UNION NO. 160**  
**INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS**

**PROCEDURAL GRIEVANCE FORM**

**NOTE:** It is agreed that neither the Union nor the Company will use this Procedural Form as evidence in an arbitration procedure. This form does not limit either the Company or the Union from bringing up additional contractual violations.

<table>
<thead>
<tr>
<th><strong>WHO is involved?</strong></th>
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<tr>
<td><strong>Grievant:</strong></td>
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<td><strong>Job Classification:</strong></td>
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<td><strong>Dept #:</strong></td>
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<td><strong>Dept:</strong></td>
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<td><strong>Section:</strong></td>
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<td><strong>Spv's Name:</strong></td>
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<td><strong>Union Steward:</strong></td>
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<tr>
<th><strong>WHEN &amp; WHERE did this happen?</strong></th>
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<td><strong>Date:</strong></td>
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<td><strong>Time:</strong></td>
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<td><strong>Location:</strong></td>
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<th><strong>WHAT are the facts of the Grievance? (Explain):</strong></th>
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<th><strong>WHY is this a grievance? (What provision of the Labor Agreement has been violated?):</strong></th>
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<th><strong>HOW to remedy?</strong></th>
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<tr>
<td><strong>The Steward - Identify how to correct situation and remedy sought. (Comments):</strong></td>
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<th><strong>The Supervisor's response:</strong></th>
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| **Signature of Steward:**     |
| **Date:**                     |
| **Signature of Supervisor:**   |
| **Date:**                     |
| **Supervisor's Title:**       |