IAM EDUCATOR
*Update for Stewards* *Vol. 6, No. 6*

# New IDEAS FOR A NEW Year

## January

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# New Ideas for a New Year

Just because you might have fallen a little short on following through with last year's New Year's resolutions (win the "American Idol" competition? Marry royalty and live in Rome?) doesn't mean this year won't be different. Set yourself some reasonable goals and give it another try. For stewards, the best goal of all may be to try some new approaches to your responsibilities, or some new ways of looking at old workplace problems. Take a look at these suggestions and see if a couple might not be worth considering.

### Improve Communications

Think about improving the way you communicate with co-workers about union business. You should be greeting new workers when they come on the job, introducing them to the union and how it operates. But do you let things slide after that, dealing with workers only when there's an issue that demands attention? Think about having an informal lunchtime or breaktime session once a week or once a month even, where you can talk about a specific workplace issue or a piece of contract language. This would underscore the union's determination to stay connected with everyone and provide the opportunity for an exchange of information that might reveal problems or concerns that hadn't really surfaced. It's amazing what kind of problems and concerns you can learn about when people get together and talk about what's going on.

### Sharpen a Skill

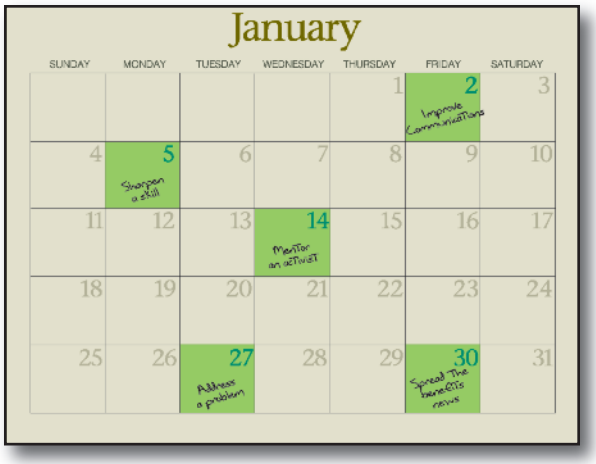
Look at your own performance as a steward and honestly ask yourself if there's an area where you're falling short. Do you always seem to take lousy notes, or have a half-baked filing system that never seems to allow you to find what you need? Do you get tongue-tied when you have to speak to a group of people? Is there some piece of contract language you've never totally understood? Instead of continuing to struggle with an issue, ask for help from another steward or union officer who has skills in the area that's giving you trouble. You won't be looked down upon or criticized for wanting to do a better job: you'll be praised for your determination to be the best possible steward you can be, and the person you approach for help will be flattered to be thought of as an expert worthy of consultation.

### Address a Problem

Nobody is in a better position than you, a steward, to see what really works right in the collective bargaining agreement and what really works lousy. If you see something that needs fixing, don't assume it is already known by the union officers: bring it to their attention. And don't assume that it won't do any good to say anything right now, because negotiations on a new contract may not be for a while yet. If a problem is serious enough the union may be able to deal with it right away. Even if it can't, it can start laying the groundwork so that when the next negotiations do come, you will be in a stronger position.

### Mentor an Activist

Find a replacement for yourself. OK, maybe not beginning tomorrow, but seriously think about your co-workers and who could step into the steward's role if you were unable to handle things. It's part of every union activist's job to bring other people along: the more activists, the stronger the union. Look around you and see if there isn't someone you can mentor, ideally a younger person you can involve more in the union's work. If the union wants stewards to gather signatures on a petition, there's no reason this person can't help out on the task. Handing out flyers? Same thing. When you go to the union meeting, invite him or her to go along. If you know the union is trying to get people to volunteer for a committee, make sure the worker knows about the opportunity. Remember that unions work only when members get involved — so do what you can to spur that involvement.




### Spread the Benefits News

Familiarize yourself with the union's benefits, so you can be of more help to co-workers. If you don't have young children, the odds are you haven't looked at how the medical plan deals with kids' issues. If you don't have older children you may not have explored what the union, or perhaps the local labor council, can offer in the way of college scholarship assistance or at least advice. If you haven't had to deal with the problems that accompany having to help aging parents, you may not be aware of what services your union or labor council can offer retirees. Remember that the union probably has access to a variety of discount programs on everything from auto insurance to health clubs to car rentals. You may not be interested in these but your co-workers may, so it would be helpful to get a sense of what programs are available and what they offer.

You can add to this list of possible New Year's resolutions, for sure. Try something new. You've got nothing to lose — and possibly a whole lot to gain.

*— David Prosten. The writer is editor of* Steward Update.

# Evidence that Counts

When employers violate contracts and workers file grievances to get justice, it's usually the stewards who work to gather evidence showing the employer was wrong. When workers mess up and employers respond with discipline or discharge, it's management's task to prove it acted appropriately. In either case, the bottom line is evidence, and how good it is. So, let's take a look at the generally accepted rules of evidence that are widely followed in dispute resolution systems. Understanding these rules can help you assure that agreed-upon wages, benefits and conditions are honored — or even save someone's job.

Remember: some types of evidence are weaker than others, so be aware of the differences.

### Hearsay

Hearsay is evidence that someone told you they had heard from someone else. It's the least desirable type of information. Instead of trying to use hearsay, go to the original source and hear what was said yourself, and then be prepared to bring the source forward to testify if necessary. Remember that persons providing information are protected from retaliation if testifying for the union.

### Verbal Agreements

A claim that there was a verbal agreement may be offered "for what it's worth," which generally isn't much, unless you can prove that the employer has in the past lived up to the same verbal agreement in other instances. Just as past practices are not as powerful as written agreements, verbal — that is, spoken — agreements suffer from the same weakness.

### Circumstantial Evidence

Circumstantial evidence is testimony or evidence which places the accused worker in direct proximity to the place where an offense was committed, or makes some other connection, but fails to conclusively link the worker directly. For example, a worker may be discharged for stealing tools because he was the last one seen in the vicinity of the tool crib, or a tool was found in his locker. In and of itself that's not sufficient evidence against the worker: it could have been someone else who put the tool there.

### Direct Testimony

The most credible evidence comes from someone who directly observed the behavior or actions taken by the employee or manager, and that person provides the information. For example, a manager may come forward to testify that he personally witnessed a worker sleeping on the job for several minutes.

### Written Statements

Rarely, the parties may have to depend upon written statements, such as a letter from a doctor, instead of direct testimony. A written statement may be acceptable to an arbitrator, but it is more desirable to bring the "expert" in to testify directly: a letter or report might be objected to by the other side. In the real world, however, it may simply be too expensive to bring the person in to testify directly, so a written statement may be acceptable to an arbitrator.

In addition to those generally accepted rules, keep in mind these general guidelines on evidence:

### Right to Cross-examine

All evidence presented in an arbitration hearing must be available to the opposing party, and the opposition also has a right to cross-examine a witness. Remember, if you don't challenge the testimony of a particular witness, his or her testimony will likely be accepted as fact by the arbitrator.

### Withholding of Evidence until Hearing

Neither party can hold back "secret" evidence until an arbitration hearing. To do so may bring about a protest and request for adjournment to consider the new evidence by the other side.

### Method of Obtaining Evidence

Evidence obtained illegally or unethically may be refused by the arbitrator. Entrapments conceived by an employer to catch an employee in a wrongful act may be considered improper by many arbitrators.

In conclusion, remember that the steward is responsible for obtaining the facts in every dispute. From the very beginning of the process, bear in mind that good information leads to good settlements with the employer. If the steward slips up and doesn't do his or her homework, then the union representative responsible for putting the case in at a higher step has to come in and start from scratch. Do a good job and get the case settled at the lowest possible step.

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

# Their Rights, Our Rights

This sound familiar? A problem arises in your workplace and the union contract is "silent" on the issue in question. Management claims that since the contract doesn't cover it, you have no basis for a grievance; that "management rights" allows them to do most anything they want.

This is where the all-important recognition clause comes in.

Usually it's at the beginning of the contract and reads something like this: "The employer recognizes the Union as the sole and exclusive bargaining agent, for the purpose of establishing wages, hours and conditions of employment."

## Where Union Rights Come From

This kind of language is just repeating what the National Labor Relations Act (NLRA), the primary U.S. labor law, says in Section 8(d). So, under most of our contracts and under the law, the employer must bargain with the union — and processing grievances is a form of bargaining — when *unresolved* issues arise regarding wages, hours and conditions of employment.

Example: Employees have always been allowed to have radios in their work area, but a new supervisor orders them removed. He claims they distract employees from doing their jobs. He also claims that under the management rights clause he has the right to manage the workplace, and this gives him the right to make changes.

He may be right about one thing, that the right to listen to radios isn't in the contract. But he's wrong about management having the unilateral right to make changes. The steward should file a grievance under the recognition clause and point out that the supervisor also violated section 8(d) of the NLRA, or appropriate other law. Removing radios would be changing employees' conditions of employment, so the employer must bargain with the union.

Be aware, however, that management rights clauses that list specific items — "management has the right to set starting times," for example — do mean the union can't complain about management setting starting times, unless some other part of the contract addresses the same issue.

## Some Restrictions Exist

Be aware as well that there are some restrictions on making employers bargain over conditions of employment. The Supreme Court has put some limits on worker rights — limits that, as may be expected, favor employers. The Court decided there are *mandatory* subjects of bargaining, but others are strictly *voluntary*.

Never take the boss's word that he doesn't have to bargain over an issue. Check with the union first, because even if the union has waived its right to bargain or grieve an issue, the employer may be obligated to bargain over the *effect* of the change.

The voluntary list is fairly small but covers some important areas. For example, it is voluntary for an employer to bargain over the decision to close locations or eliminate part of the business. He *must*, however, bargain over the *effects* on employees of decisions such as severance pay. An employer's decision to close a location that is based solely on his desire to pay lower wages may turn this issue into a "mandatory" bargaining item. Other "voluntary" items include picking supervisors, pre-employment tests, advertising, and management salaries. And there are more.

The union should always try to make management bargain over any proposed change, no matter what the management rights clause says. We won't win every fight, but by sticking to our rights and having an active membership behind us, we can "train" management to bargain over most working conditions.

Finally, here's some on-target advice from Boston labor attorney Robert Schwartz: "A union that is concerned that its contractual management rights clause may be construed as a bargaining waiver should try to obtain new contract language, perhaps by adding a sentence affirming that the union is not waiving its rights to bargain. If this is not practicable, consider submitting a letter to management during contract negotiations stating that the union does not view the existing management rights clause as a waiver of its NLRA bargaining rights."

*— Adapted from the* UE Steward, *publication of the United Electrical, Radio and Machine Workers of America.*

### Issues the Boss Must Discuss

Here is a list of some issues that management must talk to the union about unless the union has *specifically* waived its right to bargain or grieve them (by coming to contractual agreement on the issue):

- absence rules
- automation decisions
- clean-up rules
- disciplinary procedures
- dress codes
- drug/alcohol testing
- elimination of positions
- employee privileges (such as right to listen to radios, receive telephone calls, smoke, etc.)
- employee purchase plan
- evaluation systems
- food service hours, free coffee
- grooming standards
- "light duty" policies
- new positions
- parking rules
- paycheck procedures
- production quotas
- safety awards
- smoking rules
- subcontracting decisions
- tardiness rules
- union steward and officer privileges (such as paid leaves, access to facilities, time off, etc.)
- vacation policies
- workloads
- work rules

# Family Leave Rights Under FMLA

Federal law in the United States provides leave rights of up to twelve weeks per year in the event an employee has a serious health condition, is the parent of a newborn or adopted child, or needs to care for an ill family member. But does the sick family member have to be in this country? What if the sick child is a step-child? Can leave be refused if another relative is available?

These questions and many more like them have arisen since the Family and Medical Leave Act (FMLA) became law in 1993, covering public and private sector employers with a minimum of fifty employees. This article answers questions dealing with the family illness part of the law.

Our Canadian readers should be aware that Canada does not have a national law that parallels the FMLA: Each province has its own legislation. For example, Ontario workers can take up to eight weeks of job-protected family medical leave — but only if their family member is suffering from a potentially fatal illness.

### Far-away Parent

**Q** My mother, age 89, lives in Portugal. She needs an operation. I would like to take six weeks off to help her recover. Does my company have to grant my request?

**A** Yes. If you meet the FMLA's eligibility requirements (12 months service; 1250 hours worked over past year), you may take up to 12 weeks off to care for a parent, spouse, or child with a serious health condition. The relative does not have to live in the United States. Your employer must accept a medical certification from your mother's physician.

### Step-child

**Q** I just married a woman with three young children. One has a serious asthma condition. Could I take FMLA leave if he needs care at home?

**A** Yes. The FMLA applies to biological, adopted, and step-children.

### Chicken Pox

**Q** My three-year-old child has chicken pox. If I take the rest of the week off, can the days be counted under my company's attendance plan?

**A** Yes. Chicken pox does not usually qualify as a serious health condition under the FMLA because it does not require multiple doctor's visits or prescription medicines.

### Can Boss Pick the Caregiver?

**Q** My father lives in Florida. I live in California. He needs help following a stroke. My boss rejected my request for time off because I have an unemployed sister in Georgia who could make the trip more easily. Legal?

**A** No. Good-faith family leave requests must be approved, even if another relative could provide care.

### Mother-in-law Problem

**Q** My mother-in-law had a heart attack. There is no one else who can stay with her. Does my company have to give me time off?

**A** No. The FMLA does not apply to parents-in-law. (However, Connecticut, Hawaii, Oregon, Rhode Island, and Wisconsin cover in-laws under their state versions of the FMLA.)

### Same-sex Spouse

**Q** I am involved with another woman. If we marry (gay marriage is legal in Massachusetts) will I be able to take FMLA leave if she falls ill?

**A** No. The FMLA does not apply to same-sex spouses. (However, laws in Hawaii, California, Washington, D.C., and Connecticut guarantee leaves to care for domestic partners.)

### Am I Needed?

**Q** My mother is hospitalized. When I asked for three days off to stay with her my boss said that since the hospital was providing full care, I was not entitled to leave. Legal?

**A** No. FMLA rights apply if an employee will be providing an ill family member with psychological comfort or reassurance.

### Surveillance

**Q** I took a three-week leave to care for my child after his operation. Can the company hire a private detective to follow my movements? If he sees me having a drink in a tavern, could I be fired?

**A** An employer can assign a supervisor or detective to verify that an employee is providing the care she says is needed. You can take a recreation break when your presence is not required, but if you spend large amounts of time in this manner, you are asking for trouble.

### Overkill

**Q** I submitted a certification for intermittent time off over the next six months because of my mother's deteriorating cardiac condition. Yet every time I stay home with her, my supervisor says I need a note from her physician. Is this lawful?

**A** When a health care provider certifies a need for intermittent FMLA leave for a period up to six months, an employer may not require the employee to produce further documentation during the period unless circumstances change significantly; the employer receives information that casts doubt on the need for leave, or the employee requests an extension.

*— Robert M. Schwartz. The writer, a Boston labor attorney, is author of* The FMLA Handbook: A Union Guide.

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OFFICE OF THE INTERNATIONAL PRESIDENT

Dear Sisters and Brothers:

We can be proud of all we accomplished in 2008. The delegates to the 37th Grand Lodge Convention made historic decisions, setting a strong course for our union in the years to come. We organized new members and won industry-leading contracts at bargaining tables and on picket lines. And, IAM members throughout the United States and Canada mobilized like never before to win victories in critical national elections. We made gains in the number of working family advocates holding seats in the Canadian parliament. We expanded worker friendly majorities in both houses of the U.S. Congress. And, after eight long years, working people will have a friend at the White House when Barack Obama is sworn in as the 44th President of the United States.

We can't stop there, however. Our challenges for 2009 and the years ahead are even greater. We face the most serious global economic crisis since the Great Depression. The current crisis caps decades of struggle for the middle class — stagnant wages, sky-rocketing CEO pay, out-sourcing and off-shoring of good jobs, declining pension and health care coverage, and disappearing access to education and training. The path to recovery and reform will not be easy or short, but it must begin with empowering workers and expanding unionization.

We must enact the Employee Free Choice Act (EFCA). Unionization is absolutely critical to raising the standard of living for America's working families. We simply cannot rebuild our economy and the middle class without protecting workers' freedom to choose a union and bargain without management intimidation. The Employee Free Choice Act will give workers a real chance to form unions and improve their lives.

This issue of the *IAM Educator* highlights the power unionized workers have to demand a say in what happens in the workplace. Let's work together to bring a union voice to all working men and women. I urge every IAM member to join with other union members in the million member mobilization campaign in support of the Employee Free Choice Act. As a Steward, you can help by signing an EFCA card and making sure your co-workers do, too. Also, this issue contains a reminder to sign up early for 2009 Leadership courses at the William W. Winpisinger Education and Technology Center. Courses fill up fast, so make sure your lodge sends in enrollments promptly.

I hope you all had a good holiday season, and thank you in advance for your efforts in 2009.

In Solidarity,

R. Thomas Buffenbarger

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International President

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