

AA

Steward Training



Objectives

- At the end of this module you will:
 - Understand the grievance procedure from the perspective of the Executive Board and Officers.
 - Be able to explain basic rights of Local Union Officers in the grievance process.
 - Understand some of the most recent research on the grievance process.
 - Identify the core concepts of the Duty of Fair Representation.
 - Set up an effective grievance resolution system

Grievance Representation

- The Five Key Tasks for the Grievance Representative (Shop Steward)
- Checklist for the Union Officer and Steward
- Twenty Mistakes for the Union Representative
- Your Rights as a Union Representative

The Five Key Tasks for the Grievance Representative

- Establish your position
- Beware of management's tests
- Establish the Union
- Represent the Rank and File
- Build Solidarity

Checklist for the Union Officer

Pages 5 and 6 of the Stewards Manual

These 25 points serve as a checklist or a set of goals that each of you should set for yourself in becoming a responsible Union Representative.

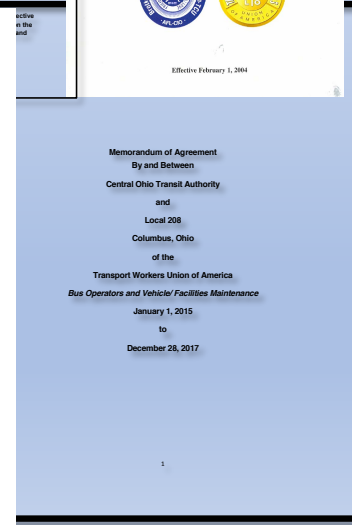
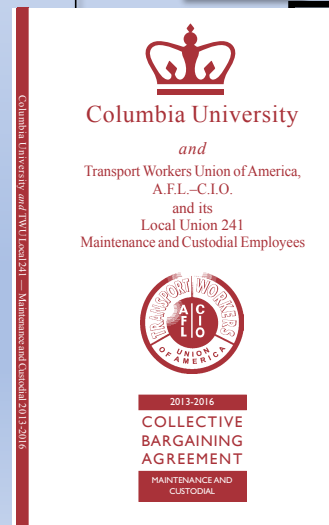
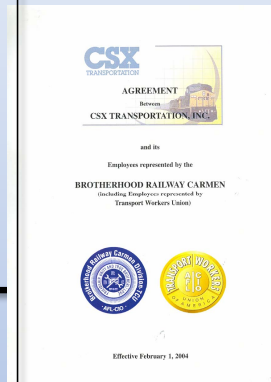
Twenty Mistakes for a Union Representative

Page 7 of the Stewards Manual

These are 20 common mistakes that both new and seasoned representatives make. Mistakes will be made at times, however, **they should never be made twice**. Go through this list often to keep yourself from making one of these mistakes.

Your rights

1. Law: The Railway Labor Act (1926), as amended (1934), the National Labor Relations Act (1937), or Public Sector statute.
2. Your contract.
3. Past arbitration cases.
4. Supreme Court cases.



Your Rights as a Union Representative

Once the Union certifies you as its representative on the property, the employer **MUST** recognize you in that capacity.

You are the Member's advocate. In your role as a steward representing a Member, you are considered equal with management.

You have specific legal rights under the National Labor Relations Act.

Right to enforce contract

The various laws under which we negotiate give the union the right to represent its members and enforce contract.

The Railroad Labor Act grants the union these rights and is enforceable in federal court.

The National Labor Relations Act grants the union these rights and denial of it is considered an “unfair labor practice.”

Right to represent

- The law grants the right of union members to select their representatives.
- When the union certifies these representatives, the employer must recognize them as union representatives with the special status granted to them to enforce the contract.
- The employer cannot select union stewards.

Right to investigate

- Union representatives must have access to the property in order to enforce the contract.
- This right is critical in terms of investigating grievances.
- The union can investigate grievance issues during breaks, meals and other nonworking times. There is no legal obligation to allow investigations on company time unless you have contract language that allows it or there is consistent past practice.
- When on the property for UB, it is courtesy to inform the company of your presence.

Rights to information

- The law varies on the requesting information from the employer.
 - The National Labor Relations Act requires it and deems it an “unfair labor practice” if you are denied access.
 - Under the Railroad Labor Act, you cannot compel the employer to give you records. You should file another grievance over the matter to make it part of the record.
 - Most employers will share the information before arbitration but that does not help the steward at step 1 of the procedure.
 - If denied access to information in the early stages of the procedure, inform the union but also encourage the steward to go with the member to Human Resources and request to see the record. Members have a right to review their records.

Right to advocate

- Equality rule when union steward acts in his/her representational role.
- No reprisals for actions taken as steward.

Upheld by the law, arbitrations, and Supreme Court case law.



Right to advocate

- Acting in your legal capacity as a union representative, you cannot be –
 - Punished for defending a member in a grievance meeting.
 - Given a bad evaluation.
 - Denied promotion.
 - Separated from other employees.
 - Deprived of overtime or other benefits.
 - Threatened or have rules enforced against you more strictly than other workers.
 - Over supervised or harassed.
 - Transferred to a different job or shift.

Grievances

- What is a Grievance?
- Five Grounds for a Grievance.

What is a Grievance?

Page 10 of the Stewards Manual

Contracts define a grievance in various ways. The definition in the current collective bargaining between American Airlines are found in Article 30 and 31 which states,

(30) An employee who believes that he has been unjustly dealt with as a result of dismissal or corrective action, may submit his written grievance

(31) An employee who believes that he has been unjustly dealt with or that any provision of this Agreement has not been properly applied or interpreted may submit his grievance

Five Grounds for a Grievance

- The Collective Bargaining Agreement (contract)
- The Law
- American Airlines Rules and Policies
- Fairness/Disparate Treatment
- Past Practice

Discipline

- Your rights when an Employer questions you
- The Stewards right to information
- Investigation procedures and preparation in discipline and discharge cases
- Interviewing witnesses
- Additional guidelines for witnesses
- Grievance Checklist – Insubordination
- How to handle a reprimand
- Listening to Others

Members Rights when the employer questions them

When do “Weingarten Rights” apply

These rights obviously apply to include questioning about theft, drugs, fights, absenteeism, lateness, or similar misconduct. Interrogations about work performance can also arouse reasonable fears. Weingarten does not apply to run-of-the mill shop floor conversations or to meetings in which supervisors give instructions on operating methods or safety practices.

Members Rights when the employer questions them

Article 29

(f) The Union does not question the right of the Company supervisors to manage and supervise the work force and make reasonable inquiries of employees, individually or collectively, in the normal course of work. In meetings for the purpose of investigation of any matter which may eventuate in the application of discipline or dismissal; or when written statements may be required; or of sufficient importance for the Company to have witnesses present, or to necessitate the presence of more than one Company supervisor; or during reasonable cause or post-accident drug/alcohol testing as provided in Article 29(h), **the Company will inform the employee of his right to have Union representation present.** The supervisor's record will reflect if the employee does not desire Union representation.

Members Rights when the employer questions them (continued)

According to the Supreme Court, when an employee requests a Steward or other Union representative, management has 3 options

- 1) It can halt the questioning until the steward arrives.
- 2) It can call off the interview, or
- 3) It can tell the employee that it will call off the interview unless the employee voluntarily give up their right to a steward. **(an option that employees should always refuse)**

Members Rights when the employer questions them (continued)

When the Steward arrives

1. Management must inform the Steward of the subject of the questioning.
2. Allow the Steward to meet privately with the Employee
3. Allow the Steward to interrupt to clarify a question or object to confusing or intimidating tactics.
4. Allow the Steward to give advise on how to answer questions
5. Allow the Steward to add additional information at the end of the interview to support the employee's case.

Members Rights when the employer questions them (continued)

Spreading the Word

The Supreme Court did not require the employers to tell workers about their right to Union assistance. **It is our job to educate and inform** our Members simply state the following if called into a meeting,

“If this discussion could in any way lead to my being disciplined or terminated, or affect my personal working conditions, I respectfully request that my union steward, representative or officer be present at the meeting. Without representation, I choose not to answer any questions.”

The Steward's Right to Information

The National Labor Relations Act requires that employers furnish unions with relevant information. The requirement comes from the language of the “duty to bargain” and a refusal to provide information of unreasonable delay is a violation of Section 8(a)(5) of the act.

Airlines are not covered under the NLRA, they are covered under the RWLA (Railway Labor Act).

You should make your request in writing, not orally, as a written request can be documented. Any request should be dated, with a short line explaining that the information is requested in the matter related to a specific grievance investigation.
(See Page 15 of the Stewards Manual)

Investigation procedures and preparation in Discipline and Discharge Cases

- Credibility Tests
- Records Tests
- Check the Contract and company rules and procedures
- Study the Grievance
- Look for Motive

Interviewing Witnesses

- **TAKE GOOD NOTES!**
- Get a written and signed statement from the witness as soon as possible (See page 34 of the Stewards Manual)
- Have them give their story in a brief, nontechnical manner, and not to argue.
- Tell witness to admit, **IF ASKED**, that you have spoken with him or her. Don't have them lie or hide the fact of a conference. **IF ASKED**, "What did your union representative tell you to say at the hearing," reply, "He/she told me to tell the truth."

Interviewing Witnesses (continued)

- Tell your witness **not to be evasive**. If they cannot remember or do not know – say so.
- If the witness **is sure of a fact**, use words like “I remember.” Do not have them use language like “I think” or “It could have”
- Don’t let witnesses get shaken by cross-examination. Tell them not to get excited, lose their temper, or get careless with an answer.
- **Tell the truth**

Additional Guidelines for Witnesses

- Tell the truth with respect to the facts and tell it as clearly as you can.
- Listen to the questions carefully so you don't answer before you know what is asked.
- If you don't understand the question ask that it be clarified for you
- Do not lose your temper or show excessive emotion.
- Do not be sarcastic if the person questioning you "needles" you. You do best by staying calm.
- Do not let the questioner lead you into statements of facts of which you do not have full knowledge.

Additional Guidelines for Witnesses (Cont.)

- Tell only the facts you know – do not be led into speculation.
- Do not volunteer information – just answer the question.
- Do not testify as to facts on a second-hand basis. Testify only what you know to be a fact.
- Do not argue with the questioner. Answer the question and then be silent.
- **Do not offer your opinion.**
- If you do not know the answer to a question when you are sure you understand it, say, “I don’t know.”

Additional Guidelines for Witnesses (Cont.)

- Do not hesitate to say, “I don’t remember,” if that is the truth.
- Do not let anyone questioning you get you to say “yes” or “no” unless it is correct. If your answer needs further explanation, state your reply accordingly and respectfully, but firmly indicate that you do not believe the “yes” or “no” answer by itself would be a truthful answer.

If you are required to make a written statement, always keep a copy of it for yourself (copy to the Union) and for future reference.

Checklist for Insubordination

- Was it a **DIRECT ORDER** (or merely instructions, suggestions, or advice)?
- Was grievant **AWARE** that he/she was given a direct order?
- If so, was the order **CLEAR**?
- Was grievant's alleged failure to comply **INTENTIONAL**?
- Was grievant given adequate **FOREWARNING** of the possible consequences of his/her alleged refusal to carry out the order?
- Was the order reasonable and necessary to the **SAFE, ORDERLY, and EFFICIENT** operation of the organization?

How to Handle a Reprimand

A member gets called into the supervisor's office and is told that his job performance has not been good. The supervisor issues a written letter of reprimand and puts it in their personnel file.

So, what can you do to protect these members?

How to Handle a Reprimand (Cont.)

Let's start with the basics. Anytime, a member is called into a manager's office and suspects that the discussion may result in discipline, they should ask for your presence at the meeting. Article 29, (f), grants that contractual right.

“the Company will inform the employee of his right to have Union representation present. The supervisor’s record will reflect if the employee does not desire Union representation.”

How to Handle a Reprimand (Cont.)

- Try to head off action that may result in a warning or reprimand
- Take notes so the Union has a record of the discussion and issue
- If the manager drops the issue, put it in your notes
- If any entry is made of the discussion, have the member ask for a copy and retain it for the Union
- Unfair entries should be answered in some form, and insist the Members version of the story is entered into the record

How to Handle a Reprimand (Cont.)

- Check to make sure any entry is accurate
- If the employer refuses the employees written statement, the Union can write up its version and send it to the employer with a copy retained by the Union
- You can take it a step further and grieve the discipline as unjust and “without just cause”

Many employers will use even a minor reprimand as part of an overall record if future disciplinary issues arise. If you do not challenge undeserved reprimands, it can strengthen the company's case in the future.

Arguing a Discipline Case

When arguing a discipline grievance - whether it is a reprimand, suspension, or discharge - you should develop arguments addressing these three issues.

1. Is the worker guilty of the offense and can the employer prove it?
2. Did the employer follow the proper procedure when it imposed the discipline? Did the employer violate the worker's right to procedural due process?
3. Even if the worker is guilty of the offense, is the penalty too severe?

The Grievance Process

- What is Arbitration
- Employee's Right to Representation – DFR
- Get the Facts – Remember the 5 W's
- Vocabulary for Grievance Writing
- Ten points on writing a grievance
- TWU Grievance fact sheet
- Checklist for Grievance Investigation
- A Dozen Points of Grievance Investigation
- Listening to Others

What is Arbitration

- What is grievance arbitration?
- Why do unions use arbitration?
- Who are the arbitrators?
- How are arbitrators selected?
- Who pays for arbitration?
- How does arbitration work?

Employee's Right to Representation - DFR

Duty of Fair Representation

Court cases have determined that a union that is elected or designated as the exclusive bargaining representative of a group of workers **must represent each and all workers in that bargaining unit fairly and without discrimination.** This requirement is called the union's Duty of Fair Representation (DFR).

Employee's Right to Representation – DFR (Cont.)

Standard of Conduct in Grievance Handling

The DFR begins when the union becomes the representative for a group of workers, and continues throughout contract negotiations and administration of the contract.

In grievance handling, DFR refers to the union's *conduct in handling the grievance*. If there is a claim in which the union did not represent an employee/grievant fairly, the inquiry will be into the conduct of the union when it handled the grievance, not the merits of the grievance.

The federal courts have not defined what kind of conduct fulfills a union's duty of fair representation. The federal courts have said that a union violates its duty of fair representation when its conduct is **arbitrary, discriminatory, or in bad faith**. What kind of conduct is arbitrary, discriminatory, or in bad faith? The courts determine this on a case-by-case basis.

Employee's Right to Representation – DFR (Cont.)

Avoiding DFR Cases

Stewards and officers can use the following guidelines to ensure that they handle grievances in a way that minimizes the possibility of meritorious DFR lawsuits:

- Carefully investigate all grievances to determine their merit.
- Make and maintain careful records of such investigations.

Employee's Right to Representation – DFR (Cont.)

- Maintain good communication with the grievant to assure of the local's concern, efforts, and good faith. Misunderstandings can prompt hostility and claims.
- Promptly process all grievances. Scrupulously observe contract time limits and confirm any continuances in writing.
- Treat all members equally. Make decisions whether to pursue grievances or arbitration solely on the merits. Avoid hostile motivation or "horse-trading."
- In borderline cases, obtain the opinion of local union officers. The decision not to arbitrate should be made at the appropriate and responsible union level.

Employee's Right to Representation – DFR (Cont.)

- Have a valid reason for any action taken on a grievance.
- If the grievant does not accept the steward's determination, consult with the officers before formally withdrawing the grievance.
- You should communicate any decision to discontinue the grievance process to the grievant. Also, communicate all settlement offers to the grievant.
- If a grievance is settled, it should be backed by a written release that is signed by the grievant.
- Union representatives should be trained in their obligations.

Get the FACTS: Remember the Five W's

- Who
- When
- Where
- What
- Why

And Also,

- How
- What Else



TWU Witness Statement & Fact Sheet ***

1) Witness _____ Position _____ Emp # _____

2) Incident took place at _____ on _____ Location _____ Grievance # _____
(TIME) (DATE)

3) Describe what took place. What you saw, who was there, what time it was, what you heard and who said it, and any other information you believe is relevant. Please be accurate in what you write, **do not guess** at anything. **If you did not hear it or see it yourself, do not report it.**

The above information is true and accurate to the best of my knowledge.

Witness/Grievant's signature _____

Shop Stewards signature _____ Date Received _____

**** This information sheet is to be used exclusively by the TWU representatives to investigate and represent a member, and is not to be distributed, copied, or shared with any Company representative.*

Vocabulary for Grievance Writing *

The following are some words and phrases commonly used in grievance writing:

- Management violated the collective bargaining agreement including but not limited to Article____,Section_____.
- Performed a discriminatory action
- Discipline (discharge, demote, suspend, transfer, fine, reprimand)
- Failed to comply with laws and regulations
- Obstructed due process Jeopardized health or safety

Vocabulary for Grievance Writing (Cont.)

- Reinstatement
- Make whole in every way including
- All rights and benefits
- Article ____, governing _____
- Past practice
- Consideration
- Letter of warning (reprimand)
- Verbal criticism

Vocabulary for Grievance Writing (Cont.)

- Verbal criticism
- Transfer from station to station
- Upgrade in classification
- Violation of contractual rights
- Interference in the performance of duties
- The rights of employees to effective representation

Vocabulary for Grievance Writing (Cont.)

- Matters affecting the terms and conditions of her/his employment
- Disciplined without just cause
- Arbitrarily
- Entitled to
- Incidental to his/her duties as steward

** Nicole Heare*

Ten Points on writing a Grievance

- 1. Limit Details to Basic Information**
- 2. Omit Union's Arguments, Evidence and Justification for Position**
- 3. Don't Limit Contract Violations**
- 4. Avoid Personal Remarks**
- 5. Don't Limit the Remedy**

Ten Points on writing a Grievance (Cont.)

6. Consults with the Grievant

7. Sign the Grievance

8. Solidarity

9. Keep the Grievant up to date

10. Arbitration (prepare each grievance as if its going to Arbitration)

TWU Grievance Fact Sheet

- Only for Union Use
- Have **Grievant** fill it out completely and **SIGN IT!**
- Make sure all information is obtained
- If there is missing information, question the grievant and see if there is information omitted so that the Union has a complete and factual record
- Make sure all company records of conduct are listed by the grievant
- Get copies of all evidence (e.g., seniority list, wage schedule, work ticket, record of similar grievance)
- **TAKE YOUR OWN NOTES** and keep them with the grievance file

Checklist for Grievance Investigation

CHECKLIST FOR GRIEVANCE INVESTIGATION

DISCHARGE AND PENALTIES

- Just cause
- Complete statement of events leading to discipline
- Date and times (important to document)
- Supervisor's name
- Name, address, phone #, and statement of witness (if any)
- Employee's record
- Print or diagram of area (if applicable)

NOTES ABOUT DISCHARGE OR DISCIPLINE CASES:

- Did the steward ask about grievant's personal problems?
- Did the steward ask about any previous record, good or bad, long or short?
- Did the steward probe any extenuating circumstances in this case?
- Did the steward ask about the personal character of all people involved?
- Did the steward discuss the consequences of the penalty?
- Did the steward consider whether the "punishment fits the crime"?
- Did the steward advise the grievant to seek employment while waiting?

JOB POSTING

- Grievant's classification and seniority
- Grievant's previous classification
- What grievant was temporarily promoted to
- Date of promotions (if any)
- Pay stubs, if possible
- Grievant's experience in vacancy requested
- Name and seniority of employee awarded job
- Number of posting and grievant's application
- Article violated

JOB POSTINGS (IMPROPER OR NON-POSTING)

- Classification of vacancy
- Area in which vacancy existed
- Name of employee who held vacancy
- Name of employee promoted to fill vacancy
- Article violated
- Shift at time of posting

REMOVED FROM POSTING

- Grievant's posted classification
- Date of last posting
- Grievant's qualifications
- Reasons for removal
- Classification assigned to
- Name of employees junior and not affected

TEMPORARY POSITION

- Grievant's seniority and classification
- Grievant's qualification
- Classification at which promotion was made
- Time of promotion
- Availability of grievant at time of promotion
- Name of supervisor involved
- Name of employee promoted
- Location promotion made
- Instructions to grievant (if any)
- Exact work performed by grievant
- Articles violated

IMPROPER PAY (WORK ASSIGNMENT)

- Grievant's regular posted classification
- Grievant's regular work assignment
- Grievant's assignment on day in question
- Name of employees who worked in grievant's place (if any)
- Name of employee available (junior to grievant)
- Date of grievant's last posting
- Safety issues (if any)
- Pay rate applicable to assignment
- Exact work performed by grievant
- Articles violated

DEMOTION

- Grievant's classification and seniority
- Number of employees affected
- Grievant's qualifications
- Classification demoted to
- Names of junior employees holding higher rated jobs (if any)
- Name of employee performing grievant's regular work (if any)
- Articles violated

OVERTIME

- Grievant's classification
- Shift or work group
- Date and shift overtime was scheduled
- Classification scheduled for overtime
- Name and classification of employee who worked
- Record of overtime from supervisor's records
- The work that was performed
- Articles violated

CONTRACTUAL HOLIDAY

- Same as overtime
- Seniority of grievant
- Seniority of employees who did work

VACATIONS

- Seniority of grievant
- Time requested and time allotted
- Grievant's qualification
- Name and classification of junior employees
- Number of employees in work group

SUPERVISION WORKING

- Name of personnel doing the work
- Type of work performed
- Amount of time worked
- Area where work was done
- Grievant's classification
- Availability of grievant
- Is grievant entitled to the pay

TRANSFERS

- Seniority of grievant
- Department requested
- Name of new employees
- Grievant's classifications
- Employees available to replace

Checklist for Grievance Investigation (Cont.)

The checklist on Page 36 of the Stewards Manual will help you in the investigation of many issues. Use the checklist as a guide to obtain information in these areas.

- Discharge and Discipline (notes about them)
- Job Posting
- Improper Pay
- Demotion
- Overtime, Vacation and Holiday Pay

Others are listed on the checklist as well.

A Dozen Points on Grievance Presentation

1. **PREPARE** the case beforehand
2. **Avoid arguments among Union people** in the presence of the company
3. **Stick to the point**, avoid getting led off on side issues by the company
4. **Get the main point** of the company's argument
5. **Disagree with dignity**
6. Avoid unnecessary delays. **Justice delayed is justice denied.**

A Dozen Points on Grievance Presentation (Cont.)

7. Settle the grievances at the lowest possible step of the grievance machinery, but make sure they are **properly settled**.
8. The **burden of proof is on the supervisor** in disciplinary cases.
9. **Avoid bluffing**
10. Maintain your position on a grievance until **proven** wrong.
11. **Be Prompt** and follow the grievance through the entire process.
12. **ENFORCE THE CONTRACT!**

Listening to Others *

1. Stop Talking
2. Empathize with the other person
3. Ask questions
4. Don't give up too soon
5. Concentrate on what is SAID
6. Look at the other person
7. Leave your emotions behind (if you can)
8. Control your anger

Listening to Others (Cont.)

9. Get rid of distractions
10. Get to the main point
11. Share responsibility for communications
12. React to ideas not to the person
13. Don't argue mentally
14. Use the difference in rate
15. Listen to what is NOT SAID
16. Listen to HOW something is said

Listening to Others (Cont.)

17. Don't antagonize the speaker
18. Listen for their personality
19. Avoid JUMPING to assumptions
20. Avoid classifying the speaker
21. Avoid hasty judgements
22. Recognize your own prejudices
23. Identify the type of reasoning
24. Evaluate facts and evidence

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The Stewards' Bill of Rights

When this country was founded, the framers of the Constitution realized that individual rights had to be guaranteed against the excessive power of the government. Without these rights, the government could encroach on the civil rights of all of its citizens.

In the same way, the steward needs a bill of rights to guarantee that the employer doesn't take away the ability of the steward to perform his or her union job. Somehow, we never got around to writing these rights down like the framers of the Constitution did, but those rights are still there.

The Stewards' Bill of Rights (Cont.)

1. I have a right to represent the Union
2. I am there for the Member
3. In conducting my job, I am the equal of management
4. I have the right to consult with my Member
5. I have the right to defend the Member

The Stewards' Bill of Rights (Cont.)

6. I have the right to investigate grievances
7. I have a right to organize my brother and sister employees
8. I have the right to question anyone, even members of management who may have information relevant to a grievance investigation
9. I have the right to question disciplinary action under the just cause doctrine
10. I cannot be disciplined for exercising these rights

15 Things Every Steward Should Know

1. You don't have to be an expert.
2. Figure out where to turn for answers.
3. Ask a lot of questions.
4. Know how to listen.
5. Never assume management knows better than you.
6. Pick your fights. Don't let management control the agenda.
7. Never disagree in front of management.
8. Acknowledge management's valid points, then redirect to the union's position.

15 Things Every Steward Should Know

9. Always get back to people
10. Be organized. Keep written notes of all activities.
11. Resolve problems at lowest level, *if possible*.
12. Be a responsible employee on the job.
13. Watch for time limits in grievance procedure.
14. A standard of reasonableness applies to both sides.
15. Always act in a professional manner.