



Equality Principle

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The Special Status of Union Stewards

By its very nature, a union Steward's job involves confrontation. On the shop floor, in supervisors' offices, and in grievance meetings, stewards must defend the actions of employees and dispute those of management. Sometimes this can be done in a restrained manner, i.e., "quiet diplomacy." But often the steward finds it necessary to use strong language, to raise a voice, to gesture, or to dramatize the union's position in other ways.

Such behavior, however, conflicts with traditional rules of employee conduct: rules which stress obedience to, and respect for, supervisors and managers. If stewards had to live by these rules, they would be in an impossible situation: either forego vigorous advocacy or risk almost certain discipline.

In recognition of this dilemma, the NLRB has adopted special rules for union stewards.

The Equality Principle

Under NLRB doctrine, union stewards (and other Union Representatives) have a special legal status when they engage in union business or act in their official capacities. During these periods, stewards are not bound by the traditional restrictions on employee conduct. When representing employees, stewards are considered to be **equals** with management. Conduct which could otherwise result in discipline must be tolerated. The NLRB describes the equality principle this way:

A frank, and not always complimentary, exchange of views must be expected and permitted the negotiators, if collective bargaining is to be natural rather than stilted. The negotiators must be free not only to put forth demands and counter demands, but also to debate and challenge the statements of one another without censorship, even if, in the course of debate, the veracity of one of the participants occasionally is brought into question.

If an employer were free to discharge an individual employee because he resented a statement made by an employee during a bargaining conference, either one of two undesirable results would follow: collective bargaining would cease to be between **equals** (an employee having no parallel method of retaliation), or employees would hesitate ever to participate personally in bargaining negotiations, leaving such matters entirely to their representatives.

In another case, the NLRB stated:

The relationship at a grievance meeting is not a "master-servant" relationship but a relationship between company advocates on one side and union

advocates on the other side, engaged as **equal opposing parties** in litigation.

The equality principle is consistent with rulings of the U.S. Supreme Court, which has said that the NLRA contemplates "robust debate" and "gives a union license to use intemperate, abusive, or insulting language without fear of restraint or penalty if it believes such rhetoric to be an effective means to make its point."

The equality principle allows stewards to raise their voices, gesture, use forceful expressions, threaten legal action, or raise the specter of on-the-job protests. Aggressive advocacy may not always be successful, or even appropriate, but it is not something for which you can be punished.

When does the equality principle apply?

*The equality principle applies when a steward is acting in an **official** capacity. It does not apply when a steward is acting in an **individual** capacity.*

You are acting in your official capacity when you investigate a grievance, request information, present a grievance, or otherwise act as a representative of employees.

You are acting in your individual capacity when you discuss your own work assignment or work performance. Being a steward does not convey a license to tell management off at all times and places.

Limits.

Even when it applies, the equality principle does not provide 100% equality. Employers can discipline stewards for conduct which (in the NLRB's words) is "outrageous" or "indefensible" and is "of such serious character as to render the employee unfit for further service." This includes extreme unprovoked profanity, racial epithets, physical threats, or striking a supervisor. Stewards can also be disciplined for disobeying reasonable directions, violating work rules, encouraging slowdowns, or taking part in illegal strikes.

Unlawful Retaliation

The right "to engage in concerted activities," guaranteed by Section 7 of the NLRA, includes the right to investigate and present union grievances. A steward cannot be punished or threatened with discipline, demotion, or other reprisals because he or she files grievances - even if management considers them overly frequent, petty, or offensively written.

Retaliation against stewards in any form is illegal. Among other things,

an employer may not:

- Order a steward to perform greater or more difficult work
- Segregate a steward from other employees
- Deprive a steward of overtime
- Enforce rules more strictly against a steward
- Overly supervise a steward

The Equal Standards Requirement

Some supervisors believe that stewards can be held to higher standards than other workers. "Of all people, you're supposed to know the rules," is often heard when a steward is given a penalty for coming in late or making a production error. These supervisors expect the steward to set an example.

This attitude has no support in logic or in law. Stewards are not super workers. Who would take the post if it meant higher work requirement or more severe discipline?

The NLRB has consistently found employers guilty of discrimination for holding stewards to higher standards than other workers or imposing greater discipline. Stewards can file NLRB charges if employers fail to apply equal standards.

There is only one circumstance when stewards can be held to higher standards than rank-and-file workers. This involves **work stoppages which violate no-strike clauses**. If a collective bargaining agreement requires the union to take positive action to prevent mid-contract work stoppages, employers may be able to discipline stewards and union officers more severely than rank-and-filer for taking part in a wildcat strike.

Questions and Answers

1. Shaking a finger

Q. During a grievance discussion, I shook my finger at the plant manager. He said, "If you ever do that again, you're finished here." Could he really fire me for this?

- A. No. Shaking a finger falls well below the level of "outrageous" conduct forbidden of stewards. File an NLRB charge because of the illegal threat.

2. Shouting

Q. After a grievance meeting with management, I received a written warning for "extremely loud behavior." Aren't I allowed to raise my voice?

- A. Yes. If it doesn't disturb production, loud arguing during a grievance meeting, or even shouting, is protected by the NLRA.

3. Calling supervisor a liar

Q. At a grievance session, I called my supervisor a liar. As it turned out, I was mistaken. Can I be disciplined for my comments?

- A. Not legally. Under the equality principle, stewards have a right to accuse supervisors of lying-even if the accusation turns out to be incorrect.

4. Calling boss a jackass

Q. During a grievance meeting, my foreman made a number of ridiculous statements. Infuriated, I called him a "jackass." Can I be disciplined?

- A. Not legally. Under the equality principle, strong language during grievance meetings, short of extreme unprovoked profanity, is protected. In one case, the NLRB allowed a steward to call a supervisor "a big twerp." In another, the NLRB reinstated an employee who called his boss "a stupid ass" during a grievance session. In a third case, the NLRB removed the written reprimand of a steward who told his supervisor, "I don't give a f- - k who you call."

5. Continuing to argue

Q. Yesterday, I was involved in a heated grievance argument with my supervisor. In the middle of it, he declared, "This meeting is over, go back to work." I continued to argue for a couple of minutes. Can I be disciplined for refusing to immediately obey his order?

- A. Not legally. In a 1980 case, the NLRB said that a short **cooling-off period** must be tolerated immediately after the end of a grievance discussion as "it is unrealistic to believe that the principals involved in a heated exchange can check their emotions at the drop of a hat." Protection may be lost, however, if a steward refuses **repeated** back-to-work orders.

6. Slamming a door

Q. Last week, I got angry during a meeting with the plant manager. When I walked out, I slammed her door. Can I be disciplined?

A. Not legally. It is not unusual for tempers to rise in grievance meetings. In a similar case, the NLRB said that slamming an office door is not so outrageous as to warrant a denial of Section 7's special protections for union representatives.

7. Refusing an order to return to work

Q. Our contract permits stewards a reasonable amount of working time to conduct union business. Last week, while I was investigating a grievance, my foreman come over and for no good reason ordered me to return to my work station. Could I have refused?

A. This is a difficult question. Most arbitrators take the position "Obey now, grieve later." Refusing a management order, even one which violates the contract, is considered insubordination. However, NLRB cases provide that a steward can refuse an illegal order from a supervisor who is bent on preventing the steward from engaging in legitimate union business, as long as union business on working time is allowed by contract or past practice, does not disrupt the work of other employees, and does not constitute an attempt to avoid work

8. Going too far.

Q. After a grievance meeting, a steward lost her temper. She screamed at the plant superintendent, told him he should have his mouth bashed in, and said that she was going to do it. Several employees stopped work to listen. When she dared him to fire her, he did. Later, she apologized, but the company refused to reinstate her. Do we have a case at the NLRB?

A. Probably not. There are limits to a steward's actions. The NLRB will probably sustain the discharge because the steward's conduct went beyond the limits. Not only did she threaten physical violence, but just as damaging, her outburst took place near other employees and caused them to stop work.

9. Telling a steward to "shut up."

Q. Can a supervisor tell a steward to "shut up" during a grievance session?

- A. This depends. If the full sentence is "Jim, shut up and listen to what I am saying," it is legal, as part of the give-and-take allowed in grievance meetings. But if the boss says, "Jim, if you don't shut up, you'll be out the door just like Jones," he has made an illegal threat.

10. Suing steward for slander.

Q. At a grievance session, I charged my supervisor with altering time records. She said she was going to sue me for slander. Can she win?

- A. No. Statements by union (or management) representatives during grievance or arbitration sessions are *legally privileged* and cannot serve as the basis of a slander lawsuit.

11. Criticism

Q. My boss often criticizes me, calling my grievances "nit-picking" and a "waste of time." Is this allowed?

- A. Yes. The NLRA permits employers to criticize union activities. Only comments which reach the level of harassment, or contain threats, are illegal.

12. Warning for soliciting grievances

Q. I have been encouraging employees to file grievances against a foreman who consistently does bargaining unit work. Yesterday, the foreman told me, "If I find that you're soliciting grievances, it'll mean your job." Isn't this an NLRA violation?

- A. Yes. Encouraging employees to file grievances against contract violations is a protected union activity. It is unlawful to threaten a steward for soliciting grievances.

13. Threatening loss of promotion

Q. My supervisor is upset because I file lots of grievances. Last week, he suggested I slow down if I still hope for a promotion. Is this an unfair labor practice?

- A. Yes. It is unlawful to threaten a steward with adverse action for filing grievances.

14. Over supervising steward

Q. Ever since I was elected steward, my foreman has been constantly watching me. Sometimes when I turn around, there are three bosses staring at me. Is this legal?

A. No. Supervising stewards more closely than other workers is a form of coercion which violates the NLRA.

15. Poor evaluation

Q. One day after I filed a grievance, I was given a warning slip for "poor work performance." Should I file a charge with the NLRB?

A. Yes - if you believe that the warning is because of your union activities. The fact that the reprimand came so soon after your grievance is circumstantial evidence of retaliation. If your supervisor made angry statements about the grievance, you will have a better case.

16. Raising standards

Q. Before I became a steward I was often a few minutes late to work but the company never said anything about it. Now that I am a steward, I get a written warning if I am even one minute late. Isn't this discrimination?

A. Probably. When an employer tolerates an employee's deficiencies for years, and then changes its attitude after the employee becomes a steward, this is evidence of unlawful discrimination.

17. Veiled threat

Q. When I presented a grievance, my boss told me, "If you don't like it around here, you can always quit." Violation?

A. Yes. This is a *veiled threat*. Your boss is warning you that he or she considers your union activity incompatible with your job.

18. Enforcing plant rules more strictly

Q. A plant rule requires employees to remain in their work areas during work time. The rule is rarely enforced - except for me. Should I file a charge?

A. Yes. Enforcing plant rules more strictly against stewards violates Section 8 (a)(3) of the NLRA.

19. Stronger discipline

The day before Christmas, a few employees, including myself, celebrated at work with a few beers. A supervisor reported us. The other workers received warnings, but I was hit with a suspension. The boss said, "You're the union steward and supposed to set an example." Can he do this?

- A. No. It is illegal discrimination to hold a steward to a higher standard of conduct than other employees or to impose unequal punishment.

20. Failing to follow grievance procedure

Q. I received a warning because I filed a written grievance before presenting it orally as required by the first step in the grievance procedure. Can the company get away with this?

- A. No. A technical mistake by a steward, even one that violates the contract, cannot be used as a basis for discipline. Your employer may be able to reject the grievance, or can protest to the union, but it cannot take action against a steward for grievance-handling mistakes made in good faith.

21. Warning steward for spending too much time on union

business

Q. Our contract permits stewards to spend "a reasonable amount of time" in the performance of union business. Yesterday, I received a disciplinary warning for spending too much time away from my work. Can I file an NLRB charge in addition to a grievance?

- A. Yes. According to NLRB doctrine, a steward has certain rights when a collective bargaining agreement or past practice allows stewards time off for union business but does not cap the amount. The employer may not discipline a steward for excessive time off without first notifying the union of the problem and attempting to come to an **accommodation**. The two sides must attempt to balance the stewards's right to time off with the employer's right to expect productive work.

22. Refusal to relay supervisor's instruction

Q. Three employees were told by management to go to a motivational seminar after work. The employees refused. A supervisor ordered me to instruct them to attend the program. Do I have to obey?

A. No. Stewards do not have to relay supervisors' orders. The responsibility to direct work lies solely with management. A steward's only obligation is to refrain from actions that directly contradict management instructions.

23. Threatening steward for failing to supply information

Q. In preparing a grievance, I compiled exhaustive documentation. The company has demanded my records and has threatened to suspend me if I refuse. Violation?

A. Yes. Although the union may have an obligation to supply the information (see Chapter 4, Question 22), the employer may enforce this obligation only by filing an unfair labor practice charge **against the union** at the NLRB. Threats directed at individual union representatives are unlawful.

24. Questioning employees about steward's actions

Q. The company thinks I am organizing a slowdown. Can supervisor and employees about my instructions to them?

A. Only to a limited degree. Interrogation of employees about union activity is a sensitive legal area. Such questioning is allowed only if the following safeguards are provided:

- ▶ *The employer must inform employees of the true reason behind the questions.*
- ▶ *Employees must be told that the interview is voluntary and that they may decline to take part.*
- ▶ *Employees must be told that no reprisals will be imposed because of what they say.*
- ▶ *The interviews must not be coercive in nature.*

25. Telling employees not to answer questions

Q. The company is investigating drug use in the plant. If I tell my people not to answer questions, can I get into trouble?

A. Yes. A union has an obligation to cooperate when an employer is conducting a legitimate investigation of misconduct. Stewards may not instruct workers to refuse to answer questions. If management learns of your orders, you can be disciplined.

25. Telling worker not to obey foremen's order.

Q. A foreman frequently makes employees do work outside of their job classifications. As a steward, do I have a legal right to tell the workers to refuse such assignments?

A. Probably not. The rule universally followed by arbitrators, and respected by the NLRB, is "Obey now, grieve later." A steward can be disciplined for insubordination for instructing workers to refuse to do a job - even if the contract is being violated. The NLRB makes an exception to this rule only when the steward has a reasonable belief that a contract provision specifically permits employees to refuse work; for example, a clause stating that drivers can refuse to operate unsafe vehicles.

27. Speaking up during shop meetings

Q. The company owner often calls shop meetings to lecture employees. When he asks for questions, can I make a statement defending the workers?

A. Yes. Union representatives have a protected right to speak up at shop meetings, including criticizing the employer, as long as the employer has not clearly forbidden employee comments.

28. Advising employees not to sign warning slips

Q. Do I have a right to advise a worker not to sign a warning slip if the warning is out of line?

A. Yes. In a 1978 case, the NLRB overruled an employer who suspended a steward for insubordination for advising employees not to sign warning slips. The NLRB agreed with the union that the steward's conduct constituted the first step in presenting a grievance and was therefore protected.

NOTE: *Alternatively, consider advising the worker to write "signed under protest" after his or her signature on the warning slip.*

29. Refusing unsafe work

Q. Our work is very dangerous. What legal protections do we have to refuse job assignments?

A. In the absence of a contractual provision allowing employees to refuse

unsafe work, employees are expected to perform all job assignments, even those which are dangerous. Nevertheless, arbitrators will often protect a work refusal if the employee has good cause to believe that the assignment

- 1) ***is extremely unsafe,***
- 2) ***poses a threat of death or serious injury, and***
- 3) ***is not a normal part of the job.***

Another source of protection is the Occupational Safety and Health Act of 1970, which is enforced by the Occupational Safety and Health Administration (OSHA). An OSHA regulation provides that an employee can refuse unsafe work if the following four conditions exist:

- ✓ The employee has a reasonable belief, based on what he or she knows at the time, that there is a real danger of death or serious physical injury.
- ✓ The employee asks the employer to eliminate the danger but the employer fails to do so.
- ✓ The danger is so urgent that the employee cannot risk waiting OSHA can conduct an inspection.
- ✓ The employee has not reasonable alternative.

Complaints must be filed with OSHA within six months if a employee
*is disciplined for refusing unsafe work.

Additional protection is provided by Section 502 of the NLRA. Section 502 protects workers who refuse to work under "abnormally dangerous" conditions - even if the union has agreed to a no-strike/no-work-stoppage clause. The danger must not be customary tot he job. Asbestos work without protective clothing would probable be considered abnormally dangerous and so would high-level construction during a lightning storm.

30. Wildcat strike

Q. Workers in my department walked out because they were upset over a supervisor. I did not lead the walkout but I did participate. Since we have a no-strike clause in our contract, all of us were punished. Most workers received three-day suspensions, but I was hit with ten days because I am the steward. Isn't this illegal discrimination?

A. Not necessarily. The lawfulness of the discipline depends on the wording of the no-strike clause in your contract. If the contract says, "The union will promptly take steps to end all work stoppages," or words to this effect, union

representatives may have special responsibilities to stop strikes and in some cases, can be given greater discipline for participating.

31. Suing steward for illegal strike

Q. Can a steward be sued for money damages for organizing an illegal strike?

A. No. Union representatives cannot be sued for money damages for leading or taking part in illegal strikes. But, since stewards are generally considered **agents** of the union, the employer may be able to sue the union for losses caused by the strike.

32. Striking to win reinstatement for steward

Q. Our steward was fired because of language she used in a grievance session. If we walk out in protest, will we have any legal protection? We have a no-strike clause.

A. Perhaps. According to U.S. Supreme Court and NLRB decisions, workers can strike despite a general no-strike clause if the employer commits a **serious unfair labor practice** which undermines the union. In a 1987 case, the NLRB reinstated several workers who struck when the illegal discharge of their steward left them with no on-site representation.

Note: *Great care must be taken before a union conducts a mid-contract strike. If at all possible, consult a labor attorney before taking action.*

33. Filing complaints at state agencies

Q. I am pursuing a pay grievance for a worker in my department. If I also file a complaint at the state wage-and-hour office, can the company take action against me?

A. No. Under the NLRA, stewards have a protected right to file complaints at state and federal agencies, or lawsuits in court, on behalf of employees. Retaliation is unlawful, whether or not the complaint is successful.

Source: Legal Rights of Union Stewards: Robert M. Schwartz