



STEWARDS CORNER

Monthly Newsletter for Union Stewards

Dealing with Discipline for Work Performance

In September 2021, management at ABC Molding Co. terminated an employee for *poor work performance* stemming from an incident that resulted in \$3500 in damages to a ceramic mold. The employer’s investigation also found that the worker didn’t use proper safety procedures to remove the mold, nor did he divulge information about the incident until questioned by the Company the following day. Although this case has unique details, USW stewards often deal with similar problems.

Poor work performance is a broad category that includes several topics, including incompetence and negligence. So, how should union stewards handle these issues? First, as always, check the grievance timeline in your collective bargaining agreement (CBA) and any sections that involve discipline. Next, review the disciplinary notice and any supporting evidence the employer cited in making its decision.

Incompetence

Arbitrators that uphold the employer’s discipline of an employee for incompetence have found that employees charged are not “guilty” of wrongdoing; they are, instead, unable “to perform the work with reasonable efficiency.” At the same time, remember that “Just Cause” or other applicable standards still apply. In light of that, if you are investigating an incompetence grievance, here are some questions to consider:

1. Has the worker failed to satisfy reasonable production standards? What proof does the employer have to substantiate this claim?
2. Was the worker given adequate notice about their production and an opportunity to improve it?
3. Did the employer provide the necessary training and supervision for the worker to perform the job?
4. Is the employee’s work performance related to illness or injury?

If your investigation reveals any of the above issues, then you may be able to argue that a *non-disciplinary* response is appropriate, such as additional training.

Negligence

Employers handle negligence and other misconduct (neglect of duty and carelessness) as disciplinary problems. Like any other discipline, the employer has to prove it has *just cause*; (check your CBA as it may require a different standard such as “proper cause” or “good cause”). Remember to use the [Seven Tests of Just Cause](#) in your investigation.

One point to consider in your investigation is the severity of the

misconduct: is it *gross*, or is it *mere negligence*? Compare these two scenarios:

- ▶ A worker does not complete the lock-out/tag-out procedure on a machine. The employer terminates the worker for the violation because she had training on the procedure, signed off on the policy, and had a previous warning on a similar violation. An arbitrator upholds the discharge.
- ▶ A forklift operator swipes a garage door rail, and the damage requires the door to be removed and the installation of a new rail. The entire process takes one shift and costs \$750.00. As a result, the company suspended the worker for one-day, and subsequently, an arbitrator reduced it to a written warning.

These examples are both forms of negligence, but an energized machine’s potential for life-threatening injury is more severe than minor damage to a garage door rail. Check your CBA and employer policies, as they sometimes define specific acts of negligence. Arbitrators use several criteria to assess the severity of negligence violations, including:

- ▶ Was there damage (or potential damage) to persons, property, or the business?
- ▶ Was the employee trained or capable of performing the negligible act?
- ▶ Is the misconduct habitual?
- ▶ What is the attitude of the worker?
- ▶ What are the effects of the negligible act on coworkers and clients?
- ▶ Did defective equipment factor into the negligible act?
- ▶ Did the action or inaction of coworkers or supervisors contribute to the negligible act?

In the above case of the employee who damaged the ceramic mold, the arbitrator reinstated the employee, reducing the discipline to a written warning with no back pay. The union showed that the employer had not disciplined other workers who caused similar incidents, including one that led to \$30,000 in damages. Also, there was a two-month gap between the incident and the worker’s termination, which raises a question: if the work performance was so poor, why did the employer wait two months to discharge him?

Contact your Local Union grievance committee or Staff Representative for more information on this topic.



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Definitions to Commonly Used Union Words and Phrases

As a steward, grievance chair, or Union officer you will hear a lot of acronyms, terms, and phrases used. Below are just a few of the terms you may hear and what they generally mean.

Arbitration: A method of settling a labor-management dispute by having an impartial third party decide the issue. The decision of the third party (arbitrator) is usually binding.

Checkoff: A clause in a union contract authorizing the employer to deduct dues or service fees from employees' paychecks and remit them to the union.

Concerted activity: Action taken by an employee or employees (generally on behalf of fellow workers) in order to improve working conditions or benefits. Bargaining law considers this type of activity protected from retaliation or reprisal.

Duty of fair representation: The legal obligation for a union to fairly represent all employees in the bargaining unit without regard to factors such as union membership or membership in a protected class.

Duty to bargain: The legally enforceable obligation of each party in a collective bargaining relationship is to meet at reasonable times and places and negotiate in good faith with respect to wages, hours, and terms and conditions of employment.

Escalator Clause: A clause in the union contract which provides for a cost-of-living increase in wages by relating wages to changes in consumer prices. Usually, the Consumer Price Index is used as the measure of price changes.

Just cause: Referenced in many collective bargaining agreements, a widely-used term that requires the employer to use good and sufficient reasons to discipline employees. There are generally accepted elements of just cause that an employer must prove to an arbitrator in order for a disciplinary action to be upheld.

Management rights: The inherent rights of an employer to make decisions regarding its business. These may be expressly reserved to management in a collective bargaining agreement.

Master agreement: A union contract usually associated with industry-wide or near-industry-wide bargaining. Usually, the master agreement settles major issues but does not necessarily control all points, thus leaving room for local Union agreements.

MOU: Memorandum of Understanding (also known as a Memorandum of Agreement or MOA). This is the contract or collective bargaining agreement between the Union and an employer.

Past practice: The history of the way parties have behaved toward one another in the past that bears upon the expectations the parties have regarding negotiations in the future. Such practices, sanctioned by use and acceptance, are not specifically included in the collective bargaining agreement. To constitute a past practice the issue must be: 1) clear to the parties; 2) consistent in its application over a period of time; and 3) condoned by the parties. Arbitrators use past practice to interpret ambiguous language in the collective bargaining agreement.

Pattern Bargaining: Collective bargaining in which the union tries to apply identical terms, conditions, or demands to a number of employers in an industry although the employers act individually rather than as a group.

Reopener Clause: Clause in a collective bargaining agreement providing for reopening negotiations on wage rates, etc., during the term of the agreement.

Successorship Clause (assumption agreement): A negotiated clause between the current employer and the union that usually states that if the company is sold, that sale is contingent on the new owner accepting the terms and conditions of the current collective bargaining agreement.

Supplemental unemployment benefits (SUB): Payments by employers to laid-off workers (usually through trust funds) to supplement state unemployment compensation benefits.

Union Label or Bug: A stamp or tag on a product or card in a store or shop to show that the work is done by union labor. The "bug" is the printer's symbol.

Union Shop: A shop where every member; of the bargaining unit must become a member of the union after a specified amount of time.

Weingarten Rights: The rights of employees covered by the NLRA to request union representation during investigatory interviews if they reasonably believe that the interview could result in their being disciplined. Weingarten rights also guarantee the rights of union representatives to assist and counsel employees during interviews that could lead to discipline.

Zipper Clause: A standard contract clause that precludes any renegotiation of conditions covered in the contract during the life of the contract. It is designed to prevent the employer from trying to change the contract before the next round of bargaining.



- ▶ **Roles of Union Stewards**, January 10 (11 AM — 8 PM)
- ▶ **New Hire Orientation**, January 24 (11 AM — 8 PM)
- ▶ **Legal Rights and Responsibilities of Union Stewards**, February 7 (11 AM — 8 PM)

All classes are held at 11 AM (EST) and 8 PM (EST)



Scan the QR code or click the link to see our upcoming schedule of classes.

<http://usw.to/teachingtuesdays>