



# STEWARDS CORNER

Monthly Newsletter for Union Stewards

## The Role of Reasonability in Labor Arbitration

“Reasonable” is a term labor arbitrators often use. They evaluate a grievant’s behavior or logic to determine if it aligns with that of a “reasonable person.” They also assess if a grievant was disciplined for violating an arbitrator-deemed “unreasonable” rule, therefore failing to meet a key test of just cause. Additionally, arbitrators review the reasonableness of management’s disciplinary actions in just cause cases.

One of the most recognized applications of reasonability is in determining whether a worker had a “reasonable belief” that a work assignment would cause imminent danger resulting in physical harm to that worker. One of the few exceptions to the “obey now, grieve later” golden rule is the ability to refuse hazardous work. Some arbitrators require a stricter standard than just a reasonable belief. Some also want evidence of the work being truly unsafe. Regardless, the first test applied by all arbitrators is that the worker had a reasonable belief for assessing the assignment as unsafe.

### One case study. . .

In one arbitration, the parties were in dispute over the interpretation of the contract’s bereavement leave language. Although the language indicates how much time employees have for bereavement (2 days or 3 days if the family member’s funeral or memorial is taking place over 150 miles away) and defines who is considered immediate family, it does not indicate the time-frame it is to be taken. The grievant had lost his father but elected to take bereavement leave on Labor Day weekend, over a month after his father’s passing. The grievant said he wanted to memorialize his father over Labor Day as it was a very special day for both him and his dad, who was an avid union member. The employer denied his request.

The union argued that the contract language didn’t restrict a member to a certain time span to memorialize their loved ones; it only restricted how many days were allowed for bereavement leave. However, applying the reasonable person standard, the arbitrator believed that a reasonable person would support the employer’s argument that “the bereavement leave benefit was intended to provide employees with paid leave to attend funerals or memorial services, or to make arrangements regarding the decedent’s funeral or estate, rather than to provide said employees with time to be taken at their discretion for participation in any and all events that they deem relevant to their loss.” Thus, the union lost the grievance.

### Reasonable Rules, Procedures, and Disciplinary Actions

Reasonability isn’t just applied to a worker’s actions or inactions or the lenses through which contract language

should be construed; it can also be used as a measuring stick to determine whether an employer’s rule is worthy of enforcement and/or disciplining a worker for breaking it. For many arbitrators, just cause has not been met if an employee is disciplined for breaking what they see as an unreasonable rule. A commonly cited example is grooming requirements in the workplace, especially rules restricting men from growing their hair long or sporting beards. Some arbitrators have found this to be a culturally dated working condition and unless it creates a workplace safety issue (respirator seals, etc.), it is unreasonable. Likewise, some unions have clung to past practices that are now considered outdated. A no-smoking policy at the workplace may have once been deemed unreasonable 40 years ago. However, it is now largely held as a reasonable, if not necessary, policy.

Employee discipline is also subjected to a reasonableness test. In cases where a grievant’s guilt is not at dispute, an arbitrator can remove or reduce a grievant’s discipline if they believe the penalty was unreasonable. An arbitrator will consider whether the discipline is proportionate to the offense; in other words: ‘Is the time worthy of the crime?’ However, most are reluctant to substitute what they think is a fair penalty instead of what the employer has prescribed unless the penalty seems wildly disproportionate to the employee’s infraction.

### So, what is reasonable?

The Merriam-Webster dictionary defines a reasonable person as:

*“A fictional person with an ordinary degree of reason, prudence, care, foresight, or intelligence whose conduct, conclusion, or expectation in relation to a particular circumstance or fact is used as an objective standard by which to measure or determine something.”*

In short, what is reasonable to one person may be unreasonable to another, so subjectivity—an individual’s opinions and feelings—is unavoidable. But the more precedent and consensus a grievance handler or advocate can cite to demonstrate what the world and other arbitrators believe is reasonable, the more successful the union will be at convincing an employer or arbitrator that they are correct.

## Character Matters: Earning Respect as a Steward

It's easy to rattle off the objects that every steward should have: a pen, notebook, copy of their collective bargaining agreement (CBA), etc. But what are the intangible qualities a steward needs for the job, the things you can't visibly see? *Thick skin? A sense of humor?*

A steward's character—their moral fiber and how they conduct themselves—can influence how members feel about and identify with their union more than anything else.

### Honesty & Trust

Trust is the foundation for effective unions. Studies show that people are less willing to speak up and work together in organizations with low trust levels than they are in settings with high trust levels. In the context of a Local Union, the lack of trust is like a solvent that erodes solidarity.

According to psychologists, deciding to trust someone is like playing the Powerball. It's great when you hit the jackpot, but if your numbers don't hit or you violate the trust someone places in you, you've either lost money or a relationship. Now, think about a member who approaches you with an issue. How do you earn their trust?

The most common response from veteran stewards is to be honest. **Telling the truth is always the best course for you, the members, and the union.** How you handle difficult conversations will define what kind of leader you are. Misleading a member or supervisor ruins your credibility.

Honoring the confidence that someone puts in you is a critical aspect of establishing trust. When representing members, you may learn things about their personal lives that should remain private unless it becomes necessary to disclose them to the employer; otherwise, think of yourself as a sealed vault.

### Good Judgment

A significant factor in a steward's leadership is the extent to which they are informed and knowledgeable about their role, the workplace, and the CBA. Do members seek your advice or opinion on matters involving them? That's a sure sign they see you as a leader. For new stewards, one-on-one meetings can be intimidating, especially if the person approaching you is aggravated.

In these instances, think of yourself as a detective and ask a lot of questions. Resist the urge to say, *"OK, I'll just take care of it."* The answers to the questions you ask will help you assess whether the member is blowing off steam or if there's a violation of the CBA or other issues. For the member, having to think through and answer your questions will help them organize their thoughts.

Your judgment will improve as you deal with new and different issues. Taking time to reflect on your experiences – what worked, what didn't work, your "light-bulb moments" – will reveal what you've learned and how you can apply that knowledge in the future.

### Consistency

A big part of your job is following up. If you say you're going to do something, do it. The first time you don't follow up on something is the last time a member feels confident in coming to you about a problem.

Following up has some practical benefits. A pocket calendar or smartphone app that lets you set time-sensitive duties and reminders can help you stay organized. It's also helpful to divide tasks into smaller pieces to determine which parts will take more time than others. For example, writing a grievance on an overtime violation may take a few minutes, but sifting through an information request on that same issue will take longer. Managing your time is a significant factor in consistency.

### You're in a Position to Influence Members' Attitudes

Most people who work in unionized workplaces usually have some general attitude about unions before they begin their job. Conversations with family members and friends combined with news and social media create perspectives that excite some people to be part of a union, leave others indifferent, and make some downright opposed to them. Unfortunately, you don't have much control over these things.

What you do have a lot of influence over is how you conduct yourself as a steward, and that makes all the difference in a member's specific attitude about their union. Stewards who are honest and trustworthy, use good judgment, and follow through on their commitments earn the respect of their coworkers and management.



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