



STEWARDS CORNER

Monthly Newsletter for Union Stewards

It's my vacation! When time is not on your side.

Jonathan booked an all-expense paid, weeklong ocean cruise with his wife and two kids. Two weeks before Jonathan's scheduled vacation, his supervisor informs him that the company is critically understaffed and that Jonathan must work the week of his scheduled vacation. The supervisor cited management rights language to assign work as needed in emergency situations and told Jonathan, "Sorry man, this is why you gotta book refundable trips. Stuff like this comes up. I was supposed to go fishing that week, and that's not happening either." Jonathan met with his steward, who immediately filed a grievance.

In this scenario, Jonathan does not have the luxury of waiting for the grievance procedure to work its way through the process, which can take several weeks at best to win his grievance. Even if he wins and is made whole, Jonathan can't get back that trip, his wife's time off, or undo his kid's disappointment. Canceled vacation is just one example of a time-sensitive issue that the grievance procedure may not be able to resolve immediately. This is often the situation where a steward has to use their persuasive skills and develop a decent enough relationship with the management where they can intervene and quickly resolve this problem in favor of the member. In many instances where it can be shown that the flights and bookings have been made and the member has financial commitments related to the vacation, the steward can successfully argue on behalf of the member. The fact that time is pressing or the language may not always favor you doesn't mean you shouldn't make an effort to solve the problem.

Time-sensitive grievances can be handled in many ways. However, there are very few instances when a worker can refuse orders from management and not be considered insubordinate. Health and safety violations that are an immediate danger to life and limb are such an exception. Note: *that an employee must not reject the work outright, but state that they are willing to do the work once the danger has been abated.*

However, health and safety concerns are arguable and may not be perceived as an imminent threat. When the situation is debatable, and the worker may not be protected from discipline, the union must consider other strategies. If the employer has a joint health and safety committee, it can intervene faster than an individual supervisor may be inclined to. Likewise, a union's health and safety committee can raise awareness and pressure around a grievance in numbers that a singular steward otherwise could not achieve alone. If all else fails, involving an outside regularity agency, such as OSHA, may provide swifter intervention or encourage the company to respond.

The principle of "work now and grieve later" in the instances mentioned earlier often leave members feeling discouraged, but organizing and mobilizing actions against management decisions are opportunities to build solidarity.

We can't always outright win every grievance, but some may

be appropriate for settling. For instance, if a member has been disciplined and they are unequivocally guilty of committing the violation, we may be able to convince management to reduce the severity of discipline based on various mitigating factors such as the member having little prior discipline, significant seniority, above average work performance, demonstrated responsiveness to corrective action, etc.

If a member is looking at possible discharge or extended suspension without pay, and the outcome of the case may be questionable, it may be best to reach a compromise settlement on the grievance and accept a lesser discipline that would keep them employed and on the payroll. Also, the grievance and arbitration process takes time, and management can often try to starve members financially while waiting for the grievance to get fully concluded, and it may be time that a member can ill afford. The steward will sometimes need to persuade both the member and the management that this could be the best course of action.

In the case of Jonathan being forced to work through his vacation, and the company steadfastly refuses to consider the hardships he has had to live with, then this can be the opportunity for the steward to find a more creative approach to be taken. It's possible that the union could successfully argue that worker shortage does not constitute an emergency and Jonathan's contractual right to vacation was violated. It may be argued that having to pay overtime to cover his absence isn't an unreasonable burden for the company to pay due to their short staffing. In any event, appealing the grievance forward to a conclusion may help set the stage for future problems of a similar nature.

If the union cannot win the grievance before Jonathan's impending trip, Jonathan does not get to take the trip or faces losing his job if he does. In such situations, the union can consider this as an opportunity to find ways to quickly organize and mount pressure and urge the management to grant Jonathan's leave. This is when a unified and responsive membership is critical.

What if everyone showed up the next day wearing a Hawaiian shirt or some other creative form of protest? Would that send a message to management that the members are unified? After all, injustice to one is an injustice to all.

It's possible that this level of widespread and visible resistance to management's decision to cancel Jonathan's vacation would force management to reconsider and do so in time so that Jonathan and his family say "bon voyage!" and enjoy their annual getaway.

Remember, think outside the grievance procedure box when time is not on your side. Consider acceptable ways to settle the grievance, apply pressure in numbers, and consider other creative actions to persuade the employer to resolve the problem quickly.



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We didn't mean for that to happen: When horseplay goes wrong.

Let's face it, many of us are fond of practical jokes and horseplay. It is the 11 year-old in us; the part that doesn't want to grow up. Still, issues arise when those tendencies come into the workplace. Ask any seasoned Union representative about this topic, and they will likely regale you with stories of how something that started in good fun wound up resulting in injuries, damaged equipment, and so on. How's the old saying go? It's always fun and games until someone loses an eye (or their job).

Most employers have a rule or policy against horseplay in the workplace, but don't make assumptions about this. You should have copies of the Company's policies, rules, and handbooks.

Some arbitrators have also commented that horseplay is a fact of the workplace and that less serious horseplay requires progressive discipline. However, this hinges on two significant points: employee(s) intent and the seriousness of the conduct.

Horseplay is generally characterized as conduct that is without malice, is playful, childish, or impulsive. However, even the best intentions can escalate into serious disciplinary action when the behavior poses risks to maintaining a safe workplace and involves serious injury to others.

Horseplay of a serious nature (misconduct) is characterized by:

1. willful intent to damage if it is premeditated;
2. malicious conduct;
3. done with evil intent or with a sinister motive or purpose;
4. intent to commit a wrong through actual or implied malice;
5. doing something with the knowledge that it is likely to result in injuries or reckless disregard of its probable consequences.

Mitigating Factors: Representing Our Members.

There are things we should look for when representing our members who are accused of horseplay:

1. What were the employee's intention(s)? If the conduct was lighthearted frivolity that involved only a remote possibility of injury, then we should push for management to follow the normal progressive discipline process.
2. Does management have a history of tolerating or condoning horseplay in the workplace? This is a common mitigating factor in arbitrations involving horseplay. If supervision is involved in the incident, then your arguments will be significantly strengthened when making this point.
3. What past disciplinary actions have been taken by management for similar conduct? Generally, similarly situated conduct warrants similar disciplinary action. However, this can be affected by other mitigating factors such as work history and the employee's disciplinary record.
4. Is the employee truly sorry for any damage done? In a review of arbitration awards, many arbitrators consider if the employee is forthright (admitting to their conduct), shows genuine regret, and is contrite. So contrition is often key.

These points should help you mitigate more severe discipline when horseplay goes wrong; however, when egregious conduct causes injuries, severe damage to company property, or could have led to both (e.g., pranks involving fire), your ability to prevail in arbitration (should the grievance wind up there) will likely be challenging.

As in all disciplinary cases, you should consider all the tests of "[just cause](#)." If you are not familiar with these, you can learn more [here](#).

Always seek assistance from Local Union leadership or your Staff Representative when needed, especially if management seeks to terminate or severely discipline employee(s) involved in horseplay.

TEACHING TUESDAYS  <http://usw.to/teachingtuesdays>



- ▶ **March 7: Representing members in Investigatory Interviews**
What rights do union members have when management asks them questions that might be used as the basis for discipline or other adverse consequences? How can stewards and grievors effectively represent their coworkers who are in these situations? Come to this interactive session to learn how to represent members who are being interrogated by management.
- ▶ **March 14: Building Local Union Power With Rapid Response**
Join us for a Teaching Tuesday on March 14th to explore the USW's Rapid Response program and learn about how internal worksite communication programs like ours can build solidarity in your local.
- ▶ **March 21: Raising the Bar For Women's Safety and Health in the Workplace**
A safer workplace for women means a safer workplace for all, regardless of gender or identity. Gender equality and the right to a safe workplace go hand in hand to improve the lives of all workers. Anything that harms men is a hazard for women, too. This workshop will provide a chance to raise concerns about women's health and safety on the job, and it will provide information and resources to help secure the protection all workers deserve.