

STEWARDS CORNER

Monthly Newsletter for Union Stewards



“We Already Settled This:” How to Use Precedents in Grievance-Handling.

PRECEDENT: an earlier event or action that is regarded as an example or guide to be considered in subsequent similar circumstances. -Oxford Dictionary

When you were growing up, you probably heard the saying, “respect your elders.” This common phrase is born from our respect for one’s experiences. In many cultures, “elders” have decision-making roles because they have greater historical knowledge and wisdom. So, when problems arise, the elders turn to precedent, “how did we deal with this issue last time?” At the same time, “the way we have always done it,” is not always the appropriate answer because language and facts change.

Resolving grievances in our workplaces is similar. What institutional knowledge do we have about how to settle issues? We need to consider precedent, the specific facts of a situation, and whether or not there have been changes in contract language, recent arbitrations, or other significant policy changes. Consistency economizes the decision-making process and lends to more fair, equitable outcomes. Instead of reinventing the wheel every time, we can use what happened before as a guide to either try to get a comparably good settlement...or to better prepare our arguments this time.

How does precedent work?

In addition to the language of the collective bargaining agreement (CBA,) in determining what the agreement “means” and how you might settle an issue, you may use past practice, grievance settlements, and arbitration awards.

When using past grievance settlements, you should begin by asking yourself some basic questions:

1. Was the past settlement precedent setting?

Grievances are often settled as “no-fault” or “without precedent.” In this case, a precedent has intentionally not been set by the parties, and thus can’t be used in this way. In some contracts, any settlement before a certain step, for example third step, are explicitly non-precedent setting. As always, you need to know YOUR contract. Does your contract have language to this effect? If the past grievance, was not excluded as precedent setting, it may be relevant to the current situation.

2. Are the facts in this case similar enough to the past case?

Sometimes, an issue arises that is identical to a previous precedent; however, this is often not the case, and some situational elements may not be present. So how do we use precedent in these situations?

Shaping your arguments to cover these situations requires clear assessment of the situation and determining the

rationale for/against the existing precedent or arbitration award. When comparing the current situation to a previous settlement, a steward should craft an argument that suggests the most straightforward similarities and/or differences, and explanations. Always try to limit vague comparisons and assumptions.

One way to do this is to consider existing precedent, break the facts of the precedent down into variables and determine the components that are necessary to the rationale of the settlement. Then, break the facts of the current situation into variables and determine if there is enough consistency to link the precedent. What type of issue is it? What contract language is relevant? Who is involved? What is their work history?

As we always say...keep great notes! Here your notes and grievance fact sheets will be instrumental in you making your case.

3. Does the existing related precedent support my requested remedy?

Remember precedents can work either for or against you. In either case, you need to be aware if any even remotely related precedents exist. If they work to your favor, does your assessment of them help you make your case. If they favor the company, you need to be prepared to argue why they may not be applicable.

A Note about Arbitration Awards

Reviewing previous arbitration awards can help shape an argument. Awards born out of your grievance process are precedent-setting and can be applied using the method above. In addition, through tools like Steelweb, you can review arbitration awards from other locations. While the latter is helpful in shaping rational arguments, they are likely not precedents in the case of your contract. They are sometimes presented in arbitrations to show areas of consistency where arbitrators tend to agree, but arbitrators are not bound to follow those awards even when they wrote them.

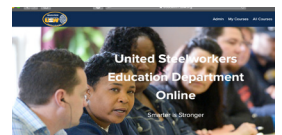
It’s in the notes....

It is tough to make a case for a precedent if you don’t have the documentation. Unfortunately, our memories are unreliable repositories, so we need to maintain the complete file associated with the precedent. Consider scanning the files into a .pdf for future stewards. In addition, locals should keep grievance binders open and resolved grievances in a secure location. The USW also provides a grievance tracking application as part of Steelweb. Reach out to your Staff Representative if you have questions about it.



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In closing, knowing “how we resolved this issue before” is critical to grievance handling. Applying precedents requires good record-keeping, that you can consistently apply similar facts, and ultimately craft rational arguments on why a precedent should or should not apply. Look for upcoming articles on developing solid arguments. Also, when in doubt,

reach out to your Local Union Officers, Grievance Chairs, or Staff Representatives for help.

Where’s my Hammer? The Tools of the Steward

Nurses need stethoscopes; educators need pens; electricians need wire cutters. If you work in a trade or are a hobbyist, mechanic, or builder, you need tools to perform the work necessary for the task at hand. While probably every mechanic used a pipe wrench or a large ratchet as an ad hoc hammer at one time, it’s definitely not the right tool for that task. The same thing goes for being a Union Representative. Being a Steward is a skilled trade, and we should have our own set of tools in our kit. In this article, we are going to discuss some of those tools.

The Physical Tools

Most of the tools in the list should be obvious, but the obvious is often worth mentioning. Every Steward should always have a copy of the current collective bargaining agreement (CBA), pen/pencil, notepad, and calendar within their reach. So, while you can write the details of your grievance investigation on yesterday’s lunch receipt, it isn’t the best idea. You need your own toolbox of sorts. In addition to the top-drawer tools listed above, a Steward needs to have the following items as well:

- ▶ USW International Constitution
- ▶ Local Union Bylaws
- ▶ Employee handbook
- ▶ Company policy postings
- ▶ Internet access to regulatory agencies (Department of Labor, National Labor Relations Board, OSHA, etc.)
- ▶ Training manuals from past educational classes
- ▶ A record of past settled and withdrawn grievances in your area
- ▶ Copies of precedent-setting grievances

This list isn’t an all-inclusive list of items, but it is a good start. Toolkits tend to start with the essentials and grow over time.

Other tools

Change is constantly happening. The toolbox needed to fix a 1966 Mustang has evolved, and many additional tools are now required to work on a 2022 Mustang. The same is true today regarding handling issues in our modern workplaces.

As always, the mandatory “soft” skills needed are the ability to listen, empathy for members’ concerns, patience, and a willingness to learn. Critical and strategic thinking also continue to be essential tools.

But, as our workplaces have evolved, we are now tasked with learning additional skills.. How we communicate with our members has evolved. A steward in 1990 didn’t have to think about text message applications or social media, but today we do. But, this new technology has also brought new ways to track and archive grievances.

This newsletter is a tool that the United Steelworker Education Department has developed to address the evolving workplace and our Union. Education is a necessary tool. The longer you are doing the work of the Union, the more you will find out how important education is.

Our Members

Too often, we are not using the most powerful tool in our toolbox, which is our members. As a steward, sometimes it is really easy to handle issues alone; however, when we do that too much, our members start viewing the Union as a law firm or insurance company, not a Union. The power of the Union is our ability to communicate and take action collectively. When dealing with an issue that is widely and deeply felt, consider using petitions and group grievances. Member involving activities show management that the members are engaged in the process and standing in solidarity behind their Union leaders and representatives. Just be sure to start with actions your members are comfortable with and escalate the tactics as needed.

**TEACHING
TUESDAYS**

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

- ▶ 12/6/2022: **FMLA/ADA** [11 a.m.](#) | [8 p.m.](#)
- ▶ 12/13/2022 - **How Unions Beat Scrooge** [11 a.m.](#) | [8 p.m.](#)



We are currently planning Teaching Tuesdays for next year. If you want to request specific topics, you can make the request via this form link:

<https://forms.gle/wCkmjd26A2yQzLBG7>

Scan the QR code to get more information
<http://usw.to/teachingtuesdays>