



Stewards & Business Agents: Working Together

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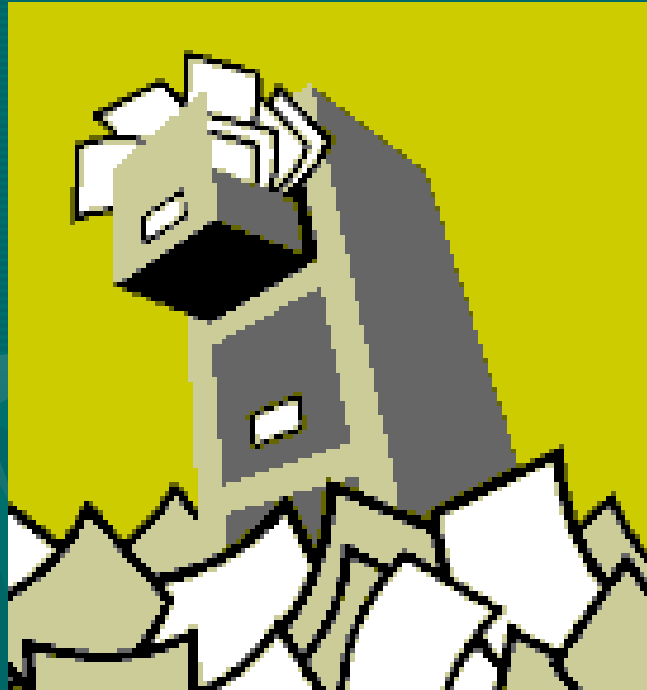
Teamsters Local No. 120 Stewards Seminar
November 20, 2004

Outline of Presentation

1. Documents Stewards & Business Agents Should Always Have
2. Grievance Drafting
3. Hearing Preparation
4. Skills



Documents Stewards & Business Agents Should Always Have



Must-Have Documents

1. CBAs
2. Company Rules & Policies
3. Seniority Lists
4. Company Communications
5. Grievances
6. Committee Notes
7. Negotiation Proposals & Notes
8. Spiral Notebook



1. CBAs



- What to Keep:
 - A copy of the current CBA
 - Copies of past CBAs
- Why:
 - Current CBA governs the case.
 - Past CBAs may be used to show how some clause changed (or didn't change) through negotiations.

2. Company Rules & Policies

- What to Keep:
 - Work Rules
 - Disciplinary Procedures
 - Safety Rules
 - Drug/Alcohol Policy
 - Attendance Policy
 - Harassment Policy
 - Etc.
- Why?
 - These rules and policies may form the basis for discipline, may themselves be the subject of a grievance, or may be a forum for the Employer to “tell-on themselves.”



3. Seniority Lists



- What to Keep:
 - A copy of the current seniority list
 - Copies of past seniority lists
- Why?
 - In discipline/discharge cases, they are used to establish period of service to the Employer.
 - Can also be used to show things like the reduction of the bargaining unit.

4. Company Communications

- What to Keep:
 - Memos/Postings
 - Emails
 - Voicemails (Transcribe)
 - Handouts/Mailings
 - Company Newsletters
 - Etc.
 - Announcements
- Why?
 - These documents can help establish a past practice, the Employer's violation of the contract, etc.



5. Grievances

- What to Keep:
 - Copies of current grievances
 - Copies of past grievances and their settlements
 - Copies of minutes/notes from grievance adjustment/Step hearings

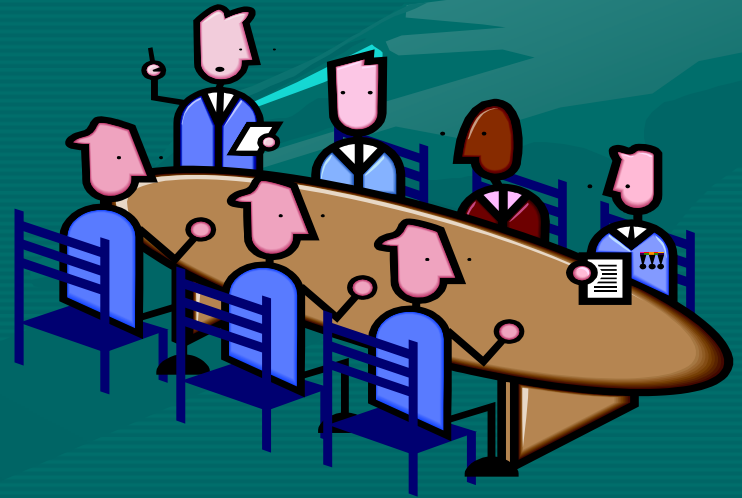
- Why?

- Grievance settlements can be used to establish a past practice, to show the Employer's acknowledgement of contract interpretation, and can be used to pin down the Employer's position at arbitration.

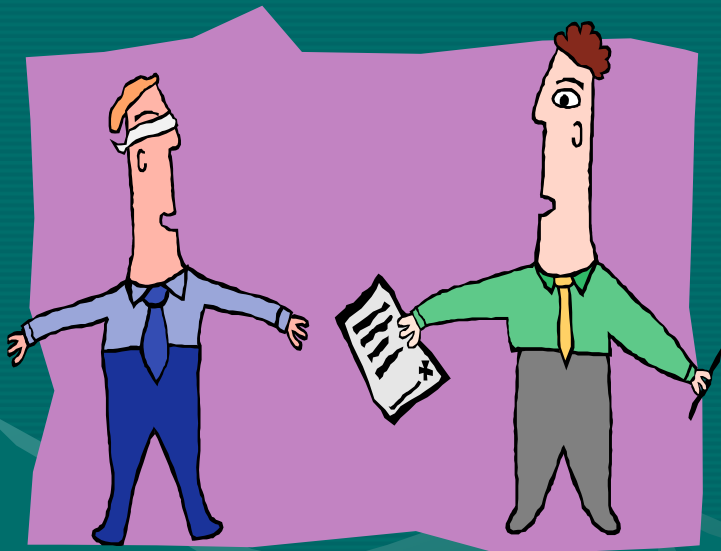


6. Committee Notes

- What to Keep:
 - Notes from Union-Company Committees
 - Safety committee
 - Warehouse committee
 - Etc.
- Why?
 - They can be used to show past practice, argue for contract interpretation favorable to the Union.



7. Negotiation Proposals & Notes



- What to Keep:
 - Copies of the proposals (number them) from both the Union and the Employer.
 - Copies of any notes from the negotiations.
- Why?
 - These notes can be used to argue for the Union's interpretation of the contract, and to undermine the Employer's interpretation.

8. Spiral Notebook

- Keep a daily log of all interaction with the Employer.
- For each entry, include:
 - Date
 - Time
 - Persons Involved
 - Subject
 - What Was Said



Must-Have Documents

- Stewards should have all must-have documents
- Business Agents must :
 - Maintain regular communication with their stewards
 - Ensure the stewards have needed documents
 - Keep a complete copies of all must-have documents.



Grievance Drafting



Grievances: Investigation

- What type of violation is being claimed?
 - Contract (CBA)
 - Unfair labor practice (ULP)
 - Statutory (EEO, FMLA, ADA)
 - Private matters
 - Harassment
 - Assault
 - Discrimination



Grievances: Investigation

- **Witnesses**
 - Who heard, saw or knows?
 - Documents (postings, memos, letters)
 - Past practices, policies, or procedures
 - Prior grievances and resolutions
 - Photos or videos
 - Diagrams of the area
 - Physical evidence



Grievances: Investigation



- Any corrective or remedial action?
 - By the Employer
 - Policy changes
 - Procedure changes
 - Physical Changes
 - By the Union
 - Rehabilitation
 - Treatment
 - Apology

Grievances: Drafting

- Ask yourself, “Who is the Grievant?”
 - Union
 - Individual
 - Group, e.g., shift, drivers, or mechanics, etc.
 - Class, e.g., bargaining unit
- Affects the remedy
 - Payment vs. change



Grievances: Drafting

- **State the Violation**



1. Clear statement

- “The company is violating the contract (or statute, etc.) by...”
- List all violated provisions
- “... And any other applicable provisions”

2. Union recognition clause

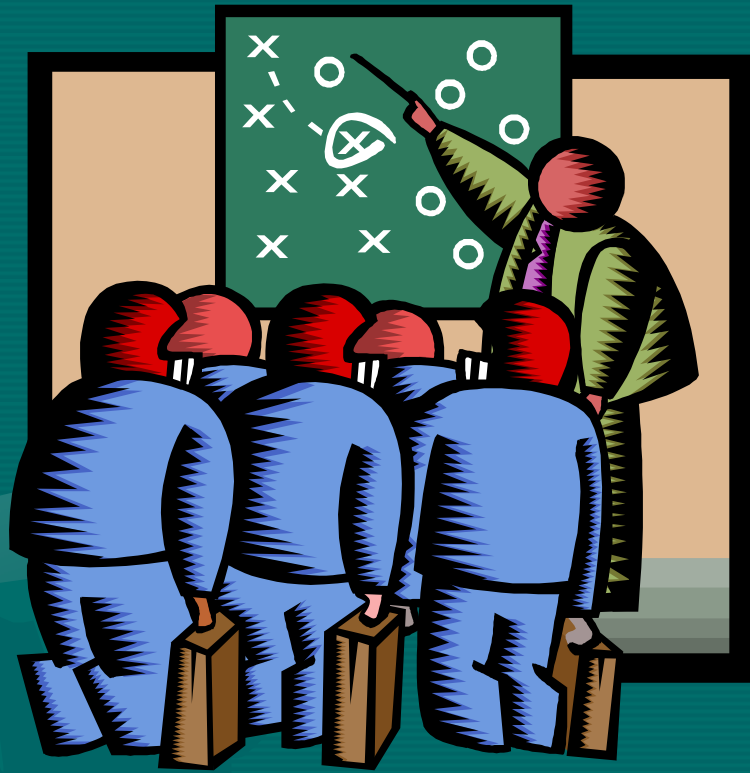
3. Maintenance of standards clause

4. Non-discrimination clause

Grievances: Drafting

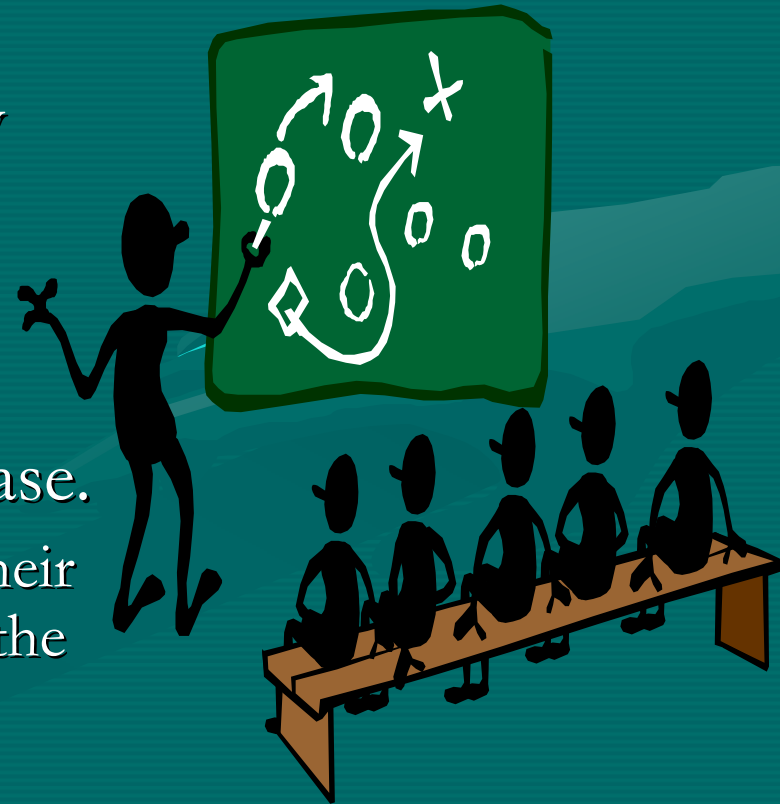
- **Description of event**
 - Who, what, when, where, why, & how it occurred
- **Remedy**
 - Reinstatement, seniority, back pay, benefits, and all other contract rights
 - Cease and desist and pay all affected members for all losses

Hearing Preparation



Hearing Preparation

- At the grievance stage, start preparing those cases you know will go to arbitration.
- This prepares the Union's case and discovers the Employer's case.
 - Get the Company to talk about their case – e.g., why they are denying the grievance.
 - Get copies of all the Company's documents
 - TAKE NOTES!!



Selecting an Arbitrator



1. Get Arbitrators' Biographies
2. Research Arbitrators' Histories and Cases
 - Who does the Arbitrator generally favor in discharge cases?
 - Has the Arbitrator ruled on similar issues or cases?
3. Decide How Arbitrators Will Be Struck
 - Who goes first?
 - Who or what decides?
 - Strategies

Developing A Strategy



- Develop a “Theory of the case”
- What is the rationale?
- What are the issues?
- What approach or version will you present?

Pre-Hearing Preparation

- Know the history of the case, the contract language, and its intent
- Review the scope of the Arbitrator's authority
- Gain different viewpoints
- Interview witnesses
- Compile a guide with records and documents



Pre-hearing Preparation



- Dress, demeanor, behavior
- REMEMBER: First impressions are lasting impressions
- “Don’t say anything, don’t do anything”—Assume the Arbitrator is watching everything you do
- Enhance the union’s presentation in all ways

Arbitration Skills



Arbitration Procedures

- In discharge cases, Employer presents first; Union second
- In other cases, Union presents first; Employer second
- Resolve procedural issues
- Statement of the issue
- Protect the Record



Opening Statement



- **Employer's opening statement**
 - Listen carefully to what the employer claims it can prove
 - Hold the employer to its burden of proof
- **Union's opening statement**
 - When to **make** the union's opening statement?
 - When to **reserve** the union's opening statement?

Employer's Case-In-Chief



- The employer has the burden of proof in discharge and discipline cases
 - In those cases, make sure the employer has established every element of its theory for discharge or discipline.
- Cross examination of employer's witnesses
 - Ask leading questions requiring yes or no answers
 - Sometimes less is more
 - BEWARE: Asking one question too many
 - Sometimes the **best** cross-examination is **no** cross-examination

Union's Case-in-Chief



1. Contract Language

2. Union witnesses

- Union officials (steward, business agent, officer)
- Grievant
- Expert witnesses

3. Evidence & Exhibits

Contract Language

- Read through all articles to see if others apply
- Read Grievance and Arbitration Language for “arbitrability” Question



Union Witnesses

- Selection
- Preparation before hearing
- Try to alleviate apprehension
- Mental markers
- Sample cross examination



Union Evidence & Exhibits



- Best
 - Originals
 - Witnesses
 - Photos
- Secondary
 - Affidavits
 - Copies
- Circumstantial

Employer's Rebuttal

- Rebuttal does **not** mean repeat
- Must respond to new matters raised by the Union



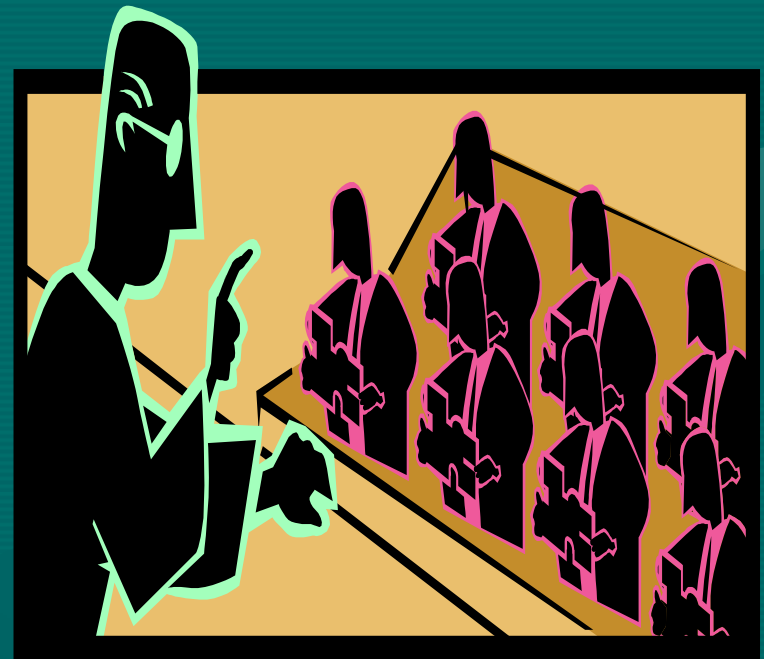
Union's Surrebuttal

- Surrebuttal does **not** mean repeat
- Must respond to new matters raised in employer's rebuttal



Final Arguments

- Employer's final argument
- Union's final argument
- Employer's rebuttal
- Union's surrebuttal



Post-Arbitration Hearing Briefs

- When to file/not file a post-hearing brief
- Simultaneous submission to the arbitrator
- Reply briefs
- Thirty to sixty-day rule



The Art of Persuasion

You can judge your age by the amount of pain you feel when you come in contact with a new idea.

--Anonymous

- Investigate
- Prepare
- Organize
- Summarize
- Present & Persuade!

