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Steward Training Workshop

Presented by
Commissioner Dan Sims and
Commissioner Priscilla Horde



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The Federal Mediation and Conciliation Service

- Independent Agency
- Established 1947
- 159 Mediators
- 60 Offices





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FMCS Mission

- Promote sound, stable L-M relations
- Prevent, minimize work stoppages
- Advocate collective bargaining, mediation & voluntary arbitration
- Develop methods of conflict resolution
- Improve employment security & organizational effectiveness



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Day 2 Program Agenda

- 10am-10:30am Grievance Investigation & Representation
- 10:30am- 11am Tests and Role of Just Cause
- 11am-11:15am Break



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Day 2 Program Agenda cont.

- 11:15am-11:45am Weingarten Rights
- 11:45am-12pm Past Practice
- Closing Remarks & Evaluations



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Program Reminders

- Participate...this is your program.
- Ask questions...when in doubt.
- Share your views with others.
- Be "open-minded" towards others' views and ideas.
- Have some fun with the learning process.



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Basic Skills

THE GRIEVANCE PROCESS



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Why A Grievance Process?

- Resolve problems
- Interpret CBA
- L-M communication
- Protect integrity of L-M agreements
- Challenge or appeal decisions





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The Grievance Procedure

- WIDELY THOUGHT OF AS THE PROCEDURE FOR JUSTICE IN THE WORKPLACE.





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Grievances Legally Defined

- Adopted definition by N.L.R.B., most Arbitrators, and the Courts...
 - “...no more or less than what the labor contract or personnel policy says they are...”



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Purpose of the Grievance Procedure

- Peaceful, systematic resolution of disputes through fact finding
- Contract interpretation
- Protect contract's integrity
- Improve efficiency
- Improve labor-management relations
- Identify problems
- Challenge or appeal decisions



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Grievances in General



- Violation of contract
- A complaint about wages, hours or working conditions
- Unfair treatment to individual or group
- Violation of past practice (sensitive)
- Violation of Law(s)



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Grievance definition in CEI Large Unit CBA

- **Article 1.9 GRIEVANCE PROCEDURE**

- A. Purpose. The purpose of the Grievance Procedure set forth in this Section is to provide an orderly procedure for settling disputes concerning the application and/or interpretation of this Agreement.
- B. Definitions.
 - 1. A "Grievance" is defined as an alleged violation of a specific provision of this Agreement, its interpretation or uniform application for all Bargaining Unit employees



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Some Causes of Grievances

- Vague contract language
 - Interpretation
- Symptomatic
 - personal, venting
- Poor communication
 - Instructions
 - Inattention
- Contract violations
 - Intentional
 - Un-intentional
- Discriminatory practices
- Disciplinary action
 - Without “Just Cause”



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Steward's role in Grievance Handling

- Responsible for moving through the steps of the grievance procedure as outlined in the labor agreement
- Act as:
 - Representative / advocate
 - Educator
 - Problem-solver



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Gripe or Grievance?

- A Gripe is generally:
 - A personal problem
 - Personality conflict
 - Beyond human control
 - NOT covered by CBA but needs discussed



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Gripe or Grievance?



- Gripes can be disruptive to all if not given proper attention!
- However, this attention should be OUTSIDE the grievance mechanism. (LMC)



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Gripe or Grievance?

- When a complaint is brought to you:
 - Interview complainant ASAP.
 - Listen carefully, ask questions, verify facts, take notes, promise nothing.
 - If in doubt, seek counsel from Union Officer/Chief Steward.
THEN...
 - Decide...Gripe or Grievance?



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Gripe or Grievance?

- If you decide problem is not a grievance:
 - Say so!! In a timely manner.
 - Take time to explain your reasoning.
 - Consider the use of available assistance, if needed.
 - Treat complainant professionally and with respect.
 - Document



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Gripe or Grievance?

- If you decide problem is a grievance:
 - Process it in a timely manner.
 - Continue with your investigation immediately!



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Exercise: Gripe vs. Grievance





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Writing The Grievance

- Purpose
 - Trigger the formal grievance steps
 - Notify the employer of:
 - ✓ Basic facts
 - ✓ Alleged violation
 - ✓ Requested remedy



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Writing the Grievance

- Fill out the grievance form completely
 - Reference CBA
- Omit arguments, justifications & evidence
- Grievant review & sign



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Grievance Investigation

- Investigate at the first step as if the grievance will go to arbitration
- Thorough investigation will expedite quick resolution
- Sloppy investigation can harm the case at the later steps





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Grievance Investigation

- Study the entire C.B.A.
- Which clauses have direct/indirect bearing on the case?
- Pay particular attention to:
 - Grievance/Arbitration procedure
 - Management's rights clause
 - Various definitions (Workweek, seniority)



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Grievance Investigation

- WHO - names, witnesses
- WHAT - clearly define problem and cite CBA provision
- WHEN - date, hour, shift, time lost
- WHERE - location of incident
- WHY - reconstruct event(s) / cause





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Grievance Investigation

- How to investigate:
 - Talk to employees
 - Research records
 - Check CBA, rules, policies or laws
 - Research past practice
 - Consult with others i.e. HR, supervisors, managers, other stewards & union reps.
 - Request information & records





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Access to Information

- Under the NLRA, relevant information may be requested to evaluate grievances or potential grievances
- Failure to provide information in timely & useful form may subject union and/or employer to ULP charges.





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Information Requests

- Requested
- Specific and relevant (no “fishing expeditions”)
- Possessed by the requested party
- Compliance does not create an undue burden
 - Cost/time to compile / prepare
 - Whether the information is private, confidential and/or proprietary (e.g., an employee’s medical records or business trade secrets)



Stewards

- Remember that supervisors must:
 - comply with policies
 - achieve goals
 - maintain productivity
 - ensure consistent application of work rules
- Ask
 - CBA violation?
 - How will members view the resolution?
 - Will resolution
 - Limit employee rights?
 - Limit earning power?
 - Limit union influence?
 - Make employee jobs more difficult or dangerous?



Supervisors

- Remember that stewards must:
 - represent anyone whose case might have merit
 - usually seek reelection
 - earn trust of members
 - protect employee rights
 - support union leaders
- Ask
 - How will upper management view resolution?
 - Will resolution
 - conflict with the CBA?
 - Limit management rights?
 - Affect productivity?
 - Limit management influence?
 - Make supervision more difficult?



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Resolving Grievances

- Employer carries the burden of proof in discipline cases
- Union carries the burden in all other grievances
- Your goal: solve the problem at the lowest step of the grievance procedure



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Resolving Grievances

- Set the tone
- Control emotions
- Avoid personality conflicts
- Actively LISTEN
- Acknowledge valid points
- Focus on the ISSUE
- Avoid settlements that violate CBA, rules & policies
- Avoid “confidential” settlements

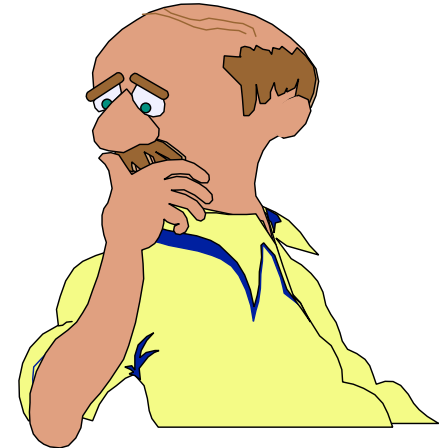


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Advice to Stewards

- Put yourself in supervisor's shoes
- Anticipate issues, facts, arguments & remedies he/she is likely to raise or offer
- Consider options and assist grievant in doing so
- Look at the "bigger" picture





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How to Say No

- Take plenty of time
- Give reasons
- Present possible consequences
- Use “put yourself in my place”
- Allow the steward to save face



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Grievance Handling Summary

- Accept responsibility
- Avoid “Passing the Buck”
- Stick to the facts
- Avoid rumor mill
- Be a good listener
- Explain decisions
- Give clear answers
- Investigate before judging
- Be timely
- Admit mistakes
- Document
- COMMUNICATE!



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Test of “Just Cause”

Right to a representative

DISCIPLINARY ACTIONS



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Test of “Just Cause”



- Forewarning
- Reasonableness
- Investigation
- Equal Treatment
- Internal consistency
- Proof of Guilt
- Documentation



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“Just Cause”

- NOTICE

- Did employee know (or should have known) possible consequences of conduct?

- REASONABLE

- Is the rule reasonably related to the efficient & safe operation of the business?

- INVESTIGATION

- Did employer fairly & objectively investigate the allegations of misconduct?



“Just Cause”

- REASONABLE PENALTY
 - Is the penalty reasonable based on proven allegations?
- Progressive discipline
 - based on work history, discipline record, similarly situated employees, etc.
 - Serious behavior exception (e.g., stealing)
- EQUITABLE TREATMENT
 - Did employer administer discipline evenhandedly and without discrimination?
- EVIDENCE/PROOF
 - Is there substantial evidence that the employee did what was alleged?
- DOCUMENTATION



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Right to a Representative

- Grievances: per contract
- Disciplinary matters: per “Weingarten rights”



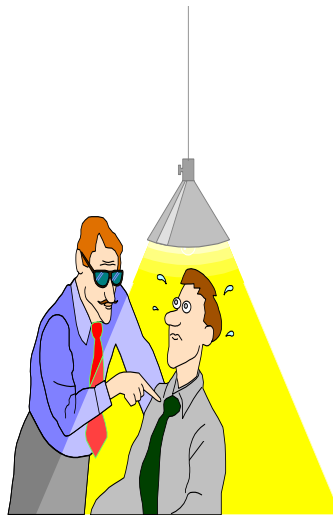
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WEINGARTEN RIGHTS

- A 1975 US Supreme Court case known as “Weingarten” affirmed employees’ right:

“To refuse to participate in investigatory interviews without union representation in situations whenever the employee reasonably fears the interview will result in discipline.”

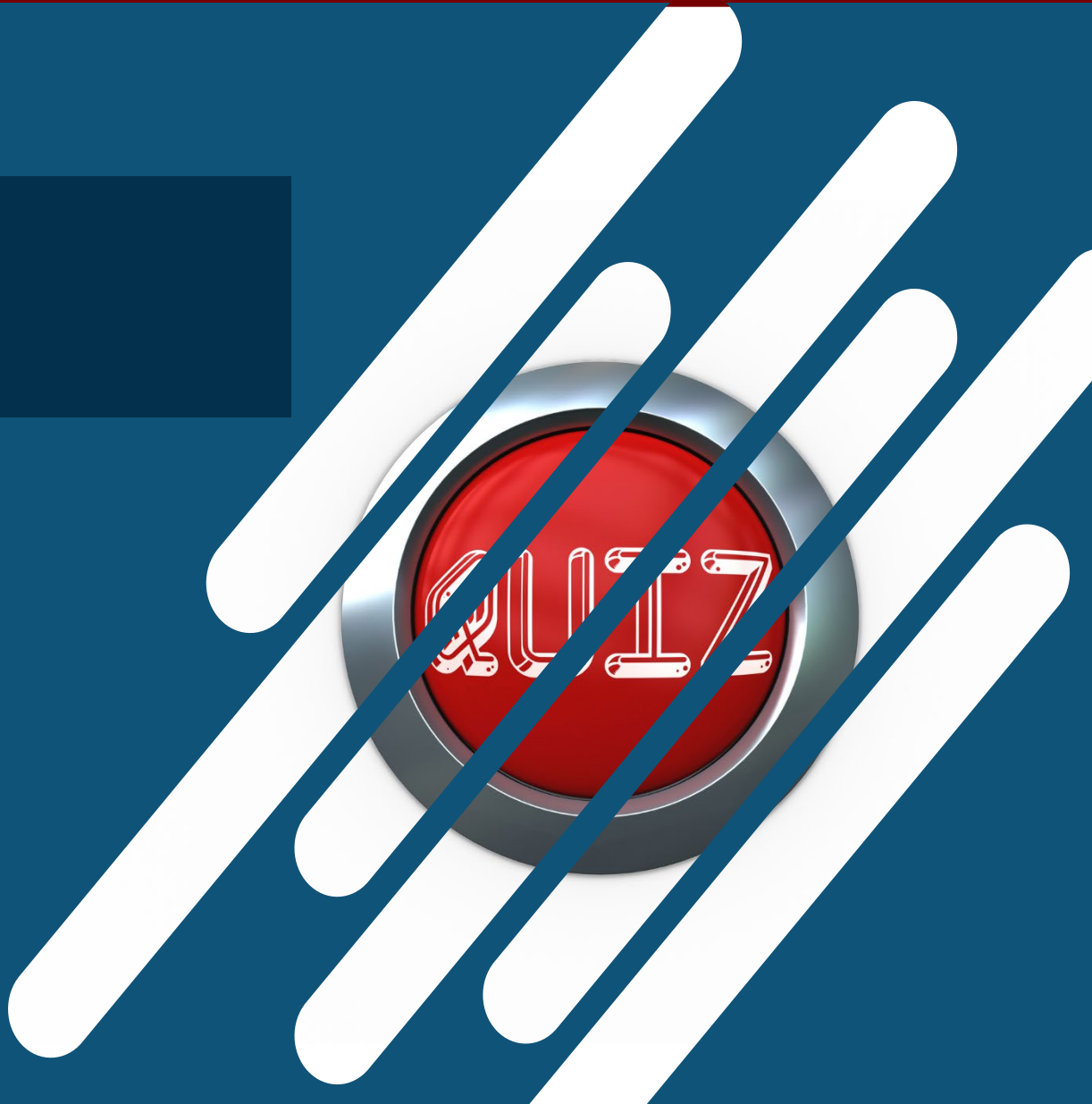




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Weingarten Rights





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WEINGARTEN RIGHTS

- ALL of the following conditions must exist:
 - a representative of the employer
 - conducts an investigatory interview of an employee
 - the employee reasonably believes that disciplinary action might result from questioning, and
 - the employee requests representation



WEINGARTEN RIGHTS

- The employer can refuse the request, terminate the interview and simply issue the discipline
- This only requires a representative and does not require the employee's preferred representative
- The employee has the right to leave the room until a representative arrives
- Generally, once an employee requests a representative, the interview must cease until a representative can be present



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WEINGARTEN RIGHTS

- An employee can not be disciplined for requesting a representative
- An employee does not have a “Weingarten” right to a representative if the employer assures the employee that:
 - no questions will be asked, or
 - no discipline will result from any responses



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WEINGARTEN RIGHTS

- The representative has a right to:
 - know the SUBJECT of the investigatory meeting
 - privately CONFER with the employee prior to the interview
 - PARTICIPATE in the meeting

However, the representative
CANNOT ARGUE THE CASE.

This is not a grievance meeting



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Past Practice

- Considerations
 - Mutuality
 - Regularity
 - Bridge effect
 - Silent contract
 - Working condition vs. gratuity





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Why is Past Practice Important?

- Clarifies ambiguous language
- Implements general contract language
- Modifies or amends unambiguous language
- Implements separate conditions of employment



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THANK
YOU.

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