

U\$TEWARD

FIRST LINE OF DEFENSE

UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA • NOVEMBER 2019

Bargaining Mid-Contract Changes



Our employer seems to believe that they have the right to change the contract whenever they want to. Just last week they announced that they were going to implement new work rules, including an absentee policy and drug testing. How can they get away with this?

Shouldn't they have brought this up in negotiations?

Does it seem like management thinks it can change the contract whenever it wants to? Here's what to do when the boss wants to make major changes outside of contract negotiations.

It doesn't seem right that management can try to make major changes outside of negotiations. Not too long ago an employer would have had to wait for contract negotiations, but its been a long time since there has been a "worker friendly government" and the NLRB keeps giving management more leeway.

What should the union do when the employer announces a new policy or changes an old policy or past practice?

There are five points that the Union must be ready to take action on:

1. The Local should immediately give the employer a written REQUEST TO BARGAIN.

The Union may be able to file a grievance over the change in past practice or policy BUT filing a grievance does not constitute a request to bargain. The written request to bargain should also tell the employer that NO changes can be made until they have bargained with the Union.

The written request can be simple:

Dear Mr. Blowhard,

The Union requests bargaining over the company's stated plans to implement a new absentee policy. Please let us know when you will be available to bargain. The Union also reminds you that no changes to the current policy can take place until bargaining is concluded.

2. File a grievance if possible.

If the new policy or work rule is different than the old one, then the Union can also file a grievance over the unilateral change in an established procedure. Are we just trying to get two bites of the same apple here? Maybe, but in some cases we can strike over unresolved grievances or we can arbitrate the issue. We shouldn't be ready to run to arbitration, especially if we think an arbitrator will say the employer had the right to make new work rules, but sometimes we may have a good case.

3. The Local should give the employer a written request for any information that will be helpful to the Union during the negotiations.

The NLRB and State Labor Relations Boards all hold that management must provide the Union with all the information we need to make intelligent decisions.

What kind of information? Ask for every-

thing that might justify management's position.

If the employer wants a new absentee policy, demand all the absentee records. Ask to see the reasons employees were absent. If they are legitimate absences, this weakens the employer's argument. If they are talking about a group of people who "always miss work," demand to know who these people are. Check their records. Are they friends of a boss, so they never get disciplined for their absences?

If the employer wants a new drug testing policy you can demand to know how many instances of "drug abuse" there have been. You might not get to see the names of everyone who may be involved in an employee assistance program, but you have a right to the numbers and reasons. If the employer says they just want a drug testing policy, but they can't prove a problem, then we have more reasons to make a policy that will not affect any workers. The Union has a right to know which laboratory samples will be sent to.

- Has this lab been certified?
- Has this lab ever made mistakes?
- Has this lab ever been cited for improper procedures?
- What guarantees does the lab make for maintaining sample purity (that is, not mixing up different samples)?

All this information is important because the Union has the right to know if the boss has "reasons" for wanting changes or is just doing this to make the workers' lives miserable.

Failure on the employer's part to provide all reasonable information is an unfair labor

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practice.

4. Come prepared with proposals about things the Union wants.

If the employer wants to open negotiations, then the Union should come prepared to discuss what the Union membership wants. If the employer says drug testing is necessary for safety reasons then the union should have a proposal on employee safety. This may include firing certain bosses who cause stress, more lights in the parking lot, more breaks or rest periods, fixing equipment, hiring more employees so there is less overtime or a lighter work load. **DON'T BE AFRAID TO BARGAIN FOR WHAT WE WANT AND MAKE THE EMPLOYER BARGAIN SERIOUSLY.**

5. Mobilize the members to fight if necessary.

While the Union might not be able to strike during the middle of the contract, the members can still take concerted action. They can take action to COLLECTIVELY let management know how they feel and to remind the boss that future relations will suffer if the employer tries to make changes without bargaining. Concerted action isn't supposed to violate the contract. UE members have always been inventive when it comes to demonstrating their dislike of employer policies. Be sure to consult with a UE Field Organizer prior to taking action. Just as the members take action during contract negotiations they should be ready to take action during mid-contract bargaining.

What issues does management have to bargain over?

The NLRB and state Labor Relations Boards have issued decisions on what issues the employer must bargain over, called mandatory subjects and those subjects the employer doesn't have to bargain over, called permissive subjects. A permissive subject is one the employer doesn't have to bargain over but can if they want to or if we can make them. In most cases the NLRB says that a change has to have significant impact on employees in order to trigger the bargaining rule. For example, switching lunch times by five minutes might not be considered significant but changing starting times by one hour would be.

Should the Union bargain over work rules and absentee policies?

For many years the policy of the Union was to say no, the Union doesn't recognize company work rules or absentee policies. What we recognize is that any discipline must follow the discipline clause of the contract. The Union treated each case on its own merits and made the employer follow the "Just Cause" section of the

contract.

The situation is more complicated now because of the NLRB and courts whittling away Union rights. Now the NLRB says the boss should bargain with the Union over work rules and absentee policies. Following that, management HAS the RIGHT to implement either the negotiated rules or if impasse is reached, implement the employer's rules.

Many arbitrators now consider employer written work rules and policies to be valid and enforceable.

What should we do? Every situation is different, but in most cases it is best for the Union to mobilize the members and fight for the best rules or policies possible. This does not mean that the Union is condoning the rules or policies. The Union is doing its job in trying to protect the members from unjust treatment.

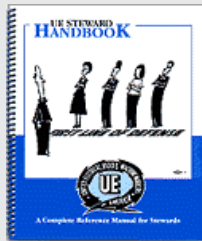
The Union should state in it's initial request to bargain and at every meeting that regardless of what rules or absentee policy is finally imple-

mented, the "just cause" part of the contract remains in effect and takes precedent over the rules. Treat this just like contract negotiations and take time to mobilize the members for a fight around the issues.

A Few Bargaining Tips:

- Make the employer bargain — Remember the employer cannot implement a new policy until they have bargained in good faith with the Union. It is to our advantage to make them really bargain, spend time on it. Don't let the boss get away with pretending to bargain.
- Don't give the company an excuse to implement a new policy. Sometimes we are tempted to just tell the boss where to go and walk out of the meeting. This will give management a chance to declare impasse, and then implement the changes they want. Always be ready to bargain.
- While we are bargaining we can be getting the members involved in expressing their dissatisfaction with the new policy, and support for the union's proposals.

The Complete UE Steward's Kit



The UE Steward Handbook

Written especially for UE Stewards and packed full of information (98 pages worth)! This is a complete handbook and reference manual covering just about everything a steward needs to know.

Tools, Rights & Rules - A chapter covering all the "tools" a steward needs on the job, from legal rights and safeguards to protections for the members.

Fighting Grievances - UE's 70-plus years of dedication to defending members' rights on the job is captured in a step-by-step guide on fighting and winning grievances.

Organizing to Win! Our rank-and-file union depends on members who are united and ready to stand up to injustice and unfair treatment by the boss. Here's how to keep your workplace organized and in top shape.

Reference - Two special sections provide even more information. First, there's "Laws that Help" and second, a special "Steward's Dictionary."



The UE Steward Pocket Guide

A guide to use on the job. Fits in a pocket and covers the information you need to know on the spot. And, one glance at the bottom of each page will tell you where to look in the Handbook for more information! Completely cross-referenced, both books were designed to be used together.

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- The UE Steward Pocket Guide
- "Best of" the UE Steward
- UE Aims and Structure
- Offers for free copies of:
 - Them and Us*
 - Labor's Untold Story*
- Steward's Button
- Shoulder Bag