



# The Problem of

# FREE WORK

*Community Chest*



**GIVING WORK AWAY  
FOR FREE CARD**

**GENEROUS IMPULSE OR COLLECTIVE CHALLENGE?**

# Generous Impulse or Collective Challenge?

## The Problem of Free Work

**T**he moral appeal of workers generously donating their time and effort without getting paid makes for behavior that is hard for a steward to correct. But it's a behavior that undermines the contract so it cannot be ignored.

Many workers whose jobs need continuity will clock out on time but stay late or come in early in order to communicate with the person who came before or after them. Over the years, those few minutes add up to huge benefits for the employer—and losses for workers. And it's not just time; people often take on additional workload, work intensification or work out of classification.

It's one thing when the employer coerces workers to work for free. But what if workers think they're just doing the right thing? Workers in every industry donate time—it's part of taking pride in our work: Grading one more paper, clipping one more bush, taking one more call. When this is the culture, the steward faces a three-level challenge.

### Level 1: Confront Self-Sacrifice

Trying to change the behavior of one individual won't do any good if the whole workplace has a culture of self-sacrifice “for the common good.” So the first thing the steward has to do is make sure that self-sacrifice is understood as a problem for the collective, not just an individual choice.

### Level 2: Do the Math

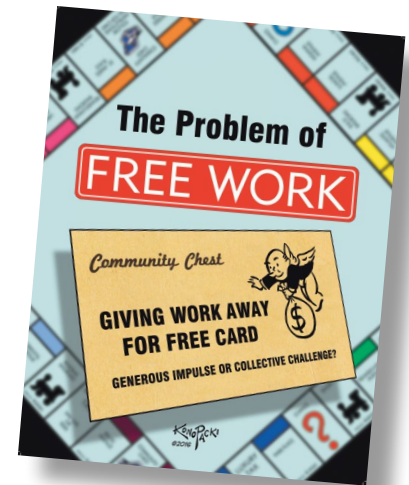
Next, the steward has to find a way to show workers exactly how much the employer benefits from their generous impulses. It's best if members gather the data themselves. For workers who are proud of what they are doing, the news can be shocking.

You might get member volunteers to keep a log of their uncompensated time or instances where they pick up duties that are not really part of their job. This project should be undertaken with enough transparency so the members do not feel spied upon. If the employer is put on notice, so be it. A few years ago a group of contingent faculty (*sessionals* in Canada) held a conference in which participants put a dollar amount on how much time they donated to their college. For each of them it was in the thousands of dollars, which became an attention-getting press release.

### Level 3: Find out Why the Free Work Seems Necessary in the First Place

Doing free work is just the surface of the problem. The third challenge for the steward and the volunteers is to figure out why the job can't run without free work. Is there simply too much to do? Has the real workload changed because of some change in laws or regulations that should have triggered new hires but didn't? Are workers taking up slack for people who have been laid off or retired and were not replaced? Are they trying to do two jobs at once—for example, training someone while continuing to do their own work? Are they being asked to work above their own training or classification because there is no one in that classification? Or is it more a matter of not having enough staff to cover once you include transition time, prep time or reporting time in the regular workday?

Answers to these questions may point to understaffing. If the work deals with the public, and the public is not being well-served, they can be an ally.



### Keep the Focus on a Collective Solution to the Collective Problem

Sometimes this process leads to individual grievances—but try to keep the focus on finding a collective solution to the collective problem. There are lots of examples of solutions in contracts, from the use of substitutes to pay for cleanup time or scheduling overlapping shifts.

### Inaction has Consequences

Once people know what the problem is, move on it. Letting something continue once it has been brought out into the open can establish a past practice that will be hard to fight. The following experience of workers in an elementary school provides another reason for the union to move promptly on spotlighting “free work.”

Budget cuts led to the layoff of the women who worked as “lunch ladies,” serving and supervising children in the cafeteria. Without compensation, these women had also remained on site to supervise the children on the playground after lunch, frequently staying through afternoon recess. Laying them off to privatize the food service function cost the school the personal relationships between these women and the children, some of many years duration. Unfortunately, the free work donated by these women wasn't made known until after the layoffs were a done deal.

If the work of these women had been recognized, honored and possibly made into a wage issue for bargaining, the fight to prevent privatization might have found additional allies among children's parents as well as teachers.

—Helena Worthen and Joe Berry. The writers are veteran labor educators.



# Assisting Members with Legal Troubles

**A**s a steward, you will occasionally be called upon to represent a member who has had some kind of encounter with law enforcement or the courts. This often results in court appearances, lawyers' appointments and disrupted household circumstances—causing lost work time and possible disciplinary action.

This can often produce situations such as these:

A member was stopped for DWI last night. He calls you from jail at 6:00 a.m. telling you he will miss his shift, he can't make bail, his attendance is already at the limit and can the union do anything for him?

A member who is the target of domestic violence takes unscheduled time off to go to court for an order of protection and take other measures to protect herself and her children, and to receive medical treatment. She misses several shifts as a result, is disciplined and asks for help.

What should you do in response, and what should you not do?

## What Not to Do

Because stewards tend to be helpers, your first impulse—to intervene on behalf of your member—is appropriate. However...

- Don't get personal: Keep your focus on representing your member *at work*. Do not get involved in legal proceedings. This can be difficult when a member is in a tough situation and asks you for help, but it's important that you not overstep your role as a representative of the union. You must avoid posting bail or participating in court proceedings. Focus on helping the member to access available resources that will help her keep her job.
- Don't ask for details: If your member is facing criminal charges, most of the time it is best not to ask "what happened?" Leave those questions to the attorney.
- Don't gossip: This should be an easy one to remember, but it's also easy to

forget. It's not your business to discuss members' problems. If, for example, a member missed a shift because he was in jail but is now back at work, it's his call, not yours, whether to explain his absence. If you are aware of a domestic violence situation through your advocacy for a member, you should not share that information with anyone who does not need to know.

So, what *can* you do?

## Know Your Contract and Other Resources

Your first resource is, of course, your collective bargaining agreement. What does it say about leave time? Can it be used in your member's situation? Also research whether federal, state or provincial law may also provide protections for workers who need time away from the job.

**Addiction and substance abuse:** In both the U.S. and Canada, addiction and substance abuse are considered disabling conditions under many circumstances. While details vary, many laws require employers to "reasonably accommodate" disabilities. In the case of substance abuse, addiction and mental illness, reasonable accommodation can mean job-protected leave time to permit the employee to seek treatment and rehabilitation. Your contract may include leave provisions, so getting a member with an addiction issue on disability leave or into rehab might protect his job for a period of time.

**Domestic Violence:** More and more states are passing laws to protect the jobs of individuals who are the target of domestic violence. Employers in these states may be required to allow leave for appointments that provide for the safety and security of victims and their children, to attend court appearances and legal appointments, and for medical care. Check your contract for provisions that mirror these laws, or consider including such protections in your next round of negotiations.

**Employee Assistance:** If your member doesn't qualify for a leave, what about other kinds of assistance? Many workplaces and unions have a confidential Employee Assistance Program that provides employees with support and help on non-work-related problems. If so, refer them.

## Document, Document:

Documentation requirements can be complicated. You can help your members obtain the documentation they need to acquire available leave time. Most employers will require advanced notice of leave unless there is an emergency. Be alert for situations where one employee is treated more rigorously than another with respect to these issues and be prepared to challenge unequal treatment.

Legal services plans may cover some of the legal expenses your member may face. If such a plan is available to your members, keep the phone number handy so you can provide it if needed.

As a steward, you may be able to help members who are experiencing difficult personal situations keep their jobs just by knowing what kind of assistance is available. Research your contract, and check out what the rules are in your state or province. There may be more help out there than you realized.

## Some useful resources:

- [www.legalmomentum.org](http://www.legalmomentum.org) for state law resources on domestic violence and workplace rights
- <http://canadianlabour.ca/issues-research/domestic-violence-work/report> Canadian Labour Congress report on addressing effects of domestic violence in the workplace
- [www.eeoc.gov](http://www.eeoc.gov) U.S. federal agency that enforces disability leave laws
- [www.escd.gc.ca/en/jobs/workplace/index.page](http://www.escd.gc.ca/en/jobs/workplace/index.page) for Canadian employment laws

—Cindy Lapoff. The writer is a labor lawyer at Trevett Cristo, P.C. in Rochester, New York.

# More (or Less) Than Meets the Eye

**O**K, stewards, ready for *Enforceable Grievance Rights – The Advanced Course?*

Collective bargaining agreements are basic, but they don't always tell the whole story. Sometimes you have more than what's spelled out in black and white, and sometimes – even if something is clearly laid out in the contract – it turns out that you can't actually use the contract to enforce it.

Most of what's in a union contract is a series of rules: you must do these things, you *may* do those things, and you *may not* do these other things. Mostly these are rules that determine the employer's behavior, but some dictate what members and the union itself can or cannot do. A savvy steward will be aware of rights that aren't specifically spelled out in the collective bargaining agreement, but are nevertheless a part of your contract rights.

One category is based on what the definition of a "grievance" is in your contract. Mostly, these say something along the lines of, "any violation of a provision of this agreement," or words to that effect. If that's what you've got, then of course your first resort is to try and find some language in the contract that you can allege a violation. But sometimes the definition of a "grievance" is broader than that. The parties may have negotiated something along the lines of, "a grievance is any violation of a term of this Agreement, *or any matter of concern or dissatisfaction.*" (Sometimes the definition will be this broad, but will specify that the subject of the concern must be a working condition.) If you're fortunate enough to have such language, then your starting

point is that anything about the workplace can be the subject of a grievance.

But there are often other places you can find rights that may be subject to your grievance procedure. Most workplaces have an employee handbook, with rules that deal with everything from leave policies to parking to fringe benefits. Or there will be personnel policies that apply to all employees of your particular employer (not just those covered by the union contract). And if you're in the public sector, you've hit the jackpot: there are usually layers and layers of regulations that spell out all the various aspects of employees' jobs. Some rules apply to one particular working unit and go up from there: regulations from your part of the agency, regulations that cover all employees in your agency, and regulations that apply to all public employees in your city or state government, or in the federal government.

Once you've uncovered what these other rules and regulations are, the next step is to figure out if your grievance procedure can enforce them. To answer this question, the first place to look is in the contract itself. Even if your contract's definition of a "grievance" isn't as broad as it could be, there may be a provision elsewhere in your contract that "incorporates by reference" other sources of workplace rights. So your contract might say, for example, that the employer and employees will be bound by "all personnel policies," or by "all applicable agency regulations." If that's the case, then an arbitrator won't be restricted to ruling on what's in "the four corners" of your collective bargaining agreement (that is, what's

specifically stated in the contract). Rather, you can argue that the employer has violated the collective bargaining agreement by failing to abide by an applicable handbook provision or agency regulation.

The same concept applies to statutes. Your contract may indirectly give you a whole host of other rights because of a law that applies to your workplace. This could be a set of rights that all individual employees have, like protection from discrimination or wage and hour requirements. Or it could be a statute that regulates the conditions of work in all workplaces, like health and safety matters. Or it could be rules that govern pension plans or required health care coverage, or just about any other

aspect of workers' lives. Step number one is to identify any such laws. Step number two is to figure out whether you can use your grievance procedure to assert those rights—either because your definition of a "grievance" is broad enough, or because your contract "incorporates by reference" the provisions of those statutes.

All this said, keep in mind that the street can run both ways. You may find that even though your contract contains a right or obligation that hasn't been adhered to, you may nonetheless not have any relief under the contract's grievance procedure. Sometime a contract will specify that an entire subject (like merit pay) is part of management rights, or just that it is not subject to the grievance procedure. Or there will be contract provisions that are specified as being grievable, but not arbitrable. If this is the case, you may still be able to use contract language to shine a light on a problem, and to pressure the employer to do the right thing. But you do need to be aware of any such limitations.

—Michael Maurer. The writer is a labor lawyer and author of *The Union Member's Complete Guide*.

**Your contract may indirectly give you a host of other rights.**

**What is the definition of a "grievance" in your contract?**

# Difficult Cases

**B**eing a steward is an interesting and educational experience. Much of the job consists of playing amateur public defender, social worker and counselor. Not *amateur* as in unskilled, but *amateur* as in unpaid. Yet, some of the situations and people you're responsible for can be as challenging as any faced by professionals.

Most people you're dealing with are relatively well-balanced and understand the difference between personal and work problems. As in any group of people, though, there will be a few who are troubled... and troublesome. And if you aren't informed and careful, they can sap your time and energy.

Meeting your obligations to the union, to your fellow workers and to the rules of the contract depends on following this simple principle: attend to their problems, but do not make them your problem. Easier said than done, of course, but fortunately your situation is not unique. There have been many studies done on how to deal effectively with difficult clients, employees, co-workers, bosses and patients. Not so much on fellow union members, though, so we'll pass on some findings that might be of help in your workplace.

■ **Composure.** When you face an angry, unreasonable or accusatory worker, remember to maintain your own composure. If you lose that, you're no help to anyone. It's understandable that unreasonable people can produce an equally unreasonable response, but don't add to the problem. Your judgment depends on you keeping a level response.

■ **Separation.** Keep the person and the issue separate. Despite the fact that they themselves may be a problem, you need to retain your objectivity to recognize if there is a real workplace concern and then address it.

■ **Timing.** If the member is upset, assess whether you can help just by letting them



vent, or whether the person might need to come back later, after they've regained at least relative composure. And if you know that you could handle the situation better at another (but not distant) time, try to postpone the meeting.

■ **Initial response.** If they insist on telling, or repeating, a dubious complaint, don't agree with them. Many of us might be inclined to agree hoping to send them on their way, but it only entrenches them in their position. Rather, simply thank them for their perspective and say that you need to do some additional research to assess the situation.

■ **Expectations.** In too many cases, members want you to step into a dispute with other workers—a task that might fall outside your duties as a steward. Or, they may be asking for changes that the union, and sometimes even management, cannot make. That's why you should, in the initial conversation, let them know what may, and what may not, be possible. Suggest other avenues that might be more appropriate for resolving that problem. Moreover, you can often sense that theirs is a much bigger problem than you're capable of handling. Once you've heard enough of their statement to make an initial judgment, ask them for their ideas about how the issue might be addressed.

■ **Limitations.** It is often safer to communicate your own limitations at the outset. According to one author on the subject, it always helps to add "from my limited experience" to the end of any statement you're unsure of—or even at times ones you *are* sure of.

■ **Documentation.** Although it can be time-consuming, document all

conversations—including phone calls, text messages or emails—you receive from them. After each meeting, send them a confirmation of what you heard. Put in as much detail as is practical. On the chance that there is a case behind all the negative emotion, you will have a good basis for proceeding.

■ **Enough.** Many people really aren't seeking a solution. Instead, whether they realize it or not, they're really asking for a place to express their frustration. If that's the case, keep it within reasonable boundaries. Let them have a few minutes of venting and then move the conversation to problem solving. If they refuse, or if there really is no union problem to be solved, then, for their sake and yours, you must politely end the conversation. It helps to set a time limit—not just for difficult members, but for everyone.

■ **Humor.** Keep in mind that humor can help you detach and can bring down the temperature of a heated outburst. Humor doesn't mean you're not serious, but it can send the message that the situation doesn't warrant crisis management. Do be careful that the humor is appropriate and aimed at defusing the tension, rather than cutting or insulting.

Whether you take these suggestions, or use others, your first attempts may fall short. Successful interpersonal communication takes practice, so don't be discouraged... at least not for long. And above all, keep your sanity.

—Alec Dubro. The writer is a veteran freelancer, past president of the National Writers Union and former communications director of the International Labor Communications Association.

# THE BACK PAGE

OPEIU Steward Update is a bi-monthly newsletter for the information and education of OPEIU's dedicated stewards.

## Let's Keep in Touch

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