

# DEALING WITH MEMBER-TO-MEMBER HARASSMENT

**Purpose:** To discuss what Union leaders do or what the Union must do when a Union member commits acts of harassment or violence against another Union member. These could be acts of sexual harassment, racial harassment, or just plain acts of harassment or violence.

To discuss how we as Union leaders deal with and educate some of our members who are less than perfect people. We want to talk about how to deal with members who do not behave as Union brothers or sisters towards other Union brothers and sisters. We could call this “Union members behaving badly.”

To talk about what are our legal and moral obligations as Union leaders.

The preamble to the UE Constitution talks about unity of all workers, because from the founding of the Union the question of fighting for unity and against discrimination was key.

**“We form an organization which unites all workers on an industrial basis, and rank and file control, regardless of craft, age, sex, nationality, race, creed or political beliefs, and pursue at all times a policy of aggressive struggle to improve our conditions.”**

The UE was founded in the 1930’s by workers in independent unions from the electrical and radio industries. Shortly afterwards they were joined a large group of workers who were machinists.

Why? Because they had originally begun to organize into the International Association of Machinists. They soon found out that the IAM had a secret clause in its constitution that only allowed skilled white men to be members of the IAM. This meant all the production workers who had signed IAM cards, all the Black workers and all the women workers were going to be excluded from joining the Union. This was unacceptable to the workers, who believed that only with unity could they fight the boss. So they joined UE.

## **INTRODUCTION**

We know what to do when a member of management harasses a Union member. A grievance is filed and if necessary possible charges with the appropriate government commission against discrimination are filed.

It is a more difficult question when the situation is one of a Union member harassing another Union member.

It becomes more difficult because many of us were brought up in the Union movement feeling that it is wrong for the Union to “turn in” another Union member to management.

It is difficult because we instinctively react badly to the idea of “management” being the ones who can “discipline” workers, like we are children.

It is difficult because we are taught that our role is to defend workers from management's discipline.

We also know that we need unity among the members in order to fight the employer. If one section of the membership feels the Union won't protect them, even from other workers, then our unity is in danger. If women members feel the Union won't defend them from some men who are harassing them, then unity is in danger. We also know that it is not the women who are endangering the unity but the men who are doing the harassing.

This workshop will look at some of the laws pertaining to harassment and discrimination and how they affect us. The purpose of this workshop is to help us figure out how to handle these situations.

### **Task 1**

In your group discuss whether there have ever been any cases of member to member harassment in your Union local. Did it involve sexual harassment, racial harassment or one member just harassing another?

## **Task 2**

Please read the information on worksheets 1-9 on the following pages.

Each group will then take one of the situations and answer the questions that follow that description of the problem.

Select a reporter who will report back to the group as a whole.

## WORKSHEET 1

### WHAT IS OUR ROLE AS LEADERS OF THE UNION ?

- To represent the members in all dealings with the employer
- To fight for unity because we know can we cannot win if we are not united.
- To organize the members to fight for decent contracts, to defend the contract, file and if possible, win grievances.
- To educate members about the union and about the necessity of political action
- To wage aggressive struggle to improve our wages, hours and conditions of employment.

### COLLECTIVE LEADERSHIP

- UE is a rank-and-file union. This means that the membership is the final authority on all matters, but like all organizations, leadership is needed to carry out the union's program and give guidance to the membership. In the UE all leaders are elected by the members and can be recalled from office if the membership is dissatisfied with their leadership.
- UE is also unique in that we believe in collective leadership. But, exactly what is collective leadership?
- We believe that strength and effective action comes from representative numbers contributing their wide range of experience and ideas to resolving issues and making decisions. It's better to have a group putting their heads together to arrive at a well thought-out solution, than to have one person making all the decisions involving the difficult problems working people are faced with today.
- Collective leadership also means representative leadership. Employers have always tried to keep workers divided. Young against old, skilled trades against assemblers, white workers against people of color, men versus women, and native born against immigrants -- to name just a few. Abraham Lincoln said it best when he said, "A house divided against itself cannot stand." A strong local will have leadership that is as representative of the membership as possible; this gives them their best chance at unifying the members around important issues.

## **WORKSHEET 2**

### **EQUAL EMPLOYMENT OPPORTUNITY COMMISSION DOCUMENTS ON RACE/COLOR DISCRIMINATION**

It is unlawful to discriminate against any employee or applicant for employment because of his/her race or color in regard to hiring, termination, promotion, compensation, job training, or any other term, condition, or privilege of employment. Title VII of the Civil Rights Act of 1964 also prohibits employment decisions based on stereotypes and assumptions about abilities, traits, or the performance of individuals of certain racial groups. Title VII prohibits both intentional discrimination and neutral job policies that disproportionately exclude minorities and that are not job related.

Equal employment opportunity cannot be denied because of marriage to or association with an individual of a different race; membership in or association with ethnic based organizations or groups; or attendance or participation in schools or places of worship generally associated with certain minority groups.

### **HARASSMENT**

Harassment on the basis of race and/or color violates Title VII. Ethnic slurs, racial “jokes,” offensive or derogatory comments, or other verbal or physical conduct based on an individual’s race/color constitutes unlawful harassment if the conduct creates an intimidating, hostile, or offensive working environment, or interferes with the individual’s work performance.

## WORKSHEET 3

### EQUAL EMPLOYMENT OPPORTUNITY COMMISSION DOCUMENTS ON SEXUAL HARASSMENT

Title VII of the Civil Rights Act of 1964 also covers discrimination in the workplace based on sex, and since 1976 the courts have interpreted this to include sexual harassment. The EEOC has issued guidelines and defines sexual harassment as follows:

*Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment.*

Sexual harassment can occur in a variety of circumstances, including but not limited to the following:

- The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.
- The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
- The harasser's conduct must be unwelcome.

It is helpful for the victim to directly inform the harasser that the conduct is unwelcome and must stop. The victim should use any employer complaint mechanism or grievance system available.

## WORKSHEET 4

### AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967 DOCUMENTS ON AGE DISCRIMINATION

The Age Discrimination in Employment Act of 1967 (ADEA) applies to individuals who are 40 years of age or older. The ADEA's protections apply to both employees and job applicants. Under the ADEA, it is unlawful to discriminate against a person because of his/her age with respect to any term, condition, or privilege of employment -- including, but not limited to, hiring, firing, promotion, layoff, compensation, benefits, job assignments, and training.

It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on age or for filing an age discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under the ADEA.

The ADEA applies to employers with 20 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations, as well as to the federal government.

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The Older Workers Benefit Protection Act of 1990 (OWBPA) amended the ADEA to specifically prohibit employers from denying benefits to older employees. An employer may reduce benefits based on age only if the cost of providing the reduced benefits to older workers is the same as the cost of providing benefits to younger workers.

## WORKSHEET 5

### **ADDITIONAL PROTECTIONS UNDER THE CONNECTICUT FAIR EMPLOYMENT PRACTICES ACT**

The Connecticut Fair Employment Practices Act goes further than Federal legislation and makes it unlawful to refuse to hire, employ, discharge or discriminate against an employee in compensation or in conditions of employment because of the employee's race, color, religious creed, age, sex, sexual orientation, marital status, national origin, ancestry, genetic information, present or past history of mental disorder, mental retardation, learning disability or physical disability, including, but not limited to blindness. The act also prohibits sexual harassment, the discriminatory advertising of employment opportunities, and has several provisions making discrimination against a woman due to pregnancy unlawful.

The Act applies to any Connecticut employer with three or more employees. Enforcement is through the Connecticut Commission on Human Rights & Opportunities (CHRO).

**WORKSHEET 6**

**WHAT CONSTITUTES RACIAL AND SEXUAL HARASSMENT?**

<b>Racial Harassment</b>	<b>Sexual Harassment</b>
Ethnic slurs, racial “jokes”	Unwelcome sexual advances
Offensive or derogatory comments	Requests for sexual favors
Other verbal or physical conduct based on an individual’s race/color	Other verbal or physical conduct of a sexual nature

There are many variations on all these that would constitute harassment. The EEOC says that it helps make a case clearer if the party that is being harassed tells the offender to stop their actions, BUT even if someone is not told to stop their actions, they are still illegal.

The EEOC says that the above actions “create an intimidating, hostile, or offensive working environment, or interferes with the individual’s work performance,” and that is wrong.

It is up to the employer to make sure that the workplace is not such that it is an “intimidating, hostile, or offensive working environment, or interferes with the individual’s work performance.”

## WORKSHEET 7

### THE DUTY OF FAIR REPRESENTATION

In the UE we know that a big part of our job as Union stewards is to protect the gains we have won in our contracts, to fight to improve our wages, hours and working conditions, and to defend workers against injustice from management.

We also know that sometimes we have to defend workers that we or others may not personally like, because we must defend a principle bigger than the individual worker.

Throughout the years a legal principle has been developed by the National Labor Relations Board called “the duty of fair representation.” This legal principle quite simply states that a union must represent all workers equally and without prejudice.

- A union cannot fail to represent or improperly represent a worker due to the worker's age, race, creed, nationality, sex, religion, political beliefs, union status or personality. If a union fails to represent a worker due to prejudice, or hostility, the union can be sued.
- The idea of failure to represent includes failing to properly investigate a grievance, process a grievance, or in some cases even to arbitrate a grievance.
- The duty to represent all workers is especially true in the case where a non-union worker or anti-union worker files a grievance. Personal feelings or the feelings of the membership cannot be allowed to interfere with the processing of that person's grievance.
- The key to the duty of failure to represent is that the union knowingly commits these acts because of prejudice or hostility towards an individual. If an honest mistake is made, it is not considered to be “failure to represent.”

If basic UE principles in grievance handling are followed there should not be a problem with “failure to represent” cases. Here are some basic guidelines.

## **WHAT SHOULD BE DONE ? PROPER GRIEVANCE HANDLING**

- Listen to the worker's complaint - don't blow it off.
- Investigate what happened, don't accept the bosses word as fact.
- If the worker wants to file a first step grievance—file it—even if you're not sure of its merits.
- Keep all notes of the investigation.
- Discuss the grievance with the grievance committee or chief steward. Make a collective decision on processing the grievance to the next step.
- Keep the worker or workers involved in the grievance fully informed about what is happening to their grievance. If you must make a compromise settlement, make sure the reason for that decision is explained and fully understood.
- Never allow prejudicial statements about the grievant in a discussion on how or whether to handle their grievance.
- If there is a debate at a union meeting over whether or not to take a grievance to arbitration, make sure the grievance is debated solely on its merits. The person chairing the union meeting **MUST RULE** any derogatory discussion of the individual **OUT OF ORDER**. The minutes of the meeting should clearly note that such discussion was ruled out of order. If the members vote not to take a case to arbitration because the person who filed the grievance is anti-union, the union can be sued and will most likely lose. If the case involves back pay, the union maybe liable for paying that workers back wages.

## **WHAT WE DON'T HAVE TO DO**

- If a grievance has no merit there is no obligation to process it past the first step. Make sure the worker is told why this is happening, if necessary, have several stewards explain the reasoning behind the decision.
- A steward does not have to pound the table over a grievance that is questionable or non-existent. Present the worker's case in a straight forward manner for them if they ask you to do so.
- Sometimes a worker has suffered an injustice that we cannot win by pointing out a spe-

cific contract violation. Make sure the individual understands that you agree an injustice has occurred but it cannot be won as a contract violation issue.

- There is no obligation to process a “non grievance” all the way to the final step of the grievance procedure. If the committee decides not to process a grievance make sure the investigation is complete and the facts are in order.
- There is no obligation to take every case to arbitration or even conduct a vote on every grievance. As long as the issue has been debated and dealt with on its merits, there should be no problem.

## WORKSHEET 8

### DFR AND MEMBER TO MEMBER HARASSMENT

When a member comes to the Union to complain about another Union member then the Union has an obligation to do something.

**First** of all because we are opposed to harassment of any kind, and especially racial or sexual harassment. We believe in equality and unity.

**Second:** The employer has an obligation under law to provide a safe and healthy workplace. The law says that this obligation includes providing a workplace free from racial or sexual harassment and free from the fear of violence. The employer has the obligation to enforce rules and make discipline to keep the workplace free from intimidation and harassment. They have an obligation to make sure everyone knows that racial and sexual harassment is illegal and won't be tolerated. They also have an obligation to provide education so that all workers know what constitutes harassment.

The Union has an obligation to represent all the workers. If the employer is failing to abide by OSHA regulations we file a grievance, to **MAKE THEM OBEY THE LAW**. We sometimes have to do this even if some workers don't want to obey the law. How often do we have the case where the boss lets workers remove safety guards so they can work faster, even if they endanger themselves. We have to insist on the guards being in place, sometimes to protect the workers from themselves. Sometimes they even get mad at us.

So, legally if a worker comes to us with a complaint of sexual, racial or any other kind of harassment, then our obligation (beside the Union obligation to help a member) is to **make the employer live up to their responsibilities under the law, to provide a safe workplace.**

## **ONE APPROACH IS A UNION COMMITTEE TO INVESTIGATE & EDUCATE**

The Union may want to set up a special committee where members can report instances of harassment (hopefully all committed by management). This committee will have the responsibility to investigate harassment complaints and to help educate members on why harassment is wrong.

Why a special committee? Some Unions have done this because they weren't sure that some members would feel right in approaching their stewards. A union committee should be made up to be representative of the workforce, men, women, Black, white etc.

The committee can take complaints and do investigation of the matter and then make recommendations to the union committee.

The committee can also lay down the law in cases where it is clear that a union member is harassing another member. They can explain to the member why what they are doing is wrong, and why they can be disciplined for doing it, and that the union cannot condone or tolerate this kind of behavior.

When the committee is conducting its investigation it must be sensitive to the feelings of the victim. The victims often times don't want all the details of what happened gossiped about the workplace, or they don't want to be made to endlessly repeat what happened before lots of people. The committee must treat details as confidential and the victim with respect. Even in cases where the harassment is man to man with no other factors, the victim of harassment doesn't want to be endlessly paraded around as being weak and a victim.

## WORKSHEET 10

### SHOULD THE UNION “TURN IN” THE OFFENDER TO MANAGEMENT?

We would of course like to avoid this. We would like for the offender to admit what they were doing is wrong and apologize to the other union member. We would hope that this would settle the issue. The offender would have to know that any repeat offenses would force the union to demand management take action to protect the victim. This approach of course depends on many things. How severe has the harassment been, is violence or threatened violence involved, how long has this been going on, is the victim willing to go along with this solution.

In this regard we should never make the victim the villain. This can happen if people start putting pressure on the victim not to “press charges.” You know, “Oh don’t say anything or poor Pete will get in trouble, etc.” Poor old Pete is a grownup and if guilty must pay.

We should also reject solutions that make the victim pay. Just as when a foreman is found guilty of sexual harassment we reject solutions that make the victim transfer to another department or shift, we should reject such solutions when the case involves member to member harassment. Make the harasser suffer not the victim.

There may be a time when the only solution is to make the employer take action against the harasser. If the harasser refuses to stop harassing, or if the actions were such that the other worker feels threatened, then “turning in” the harasser may be the only solution. In doing this we are defending a union member and defending the unity of our Union.

**WHAT TO SAY TO A HARASSER**

As a Union Committee member, it is important to speak seriously to an alleged harasser and to let him know—if he admits to the behavior—that the behavior must stop immediately.

**Bring** sensitivity to your discussion with the harasser. He may not have intended to harass and may be shocked and hurt to hear of the allegation.

Whether you are a union representative or a designated handler of sexual or racial harassment complaints, it may be important to follow the following suggestions:

- Be serious and stick to the point.
- Let the alleged harasser know what the purpose of the meeting is: “This meeting is to talk about an allegation of harassment.”
- What matters is not the intent, but the behavior of the alleged harasser.
- Ask the alleged harasser to respond to each allegation separately.
- Tell him that sexual or racial harassment is against the law and will not be tolerated at work. If he is engaging in harassing behavior it has to stop—such behavior is wrong.
- A Union steward can tell a harasser that the Union may not be able to support him if he continues the behavior which is in violation of union conduct codes.
- In some cases it might be appropriate to suggest that the harasser attend education or counseling sessions. This could be made a requirement of his continued employment.

## **SITUATION 1**

Joe and Sara, both Union members went out on several dates. After a month Sara decided not to go out with Joe any more and told him so. Joe has taken this badly. In her presence he says rude and crude things about her to other men. Several times when walking by, he grabs her and makes crude remarks. He continues to call her at home. She keeps telling Joe to leave her alone. Sara comes to the Union Steward and asks him to make Joe stop harassing her, or she is going to management.

The Steward talks to Joe and tells him to quit bothering Sara. Joe says it is none of the Steward's business and to leave him alone.

## **QUESTIONS**

What should the Steward and the Union do?

What should the Union do if after talking to Joe again, he continues to bother Sara?

Is this a violation of the Civil Rights law?

If Joe gets disciplined by management should the Union defend him?

If the Union does nothing for Sara can it be held liable by the Labor Board or by the Courts?

## **SITUATION 2**

Harry is the kind of person who likes to hassle other people, and his latest target is Rick. Both are white men in their 30's. Both are union members. Harry continually throws spit balls at Rick, sometimes he throws bolts and nuts. Several times Rick has found machine oil poured into his lunch box. Harry always loudly proclaims his innocence. One time Rick complained to his foreman, who then told Harry to "knock it off." This only made things worse, with Harry and some of his friends calling Rick a squealer. Most of the workers think Harry is a jerk and several have complained to the company about him in the past. Rick finally goes to the Union Steward and demands that the Union get Harry fired or else. Rick says "I'm gonna kill him if he doesn't leave me alone." The foreman says if he gets anymore complaints about Harry, he will fire him.

## **QUESTIONS**

What should the Union do about Harry?

What should the Union do about Rick's threat?

Is this a violation of the Civil Rights law? Any other law?

If Harry gets fired, should the Union process his grievance?

### **SITUATION 3**

Peters Manufacturing Co. has several hundred workers, about equally split between Black and white. The Union is strong but faces lots of battles from a tough management. Several African-American workers come to the Union with a complaint about a group of new hires, all young white men. These men go out of their way to make loud racist comments whenever they are near a group of Black workers. The Black workers want to file a grievance against the white workers. Several times the white workers have been told to stop making those comments, but they never listen, claiming they have a right to free speech. Several foremen have heard the remarks but just laugh it off.

### **QUESTIONS**

What should the Union do?

Should the Union file a grievance? Against whom?

Is this a violation of the Civil Rights law?

Can the Union make the company do anything?

If the Union does nothing about the complaints of the Black workers can it be held liable by the Labor Board, or by the Courts?

## **WORKSHEET 12**

### **SOME POINTS TO TAKE INTO CONSIDERATION ON THE SOLUTIONS TO SITUATIONS 1, 2, & 3**

#### **SITUATION 1**

The Union should take up this case of sexual harassment. The Steward and the Committee should try to get Joe to see the light and stop harassing Sara. If he refuses and keeps up his actions then the Union must act to protect Sara by raising the issue with management.

This is a violation of the Civil Rights Law and the management must act to provide Sara with a safe working environment.

The Union should see that the discipline given to Joe is just, but given the fact that he refused the Union's request to stop harassing Sara, it seems that some sort of discipline is necessary.

The Union could be held liable if they did nothing to help Sara after she appealed to the Union for help.

#### **SITUATION 2**

The Union should tell Harry that his behavior is wrong and will lead to disciplinary action and that the Union will not be able to do anything for him if he doesn't stop harassing other workers. The Union may have to make the employer take action since Harry's actions could injure other workers.

The union should advise Rick not to make threats since he could be disciplined for them, but also they must understand what caused Rick to get so mad.

There is no violation of the Civil Rights law, but possibly violations of OSHA.

The Union should process Harry's grievance only if they feel the firing was unjust, but with facts being what they are the union would not be obligated to arbitrate.

#### **SITUATION 3**

The Union must definitely take action and confront this group of new hires. The Union must let them know that it won't tolerate racism and why. A grievance should be filed against the foreman for refusing to stop the harassment.

This is definitely a violation of the Civil Rights law and the Union can force the employer to provide a safe work place that is free of harassment.

The Union could be liable for not taking action once they know about the situation.