

LABOR NOTES WEBINAR

UNION INFORMATION RIGHTS

# GENERAL RULE: A UNION IS ENTITLED TO INFORMATION NEEDED TO:

- Police the workplace in the interests of employees
- Investigate and present grievances
- Intelligently bargain over mid-term changes not covered by management rights clauses or other language permitting unilateral action
- Bargain a collective bargaining agreement

# ENFORCEMENT AGENCIES

- National Labor Relations Board
- State labor relations boards

# BENEFITS OF INFORMATION REQUESTS

- To obtain information needed for grievances and bargaining
- To impose a burden on management for violating the contract
- In bargaining, to prevent the employer from being able to declare impasse
- To lay the basis for an unfair labor practice strike
- To prevent employer from declaring a lawful lockout

NATIONAL LABOR RELATIONS BOARD

# UNION'S REQUEST MAY BE ORAL OR IN WRITING

- Best practice – put request in writing
- Request (or “demand”) can be incorporated in or attached to grievance

# WHEN CAN GRIEVANCE INFO BE REQUESTED?

- To monitor the workplace or the contract
- To investigate whether to file a grievance
- To prepare for a grievance meeting
- To prepare for arbitration

# WHAT CAN BE REQUESTED?

- Documents
- Data
- Facts

# DOCUMENTS

- Attendance reports
- Contracts with subcontractors (sometimes)
- Customer complaints
- Employee evaluations
- Insurance policies
- Interview notes
- Investigative files
- Personnel files
- Studies
- Videotapes (to examine, not to take)



# DATA

- Employees disciplined for same offense
- Incidents in which past practice not observed
- Number of accidents in past year
- Names of subcontractors and work being performed

# FACTS

- Names of complainants
- Names of witnesses
- Dates
- “In the second step grievance meeting, you said the grievant had done the same thing several times before. Please describe the date and nature of each incident.”

# GENERAL REQUESTS

- All documents relied on in making the decision to impose discipline
- All reasons for making the decision to adopt a new attendance policy

# WITNESS STATEMENTS

# EMPLOYER DEFENSES THAT MAY HAVE MERIT

- Union is seeking information in bad faith (to harass employer, to prevent impasse)
- Union is seeking information to support an unfair labor practice charge
- Requested information is confidential

# CONFIDENTIALITY

- INFORMATION HIGHLY SENSITIVE TO EMPLOYER
  - \* Trade secrets
  - \* Profit levels
  - \* Ongoing investigation
  - \* Documents prepared by employer's attorney
- INFORMATION HIGHLY PERSONAL TO EMPLOYEES
  - \* Medical records
  - \* Aptitude scores

# UNION RESPONSE TO CONFIDENTIALITY CLAIM

- Argue that information is not confidential
- Argue that union need for the information outweighs employer need for confidentiality
- Agree that confidential information can be removed or redacted
- Offer to sign a confidentiality agreement

# HIPAA

- Health Insurance Portability and Accountability Act
- Forbids health care providers from disclosing protected health information without patient authorization.
- Exception: “Disclosures required by law” or for the purpose of resolving “internal grievances.”



# IF EMPLOYER DEMANDS PAYMENT

- Demand information that supports employer claim that production of data will be “unduly burdensome.”
- Offer to share the costs
- Reduce size of request
- Tell employer to send info electronically
- Offer to use union copier
- Offer to have union members do research in company records

INFORMATION ABOUT SUPERVISORS OR OTHER  
PERSONS OUTSIDE BARGAINING UNIT

# SAMPLE REQUEST: EMPLOYEE DISCHARGED FOR FIGHTING

1

2

3

EMPLOYER SUBMITS INFO REQUEST