

# *District Council No. 16*

## STEWARD'S GUIDE



INTERNATIONAL UNION OF  
PAINTERS AND ALLIED TRADES

“ONE UNION – ONE VOICE – ONE AGENDA”

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Dear Fellow Union Member,

The membership of District Council 16 recognizes the need for strong Steward's. We must ensure that each and every member of our Union receives the representation he or she expects and deserves. A strong Steward will help protect our wages and working conditions at the workplace. Training Stewards to meet the challenges they will face will not be a simple matter. The goal can only be achieved through hard work and diligence. We feel by giving you the training that is needed and the latitude to make decisions, you will be a successful Steward. We have full confidence in your ability to perform the duties of a Union Steward.

As our industries and Union grows, we must position ourselves for the future. The implementation of an effective Steward's program will stimulate a reawakening in many areas of our industry. Every day carpet installers, drywall finishers, glaziers and painters are joining our Union to better provide for their families. As a Steward you are among the front line troops fighting to sustain livable wages and working conditions for your fellow members and for yourself. It is our hope that this Stewards Guide will assist you in being the best shop Steward that you can be.

Fraternally,  
Doug Christopher  
Director of Service  
District Council No. 16

# Part 1 – The District Council 16 Steward

## Introduction

For well over 100 years the International Union of Painters and Allied Trades has represented men and women in the painting, glazing, floor covering, paint manufacturing, sign-painting and drywall trades. Founded in 1887, the IUPAT is one of the oldest construction unions in North America. Our Union has survived recessions, depressions and changes in the nation's political and economic climate, along with changes in our own leadership. We survived for one good reason; our union is made up of the most highly skilled and best trained crafts people in the construction industry.

The primary objectives of the Union is to organize workers to ensure that members have access to well paid employment and benefits and to promote the health, safety, and welfare of all members. Beyond those basic needs, the Union works to improve the members' quality of life and to build a sense of solidarity and support among its members.

It would be impossible for the Principal Officer of a Local Union or District Council to have personal contact with each member on a daily basis. The Steward does have this personal contact on the job. The Steward is the most frequent contact a member will have with the leadership of the union. District Council 16 Stewards are therefore a critical link between the members and the Local, District Council, and the International Union.

## Role & Responsibilities

As a District Council 16 Steward, you have daily contact with the members, other trades, and management. **How the local and the Union as a whole are perceived by each of these groups is influenced by your attitude and behavior. If you are positive about the Union, if you maintain your composure, if you demonstrate a commitment to quality in your work and adopt a professional attitude as a Steward, then a good impression of the Union is conveyed.**

On the job you are both a worker and a worker's representative. In your capacity as a Steward you will be called on to **educate members about the Union and respond to their questions or refer them to the Principal Officer of your Local or District Council.** In addition, you are called on to **solve everyday job-related problems.** In most cases - **by using common sense** - you will be able to resolve these problems with little or no difficulty. Key things to remember are to **be fair and unprejudiced, to listen carefully, to be thorough in your investigation, and to maintain a high level of respect for all of your co-workers and for management. When in doubt about how to handle a situation, call the Principal officer of your Local or District Council.**

Unless otherwise stated in your collective bargaining agreement, the Business Representative has the final authority to appoint Stewards on the jobs. No journey level employees will be discriminated against in their right to be Steward, or to attend District Council 16 Steward Training.

## Your Responsibilities as the Steward include:

- **Organizing and union building** - introducing yourself to new or potential members and offering to answer any question they have about the Union.
- **Listening** to members' needs and concerns.
- **Protecting members' rights on the job** - Including making sure that work and safety rules outlined in the Collective Bargaining Agreement or Bylaws are enforced.
- **Communicating with the Business Representative** - making sure that he/she is aware of member questions and concerns and is kept informed of potential problems on the job.
- **Responding promptly and decisively to all complaints**, including those involving any form of harassment.
- **Maintaining good records** of members and hours worked on the job, details related to problems or grievances, accident reports, and safety concerns.
- **Acting as a model of fairness** - treating everyone the same - regardless of race, creed, gender, age, sexual orientation, or political belief.
- **Working productively and following good work practices** will give you credibility with both management and your fellow members.
- **Solving problems** – work related and others. As a service organization we should be concerned with our members – both on and off the jobsite. As a union Steward you will have many opportunities to be of help to your co-workers; it can be the most rewarding part of being a Steward
- **Supporting your Local and District Council Officers and the Union** in front of the members and management and by attending union meetings.

## Key Information

### 1. IUPAT's Structure

This Union is governed by the following bodies:

- (1) General Convention (G.C.)
- (2) General Executive Board (G.E.B.)
- (3) General Officers
- (4) District Councils
- (5) Local Unions

All sovereign powers, including the legislative, executive, administrative and judicial powers, of the International Union of Painters and Allied Trades, are vested in its General Convention when in session.

All the powers of the General Convention shall, when the G.C. is not in session, pass to and vest in the General Executive Board (with the exception of such powers that are specifically delegated to the various officers and subdivisions of the Union, or to the General Convention alone).

All the powers exercised by the General Convention when in session and all the powers exercised by the General Executive Board when in session, when such bodies are not in session, pass to and vest in the General President, except as expressly limited by the Constitution. Such powers are exercised subject to

the approval of the General Executive Board. All other General Officers exercise powers that are conferred upon them by the Constitution.

The District Councils and Local Unions have authority to exercise powers that are conferred upon them by the Constitution.

Except to the extent necessary to accomplish the purposes and objectives of the Union as set forth in the Constitution, the subordinate bodies of the union shall have autonomy in the conduct of their affairs, including organizing activities and the negotiation, administration, and enforcement of their Collective Bargaining Agreements and engaging in economic activity to that end.

## **2. Trade Jurisdiction**

Most local IUPAT Collective Bargaining Agreements contain a section outlining the scope of work covered by the agreement. Past Practice, the Constitution of the International Union, and "the green book" of the AFL- CIO Building; Metal Trades departments also spell out craft jurisdiction for each craft within the IUPAT.

(**Appendix A** contains the IUPAT's Trade Jurisdiction as outlined in the I.U.P.A.T. Constitution.)

- Painting
- Paperhanging
- Glazing
- Paint making
- Drywall finishing
- Resilient floors and decorative coverings
- Sign and display
- Display convention and show decorating
- Scenic Artist

One of the primary functions as a Steward is to protect the IUPAT's craft jurisdiction on the job. This is done, first, by making sure that all work covered by the jurisdictional section of the collective bargaining agreement is being performed by workers falling under the agreement. Second, alert your Business Representative of any work being done on the job that you believe falls under your Local jurisdiction. For example, you are the Steward on a job covered by your Local's painting agreement. You notice that in another part of the project, faux finishing is being done by someone other than an IUPAT member. You should immediately inform your Business Representative.

## **3. Work Hours & Overtime**

Each local has a policy or language in its Collective Bargaining Agreement (CBA) covering overtime. It is your responsibility to familiarize yourself with the policy and ensure it is followed on the job. **In order to keep track of hours worked by each member (for wage and benefit purposes), you must complete a Stewards Report** (See sample form on next page)

## **4. Work Rules**

State and Federal regulations, as well as the Collective Bargaining Agreement contain work rules for governing things such as the use of scaffold, stilts, personal protective equipment, and other tools of the

trade. You must be familiar with the work rules and ensure they are followed by all members working on the job.

### **5. Union Membership**

To ensure that individuals working on the job are members in good standing, you should inspect the quarterly dues cards of all members, working foreman and apprentices.



## 6. Membership Benefits

Both new and existing members may have questions concerning their pension or health & welfare benefits. You are not expected to be an expert on the eligibility requirements or answer detailed questions about the provisions of these benefits, but you should familiarize yourself generally with the provisions of the benefit trusts. You should also be able to supply the name and phone number of the person able to answer specific questions a member might have about benefits.

## 7. Unemployment & Workers' Compensation Benefits

It will be helpful for you to be knowledgeable about unemployment rates and eligibility requirements. You should also be able to provide members with a local phone number for the location of the nearest Unemployment office.

## 8. Picket Lines & Work Stoppages

While IUPAT members are expected to honor an authorized IUPAT picket line, whether or not you honor another union's authorized picket line is ultimately a decision that union members make for themselves. As a District Council 16 Steward you should not initiate or encourage work stoppages or picket lines.

As a union member you have the right to follow your own conscience and honor any picket. However, full authority for calling a strike rests with your Business Representative. **Immediately inform your Business Representative if a picket line is put up on the job. Do not request assistance regarding the strike via the phone, they can not give advice over the telephone.**

Honoring a picket line or walking off the job is a strong expression of solidarity with another craft union but may, in some cases, result in the loss of your job or even a lawsuit against the Union.

As a District Council 16 Steward you are a legal representative of the union. Be sure to discuss the rights and responsibilities of union membership with your co-workers well before any picket is established, because you are legally limited as to what instructions you can give your co-workers once the pickets go up.

## 9. Safety on the Jobsite

The employer has the ultimate responsibility for providing a safe workplace. As a Steward, however, it is your responsibility to bring any unsafe or hazardous conditions to the attention of the foreman in charge on the jobsite and to encourage the employer to correct the condition in a timely manner. Contact your Local Business Representative if the employer fails to correct the unsafe condition. **Always keep a record of unsafe or hazardous conditions on the job, including when you notified the employer and when the corrective action was taken.**

In addition, it is your responsibility to make sure that any member who becomes sick or injured on the job receives proper care. The Steward should: a) accompany the member to the hospital or make sure the member arrives home safely, b) notify the member's family and your Business Representative, and c) gather information on the accident or illness from witnesses and medical personnel. **The Stewards Accident & Illness Report should be filled out immediately.** Copies of the report should be given to

the Supervising Business Representative or Principal Officer, the member, and the contractor. (See sample Steward's Accident & Illness Report form on page 7)

## **10. Apprentice to Journeyperson Ratios**

As a Steward, you are responsible for verifying that the ratio of apprentices to journeypersons, and seeing that the ratio is in conformance with the CBA.

Enforcement of this provision will help ensure that apprentices are given the appropriate work opportunities, and that they are adequately supervised by journey level IUPAT members.

## **11. Problem Resolution & Grievance Procedure**

A primary responsibility of the District Council 16 Steward is to serve as a problem solver on the job. You will be in a position to correct a problem quickly and completely at the most immediate place - the jobsite.

When a problem cannot be quickly resolved and a grievance is filed you should carefully follow all appropriate steps: investigating and documenting the grievance, notifying employer and the Supervising Business Representative or Principle Officer, and keeping the member informed. (See Part 3 for a detailed discussion of the steward's role in grievances.)

Remember - the local or district council must be kept informed of all problems on the job.

# District Council 16

## STEWARD'S ACCIDENT & ILLNESS REPORT FORM

Local(#) \_\_\_\_\_ State \_\_\_\_\_

Name of injured worker  
\_\_\_\_\_

Social Security # \_\_\_\_\_ Craft \_\_\_\_\_

Home address \_\_\_\_\_ Telephone # \_\_\_\_\_

Project \_\_\_\_\_ Location \_\_\_\_\_

IUPAT Contractor \_\_\_\_\_ Address  
\_\_\_\_\_

Foreman \_\_\_\_\_ General Contractor \_\_\_\_\_ Address \_\_\_\_\_

Steward \_\_\_\_\_ Telephone \_\_\_\_\_

Date of injury/illness \_\_\_\_\_ Time of injury/illness \_\_\_\_\_

Location and description of accident \_\_\_\_\_

Description of injury/illness \_\_\_\_\_

WITNESS	ADDRESS	TELEPHONE

Hazard or other factors or circumstances causing or contributing to accident \_\_\_\_\_

Treatment (first aid, etc.)  
\_\_\_\_\_

Hospital \_\_\_\_\_ Address \_\_\_\_\_ Telephone \_\_\_\_\_

Doctor \_\_\_\_\_ Address \_\_\_\_\_ Telephone \_\_\_\_\_

Last day worked \_\_\_\_\_ Date returned to work \_\_\_\_\_

## Skills for Being an Effective Steward

### 1. Treat Members & Employers with Respect and Dignity (See Interpersonal Skills Guide on next page)

As a District Council 16 Steward, you are the "middle-man", the key link between the Union, the employers, and the members. How you treat people is very important.

Sometimes treating everyone with respect and dignity will be easy - something that you will not have to think about.

Other times, you will encounter people who will test your skills and training to the utmost. **Always do your best to keep a sense of humor; be approachable, pleasant and positive; treat everyone equally. Do not hesitate to request support or assistance from the supervising Business Representative if you are on uncomfortable or unfamiliar ground.**

**Above all, avoid favoritism.** As a District Council 16 Steward you must be an impartial representative of the entire membership. If you show favoritism you will lose credibility with many of the members and all of the employers. Although you may prefer some workers to others, this must not influence your behavior as a District Council 16 Steward.

### 2. Listen to Others - Respect the Other Persons Point of View

Always take time to listen to a member's concern. **Hear the person out and respect their point of view even when you don't agree.** Avoid jumping to hasty conclusions or letting personalities influence your feelings. If necessary, talk to other workers who also may be aware of the problem to help gain a better picture of the situation. It may be helpful to review this good advice before talking with a member.

### 3. Follow Up on Concerns or Problem Quickly

By following up on concerns and potential problems quickly you will be able to keep the small problems from getting bigger. If based on your review of the situation, the workers complaint is unjustified, take the time to let the worker tell his/her side and then try to explain why the complaint cannot be justified. **If you are unsure about any complaint, contact your Business Representative and convey the workers point of view. Use all proper methods to get the foreman to act and eliminate the cause of the problem. Follow up to ensure that the employer - through the foreman - has corrected the situation.**

## INTERPERSONAL SKILLS GUIDE

- Always keep a sense of humor.
- Be approachable – be pleasant and keep a positive attitude.
- Learn the names of your co-workers – when you see them say hello and call them by their name.
- Respect the other person’s point of view – even when you don’t agree.
- Keep your word – build an atmosphere of trust – if you say you are going to do something, either do it or offer an explanation.
- Always be willing to listen to others.
- Be reliable – follow through on what you’ve said you would do.
- Don’t hold grudges.
- Most importantly: Use common sense – Think before you act

Remember, misunderstandings occur, but if they are identified and responded to promptly they will not escalate into major problems. Your ability and that of the foreman to work together and take swift corrective action will be recognized and appreciated by the members on the job, union officials, and the employer.

#### **4. Be Cooperative with Management**

Both you and the foreman have more to gain from a cooperative working relationship than an adversarial one. If the foreman is clearly making an effort to address a problem raised, be patient and reasonable - do not demand more than can be delivered. There may be instances, however, when the other side is not willing to cooperate. If you are faced with a foreman who has no desire to have a cooperative working relationship – remove yourself from the situation and turn the problem over to your Business Agent.

#### **5. Keep Workers and Your Supervising Business Agent Informed**

Keep workers informed about what action has been taken to address their concern. If the problem is not corrected quickly, make sure that the member understands why. **Members should never feel that their concerns are being ignored by the Union.**

One of the primary functions you will perform as an District Council 16 Steward is **to keep your Business Representative informed at all stages of problems raised on the job.** Without adequate information, your Business Representative will not be able to provide you with the backup and support you may need.

## Part 2 - Legal Rights & Obligation

### Your Rights as a District Council 16 Steward

Your right to function as a District Council 16 Steward is based both in labor law and, in most cases, your District Council's Collective Bargaining Agreement.

The National Labor Relations Act of 1935 outlines the statutory rights of private sector Union Stewards and makes it illegal for employers to interfere with the rights of workers, under section 7, to organize and bargain collectively. Other key issues are:

- **Section 8(a)(1):** prohibits employer interference with employees in their section 7 rights. It is probably the most frequently used tool to protect Stewards' legitimate roles in the workplace.
- **Section 8(a)(3):** prohibits employer discrimination against employees for their union activism. It is used in cases when Stewards (or others) have been disciplined or discharged for vigorously carrying out their duties.
- **Section 8(a)(5):** prohibits an employer from refusing to bargain with the Union. Used to compel the employer to negotiate grievance cases, it includes the duty of the employer to provide information needed for grievance processing to Union Representatives.

### Members' Rights to Union Representation

**The United States Supreme Court has ruled that a worker is entitled to have a Union Representative present at an investigatory interview by the employer if the worker "reasonably believes" the investigation might result in disciplinary action. In other words, you have the legal right to have a Representative of the Union attend a meeting with you if the purpose of the meeting is "... discussing an incident which may lead to suspension, demotion, or termination." If your Union Representative is not available, you must be "... provided reasonable time to arrange for Union representation."**

State and federal law expand this further. If you "reasonably perceive" that a meeting may result in discipline and you request union representation, it must be provided. No one should ever attend such a meeting without a Union Representative who can assist you in presenting or clarifying facts.

Regardless of the circumstance, whenever a union member thinks an interview might lead to discipline, they should have the opportunity to discuss the matter with a District Council 16 Steward before going into the interview.

**It is important to recognize, however, that a worker's right to union representation arises only when the worker requests this representation. Stewards should advise all members on the job of this right.**

## **Duty of Fair Representation (DFR)**

A union owes the Duty of Fair Representation to **all employees in the unit for which it is the exclusive representative**. The union is bound to the Duty of Fair Representation with respect to all of its actions **in negotiating and enforcing the Collective Bargaining Agreement**.

As a steward, you are the frontline representative of the Union. It is expected that you will fulfill your duty to provide fair representation to any member requesting assistance in enforcing provisions of the Collective Bargaining Agreement.

Most Duty of Fair Representation cases involve claims relating to the enforcement of the contract's grievance procedure.

The most common claims are:

- The Union failed to take any steps to process the individual's grievance.
- The Union processed the grievance in a perfunctory manner.
- The Union failed to take the grievance to the final step in the grievance procedure.

The Supreme Court has held that a Union breaches its Duty of Fair Representation if it acts toward a worker in a bargaining unit in an "arbitrary, discriminatory, or bad faith" manner. A union acts in an "arbitrary" manner if it acts perfunctorily and without enough regard to the merits of the matter. It acts in a "discriminatory" manner if it acts unfairly toward one person as compared to another person's similarly situation. It acts in "bad faith" if it acts with improper intent, motive, and purpose. Over the years, courts have expanded the definition of the Duty of Fair Representation and have thereby placed a greater burden on unions and their representatives.

It is important to note, however, that while the standard imposed by Duty of Fair Representation has become more stringent over the years, the Duty of Fair Representation does not require a union to process every grievance to arbitration, or, for that matter, even to process every grievance to the first step of the grievance procedure.

The Supreme Court has recognized that "though... a union may not ignore a meritorious grievance or process it in a perfunctory fashion... the individual employee does not have an absolute right to have his/her grievance taken to arbitration." The Business Representative has the right to "sift out wholly frivolous grievances" and has a significant area of discretion in deciding which has a "wide range of reasonableness... subject always to complete faith and honesty of purpose in exercise of its discretion."

## **Discrimination & Harassment on the Jobsite**

Discrimination and harassment take many forms. Workers are discriminated against or harassed because of their gender, race, nationality, religious beliefs, sexual orientation, seniority, age, or simply because of their personality. Whatever form the discrimination or harassment takes, it is demeaning, destructive to a cohesive work site, counter productive and in some cases, illegal.

It goes without saying that, as a Steward, you must refrain from discriminating against or harassing a fellow member. In some situations workers from another craft or a supervisor will behave in a discriminating manner; sometimes an IUPAT member might discriminate against another. As a District Council 16 Steward you will be responsible for helping to protect workers from any form of discrimination, harassment, or any violation of their rights and dignity. Any form of discrimination or harassment on the job will not be tolerated by the Union.

The Constitution of our Union clearly articulates the Union's commitment to developing a diverse membership base (Sec. 2):

**"To unite into one labor organization all workers eligible for membership, regardless of religion, race, creed, color, national origin, age, or sex"**

You should report all complaints of discrimination to your supervising Business Representative and together make every effort to resolve problems of discrimination directly at the workplace. In rare instances when you are unable to solve the problem on the jobsite, the member may choose to file charges against another member for violation of the Constitution and/or District Council Bylaws.

Both Federal and state law support the Constitution of the Union and the Bylaws of the District Council. The Constitution and Bylaws are consistent with the goal of promoting diversity and building a strong union reflective of our community. To that end you, as a District Council 16 Steward, will be expected to practice behavior that welcomes minorities, women, and ethnic groups into our Union and on our jobsites.

Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment based on race, color, sex, religion, or national origin. The Americans with Disabilities Act of 1990 prohibits discrimination in employment against people with disabilities. The Age Discrimination in Employment Act of 1967 prohibits discrimination against an individual because of age (limited to individuals who are at least 40 years of age). Both employers and trade unions, and their officers, must abide by these laws. You are further obligated to behave consistent with the rules of conduct stipulated in our Constitution and Bylaws.

Therefore, you should know that:

**1. It is unlawful for an EMPLOYER to discriminate with regard to:**

- Hiring and firing
- Job advertisement
- Recruitment
- Testing
- Compensation, assignment, or classification of employees
- Transfer, promotion, layoff, or recall of employees
- Use of company facilities
- Training and apprenticeship programs
- Fringe benefits - such as life and health insurance
- Pay, retirement plans, and disability leave
- Causing or attempting to cause a union to discriminate

- Other terms and conditions of employment

**2. It is unlawful for LABOR UNIONS to discriminate with regard to:**

- Application for membership
- Segregation of classification of members
- Referrals for employment
- Training and apprenticeship programs
- Job advertisements
- Other discriminatory conduct, including causing or attempting to cause an employer to discriminate

**3. It is unlawful for EMPLOYERS and LABOR UNIONS to retaliate against individuals who oppose unlawful employment practices or attempt to exercise their rights under this statute.**

**Sexual harassment** is an area that you should be particularly aware of given recent changes in the composition of the historically male-dominated construction workforce. We must ensure that women, like all other members, have the opportunity to work in a safe, non-threatening, non-hostile environment.

As a District Council 16 Steward, you should be aware that sexual harassment is illegal. From a legal standpoint, harassment on the basis of sex is a violation of section 730 of Title VII of the Civil Rights Act. Cases of sexual harassment fall into one of two categories: a) the worker suffers a tangible job setback or loss in retaliation for not acceding to sexual demands, or b) harassment in the form of sexual threats, insults or innuendoes, inappropriate comments, sexual gestures, and/or unwelcome physical touching.

**According to the courts, sexual harassment includes:**

- Verbal abuse
- Pressure for sexual activity
- Sexual remarks about a persons clothing, body or sexual activity
- Unnecessary touching, patting, pinching, or brushing against a person's body
- Leering
- Request for sexual favors accompanied by threats (implied or overt) concerning one's job
- Physical assault
- Pinups or other materials which, when posted at a work site, make a member uncomfortable
- Inappropriate language
- Unwelcome jokes

**Who can be sued for sexual harassment?** Victims of sexual harassment can name as a defendant:

- The employer
- The alleged sexual harasser
- Management
- Union officials
- The Union

Individuals can be made to pay a portion of the judgment out of their own pockets. Take any claims of sexual harassment seriously. Report any claim of harassment to your Supervising Business Representative immediately. Failure to respond promptly may result in liability to the Union and, in flagrant circumstances, to you personally. You can be liable.

**A simple rule to follow is the "Reasonable Woman" Test.** The courts refer to "reasonable woman" as a sort of guide to sexual harassment. What would a reasonable woman - your mother, wife, daughter, or sister - find offensive?

In the event that a case of sexual harassment is brought to your attention, you will:

- Inform your Supervising Business Representative or the Business Manager of the Council in the absence of the Business Representative.
- Document, investigate and process the case immediately – and follow up to make sure that appropriate corrective action is taken.
- Notify the employer immediately - the employer is legally responsible for sexual harassment in the workplace.

It is your job to remind members that harassing another worker, including using offensive words and pictures, will not be tolerated by the Union and may be illegal.

By talking to members, you can help them understand what constitutes sexual harassment. By doing your job well - investigating all harassment charges - you send a clear message to the members that harassing behavior will not be ignored.

The Union will actively work to uphold each member's right to be treated with respect and dignity in the workplace. Your coworkers will respect you standing up against bias and unfair treatment. By insuring a fair workplace free from discrimination you will be seen as a leader, in a fair union. That will build our strength, sense of unity, and purpose over time.

## **Labor Laws**

Brief explanations of selected labor laws which cover IUPAT members are located in **Appendix B - Labor Laws**. This information has been included as a quick reference. You should familiarize yourself with Appendix B.

## Part 3 - Handling Problems & Grievances

### Reacting to a Problem

It is the responsibility of the District Council 16 Steward to follow up on problems raised by members. In most cases, problems on the job can be solved immediately between the Foreman and the Steward. Instances may arise, however, when a problem is not resolved and a next course of action is required.

Prior to filing any grievance, contact your Business Representative. Make sure you abide by the time limits in the Collective Bargaining Agreement for grievance filing.

To determine if a complaint is a valid grievance, see if it fits any of the following criteria:

- Is it a violation of the **contract**?
- Is it a violation of **federal, state, or local** law?
- Is it a violation of **past practice**, written or unwritten?
- Is it a **neglect of management responsibility**?
- Is it a violation of **management rules**?

If it fits into any of these categories, then it may be a valid grievance.

If the complaint does not fit any of the above criteria, it may still be a legitimate gripe. If you are unsure - **call your Business Representative for advice.**

### Investigating a Grievance

Your Collective Bargaining Agreement contains grievance procedures. This should be your first reference when faced with a grievance.

You will play a critical role in the early stages of any grievance. As a District Council 16 Steward, you will be responsible for collecting the initial information. Appendix C contains sample questions to ask when you investigating a problem or grievance. The observations you make, and notes you take could be determining factors in the outcome of the case. **Sample Grievance Information Request and Grievance Investigation Forms are located on pages 17 and 18, respectively.**

**To gather the facts:**

#### **1. Talk to the foreman**

The foreman might tell you the worker is right, agree to correct the situation then and there, or reveal some pertinent facts that neither the worker nor you know about.

# *District Council 16*

## **GRIEVANCE INFORMATION REQUEST FORM**

To (insert the name of the foreman/supervisor and the company)

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Information Requested (such as wage history of workers employed, daily work reports, company rules, medical records related to the grievance, disciplinary and performance record of grievant)

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Date Presented to Management \_\_\_\_\_

District Council 16 Steward \_\_\_\_\_

Received by \_\_\_\_\_ Date \_\_\_\_\_  
(initial or signature)

IUPAT Local (#) \_\_\_\_\_ (State) \_\_\_\_\_

# District Council 16

## GRIEVANCE INVESTIGATION FORM

Local Union (#) \_\_\_\_\_ (State) \_\_\_\_\_  
Grievant Name \_\_\_\_\_ Craft \_\_\_\_\_ Wage Rate \_\_\_\_\_  
Shift \_\_\_\_\_ Project \_\_\_\_\_  
Contractor \_\_\_\_\_ Address \_\_\_\_\_  
Forman \_\_\_\_\_ Steward \_\_\_\_\_ Date of incident \_\_\_\_\_  
Management personnel involved \_\_\_\_\_  
Other workers involved \_\_\_\_\_

WITNESS	ADDRESS	TELEPHONE

When did the problem(s) occur? (Is more than one specific time involved?)

Where did the problem(s) occur? Specific location(s) of the incident(s).

Why is this a grievance? (Background, violation of contract, law, past practice, safety, etc., facts, differing positions)

What does the member want?

Date: \_\_\_\_\_

## **2. Interview all parties involved.**

- Include fellow workers who may have some knowledge of the situation (worked in a similar area, witnessed the incident, worked with the grievant before):
- Find out if the worker's problem is an isolated event or if it is a recurring problem.
- Keep track of the names of the witnesses (if any) and others interviewed. Be sure to record their mailing addresses and telephone numbers.
- When talking to the foreman, witnesses, and other workers, keep in mind that the personalities may come into play - make sure you separate facts from opinions and generalities.

## **3. Visit the site of the grievance (if applicable).**

Make a sketch and try to visualize the sequence of related events.

## **4. Check pertinent company records.**

Look for supporting company data. Does the employee have a clean record?

## **5. Write down all pertinent points.**

Don't trust your memory. It is important for you to keep accurate notes of your investigation. At some point others may be attempting to resolve the grievance using your notes. Be thorough.

## **Writing Up a Grievance - Helpful Tips**

Written documentation of a grievance will be one of your strongest weapons. The grievance that is presented to management should only contain **the facts**. You will not be able to win a case without an adequate presentation of factual information. The facts provide evidence to support the worker's claim and the Union's position that a violation has occurred. Hearsay and opinions will not win a case. When you write up a grievance, **remember the "Five W's"**:

1. **WHO** is involved? The member, the foreman, the witness - anyone who can contribute to your knowledge about the case.
2. **WHEN** did it happen? Dates and times of all related events, including when the violation occurred, when the Steward was approached, when management was notified, when the grievance was written, and when the foreman made the decision.
3. **WHERE** did it take place? The location where the incident occurred (if important).
4. **WHY** is a grievance being filed? What series of events led to the grievance? How have the worker's rights been violated? Was a section of the agreement violated, etc. - this must be spelled out so the Steward can ask for corrective action. What was said by both sides? What other evidence supports the grievant's position?

5. **WHAT** settlement or corrective action is desired?

Although most people do not have difficulty orally presenting a grievance, writing one up can be more difficult. To make it easier, remember these five simple rules:

- Be short and to the point. Make sure that the basic information is included.
- Keep an on-going written record of detail. Don't trust your memory, and don't wait until the last minute to try and document the grievance.

- Be clear. Say it out loud first - then write it down.
- Write legibly.
- Work with your Business Representative while building your case for the member.

The next page contains a helpful Grievance Report Form that you can follow when writing up a grievance.

## **Arbitration**

Most of our Collective Bargaining Agreements provide for binding arbitration in the event the parties are unable to come to a resolution. Arbitration is the final step in the grievance procedure, though some times limited only to violations of the agreement or to violations of certain contract provisions. The decision of the arbitrator is binding on both parties.

Doing a good job of preparing a grievance will often provide the margin necessary for the grievant to prevail. Your work may also determine the remedy awarded to the member.

# District Council 16

## GRIEVANCE REPORT FORM

IUPAT Local (#) \_\_\_\_\_ (State) \_\_\_\_\_

Date \_\_\_\_\_

Employee's Name \_\_\_\_\_

Craft \_\_\_\_\_ Status (Journey person, etc.) \_\_\_\_\_

Employer \_\_\_\_\_ Shift \_\_\_\_\_

Hire Date \_\_\_\_\_ CBA \_\_\_\_\_

Section/s Violated

Nature of Grievance

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Remedy Desired

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Management Action

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Date \_\_\_\_\_

Signature \_\_\_\_\_

## Part 4 - Approaching Management

Throughout this Guide the importance of cooperation, listening to both sides, and acting in a fair and reasonable manner has been stressed. In most cases Management is as interested as the Union in resolving problems. It is in the mutual interests of the Union and Management to resolve situations related to safety or procedures that could have a negative impact if ignored. There may be problems, or grievances, which management would rather avoid. When these arise, be alert to Management efforts to stall the process or avoid going through proper channels to resolve the situation.

### Tactics to Avoid

#### Stalling

While Management should be given adequate time to gather the facts, they should be held to a schedule. Do not be put off. If a time line for resolving the problem, consistent with the Collective Bargaining Agreement, cannot be established, move forward with the grievance procedure.

#### Trading

It is also not uncommon for a Steward to be offered a settlement for one grievance if a part of the grievance, or another grievance, is dropped. **District Council 16 Stewards have no authority to trade anyone's rights.**

#### Side issues

Another tactic is sidetracking the discussion onto another issue, or telling a story or anecdote which uses up time set for the meeting. When you see that a meeting is heading in that direction, politely interrupt with a response such as:

"You know this is a discussion that I know my Local Business Representative would want to be part of. Perhaps we can schedule a meeting for tomorrow where he or she can join us. " ,or

"I'd like to hear more about your vacation maybe we can get together sometime after work hours and exchange stories."

Employers who use these tactics are forgetting that the Union's primary goal is to fairly represent the member. Fairly representing members means resolving problems and grievances in a timely manner.

### Behavioral Tips

Two common mistakes made by Stewards are:

1. Saying more than is necessary and, as a result, talking themselves out of a settlement
2. Losing their temper.

To avoid both of these pitfalls remember these rules:

- **It is better to say too little than too much.**
- **Take your time and choose your words carefully**
- **Don't rehash the issue.**
- **Control your temper** - nothing will be gained if you lose control. If you feel that you're about to lose your temper, take a break or bring the meeting to a close for the moment. Then talk to your Business Representative - management may be trying to provoke you so you lose control of the situation.
- **If you win your point, stop talking** - don't rub it in.

# **Appendix A**

## **IUPAT Trade Jurisdiction**

The I.U.P.A.T. has jurisdiction over the following:

- Display Convention and Show Decorators
- Drywall Finishers
- Glaziers, Architectural Metal and Glass Workers
- Shipyard Workers
- Paint Makers
- Painters
- Resilient Floors and Decorative Covering Workers
- Scenic Artists
- Sign and Display Painters

Including the operation and care of all tools and equipment used by all trades coming under our International Union's jurisdiction including brushes, rollers, spray painting equipment, miscellaneous hand and power driven tools including sandblasting equipment, ladders, scaffolding and other rigging and the operations and maintenance of all types of compressors.

# Appendix B

## Labor Laws

The following summaries provide an introduction to selected labor laws which regulate IUPAT's labor and management relations.

### **National Labor Relation Act (Wagner Act)**

In 1935 Congress enacted and Franklin Roosevelt signed this law guaranteeing workers the right to bargain collectively through representatives of their own choosing and "to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection". The law places restrictions on employer opposition to unions and enumerates employer "unfair labor practices". The National Labor Relations Board enforces the Wagner Act as amended. The Board investigates complaints of unfair labor practices and supervises representation elections. The Wagner Act outlawed the formation of company unions. Employers can not fire or otherwise penalize employees for union activity, force employees to sign "yellow dog" contracts, hire labor spies, or circulate blacklists.

In 1947 the Wagner Act was amended by the Taft-Hartley Act. The Taft-Hartley Act was an effort to weaken unions by outlawing the closed shop, jurisdictional strikes, and the secondary boycott, and by establishing union unfair labor practices. Taft-Hartley also contains section 14(b) which permits states to pass "right-to-work" laws, which deny unions and employers the right to negotiate union shop agreements.

### **Fair Labor Standards Act**

The Fair Labor Standards Act was passed in 1938 and has been amended six times since. This statute sets the nation's basic labor standards. It requires that public and private employers engaged in interstate commerce adhere to certain minimum conditions of employment. Basic to these conditions are the minimum wage; time and one-half pay for work over 40 hours per week; equal pay for equal work; limits on the employment of children in hazardous work, such as mining, manufacturing and most construction; and limits on industrial homework.

### **Civil Rights Act of 1964**

The Civil Rights Act of 1964 requires, in Title VII, that employers, unions, and employment agencies treat all persons equally, without regard to race, color, religion, sex or national origin. This applies to all phases of employment including hiring, promotions, firing, apprenticeship, training, and other job assignments. The coverage threshold requires that there be 15 or more workers, or 10 or more union members.

An amendment to the Civil Rights Act protects pregnant workers from employer discrimination in any form of employment. This includes hiring, job security, promotions, and fringe benefits. In addition, any employer with a health or disability plan must cover pregnancy, childbirth, and related medical conditions in the same manner that other ailments or disabilities are covered under the health plan.

### **Davis-Bacon Act**

The Davis-Bacon Act, also known as the prevailing wage law, was enacted in 1931. The law requires that all contractors working on federal construction projects pay their workers the wage rate prevailing in

the local area for each craft, as determined by the Department of Labor. Simply stated, if the typical painter or drywall worker's wage package in a community is \$25 per hour, then contractors working on a federal construction project in the community must pay their employees \$25 per hour. A contractor cannot undercut the market - or lower his/ her bid - by bringing in workers from lower wage areas who are willing to work for less. Workers must be paid a living wage for the market in which the construction project is taking place. Some states have "little" Davis- Bacon Acts which require the contractor to pay prevailing wages on state, county, or city construction projects.

### **Social Security**

The first program to provide a national system of social insurance was enacted in 1935. It was formed to provide protection for wage earners and their families against loss of income due to unemployment, old age, and death. A system of federal aid for relief for specified groups was also included in the original act. The scope of the act has been extended over the years to provide more services for more people, such as disability benefits, a system of hospital and nursing home care for the aged, and a program for voluntary medical care insurance. The old-age, disability, and survivors' insurance and Medicare are financed by a tax on workers and employers, and benefits are determined by Congress.

### **Unemployment Insurance**

Unemployment insurance is a joint federal/state program to provide weekly benefits for unemployed workers covered by the law. Each state determines eligibility, the amount, and duration of benefits. In addition to the maximum of 26 weeks of regular unemployment insurance benefits, the federal law provides for 13 weeks of extended benefits when the insured unemployment rate in a state reaches a level specified in the law. Several state laws also provide a "trigger" mechanism which automatically extends benefits for 13 weeks when unemployment reaches a certain level in that state. A temporary program of federal supplemental benefits was established in 1982; it now provides 8, 10, 12, or 14 weeks of benefits for jobless workers who exhaust extended or regular benefits. The duration of benefits available in a particular state is based on the rate of insured unemployment.

### **Occupational Safety & Health Act of 1970 (OSHA)**

In 1970, the Occupational Safety and Health Act was established, which gave the federal government the power to establish and enforce national standards in all states. The law covers all farm and non-farm workers not already covered by other federal laws, as well as most state and local public employees. The Secretary of Labor has the responsibility for setting and enforcing occupational safety and health standards. The U.S. Department of Labor will make inspections and has authority to halt violations and invoke penalties if violations continue. State governments are allowed to enforce the Act if their plans meet the requirements of eligibility set forth in the Act.

# Appendix C

## Grievance - Sample Questions to Ask and Answer

The following are examples of problems which may arise on the job and the types of questions you should ask and actions you should take as part of **your effort to get the facts**.

### **Problem: Safety Rule Violations**

- What was the alleged violation?
- Are written safety rules provided to all workers?
- When and where did the alleged violation occur?
- Had the worker been previously warned about safety violations?
- Obtain the report covering the alleged violation from management.
- Was anyone injured?
- If medical attention was required, obtain a doctor's statement.
- Was a safety rule violated because of the insistence of the foreman?
- Were extenuating circumstances involved?
- Was the worker aware of all the hazards involved?
- Was the incident investigated by the Cal OSHA
- Was proper safety equipment available?
- What penalty was given? State the number of hours and the dates of time lost due to disciplinary action.

### **Problem: Insubordination**

- When and where did the alleged incident occur?
- What order was allegedly refused by the worker?
- Did the foreman clearly give a direct order?
  - a) What were the instructions?
  - b) What was the conversation between the parties?
  - c) Was there any use of abusive language?
  - d) Was there a clear refusal by the worker to comply with the order?
- Was the work outside of IUPAT's jurisdiction or the worker's craft?
- Was the work ordered in violation of work or safety rules?
- In what manner did the worker allegedly avoid the order? Any previous trouble of the same nature with the worker?
- Were others prevented from working due to the alleged refusal?
- Was there a claim of physical inability to comply with the order?
- Did the worker eventually comply with the order?
- Did the worker give a reason for refusal; i.e., health or safety hazards?
- Did another worker comply with the order under the same conditions?
- Describe the act of alleged disobedience in detail.
- Obtain statements from any witnesses.
- What was the penalty? Give the dates and number of hours lost by the worker.

### **Problem: Abusive Language or Improper Conduct**

- When and where did the alleged incident occur?
- What is the statement of the foreman regarding the action of the worker?
- What is the worker's statement regarding the incident?
- Obtain statements from witnesses.
- Was there interference with productivity?
- Was the act verbal only or accompanied by threatening gestures?
- Was a weapon used in this gesture?
- Can you determine the cause of the worker's conduct? Is aggravation by the foreman indicated?
- What is the foreman's general attitude in the relationship with the worker or other workers? Is this alleged incident unusual for this work area?
- What was the penalty? If less than discharge, how much time did the worker lose? Give the number of hours and the dates.

**Problem: Fighting**

- When and where did the alleged fight take place?
- Who witnessed the alleged fight?
- Obtain statements of witnesses and the aggrieved.
- From information supplied, can you reconstruct the action that took place?
- Who was the aggressor?
- Can you determine the cause of the alleged fight?
- Were the participants penalized?
- To what extent? Give the number of hours and the dates of lost time.
- Was medical treatment required?
- Obtain the medical diagnosis of injuries sustained.
- Was any violation of safety rules involved?
- Was there damage to property? Was there interference with productivity?

**Problem: Theft**

- When did the alleged theft occur? (Time, date, and location.)
- What parts, materials, or items were involved, and what is their value?
- Why was the worker accused? By whom?
- Is the theft admitted?
- Was the worker's property searched? If so, by whom?
- Is there evidence others may be implicated?
- In your opinion, are there any extenuating circumstances to be considered further?
- If the penalty was less than discharge, state the number of hours and the dates of lost time during the penalty period.

**Problem: Destruction of Company Property**

- When, where, and how did the alleged incident occur?
- What company property was destroyed? Give an estimate of the damage.
- Were conditions such that destruction could not be avoided?
- Were others who may have been partly responsible involved (another worker, supervisor, etc.)?
- Have those witnessing the action given statements? Obtain the statement of the aggrieved.
- What are the particular responsibilities of the worker involved?

- Was there a violation of safety rules?
- What penalty was assessed?
- Time lost - number of hours and the dates of disciplinary penalty.

**Problem: Assault on Foremen/Employer Representative**

- When and where did the alleged assault occur?
- What was the cause of the alleged assault?
- Have you obtained statements from the aggrieved and those witnessing the action?
- Was any weapon used?
- From information available, can you reconstruct the action as it took place?
- Has either party filed criminal or civil complaints?
- Was the alleged assault a spontaneous act, triggered by an ongoing dispute, or an isolated event?
- Was horseplay involved?
- What penalty was given to the worker? State the number of hours and the dates of lost time due to disciplinary action.
- Was the company's action consistent with action taken in the past for similar incidents?
- Did the foreman/employer representative or the worker receive medical treatment? If so, attach the diagnosis of the injury.
- Obtain management's investigation reports, if any.

**Problem: Alcohol and Drugs - Impairment and Possession**

- When and where did the alleged incident occur?
- Under what circumstances was the worker discovered in this alleged condition?
- Was there an accident, injury, or property damage as a result of the alleged impairment?
- Was the worker ever examined by a doctor?
- If so, obtain a copy of the doctor's examination.
- Providing there were no doctors available, who determined that the worker was intoxicated or impaired?
- Was there an independent assessment of the worker's behavior by two or more supervisors?
- Would the Steward consider the person making this determination capable of using good judgment?
- What outward signs and actions tend to establish intoxication or impairment?
- At what time during the shift was the worker found allegedly intoxicated or impaired?
- If discovered late in the shift, what explanation does the foreman give for the worker's condition?
- Describe the charge against the worker.
- Who initially accused or suspected worker involvement with alcohol and/or drugs?
- Why was the worker suspected?
- Did employer actions follow reports from someone other than the foreman?
- Did the worker have the assistance of an IUPAT representative?
- What substances (blood, urine) were tested? Is the worker taking prescribed medication?
- Who collected the specimens? How were they forward to the lab? Identify the lab.
- What tests were performed? Results, if known.
- Were additional samples collected for independent testing? Was a portion of the sample isolated for independent testing?
- Were there witnesses to the worker's behavior prior to the search or test? If so, obtain statements.
- How was alleged possession established?
- What property was searched?
- Was access to property searched under the sole control of the worker?

- Were there witnesses to the search? If so, obtain statements.
- Was the worker interrogated by employer security? Criminal authorities? Were interrogations recorded?
- Did the worker make any admissions to the employer or criminal authorities?
- Has the worker been involved in alcohol or drug activity in the past? Employee assistance programs?
- Penalty applied.

# Appendix D

## Definitions of Common Words & Phrases

**Agency Shop** - A union security clause in the Collective Bargaining Agreement which provides that an employee in the bargaining unit who refuses to join the union must pay a service fee to the union equal to union dues.

**Arbitration** - A way of settling disputes by using the local's Arbitration Committee or Board, consistent with the provisions of the Collective Bargaining Agreement, or by calling in an impartial third party to make a decision.

**Bargaining Unit** - A group of employees who bargain collectively with their employer. The unit may include workers in a single craft, or it may include workers in a multi-craft agreement.

**Checkoff** - A clause in the union contract authorizing the company to deduct union dues from members' paychecks and transfer them to the union.

**Collective Bargaining** - The way of determining wages, hours, and other conditions of employment through direct negotiations between the union and employer.

**Discrimination** - Unequal treatment of workers. Some forms of discrimination are illegal. For example, it is unfair to discriminate based on age, but not illegal if the person is less than 40 years old. It is illegal to discriminate in the conditions of employment for reasons based on sex, union membership, nationality, religion, race, or age (if the person is between 40 and 70). The conditions of employment include types of jobs, benefits, promotions, layoffs, pay, and other conditions.

**Ergonomics** - The study of the relationship between the worker and the environment in which he/she works - with a focus on matching the workplace to the worker in an effort to reduce job related health problems (such as back strain, repetitive motion syndrome, etc.) and thereby decrease lost time caused by work-related illness and disability.

**Fair Representation** - The legal obligation of union representatives to represent all members and to do so in an even-handed way.

**Fringe Benefits** - All non-wage benefits in the union contract - such as pension contributions and health and welfare contributions - which are paid in whole by employer, or shared between the member and the employer.

**Good Standing** - A member in good standing is one with paid-up dues, and who has met all other obligations of membership.

**Insubordination** - The act of refusing or deliberately failing to carry out a legal assignment. IUPAT members should always follow legal assignments made by management. "Perform the assigned work, and grieve the assignment later" is a good rule of thumb.

**Lockout** - The denial of employment by the employer to his/her workers during a labor dispute in an attempt to force the union to settle on the company's terms.

**Management Rights** - A clause in the Collective Bargaining Agreement that describes functions that management has reserved for itself, including the right to assign work.

**National Labor Relations Board** - Created by the National Labor Relations Act 1935, the NLRB administers and enforces the Act. Its functions include: defining appropriate bargaining units, holding elections to determine whether a majority of workers want to be represented by a specific union or no union, certifying unions to represent employees, and interpreting and applying the Act's provisions prohibiting certain employer and union unfair labor practices.

**Project Agreements** - Larger projects may be covered by special agreements negotiated between the developer, owner, contractor or other entity, and in most cases, the local Building Trades Council. These agreements, called project agreements, usually have been agreed to by all or most of the Crafts working on the project. This type of agreement may include special provisions geared towards ensuring harmony on the job, such as a "no strike - no lockout clause" that may not be included in the locals Collective Bargaining Agreement. Therefore, the responsibilities of the Local Union and the Steward may be different on these types of projects. Be sure to fully discuss the contract if you are assigned to a Project Labor Agreement jobsite.

**Right-to- Work Law** - So called Right-to-Work laws prohibit employers from negotiating a union security clause (or union shop agreement) into a collective bargaining agreement with the union that represents their employees. Although the name of the law implies "access to work", there is no guarantee of work under the law. In fact, based on wage trends in those states covered by Right-to-Work laws, the only "right" workers get is the right to work for less money.

**Slowdown** - The act of reducing the pace of work. If led by a union Steward or representative, this is a violation of most agreements.

**Union Shop** - A job on which every worker covered by the contract must become a member of the union. Workers do not have to be a member to be hired, but must join the union within a certain number of days. Depending of the type of Labor Agreement this period is 7 or 30 days.