Getting the Most Out Of Information Requests

October 05, 2012 / Robert M. Schwartz

Union representatives can use their right to information not just to win grievances but to nudge the boss toward contract compliance.

Labor law requires employers to turn over information that a union needs to investigate or present a grievance. Union reps should get in the habit of filing an information request for each and every grievance. Eventually, managers will understand that if they violate the contract, they will be hit not only with a grievance but also with a request for a sizable amount of data, including sensitive records.

In many cases, an information request can be more burdensome than the grievance itself.

MAKING REQUESTS

The best practice is to attach an information request to the grievance itself. Follow-up requests can be filed based on the material initially provided or on claims made by the employer during the grievance process.

Following grievance meetings, the union should review the employer's arguments and file a request forcing the employer to back up any assertions or defenses. An example:

"During the first-step meeting on this grievance, supervisor James Martin said that the company had a 'past practice' of denying educational leaves. Please list each such employee request made during the past five years, the date, and the company's response."

LABOR BOARD CHARGES

Unions should not hesitate to file unfair labor practice charges at the NLRB or a state labor board if the employer ignores, denies, or blows off union information requests.

If the union asks for ten items, and the employer fulfills nine, the union should file a charge over the missing item (unless the employer advances a legitimate reason).

Information rights is one of the few areas of labor law that is still solidly pro-union. There is no charge for filing and, in most cases, the union can expect a positive result. The employer will have to spend money and time to defend itself—and will eventually learn that the union always insists on full compliance with its requests.

PRIVACY POLICIES

In discipline cases, unions often seek the personnel files of “comparable” employees, to discover whether disparate treatment was meted out. Employers sometimes respond by citing a “privacy policy” that requires a signed authorization from each such employee.

Unions should never accede to such demands. After all, many requests likely concern employees who are favorites of management and hostile to the union. Federal labor law is clear that a union must be allowed access to bargaining unit personnel files without the need for authorizations. Records must be provided even if the employee objects.

The only records for which authorizations can be demanded are those that reveal a medical or psychological disorder, an intelligence score, or some other highly sensitive personal information.

DON’T FORGET EMAILS

Whenever possible, demand correspondence between the employer and involved parties such as government agencies, contractors, investigators, and customers. In a grievance over contracting out, ask for correspondence from and to the subcontractor. In a grievance concerning a customer complaint, ask for all letters to and from the customer. Employers hate to disgorge correspondence and may settle a grievance to avoid it.

Whenever the union asks for correspondence, it should make clear that the request encompasses emails, texts, and voice mails. These records and other forms of correspondence must be provided unless they reveal company “trade secrets,” i.e., data that could be used by competitors. Even in such cases the employer must comply if the union agrees not to disseminate the information.

SUPERVISORS AND MANAGERS

Requests for the personnel files of higher-ups can unsettle an employer. Employers must provide such records when company rules apply throughout the workplace and the union has information that managers or supervisors have committed violations as well as bargaining unit members.

For example, consider a grievance for a worker fired for breaking the rule against threats and fighting—a rule that indisputably applies to all employees. Here is an appropriate request:

1. Please provide a list of each bargaining-unit and non-bargaining-unit employee, including supervisors and managers, known to have engaged in fights or threats over the past five years, including persons no longer working for the employer.

2. Please provide a copy of the personnel file of each such employee, including supervisors and managers, so the union can learn whether there was a distinction in treatment.

Labor lawyer Robert Schwartz is the author of the brand-new manual Just Cause: A Union Guide to Winning Discipline Cases. *Call 313-842-6262 to order.*

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