



What Unit Officers/ Stewards Need to Know About Past Practice

A past practice is any longstanding, frequent practice that is accepted and known by both union and management. Bona fide past practices are considered part of the contract, so grievances or charges can be filed if management violates them. Be sure to check your language that limits their use for grievances. In most cases management cannot end a past practice without first bargaining with the union. In some cases management must wait until contract negotiations to change a past practice.

There are 3 categories of past practice:

1. CONTRACT-CLARIFYING PAST PRACTICE is the strongest type. When contract language is vague or general, the practice clarifies the general language.

e.g. The contract language reads, "For many years the company has allowed stewards reasonable time off to attend union meetings and annual training." A practice clarifies and backs up what the contract means by *reasonable*. With a strong past practice, an employer must bargain to change it and cannot change it if the union doesn't agree.

2. INDEPENDENT PAST PRACTICE is not addressed by any contract language. Most often these are benefits that workers take for granted and so were not included in the contract.

e.g. There have always been vending machines in the cafeteria and free parking in the company lot. Management cannot just do away with these benefits.

Management can terminate independent past practices under 3 conditions:

- It can prove that there has been a significant change in the original conditions that started the practice.
- It can prove significant ongoing employee abuse of the practice.
- It notifies the union during contract negotiations that it will end the practice during the next contract.

Even in the first two situations, the employer must bargain with the union before ending the practice. Most arbitrators will not extend these past practices rights to work methods. e.g. Management wants workers to run 3 machines instead of 2, claiming new technology makes them easier to run. The union probably cannot claim it is a past practice that workers run only 2 machines. However, the union can demand that management bargain over a change in working conditions.

3. CONTRACT-CONFLICTING PAST PRACTICE is the hardest to prove with most arbitrators saying the contract should prevail. However, the arbitrator may rule in favor of practices that have existed for a long time, happen frequently, clearly conflict with the contract, and were clearly known to both parties.

e.g. The employer has never given union reps absentee points for attending union training, even though there are no such provisions in the contract. For 10 years, the union has notified management each time who would be attending. Although the practice conflicts with the contract, it probably would be considered valid. The employer must notify the union of its intent to end this type of past practice and must bargain if the union requests.

The tests for a valid past practice are:

- Has existed for a reasonably long time. The longer a practice has been in effect, the more weight it carries. Many arbitrators think that a practice must be 3 to 5 years old and must have been in practice during at least 2 contracts.
- Occurs repeatedly, the more times the better. An exception might occur around a holiday. If every year for 7 years management allows workers to go home early Christmas Eve, this could be a valid past practice.
- Is clear and consistent, repeated the same way each time. If there are minor deviations, there must be at least a predominant pattern of consistency. e.g. Management has always let workers accept personal phone calls. The union can document 100 times in the last 5 years. Management points out 3 occasions where workers were refused the right due to exceptional conditions. The overwhelming pattern favors the union.
- Must be known to both management and union. While a past practice does not have to be *negotiated*, it must be something that both parties know about. Sometimes it's not good enough for a low-level foreman to know, it must be higher management. According to the absentee program, they should receive one point, but the foreman never gives points for Friday. Upper management finds out and decides to give everybody warnings. Management did not inform the union that it wanted to change the practice. However, since upper management did not know about this practice, it would be hard to argue that workers could continue to leave work early every Friday.
- Must be accepted by both management and union. Often the fact that a practice occurs frequently over a long period of time indicates that the parties agree to it. A practice that is openly agreed to by both parties gains past practice status quicker than one that is not openly accepted.

e.g. For many years workers have been allowed to line up at the clock after the first bell rings, signifying 5 minutes until quitting time. A new boss says no one can line up until the quitting bell rings. The union has a strong case; the fact that management never did anything to stop this practice indicates acceptance.

Article based on attorney Robert Schwartz' book, *How To Win Past Practice Grievances*

SPRING HAS FINALLY SPRUNG by Morici & Morici, LLP

As the warm weather is now upon us, residents are heating up for outdoor activities. As follows any increase in outdoor activities is the unfortunate inevitable increase in injuries due to these activities. MORICI & MORICI, LLP is here to inform members of their rights and responsibilities while enjoying another summer. What you read here might surprise you...



SLIDES & RIDES

Water parks, amusement parks and horseback riding; these activities are all exciting attractions for families to enjoy during the warm weather months. However, these attractions come with the inherent risks involved causing injuries every year. Generally speaking, New York Court's acknowledge certain "assumed risks" associated with such activities. These assumed risk activities are more commonly referred to as "at your own risk". However, recent developments in the law have resulted in there being a not so clear cut line as to which risks associated with an activity are really "at your own risk" and which are not. For instance, recent successful and unsuccessful cases pertaining to participant's injured while horseback riding have focused on whether the activity was classified as "instructional" or "recreational". Although these cases specific cases drew a line permitting or denying the right of recovery to the injured party, where that line is drawn in future cases is still not clear.

In addition to the above activities, recent cases have provided money awards for participants injured while playing sports such as softball and kickball in public parks. Even though these activities are accompanied by inherent risks, should it be found a condition in the park was a factor in causing the injury, the "assumed risk" can become overridden by the defective condition. As these warm weather activities and the unfortunate resulting injuries continue, the one sure thing is that the courts will continue to assess whether compensation to the injured party is appropriate on a case by case basis. Therefore, should an injury occur during this warm season's activities, it is imperative to reach out to MORICI & MORICI, LLP so that we can assess the situation and make sure your rights are protected! Initial consults are FREE for ALL union members.

OTHER WARM WEATHER CONSIDERATIONS

As the weather warms up, many residents are also preparing to tackle those home improvements they have been putting off. Many homeowners plan on completing these home improvements without the assistance of hiring a contractor. It is important for property owners to be aware of which home improvements require a building permit and which do not so as to avoid unnecessary fees and hassle after the home improvement has been completed. This is most relevant to the homeowner "fixing things up" in an attempt to sell their home. Any home improvement completed which requires a permit, and done so without one, will cause fees and delays during the sale due to issues passing "good title". Permits are likely needed for placement of a new fence on your property, building a deck in the backyard and even possibly for central air conditioning units and generators that are installed as fixtures attached to your home. The requirements for building permits can be set by the State, County, Town or Village. It is therefore important to contact the building department in your Town or Village so that you are aware of the requirements for your specific property before you get started.

WORKERS' COMPENSATION ALERT!!!

The Business Council of New York State is trying to have a number of bills considered as part of the state budget negotiations that would devastate benefits for injured workers. Among the bills are proposals to:

- Require the Board to adopt schedule loss of use guidelines that would significantly reduce or eliminate these awards for injured workers;
- Run the caps on permanent partial disability benefits retroactively to the date of the accident, and make any weekly benefits previously paid in excess of the permanent disability rate an overpayment to be recouped by the carrier;
- Expand the PPO (employer-managed care) opt-out period from 30 days to 120 days.

The Business Council has been actively lobbying both houses of the Legislature (and presumably the Governor's office) in support of these bills. We need to show our elected officials that these bills do not have the support of the public.

Please see the petition at the below link and distribute widely to all who are concerned about working people.

http://petitions.moveon.org/sign/oppose-the-business-council?source=c.em&r_by=15294694

UPSEU MEMBER BENEFITS AND UPDATES



HealthCare Assistance with Member Support, LLC, (HCAMS) provides services to individuals with substance abuse and other behavioral health problems that are affecting their work, health and/or personal lives. Our services include assessment, intervention, treatment referrals and placement, case management, and recovery advocacy. www.unionsupport.org

EMPLOYEE SIGNS AND SYMPTOMS

- Low productivity, carelessness, takes needless risks
- Poor concentration - deteriorating work habits
- Unexplained absenteeism, persistent tardiness, inappropriate use of FMLA, disregards consequences
- Interpersonal problems on the job, inability to get along with co-workers/supervisors
- Outbursts, anger management issues and/or aggression
- Avoidance and isolating at work (i.e. excessively long lunch breaks)
- Higher than average accident rate and Worker's Compensation claims
- Inconsistent work quality, frequent mistakes, blames others for poor performance
- Inappropriate conversation about personal problems at work, unpaid loans from co-workers
- Conduct unbecoming of an employee
- Off-duty conduct: DUI, Domestic Abuse, other arrests

A SINGLE CALL TO OUR TOLL-FREE HOTLINE 888-828-7826 CONNECTS YOU WITH A CARE SERVICE PROVIDER WHO CAN:

Access a network of treatment providers to meet an individual or family's needs, no matter what level of care is needed.

Assist those in crisis through education, intervention, guidance, and job protection while case managing and protecting their jobs until they are able to return to work "fit for duty."

Advocate for insurance by providing you with information on the best resources based on your insurance and assist individuals in securing the proper level of care.

Work with your Labor Relations Representative to provide an alternate medical legal defense if you are being disciplined on the job.

Advocate for alternative sentencing if legal issues arise.

On November 7th there will be a Ballot Question on the New York General Election Ballot, "Shall there be a convention to revise the NYS constitution and amend same?"

How could a NYS Constitutional Convention affect you and your family?

A vote in favor of the Constitutional Convention means you could lose:

- **Protection of your PUBLIC PENSION**
- **Protection of your PRIVATE PENSION**
- **Protection of your PUBLIC PARKLANDS and DRINKING WATER**
- **Protection of your HEALTH INSURANCE**
- **Protection of WORKERS' COMPENSATION RIGHTS**
- **Protection of your PUBLIC LIBRARIES**
- **Protection of a UNION'S RIGHT to ORGANIZE**
- **Protection of RIGHTS under the CRIMINAL PROCEDURE LAW**
- **Protection of PUBLIC SCHOOL FUNDING**

Vote NO Constitutional Convention on November 7th



The Steward's Toolkit

- Notebook and a pen
- Calendar
- Copy of your union contract
- Copy of your employer's worker handbook, if any
- Grievance forms
- Grievance fact sheets
- List of unit members and contact information
- Seniority lists, as appropriate
- List of non members
- Union membership sign-up forms
- Copies of your local newsletter
- Names and contact information for unit officers
- Employee Assistance Program information, if any
- Listing of member benefit programs

Ward off Heart Attacks: Take a Vacation

With summer almost here, it's time to put vacation days on your calendar. A 20 year study shows that men who took frequent vacations were a third less likely to die of heart attacks. Women cut their risk of heart attack in half just by taking two vacations a year.

Here's how to slow down and take a vacation this year:

1. REMEMBER: Skipping on vacation won't boost your career.
If you're a steward or officer, it's especially important that you lead by example and take time off. You and those around you will see the payoff: **rejuvenation**.
2. SQUEEZE IN SHORTER, MORE FREQUENT GETAWAYS.
If your workload is at its peak, schedule a handful of three or four day weekends.
3. NAIL IT DOWN: WRITE IT DOWN.
Many members find that if they don't plan a vacation at the beginning of the year, it won't happen. If you must postpone a planned vacation because of urgent work, set another date for the holiday immediately and write it on your calendar.
4. GET PASSIONATE ABOUT SOMETHING THAT'S NOT WORK.
You're more likely to take time off if you have an interest outside the office.

Adapted from "A Healthy New Year's Resolution: Take a Vacation," by Anne Fisher



**July 1st in the Deadline
for UPSEU Scholarship Applications!**
Applications are available on our website
at www.upseu.org

If you are registered on our website, you may fill in the application online.