

## Insubordination - 10 Questions to Ask

Insubordination is one of the most difficult issues for all shop stewards to handle. Many contracts say in clear language that an employee can be disciplined and discharged for insubordination.

For employers, it is considered a capital offense, right up there with theft and violence. That is why arbitrators hold for almost every disciplinary case involving insubordination the rule is "obey now, grieve later."

But in the heat of an argument or in situations where a member may be provoked beyond all common sense, the thought of filing a grievance over the issue is just not there.

Insubordination is usually defined as the failure by an employee to perform a task or comply with an order given to him or her by a supervisor. An arbitrator usually looks at an employee's compliance with a reasonable order as basic to the conduct of the employer's business. Arbitrators take this issue seriously and consider it a major infraction beyond the rules of progressive discipline.

Simply put, refuse a reasonable order and you can be discharged.

There are a number of issues that must be taken into consideration in any insubordination case.

1. Was the employee given a direct order? Instructions, suggestions, or advice are not the same as a direct order. A smart supervisor will say, "I am giving you a direct order to complete that job."

2. Was the member aware that she was given a direct order? A member may not have understood that the

language used by the supervisor was a direct order.

3. Was the language clear so that no reasonable person could have misunderstood it?

4. Was the order audible? Many of our members work in very noisy locations.

5. Was the member given forewarning of the consequence of a refusal to follow the order? A smart supervisor will use words that clearly indicate a disciplinary consequence will follow the refusal to obey the order: "If you do not comply with my order, I will take you out of service."

6. Did the employee willfully disobey or disregard the order? Most cases demand that the refusal to follow an order be willful. A member may say that a supervisor provoked him -- by abusive language for example. If a member comes to you with that kind of defense, dig down deep to find out why. In most cases, provocation is viewed by an arbitrator as a way of lessening the discipline, but not overturning it. Discipline could be overturned if the language used was racist or anti-union.

7. Was there an ongoing dispute between supervisor and member? If this can be documented over a period of time, the issue may be harassment. But to prove harassment, you need clear documentation from the member of instances where and when she was picked on.

8. Was the supervisor being unreasonable? The supervisor may have had a tough deadline to meet for production and a small incident sets him off.

9. Did the order violate the contract, work rules, past practice, past arbitration decisions, or the law?

10. Did the member feel that complying with the order would endanger herself and her coworkers? The right to refuse dangerous work is upheld by the Occupational Safety and Health Act. You must make your members aware whether this language or a similar state statute covers them. If the work is unsafe, a member must report it and ask that it be made safe. Rather than an outright refusal, safer language might be, "I will comply with your request when the unsafe condition is corrected."

Remember, a shop steward's conduct is legally protected when he acts in his union role. If he gets into a shouting match with the supervisor at a grievance meeting, his conduct in most instances is not insubordinate.

As a shop steward, you need to thoroughly investigate all charges of insubordination. In certain cases, you may be able to lessen the punishment, particularly if the employer is inconsistent in applying standards of behavior. But that means your local needs to keep excellent records. Also, a good work record may mitigate punishment in borderline insubordination cases.

The bottom line is that you must tell all members never to refuse a properly worded direct order. Check with the union before considering disobeying the order, even those health and safety orders. Remember, a member can safely obey most orders and grieve later.