



Happy Valentine's Day:

Dealing with Romance in the Workplace



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SEW I've chosen UNION!

Love, Union Style

As Valentine's Day approaches, I have the unromantic duty to throw a little caution on any existing or anticipated workplace romances. Although all love involves some danger and complication, love at work often means navigating a minefield of work regulations, employment law, union rules and gender issues, as well as the usual manners and feelings.

Since most of us spend roughly one-third of our lives at work, it's not too surprising that romance flourishes there. Statistics aren't precise, but it seems that half of us have dated a co-worker at least once. Even more impressive: According to most surveys, some 30 percent of all relationships start at work. There don't seem to be any surveys about unionized vs. non-union workplaces, but there's no reason to think they're very different.

I come to you as an authority: Twenty-eight years ago, I began a relationship at the union office in which we both worked. The resulting storm ended with us both leaving the job. Outcome: we're still married.

While you, too, may have a happy outcome, it's by no means assured. So, it's good to be aware of those rules that exist and of your own obligations. Plus, any role the union can play in helping you if you encounter workplace difficulties.

Let's look at company policies, civil laws, harassment and unions.

COMPANY POLICIES

Policies can be strict, but most are vague; enforcement is haphazard; and workers tend to find ways around most rules anyway. After all, in what other area of life would we accept rules that determine who we can date or love?

The courts have generally decided that employers can prohibit employees from dating one another with some exceptions.

A human resources newsletter, *HR Daily Advisor*, noted:

■ Some employers only prohibit relationships where one partner has authority over the other, thereby minimizing risks without prohibiting dating altogether.

■ Another policy some employers opt for is prohibiting couples from working together directly, such as in the same department.

■ Other employers seek only to discourage dating, not ban it. "The problem, however, is that in the absence of a specific ban, what does the policy actually do? (Answer: Not much.)"

■ And some employers simply require disclosure of relationships, and require that couples sign acknowledgements stating that they will act professionally. However, some authorities think prohibiting dating is the wrong way to go. "Frederick S. Lane III, author of *The Naked Employee*, ... argues that co-worker couples spend more time at work, take fewer sick days, and are less likely to quit," Zenefits correspondent Sprout writes.

Whatever you think, though, it's on you to find out what workplace rules are.

LAWS

Employers are driven to enact rules that will ensure them the least amount of friction in the workplace. They foresee bad breakups (which certainly do occur) resulting in one or both of the employees wanting to leave the department or the company. This may cost employers the training they paid for; also, turnover is expensive.

However, some courts have found that strict rules against dating have exceeded rulings on personal privacy. This particularly applies to actions by adults outside the workplace.

In the US, perhaps the clearest rulings have come from the California Supreme Court, where the principles of constitutional privacy apply to both private employers and the government. However, even this principle has not resulted in clear-cut limits on employers—or guidelines for workers. Protections in Canada

are similar though, as is generally the case, stronger for workers. Most relationships are permitted, with exceptions for superiors who date subordinates.

One area where there are rulings, though, regards actual and possible favoritism that can result from workplace relationships. Claims have been brought by workers not in the romance who see favors granted, especially to women, in relationships with supervisors or managers. However, it's usually on the plaintiff to prove a "widespread" problem.

LOVE, HARASSMENT AND UNIONS

Unless you've been hiding from news and social media for the last several months, you're aware that sexual harassment by men in authority is a top concern. And it should be.

What may be romantic advances by one worker can be harassment to another. Although workers of equal status can, and do, harass others, it becomes particularly disturbing when it's between supervisor and subordinate. While publicized cases can provoke outrage, too few people see this as both a workplace and a labor issue.

Writer Judith Levine explored this recently in an article entitled *#ThemToo*. She wrote:

"As women become more equal as women, their rights and the power of the institutions that represent them as workers are progressively being overtaken by the prerogatives of employers and corporations. The result: it is every woman for herself, which means only a few women prevail."

That means that where unions exist, they should be out front on this important issue. It's upon us as stewards, as trade unionists and as decent human beings to a) set a good example and b) call out harassing behavior when we see it. (Helpful advice for how to do this, as a steward, is in the last edition of this publication, and online at www.unionist.com.) And that means harassment even if it comes from union members and, above all, officials.

As Levine said, "Yes, women and men both have to speak up against sexual harassment. But there's only one way to end it: don't tweet, organize."

Oh, and have a nice Valentine's Day.

—Alec Dubro. The writer is a veteran labor communicator based in Washington, D.C.

U.S. SUPREME COURT CASE: A THREAT TO WORKERS AND COMMUNITIES

Unions are all abuzz with talk about the Supreme Court case *Janus v. AFSCME*. I know it all sounds so dry and bureaucratic. But take a closer look and you will see that *Janus*, which pits a single state employee—backed by anti-union groups—against a public workers union, threatens countless Americans.

The case argues whether unions can collect dues from all the workers who enjoy union benefits like fair salaries and safe working conditions—or whether some workers can get a free ride. Without dues, unions would be less able to protect workers—including teachers, police officers, firefighters, custodians, bus drivers, cafeteria workers, college professors and city clerks, all of whom serve the public. So it's about more than dues. It's about people. People in public sector jobs.

Many of those people are black. In fact, about 20 percent of black people work in the public sector.

If you care about black people, you should care about *Janus*. If you care about salaries and wages in a public school district, you should care about *Janus*. And if you care about quality education, you should care about *Janus*.

This case is about stripping public sector workers of their voice. It's also about stripping them of their wages and opportunity to achieve the American dream.

If the Supreme Court rules against AFSCME (the American Federation of State, County and Municipal Employees), those likely to take the brunt of the blow will be black people. Black civil servants.

For so many people of color, the public sector has been the safest workplace from discrimination. And for many of us, and our parents and family members, public sector work has also been a vehicle of social mobility. It has given us the opportunity to have quality healthcare, a pension and some money on the side to enroll our children in the activities that

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make them more whole and well-rounded. A loss in this case would rob us and our families and friends of our vehicle for social mobility.

In addition to that, when wages are up for government employees, wages are up for all black people. We are years past the so-called end of the recession, but black wealth has not returned, and it is not growing the way it has in other communities. A big reason for this is the assault on public workers. Our friends in right-to-work states know this all too well.

You may have heard the phrase “a rising tide lifts all boats.” Well, a union wage lifts all wages. So even nonunion members should care about *Janus*.

I also worry about how a loss in this case would harm public education. Teachers unions work to ensure that those who educate our children have the proper and necessary training, because when the requirements to be a teacher are too lax, we see ill-prepared teachers in the classroom. Fairly negotiated contracts with unions and school boards aren't just for the teachers' protection. They're also for the students.

We can't claim that education is the pathway out of poverty and then put teachers in front of our students unequipped to do the job. A *Janus* loss would ultimately rob teachers of their strength in collective bargaining and allow under-qualified, lower-wage teachers to stand before our students. We've seen that movie before, and it doesn't end well for us or for our children.

The American Federation of Teachers represents not only teachers but also paraprofessionals, bus drivers, cafeteria workers and custodians. We represent public college professors and staff, state and municipal workers, and public health-care workers like nurses, lab technicians, addiction counselors and social workers. The AFT supports all these workers and, by extension, supports and celebrates countless people of color in the workplace.

For all those people, the union must remain strong, especially in the face of *Janus*. Whatever happens, our collective voice must continue to ring out.

—Marietta English is the president of the Baltimore Teachers Union and AFT-Maryland, and is an AFT vice president.

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For more background and analysis about the *Janus* case, visit www.unionist.com/janus

The Most Famous Union Grievance in the Country



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Alternative Approaches to Discipline

Sometimes a worker is guilty as charged and even the greatest steward in the world can't prove otherwise. But if the steward has good negotiating skills, the worker in question has an otherwise clean record, and the employer is reasonable, it still may be possible to help. There are two methods worth trying, called "limbo" and "conditional discharge."

LIVING IN LIMBO

Limbo is effective for first-time verbal or written warnings where there's been no previous history of the conduct or behavior and the employee has a good record. It can also be used in other situations.

To start, union and employer agree the purpose of the discipline was to "wake up" the worker to change the behavior, not permanently damage or punish.

Next, an agreement is put into writing stating the discipline will be temporarily removed from the file and the member's record under the following conditions:

1 Paperwork supporting the discipline, and the discipline itself, will be held in a special employer file for a period not to exceed normal contract limits for active discipline, or some other agreed-upon date. At the same time, all references leading up to and including the discipline will be purged from all of the worker's files.

2 If, by the time the agreed-upon date is reached, there has been no repeat of the conduct or behavior, the discipline will "die a natural death" in the special file and the paperwork will be destroyed. It will never be considered as having been a part of the employee's record or having ever occurred.

3 If, before the expiration date, the behavior or conduct is repeated, then the original discipline and documentation comes back into the file but both sides agree it will not be grieved. The employer

can impose the next step of discipline for the repeat behavior/conduct, with the understanding the union can grieve it.

The basic idea behind this limbo method is that it's not productive to argue about whether or not a verbal or written warning was appropriate or will change a member's behavior or conduct, because labor and management simply cannot predict the future -- only the worker can determine what happens down the road. Using the limbo alternative can result in positively refocusing the traditional labor-management "blame and shame game" by empowering the member to take control of the future with an opportunity to correct the past. For management, especially, it's a way to motivate a potentially valuable long-term employee.

CONDITIONAL DISCHARGE

The other method, used in termination situations, is conditional discharge. It doesn't change termination but it does provide a process for the member's possible return. Although it can be used in different circumstances, its primary use has been in cases involving substance abuse and off-duty criminal behavior.

First, let's consider the off-duty criminal charge.

In such situations, both sides can waste a lot of time in the grievance process playing criminal court and trying to predict the outcome of a trial. Under conditional discharge, however, the member, although temporarily discharged, can be re-instated under the following conditions: The grievance process is suspended with the parties agreeing the outcome of original criminal charges will resolve the grievance as follows: (1) either the withdrawal or acquittal of the original arresting charges will result in a return to full employment with the member made 100 percent whole, or, (2), should the member be found guilty of the original criminal charges, or accept a plea bargain, the

union will either not file the grievance or will withdraw it.

In substance abuse cases the conditions for reinstatement can be as follows:

- The member can be eligible for employment after demonstrating three things: successful completion and long-term maintenance of rehabilitation; successful long-term maintenance of employment with another employer, and documentation about the member's success from counselors and others in support systems.
- After being determined eligible for employment the member is free to apply, and management agrees to consider the application without any prejudice.
- If the member is selected for a position he will be on probation for a period greater than the contract normally allows, to be agreed upon in advance by the parties, and so stated in the conditional discharge.
- At the successful end of the probationary period the employee is to be completely reinstated and made 100 percent whole as if he never left the company, and the discharge is purged from all records. Again, this is a way the employer can bring back, with confidence, a trained, veteran worker.

In summary, the next time it looks like the employer is holding all the cards, you may want to see if he'll consider one of these approaches. They have the potential to help co-workers who find themselves in hot water, and to help employers motivate and keep skilled employees who made mistakes but proved they had mended their ways.

—Bob Oberstein. The writer has been a professor at Ottawa University, Phoenix, Arizona, where he taught arbitration and labor/employment law and related subjects. He has also served as an arbitrator, mediator and fact-finder.

May 8 -11, 2018

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What if?

ANSWERS TO SOME OF A NEW STEWARD'S MOST COMMON "WHAT IF?" QUESTIONS

Internet users are familiar with the term “FAQ,” which stands for Frequently Asked Questions: questions about a service, a product, a way of handling a computer task. Union stewards—especially new ones—have a lot of Frequently Asked Questions as well, especially when it comes to handling grievances. Those questions usually start with the old familiar “What if...” This article offers ten classic What ifs. Maybe the answers can make life a little easier for you.

WHAT IF

... the grievant reveals a fact in the grievance meeting that I didn't know about?

Call a caucus and find out what it's about. Good interviewing can help prevent this, but it happens to every steward at some point. When you meet with the worker before going into the grievance meeting, always ask, “Is there anything else I should know?”

... I can't make a full investigation within the time limits to determine if a complaint is a grievance?

File the grievance and continue your investigation. The union can always withdraw the grievance at any time if you find it shouldn't be pursued.

... I goof up at the first step?

You'll have another chance at the second step—and you'll have time to discuss the case with other stewards or union staff to help you do a better job.

... a worker's rights have been violated, but he or she does not want to file a grievance?

Fear is a very real feeling in the workplace today and a steward needs to assure members that the union—their co-workers—will support them. Remember, though, “an injury to one is an injury to

all” and we have the responsibility to make sure the contract is enforced and workers' rights are not violated. If filing a grievance is necessary, but a member is not willing to come forward, it can be filed as a “union grievance.” Letting violations pass without some kind of union action weakens the union and encourages the employer to single out other fearful workers.

... a worker is violating the contract or otherwise doing something that will get him or her in trouble?

Consider talking with the worker privately, or ask a friend of the worker to discuss the issue with him or her. Your role is not to be a “police officer” but rather that of a union leader concerned that the worker will be disciplined and the union will be the weaker for it.

... a worker's complaint is not a valid grievance?

First, make sure it's not a grievance. Remember, valid grievances can include unfairnesses that are not contract violations. If it's really not valid, explain this honestly to the grievant, but it can be better to fight it anyway. It's often better to have the boss say “no” than the union. There are some grievances—complaints about other workers; grievances that, if won, would harm the general membership; or particularly outrageous claims—that should not be fought. Telling people honestly when they are simply wrong is part of the steward's job. This should rarely happen, but if there is any doubt, you must begin by assuming that our people are right and the boss is wrong!

... management interviews and disciplines a worker without the presence of a steward?

Under a 1975 U.S. Supreme Court decision, a worker has the right to request

union representation when the worker reasonably believes that disciplinary action may result from a meeting with management. This protection is known as “Weingarten Rights.” It's the same in Canada. However, it is up to the worker to request the steward or union officer: the employer is under no obligation to inform the worker of his or her rights. It is important for you to tell workers you represent about this right. Your union officers can give you more information.

... a nonmember asks me to handle his or her grievance?

You must handle it just as you would handle a member's grievance. Under law, the union must represent everyone in the bargaining unit fairly, without discrimination or hostility. This is known as the “Duty of Fair Representation.” It gives you an opportunity to show the nonmember rank-and-file unionism in action—and he or she may reconsider joining.

... there is a provision in the contract about scheduling that you are getting a lot of complaints about? You investigate, but there doesn't seem to be a violation of the agreement: management seems to be right on this one.

Put the boss on notice that this is a problem and figure out some ways for the members to let the boss know why they don't like it. He or she may be willing to work it out. If there's an element of unfair treatment involved, you may be able to pursue the problem under the contract's union recognition clause. Better yet, look at ways you can use the collective power of your co-workers to settle the grievance.

—Adapted with thanks from the *Steward Handbook of the United Electrical, Radio & Machine Workers of America.*

MAKING OPEIU A PART OF EVERY BARGAINING UNIT EMPLOYEE'S WORK LIFE

Remind Your Co-Workers Why Being an OPEIU Member is a Small Investment with a Great Impact!

If you're getting this newsletter, you already know why it's a good move to be a member of the union. Our challenge is to get others to join too so we can be bigger, stronger and accomplish more for members and the community. These days, that's no small task. But there are a few things you can do to get a discussion going, educate people and show your pride!

✓ **BUSINESS CARDS.** All stewards and communication and outreach committee members should have business cards with your name and contact information. On the back, put the Weingarten Rights wording so everyone knows their right to representation. This goes for non-union people too.

✓ **BULLETIN BOARDS.** Most OPEIU contracts have the right to post on bulletin boards at the

workplace. Put a nice "OPEIU" on it in big letters – or better yet, include the OPEIU logo – and union contact information and keep it updated with announcements about meetings, activities and important language from the contract (such as overtime and scheduling language, benefits bargained by the union, etc.). If it's a community bulletin board, you are allowed to use it for union business. If someone can advertise selling a car, you can advertise the union!

✓ **BUTTONS, T-SHIRTS AND CAPS.** Show your colors! In general, if the dress code or practice allows you to wear paraphernalia advertising a sports team, you may wear union items. Get a union hoodie or sweater to keep on your chair at work, order lapel buttons from the International, get lanyards with the local name for ID cards.

✓ **SOCIAL MEDIA.** Learn how to set up a Facebook page, Twitter, Instagram and other social media accounts to post pictures and activities of the local union members and leaders. Keep it updated, showing everyday involvement in rallies, work activities, charitable work, etc.

✓ **COMMUNITY ACTIVITY.** Get involved as a union in local community activities such as social justice issues, low-income organizing, food banks, etc. Ask members who are already active to wear their union gear when participating.

Finally, ask others to get involved doing these things. It's a small investment in building our union.



AFL-CIO, CLC