

The Recognition Clause: A Secret Weapon

Ever have a boss throw a grievance back in your face with the happy words: "Forget it, it's not covered in the contract. You haven't got a leg to stand on"?

Even worse than hearing those words is seeing a steward accept this decision and fail to pursue justice on a reasonable issue.

The fact is that there may well be a way to get your grievance up and running when it appears that the situation is not covered by any specific contract language. Consider using the recognition clause (sometimes called recognition agreement or article). Frequently the first article of every contract, the recognition clause is often unknown, or at least unappreciated, even by the most experienced union representatives who pride themselves on knowing every word of the contract.

Incredibly Important

The recognition clause is incredibly important because it covers every situation in, around or related to the workplace. Usually the language is deceptively simple, reading that *"the Union is recognized as the sole and exclusive collective bargaining representative (or agent) for the purposes of collective bargaining in regards to wages, hours and all other terms and conditions of employment."*

What are "all other terms and conditions of employment"? Just like it says: everything at, around or relating to the workplace. "Terms and conditions of employment" cover the hundreds of situations that arise every day in the unionized workplace. Some of the situations are *specifically* covered by the contract, some are *generally* covered by the contract and some are not even *mentioned* in the contract. That's the beauty of the recognition clause — it covers everything.

Understanding the recognition clause is especially important because management always tries to extend its control of its workers and its workplace, almost trying to put people under a kind of 24-hour surveillance. There are an increasing number of grievances, for example, concerning "off-duty misconduct" — that is, a worker does something away from the workplace, which may (or may not) be related to something or someone at work, and management tries to enforce discipline. Usually the boss uses the "management rights" clause as a right under the contract to take this action.

Well, the recognition clause is the union's opportunity to do something similar — to raise any issue as a grievance, whether it's specifically covered by the contract or not.

Once upon a time, a union had only a recognition clause and had to organize to fight on various issues, leaving both opportunity and difficulties for the membership. For example, the original national agreement between the United Auto Workers and General Motors was little more than a recognition clause and a commitment to start bargaining. This single sheet of paper covered 17 different GM facilities and more than 100,000 workers and was language good enough to launch the UAW in the automobile industry.

The recognition clause is especially helpful when you are trying to resolve a grievance that falls under the category of "just plain unfair" or when you are working through an issue that has come into the workplace since the contract was negotiated — introduction of a new piece of equipment or a new task, for example, or even new ownership.

The recognition clause gives the union the legal right, both by contract and by law, to pursue *any issue* affecting the bargaining unit workers. It is so broad that it lends itself to group grievances, which are helpful in pushing a "just plain unfair" grievance, by getting many members involved in the particular issue.

Unwelcome Surprise

For supervisors, used to a strict interpretation of the contract, the union's use of the recognition article will be an unwelcome surprise. Many employers hide behind the management rights clause as something that is supposed to cover, in the boss's favor, anything that is not specifically addressed in the contract. In fact, the recognition clause is the antidote to management rights. It could well be called *union* rights.

Employers and unions understand that a contract cannot specifically cover all possible incidents in a workplace. Words like "reasonable" and "every best effort" are sprinkled through various articles, and both sides understanding that these are open to future interpretation.

Employers fight this use of the recognition clause, but it's frequently used with great success. Example: a critical case for the Communications Workers of America,

when arbitrator Glen M. Bendixsen ruled emphatically in the union's favor in a case involving the assignment of work at AT&T.

New technology led to "new work" at the company. AT&T assigned to management some work the union claimed had "contractually and historically" been assigned to its members. Citing their contract's recognition clause, CWA claimed the work and the arbitrator agreed. The article specified that CWA is "the exclusive representative for those employees whose job titles were listed in the contract" and for those workers holding new job titles created under the contract.

Strong Order

And using the same clause, Bendixsen directed the parties to negotiate over new work and told AT&T to provide necessary information to the union. These are two areas normally associated in the private sector with "refusal to bargain" charges through the National Labor Relations Board.

For stewards, however, this award offered a mixed lesson. While the arbitrator provided a "win" for the union, his remedy was only a "cease and desist," with no money awarded for back pay or lost work. More important, the original grievance was filed in 1994 and the arbitrator's award was issued in August 1998. So the violation continued for four years and the workers received no back pay. The point: win your fights by pressuring management whenever possible, not by filing grievances. Avoid arbitration if you can.

Stewards should use the recognition clause when filing an initial grievance. It is always recommended that a grievance refer to as many articles as possible in the contract, always using language like "including Articles such-and-such . . ." to make sure that every angle is covered and that nothing is omitted that might be helpful later on. The best course is to also refer to the recognition article as one of these clauses. "The Employer has violated the contract, including the recognition article . . ." The recognition clause is the door that opens all of the other articles of the contract, and gives the union the right to raise as a grievance anything that happens around the workplace.

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