

The Company Rulebook

It's your first day with the company and you are sitting at orientation. You are handed all sorts of forms to fill out—a W-2, I-9—and then you are handed a 70-page company policy book that you sign for. You sign a receipt, hand it in with all the other paperwork, bring it home, and throw it in the corner and forget about it.

A year later, you are called into the supervisor's office and charged with a rule violation. The manager pulls out that very same signed receipt and asks if you ever read the book you signed for. That may begin your personal experience with the process of rule enforcement.

The employer will always argue they have the right to establish rules and they will point to the management rights clause in the labor-management contract to justify their action. While we don't deny that right, we will always reserve the right to challenge that rule. That challenge usually occurs when one of our members is charged with a rule violation. Let's look at how the rules can be challenged:

1. Is the rule worded in a clear manner? "Excessive absences will not be tolerated" is open to wide interpretation. Most contracts and rulebooks spell out the attendance policy in detail including an explanation of the policy, what is expected of the employee, and what the penalties will be for violating the rule. Vague language when enforced should be challenged.

2. Was there proper notification of the new or revised rule? Did the company notify its employees that there was a new rule, revised rule, or reinstatement of a lapsed rule? When the company handed out new safety vests to its employees, it should have specified under what circumstances the vests should be worn. The rule could have been announced when the vests were distributed, handed out with the vest, posted for everyone to see and

then added to the rulebook. That would have fulfilled the proper notification requirement.

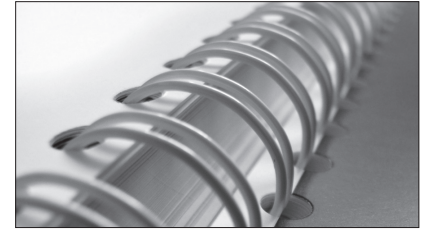
3. Does the rule cause undue hardship for some workers? Rules cannot be issued in the abstract. They must have reasonable application in the specific workplace. A 15-minute break may be fine but when it takes 10 minutes to walk each way to the bathroom or canteen for workers in the paint shop who are in a different part of the facility than other workers, the rule can be penalizing for those workers.

4. Is the rule applied in an even-handed manner? The rule applies to everyone and cannot be enforced selectively with certain groups of workers and not others. If there is a no smoking rule in the facility, it must be applied to everyone on all shifts. Also, if one member is given a written warning while another is given a 3-day suspension for the same infraction and both have similar work records, the union might be able to charge the company with disparate treatment.

5. Did the company speak with the union before imposing or changing the rule? Even if some rules are not subject to mandatory bargaining, the union must get notification and have some input because the rule could affect negotiated working conditions. You won't know unless the union is notified of the rule or rule change and gets a chance to talk about it.

6. When the company charged the employee with the rule violation, did the company follow due process? Was the member given a fair hearing, access to a steward, and treated innocent of the alleged infraction until the hearing process was finished?

7. When discipline was assessed (in a non-major charge), was it progressive in nature? Was the member, for exam-



ple, given a verbal warning followed by a written warning, suspension, and finally discharge? There are exceptions to this process such as if the member is charged with theft or violence. Also, the union and company may have negotiated their own disciplinary procedure including penalties. The key is whether the procedure is followed.

8. Did the company actually prove that the member was guilty of the alleged infraction? This part of the hearing is crucial since the company controls the process. It is not enough for the company to say the employee did what she was charged with. It must be proved with evidence. Hearsay evidence is not admissible and you should object to its use. Insist that the supervisor who submitted the written statement be brought in for questioning.

9. Are there mitigating or extenuating circumstances? Even though the member has admitted breaking the rule, does she have family problems that caused it? A good work record or years of service can lessen the penalty.

10. Is the rule even needed? Arbitrators have used the expression, "Is the rule reasonably related to the efficient conduct of the employer's business?" An outdated appearance rule—no mustaches or beards—should be dropped if it no longer has any bearing on the business. When a member is charged with an outdated rule, you should argue that it no longer has any bearing on the conduct of the business.

Again, the company can issue rules, but there are ways the union can challenge them through the enforcement process.