



A Report to the New York State Professional Fire Fighters
on the
Labor Leadership Skills Bootcamp
at
The Worker Institute at Cornell

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Introduction

At our September 2016 NYSPFFA board meeting, your executive board created a program to deliver new educational resources to all of our members. Under this plan, board members can attend programs relevant to the needs of our organization and its members, under the condition that we then produce a thorough written report to be distributed for the benefit of the association. This is the first such report.

How Was It?

In general, the ILR Labor Leadership Skills Bootcamp is excellent. Heavily focused on role playing in mock scenarios, it is a great training ground to push one's boundaries in several key union leadership areas, including negotiations, presentations, and representation (stewardship).

On the other hand, since it consists primarily of hands-on experiential learning, it's hard to transmit in written form. They don't just lecture about negotiating; they give you the keys, and then send you out into small rooms to actually negotiate against "management". They don't give a long talk about presenting; they give you the keys, and then have you give a presentation to a live audience, on video, followed by a critique.

Is It Similar to Previous NYSPFFA Labor Law Seminars?

One key difference is that Labor Law is only one of four components; the others being Communication, Negotiations, and Costing a Contract. To compare apples-to-apples, let's just consider the Labor Law segment (they called it "Representation"). It was a mix of general principles, practical scenarios, and freewheeling discussion, with a smattering of relevant union history. It seems as if it could certainly make a great addition to our curriculum. It could also quite easily stand on its own if our members would find this focus/format more valuable. Finally, they offer [a 3-week public sector course](#) which might be adaptable into a shorter format for us. We are in communications with the staff to explore that possibility. Overall, they seemed willing and able to customize their extensive materials for the needs of a particular organization.

Who Should Attend?

The mix of high-level overview and hands-on, as well as the breadth of topics, makes this course most appropriate and helpful for new union leaders. That said, there are probably few of us who would not find value here.

How Do I Sign Up?

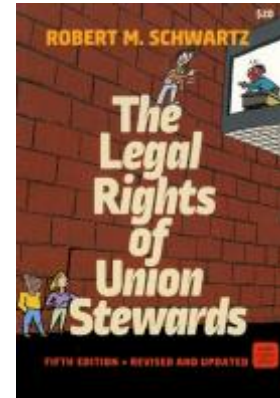
[According to their website](#), no future dates have been scheduled yet, but they do offer "customized delivery to your organization".

How Do I Learn More?

This document is a collection of notes that hopefully gives a taste for how many rights and options we have, which are protected by labor law, but often unknown and unutilized.

Here are a few resources for follow up:

- I believe that every union leader should read [The Legal Rights of Union Stewards](#) by union attorney [Robert M. Schwartz](#). It offers a great perspective on how many – often unknown and unutilized – rights we have. One word of caution: since the book was written for the private sector, one has to be careful adapting to the special rules we face the public sector. For example, anything declared a “work stoppage” can really jam you up, and you’d be surprised what a court might consider one (e.g. teachers refusing to continue *volunteer* bus duty).
- Download the course materials (handouts, excel spreadsheets) [here](#).
- Check out [these PowerPoints from ILR’s public sector labor course](#), which they threw in for free.



I hope you’ve found this report valuable. Please feel free to reach out if I can provide any more information!

A handwritten signature in black ink, appearing to be 'Sen'.

Representation (Stewards)

Solidarity

Member support is the most important worker protection, second to the contract, with legal remedies only a last resort.

Equality Principle - A Source of Rights and Protections

When representing employees, stewards (those acting in the capacity regardless of whether they are called “stewards”), are considered to be equals with management. More generally, everyone must be treated equally. The employer must treat all employees equally, just as the union must treat all members equally. Management may not:

- increase discipline after a grievance has been filed
- choose or prohibit union reps, including umbrella organizations, when meeting re mandatory subjects of negotiation
- expect more from a steward than any other employee
- intimidate or discourage employees from filing grievances

Work Now, Grieve Later

- Refusing work is only protected if the order is unethical, illegal, or immediately dangerous to life and limb.
- Example: If management had a pattern of interfering every time you're investigating, there would be a good shot at an IP, but not for individual cases where there was a valid reason e.g. they were particularly busy.

Weingarten Rights

If an employee is interviewed by management, and has a reasonable belief that discipline may result, they have the right to union representation on request, and can refuse to answer questions if denied.

- A “reasonable” period of time must be given to find a rep, which [“depends upon the circumstances of each individual situation. It may be as short as five minutes or as long as several days depending upon the situation”](#)
- [NYS CSL Section 75.2](#) (a different set of rights with different consequences) requires Written Notice of Right: “An employee who at the time of questioning appears to be a potential subject of disciplinary action shall have a right to representation by his or her certified or recognized employee organization under article fourteen of this chapter and shall be notified in advance, in writing, of such right.”

History

Initial PERB precedent was that public employees had the same Weingarten rights as private sector employees. In February 2007, the Court of Appeals [reversed this interpretation](#). A few months later, the Taylor Law was amended to explicitly add these rights ([§ 209-a\(g\)](#)).

Information Sharing

The employer (just like the union) is only entitled to relevant company documentation (e.g. you took a log book home), not the union's internal research. But if you go to arbitration, and submit a member interview as evidence, the arbitrator may request your notes.

Losing Emotional Control

While many situations are protected (cooling off, finger wagging, many insults), it brings you into a gray area of labor law, which is safer to avoid.

Prohibited Conduct

It is improper to disrupt work, threaten violence, or violate someone's civil rights (e.g. discrimination based on race, gender, sexual orientation).

Charging for Information Request Expenses

Usually they don't, but they can, and might if it's a particularly tough request (e.g. 1000 printed pages)

Signing Discipline Paperwork

Signing receipt does not mean you agree, but if they make you sign, putting "signed under protest" protects you and does not waive any rights.

Miscellaneous

- Once a grievance goes to arbitration (i.e. you're past previous steps and filed), you don't have to agree to more interviews; their investigation is over
- Union Issue T-shirts - you can wear to a grievance meeting and the company can't refuse to meet based on that.
- You see a member being interviewed by a supervisor, you have the right to interrupt the meeting and see if they feel anything they say could be used as discipline and they would like a union rep.
- Supervisors routinely bait union reps hoping they'll lose their cool or give up; expect and prepare for that.

- A union has the right to choose their representatives in meetings with management, including reps outside the bargaining unit, such as representatives from the parent union.

Grievances

- Try to resolve informally if possible. Filing a grievance should be your backup plan because official grievances immediately get passed up the chain of command and things get more complicated as the lawyers and top level managers get their eyes on them.
 - Especially for weak grievances
 - Document verbal agreements with follow-up notes, an email to the supervisor who made the agreement, etc.
 - Example: A supervisor routinely takes up time during lunch and break periods with work. The contract doesn't say breaks must be "uninterrupted". Initial tactics could be to tell them you're restarting your break, or put in for the overtime.
- Publicizing: exhaust all available remedies before you publicize e.g. informal resolution, grievance, Health and Safety Committee
- When one member has a complaint against another, you may have to represent both. For example:
 - Harassment is a workplace-safety issue for which you will represent the victim.
 - You must also make sure that if the accused member is disciplined, it is applied fairly, but don't go to the accused member and start asking questions because it will make things worse e.g. "Who ratted me out?"

Arbitration is No Silver Bullet

- An arbitrator's future employment depends on appearing neutral, so they have an incentive to pacify both sides, even if it isn't "fair".
- There is often a delay of months or years to get a final resolution.
- Financial
 - Is the benefit worth the cost?
 - Most unions argue the case themselves, so could be much more expensive for the employer.
- Precedent: Will the outcome create one? Or is this a one-time event?

Past Practices

- Careful: May be interpreted to amend or modify the contract.
- You only get one. Even if you win, they have now put you on notice that they no longer intend to continue the practice, so you have one year to negotiate a written agreement before you lose the benefit.

Collective Bargaining

- You're always gaining or losing. There is no such thing as standing still. Always be prepared with a goal to advance your members' interests. Have a plan; if you don't know why you're going into the meeting, don't go.
- The first thing you do at the bargaining table is settle all past grievances e.g. "We've been having a lot of problems with X, let's look at how to solve this."
- Anchor: Ideally, you want the other side to propose a number first; be ready for - and undistracted by - an extreme number designed to reframe the conversation in their favor.
- Contract Zone/Range: The area below the payer's maximum and the receiver's minimum. This is the range of possible agreements. An anchor pulls the conversation to a particular point in this zone.
- Interest-Based Bargaining / Problem Solving
 - Position (one possible solution) vs. Interest (what they really want)
 - Eliminate bad options based on objective criteria e.g. If you don't want to go to McDonald's to eat, the fact that you want wine and they don't serve it is objective, while "there's no atmosphere" is subjective.
- Ratification
 - Failure to organize your membership reduces your credibility with management and they may stop believing that you can deliver on what you say.
 - Educate (not "selling") the membership on why you agreed to each point.
- Information / Due Diligence Requests: Blame it on an outside agent e.g. "Of course we trust you, but we have to justify and explain this to our members when we come back, so we're going to need to see the documentation on..."
- Learn from Mistakes; but be specific - don't stop at "We tried X and it didn't work." Why didn't it work?

Costing Out a Contract

Handouts

- Packet: “Costing Key Concepts”
- Packet: “CPI & Bargaining Math”
- Table: “CPI for Urban Wage Earners and Clerical Workers”
- Worksheet: “Costing Breakout Sheet”
- Worksheet: “Costing Out the Contract”

Cost of Living

- If raises don’t at least keep pace with inflation, wages are actually going *down* even if the salary stays the same.
- There are many variations of the Consumer Price Index (CPI), but the CPI for Urban Wage Earners and Clerical Workers (CPI-W) is considered to be the one appropriate for collective bargaining.
 - Use either the index for the whole US, or for your geographic region e.g. “New York/Northern New Jersey/Long Island”, but once you choose one you should stick with it because a particular region may diverge over shorter time periods.
 - Avoid seasonally-adjusted values.
 - Avoid local indices, which are too volatile.
 - Use the “Annual” number instead of the monthly or “HALF” values

Misc

- Valuation: focus on the value to members, as opposed to the cost to the employee. For example, the value of a sick or vacation day to a member is the day’s pay that they wouldn’t get if forced to take unpaid leave, even if the cost to the employee might be more e.g. due to overtime.
- Roll Up: Any change in wages ripples through all wage-based benefits e.g. overtime, paid leave
- Front/Back-Loading Increases: In the end, the final rate will be the same, but frontloading puts more money in your pocket during the build-up years
- Sample Scenario – How much will it cost?

Year 1	Year 2
<ul style="list-style-type: none"> ● 3% raise ● 1 extra holiday ● 1 more funeral day ● Health insurance cost up 10% ● AD&D coverage up \$2,000 ● Life insurance up \$3,000 	<ul style="list-style-type: none"> ● 2.5% raise ● Health insurance cost up 10% ● Rollup = 31% ● 2 extra vacation day for 19 employees with 4-6 years seniority

Effective Communication and Public Speaking

- Emotional Intelligence: a learned skill that continues to develop as we learn from experience