

Past Practice: What a Steward Should Know

Working with a union representative, stewards can use the principle of “past practice,” as a tool to help re-instate a working condition that an employer unilaterally removed without bargaining with the union. To be powerful in the workplace, it’s important for stewards to have some knowledge of past practice. More information about how to use past practice is below.

Definition

As defined in the *Local 17 Steward Resource Guide*, Past Practice is: “A reasonably uniform response to a recurring situation over a substantial period of time which has been recognized by management, the union and the employees implicitly or explicitly as the proper response.”

Court’s Response

The Supreme Court explained the legal status of past practice in 1960: The collective bargaining agreement covers the whole employment relationship. It calls into being a new common law—the common law of a particular industry or of a particular plant. The industrial common law—the practice of the industry and the shop—is equally part of the collective bargaining agreement although not expressed in it. (*United Steelworkers of America vs. Warrior and Gulf Navigation Co.*)

An Arbitrators View

Most arbitrators will ask themselves the following questions in attempting to determine if a binding practice exists in a given factual situation.

If you get “yes” answers to questions 1, 2, 3, and 4 a “no” answer to question 5, a valid past practice probably exists. Read on.

Is it a past practice?

1. Has the practice been in effect for a considerable length of time?
2. Is the alleged practice a consistently applied response to given factual situation?
3. Is the practice considered a real benefit and a gratuity?
4. Can the practice be shown to have been mutually accepted by the parties (either openly or tacitly)?
5. Does the practice conflict with specific language in the Agreement or with specific language in the law?



Labor Board Charges

An employer’s elimination of a past practice may also violate the Public Employee Relations Act. Under this law, before an employer can change a term or condition that has a substantial impact on employees, it must give the union prior notice and if the union requests, bargain to agreement or impasse before the policy is implemented. An employer that unilaterally changes an established practice can be ordered by the Public Employees Relations Commission (PERC) to rescind the change.

Conclusion

If you suspect an employer is violating a past practice, contact your union representative. For more information on past practice, consult page 54 of your *Local 17 Steward Resource Guide*. That document is found on-line at: www.ifpte17.org/publications/publications.html. You can also get a hard copy by calling 206-328-7321 ext. 118. — By Don Briscoe, Local 17 Legislative Director

