

## Insubordination - A Dozen Questions to Ask

One of the most troubling and difficult issues for the shop steward is the issue of insubordination. Many contracts say in clear language that an employee can be disciplined and discharged for insubordination. For employers, insubordination is considered one of the deadly sins, right up there with theft and violence. They will be hard-nosed and unforgiving on the issue. That is why for almost every discipline case involving insubordination arbitrators hold to the rule "obey now, grieve later." But in the heat of an argument or in situations where a member may be provoked beyond all common sense, the thought of filing a grievance over the issue may be furthest from their mind.

Let's go over some of the basics here. First, insubordination is usually defined as the failure by an employee to perform a task or comply with an order given to him or her by a supervisor. An arbitrator will usually look at an employee's compliance with a reasonable order as basic to the conduct of the employer's business. Arbitrators take the issue of insubordination very seriously and consider it a major infraction beyond the rules of progressive discipline. Simply put, refuse a reasonable order and you can be discharged. Life, however, is never that simple. There are a number of issues that must be taken into consideration in any insubordination case.

**1. Was the employee given a direct order?** Mere instructions, suggestions, and/or advice are not the same as a direct order. A smart supervisor will say in no uncertain terms, "I am giving you a direct order to complete that job."



**2. Was the member aware that he or she was given a direct order?** A member may not have understood that the language used by the supervisor was a direct order.



**3. Was the language clear?** For example, a member might be told to stop smoking. As part of their job, they may go to another location in the facility and light up another cigarette. Caught smoking a second time, the supervisor might discipline them for disobeying an order. But how clear was the original order? The employee might have thought that he had to stop smoking at his original work location only.

**4. Was the order audible?** Many of our members work in very noisy locations.

**5. Was the member given forewarning of the consequence of a refusal to follow the order?** A smart supervisor will use words that clearly indicate a disciplinary consequence will follow the refusal to obey the order: "If you do not comply with my order, I will take you out of service."

**6. Did the employee willfully disobey or disregard the order?** Most cases demand that the refusal to follow an order be willful. A member may say that a supervisor provoked her, by abusive language for example. If a member comes to you with that kind of defense, you must dig down deep to find out why. In most cases, provocation is viewed by an arbitrator as a way of lessening the discipline, but not overturning it. An exception to this might be if the order was an affront to the basic dignity of the member. Racist or anti-union comments in the form of an order, for example, have no place in the shop and should be reported immediately to the union for action.



**7. Was there an ongoing dispute between supervisor and member?** If this can be documented over a period of time, the issue may be harassment. But to prove harassment, you need clear documentation from the member of instances where he or she was picked on.

**8. Was the supervisor being unreasonable?** The supervisor may have had a tough deadline to meet for production and a small incident set him or her off. The likely target becomes the member who just happens to appear in the cross hairs.

**9. Was the order reasonable and necessary to the safe, orderly and efficient operation of the business?** Did the order violate the contract, work rules, past practice, past arbitration decisions, or the law?

**10. Did the member feel that complying with the order would endanger him or her and his/her coworkers?**



The right to refuse dangerous work is upheld by the Occupational Safety and Health Act. You must make your members aware whether this language or state statute that is similar covers them. If the work is unsafe, a member must report it and ask that it be made safe. Rather than an outright refusal, safer language might be, "I will comply with your request when the unsafe condition is corrected."

**11. Was the member set up?** This has happened often enough to make us suspicious of employer motives. If you are suspicious of the situation, make a thorough investigation. Check for witnesses and motive. Recreate the incident as accurately as possible.

**12. Did the charge of insubordination arise out of the member executing his/her role as a union officer?** If the member is a shop steward and got into a shouting match with the supervisor at a grievance meeting, the steward's conduct is protected. In cases of union duties, the steward or officer is an equal of management in labor-management issues and cannot be disciplined for exercising that role.

As a shop steward, you need to thoroughly investigate all charges of insubordination. In certain cases, you may be able to lessen the punishment, particularly if the employer is inconsistent in applying standards of behavior to your unit. But that means your local needs to keep excellent records. Also, a good work record may mitigate punishment in borderline insubordination cases.

The bottom line is that as a communicator, you must tell all members never to refuse a properly worded direct order. Check with a union officer before considering disobeying the order, even those health and safety orders. Lastly, a member can safely obey most orders and grieve later.