

INSUBORDINATION

Firmly embedded in the mind of every labor arbitrator is the statement by the late Harry Shulman (umpire for Ford Motor Co. and the UAW) who said, [The] industrial plant is not a debating society. 3 LA 779, 781(1944)

Thus, when a supervisor issues an order, management has and is entitled to the expectation that the order will be obeyed.

The charge of insubordination is always based on the grievant's refusal. It is never based on the validity of management's authority to issue orders and directives. This is an important point because managements case-in-chief at an arbitration hearing does not have to include evidence on the validity or legitimacy of the order.

Arbitrators uniformly require grievants to obey the order and after complying, consider recourse through the grievance procedure for any violation of the contract. Arbitrators refer to this principle in another legendary phrase, "obey now, grieve later."

The following discussion and cases illustrate the unlimited permutations of human behavior in this area.

Elements of Insubordination

An order or directive typically comes from someone who has authority to issue orders. Otherwise, the employee could not be insubordinate. Furthermore, the order must be understandable and doable, if management wants to hold the grievant responsible.

Two other elements are more problematic. First, the order or directive must give the employee time in which to comply. How much time depends on the case. Montgomery County Govt. and UFCW Local 400, 99 LA 111 (Hockenberry, Arb., 1992)(Grievants explanations accepted); Velva Sheen Mfg. Co. and ACTWU Chicago Joint Board, 98 LA 131 (Modjeska, 1991) (grievant as union steward could not perform her own assignment and grieve at the same time).

Second, the consequences of the disobedience must be known to the employee. Herein lies a murky, gray area. When can the employer assume that employees already know the consequences and when is the employer required to specifically warn an individual employee in advance of discipline? In one case, an employee was suspended for six months because the supervisor's order created a duty which the grievant ignored; the supervisor did not have to threaten discipline. Butler Aviation and IAM District Lodge 141, 97 LA 477, 479 (Avins, Arb. 1991).

But in another case, the late Adolph Koven found that given this grievant, management should have "repeat[ed] what would inevitably happen to him if he insisted upon disobeying the order so that there could be no doubt in anyone's mind that the Grievant was refusing with full knowledge of the consequence. GCIU District Council 2 and Westvaco, 89-1 ARE ¶8018 at 3066 (Koven, Arb. 1988)

Even when all of these elements are present, there may be other countervailing circumstances. For example, one arbitrator reduced the penalty because the supervisor exhibited "frustrated anger" and did not consider the past efforts to resolve the issue. Sebewaing Industries and Allied Ind. Workers Local 111, 92 LA 1225 (Girolamo, Arb. 1989).

Exceptions

There are well-defined exceptions to the general rule on insubordination. First, employees do not have to carry out orders which endanger the health and safety of themselves or others. Second, the employee's response may also be protected under a contract provision. Third, an employee may refuse to work overtime if it is unreasonable. Ralph Seward found mandatory overtime to be unreasonable when the overtime could have been performed by others, the

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amount of overtime was extremely high and no emergency existed. Bethlehem Steel Co. and USWA Local 2604, 24 LA 63 (Seward, Arb. 1955).

The more troublesome exception is for the union representative who, as part of his or her union work, argues with a supervisor. Stewards have latitude to be an advocate. However, arbitrators vary on when advocacy ends and insubordination begins. At one extreme are the arbitrators in Kaiser Aluminum & Chemical Corp, 90 LA(Thompson, 1988) and E.A. Norris Plumbing Co., 90 LA 46 (Christopher, 1988). On the other hand, a steward's grievance handling activities are protected under the NLRA. See Southern Indiana Gas & Electric Co. and IBEW Local 702, 85 LA 716 (Nathan, 1985).

GRIEVANCE CHECKLIST - INSUBORDINATION

(WHAT THE ARBITRATOR LOOKS FOR, SHOULD BE PREPARED FOR)

- Was Grievant actually given a DIRECT ORDER - (or merely instructions, suggestions, or advice)?
- Was Grievant AWARE that (s)he was given a direct order?
- If so, was the order CLEAR?
- Was Grievant's alleged failure to comply INTENTIONAL?
- Was Grievant given adequate FOREWARNING of the possible consequences of his/her alleged refusal to carry out the order?
- Was the order reasonable and necessary to the SAFE, ORDERLY and EFFICIENT operation of the organization?

Did it violate:

The Agreement? ("Contract")

An Addendum to the Agreement

A Supplementary Letter of Understanding? ("Side Letter") Policy?

An Administrative Directive?

A Past Practice?

An Applicable and Relevant Arbitration Award?

An Applicable Law?

Did the order threaten to cause undue hardship or irreparable harm?

Did the order threaten to endanger the health or safety of the Grievant?

Would the order force the Grievant to violate a law?

Was the order arbitrary? capricious? unjust? unfair? inequitable? unreasonable?

Did the order otherwise adversely affect the welfare of the Grievant or the Union?