



# MANAGING THE UNION SHOP TOOLKIT

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# 7 Tests of Just Cause

## DECISION FLOWCHART

Almost all union contracts require "just cause" to terminate someone.  
Follow this flowchart to determine if you can prove just cause.

| TEST 1: Was employee adequately warned of the consequences of his conduct? |  |
|--|--|
| ✓ YES  | ✗ NO   |
| Continue to Next Test ▼  | <b>EXIT:</b> Make sure all discipline provides clear and documented warning of consequences of violation, up to and including termination. |



| TEST 2: Rule reasonably related to efficient and safe operation? |  |
|--|--|
| ✓ YES  | ✗ NO   |
| Continue to Next Test ▼  | <b>EXIT:</b> Make sure that any work rule or policy that can lead to termination is clearly related to efficient and safe operation of the business. |



| TEST 3: Did the employee breach the rule or commit the offense? |   |
|---|---|
| ✓ YES   | ✗ NO  |
| Continue to Next Test ▼   | <b>EXIT:</b> If you can't prove the employee breached the rule you can't justify the disciplinary action. Arbitrators will require strong evidence. |



| TEST 4: Did management investigate prior to acting? |      |
|---|------|
| ✓ YES   | ✗ NO |

**EXIT:** Never take disciplinary action BEFORE a full

**Continue to Next Test ▼**

investigation. Suspend if necessary but always complete investigation before acting.



**TEST 5: Was investigation fair and objective?**

☒ YES ☒ NO

**Continue to Next Test ▼**

testifying in favor of the employee)? Did you

**EXIT:** Did you interview ALL witnesses (even those actively seek evidence opposing termination?

**Continue on Next Page ▼**

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**TEST 6: Was there substantial evidence of guilt?**

☒ YES

☒ NO

**Continue to Next Test ▼**

**EXIT:** The majority of evidence should support the decision to terminate. Some counter evidence is OK, but most evidence should support termination.



**TEST 7: Is the discipline reasonable given the severity of offense and work record?**

☒ YES

☒ NO

☒ **JUST CAUSE PROVEN**

**EXIT:** Be able to prove termination was a last resort, given either the severity of the offense or the amount of prior warning. Long term employees get leeway.

**⚠ CRITICAL REMINDERS**

- **Documentation is Everything:** If it isn't documented, it didn't happen. Arbitrators will rely on written records, not verbal testimony about what "usually happens."
- **Investigation Before Action:** The most common mistake is taking disciplinary action too quickly. When in doubt, suspend with pay pending investigation. You can't un-ring the bell of a premature termination.
- **Progressive Discipline Matters:** Except for the most egregious offenses, arbitrators expect to

see a pattern of escalating discipline. First-time offenders rarely lose termination cases unless the conduct was extremely serious.

- **Consistency is King:** Treat similar situations similarly. If you let Jane off with a warning for tardiness, you can't fire John for the same first offense. Arbitrators will compare how you've handled past cases.
- **When You Fail a Test:** Failing one of these tests doesn't mean you can never terminate this employee—it means you can't terminate them TODAY for THIS offense. Use the failure as a learning opportunity to build your case properly.
- **Get Help Early:** These aren't legal issues yet—but they can turn into them quickly. Get guidance. Fortune 500 companies have dedicated teams for this; you should too.

Source note: This is based on common arbitration practices and established labor relations. The "Seven Tests of Just Cause" framework has been widely used in labor arbitration since the 1960s, originating from arbitrator Carroll Daugherty's landmark decision. Individual arbitrators may weight factors differently, but these seven elements are the standard framework.

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# GRIEVANCE INVESTIGATION CHEAT SHEET

## Your Step-by-Step Guide to Conducting Bulletproof Investigations

### WHY THIS MATTERS

Arbitrators throw out terminations when investigations are sloppy. A thorough, fair, and objective investigation is your best defense against grievances. This guide ensures yours won't be challenged.

## THE 6 STEPS TO A WINNING INVESTIGATION

### STEP 1: Assess the Matter

Determine if this requires a formal investigation or just an inquiry:

|                       |                        |
|-----------------------|------------------------|
| INQUIRY (Less Formal) | INVESTIGATION (Formal) |
|-----------------------|------------------------|

|   |  |
|---|--|
| <ul style="list-style-type: none"> <li>• Minor issues</li> <li>• Not every fact needed</li> <li>• Witnesses not always necessary</li> </ul> | <ul style="list-style-type: none"> <li>• Serious matters (termination, suspension)</li> <li>• Fully documented</li> <li>• All witnesses interviewed</li> <li>• Consider notifying union</li> </ul> |
|---|--|

## STEP 2: Develop an Investigation Brief

Plan before you act. Create your investigation roadmap:

- ☐ List ALL interviews needed (grievant, witnesses, background experts) ☐

List ALL documents to collect

*Company rules, policies, procedures, employee handbook*

*Union contract, safety rules, benefits books*

*Personnel files, performance appraisals, prior disciplinary actions*

*Business records, time cards, logs, calendars*

- ☐ Determine interview order (to prevent stories from being coordinated)

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## STEP 3: Conduct Interviews

### WEINGARTEN RIGHTS - LEGAL REQUIREMENT

Union members have a **LEGAL RIGHT** to union representation during investigatory interviews when discipline is possible.

#### Key Facts About Weingarten Rights:

- Applies **ONLY** to investigatory interviews that may lead to disciplinary action •
- Employer is **NOT** required to notify employee of this right (but see below) •
- Employee must ask for representation - if they don't ask, you don't have to offer •
- If employee requests a steward, you MUST allow it or end the interview** •
- HOWEVER**, consider informing of the right - a steward can help calm the situation, and you can document a refusal to avoid a claim that you interviewed them improperly

 **TIP:** Having a union representative present can actually help - they witness your fair process and may help keep the employee calm.

#### Interview Strategy:

- Consider sequestering interviewees to limit chance to get stories straight •
- Usually interview perpetrator first (but sometimes witnesses first to avoid

evidence tainting)

- Interview before or after work if needed to minimize workplace disruption

### How to Begin Each Interview:

1. Alert interviewee of the purpose of the investigation
2. Stress objectivity and impartiality
3. State that full cooperation is expected
4. Assure no retaliation
5. Explain confidentiality requirements
6. Consider getting witness to sign statement

### Critical Interview Checklist:

- ☐ Distinguish between fact, opinion, allegation, and assumption
- ☐ Ask employee to repeat facts - watch for verbatim stories and inconsistencies ☐
- Take detailed notes - get names, times, places
- ☐ Interview witnesses for BOTH sides (critical for proving fairness) ☐
- Recap the grievance and remedy sought

## STEP 4: Collect Evidence & Documentation

- ☐ Check grievability and arbitrability

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- ☐ Verify contract provisions, rules, and policies
- ☐ Check time limits (critical!)
- ☐ Examine and organize all records and documents
- ☐ Inspect physical premises if relevant
- ☐ Check relevant past practice and previous grievance settlements

## STEP 5: Verify Legal Requirements

Before finalizing your decision, verify you can prove Just Cause using the 7 Tests:

### THE 7 TESTS OF JUST CAUSE

1. Was employee adequately warned of consequences?
2. Is the rule reasonably related to efficient and safe operation?
3. Did the employee breach the rule or commit the offense?
4. Did management investigate BEFORE acting?
5. Was the investigation fair and objective?
6. Was there substantial evidence of guilt?
7. Is the penalty reasonable given the severity and work record?

## STEP 6: Report Findings & Recommendations

Your investigation report should include:

- Summary of the grievance and contract provisions involved
- List of all witnesses interviewed and documents reviewed
- Factual findings (distinguish facts from opinions)
- Analysis of credibility (explain why one version is more believable)
- Application of the 7 Tests of Just Cause
- Recommended decision and rationale
- Consideration of past practice and precedent

### CRITICAL REMINDERS

- **NEVER** take disciplinary action **BEFORE** completing investigation
- **Respect Weingarten Rights** - if employee requests union rep, allow it or end interview
- Always interview witnesses for BOTH sides (critical for proving fairness) • Document everything - if it's not written down, it didn't happen
- **Check time limits in the grievance procedure**
- Long-term employees get more leeway - consider work record
- Suspension without pay while investigating serious matters is acceptable • When in doubt about credibility, explain WHY (motives, body language, inconsistencies)

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# UNION STEWARD COMMUNICATION PLAYBOOK

## Word-for-Word Scripts for the 10 Most Common Steward Interactions

### THE GOAL: BUILD A PROFESSIONAL RELATIONSHIP WITHOUT BEING A PUSHOVER

You can be respectful, professional, and approachable with union stewards while firmly protecting management's rights. The key is being fair, firm, credible, consistent, and predictable. This playbook gives you proven scripts that work.

## THE FOUNDATION: THREE PRINCIPLES

Before using any script, remember these three core principles:

|  |  |  |
|--|--|--|
|  |  |  |
|--|--|--|

Do your job. Meet production needs. Handle day-to-day operations.

Know it cold. Follow it to the letter. Never bend rules or give 'gifts.'

Be respectful, calm, and professional. Listen. Explain clearly.

## ⚠️ FACTS OF LIFE IN A UNION SHOP

### Nice guys finish last.

Bending rules to help someone WILL come back to bite you. The steward's job is to follow the contract to the letter and hold YOU accountable.

### Stewards may ask for special treatment outside the contract.

Deny it, even if they threaten a grievance. If you follow the contract, you're always on firm ground. Any exceptions become past practice that erodes your authority.

### Remember the steward's perspective:

*"The problems of management are not your problems. Your job is to protect the workers and get their grievances settled quickly and satisfactorily."*

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## THE 10 COMMON SCENARIOS

### SCENARIO 1: Steward Requests Special Treatment

#### SITUATION:

Steward: "Can you make an exception this one time? It's really important to the employee."

#### WHAT TO SAY:

"I really appreciate you bringing this to me, and I understand why this matters to the employee. I want to help where I can, but I also need to be fair to everyone by following the contract consistently. Article [X] is pretty clear on this one. I know that's not the answer you were hoping for, but if you think I'm misreading the contract or if there's something I'm missing, please file a grievance and we'll work through it together. I value our working relationship and want to make sure we're both doing our jobs right."

#### WHY THIS WORKS:

- Acknowledges their advocacy role positively
- Explains the fairness principle behind the decision



- Invites collaboration through the proper process
- Reinforces the relationship while holding the boundary

## SCENARIO 2: Steward Challenges Your Management Decision

### SITUATION:

Steward: "I don't think you should have done it that way. That's not fair to the employee."

### WHAT TO SAY:

"Thanks for sharing your perspective—I know you're looking out for your members and I respect that. Let me explain my thinking here. This decision falls under management's rights in Article [X], and I've tried to apply the contract consistently with everyone in similar situations. I hear that you see it differently, and that's okay. If you believe I've misapplied the contract, I'd encourage you to file a grievance so we can get it resolved properly. I'm always open to hearing I got something wrong, and the grievance process helps us both do our jobs better."

### WHY THIS WORKS:

- Validates their role as member advocate
- Explains reasoning transparently
- Shows openness to being wrong
- Frames grievance process as collaborative, not adversarial

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## SCENARIO 3: Steward Says "We've Always Done It This Way"

### SITUATION:

Steward: "But the old supervisor let us do it this way. You have to honor past practice."

### WHAT TO SAY:

"I appreciate you bringing that history to my attention. Help me understand—how long has that been the practice and how consistently was it applied? The challenge I have is that Article [X] seems pretty clear, and I need to follow the written contract. Sometimes what happened in the past doesn't match the contract language, which can create confusion. If you believe there's a fixed and established past practice that should override the contract language, I'd really value seeing that documented in a grievance. That way we can look at the history together and get clarity on the right path forward. Does that make sense?"

### WHY THIS WORKS:

- Invites dialogue and asks clarifying questions
- Explains the genuine challenge (contract vs. practice)

- Positions grievance as collaborative fact-finding
- Ends with engagement question ("Does that make sense?")

## SCENARIO 4: Steward Threatens a Grievance

### SITUATION:

Steward: "If you don't change this decision, I'm filing a grievance."

### WHAT TO SAY:

"That's absolutely your right, and honestly, that's what the grievance process is for. I'm confident in my decision, but I also know I'm not perfect. If you see something in the contract that I'm missing or if you think I've made an error, filing a grievance is the right thing to do. That's how we both learn and get better at this. Is there any information you need from me to prepare the grievance? I'm happy to help make sure you have what you need."

### WHY THIS WORKS:

- Affirms their right to file without defensiveness
- Shows humility and openness to being corrected
- Frames grievances as learning opportunity, not combat
- Offers proactive support (builds trust)

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## SCENARIO 5: Steward Wants to Negotiate Outside the Contract

### SITUATION:

Steward: "Let's work out a deal on this. I'll give you something if you give us something."

### WHAT TO SAY:

"I appreciate that you're trying to find a creative solution here, and I respect that you're thinking about how we can work together. The challenge is that Article [X] already addresses this, and I don't have the authority to negotiate outside the contract. I'm not trying to be difficult—it's just that if I start making deals on contract issues, it can create problems down the road for both of us. If you think the contract language itself needs to change, that's definitely something to raise at the bargaining table. In the meantime, I need to stick with what we've both agreed to in the contract. Fair enough?"

### WHY THIS WORKS:

- Appreciates their problem-solving effort

- Explains lack of authority (not unwillingness)
- Shows concern for both parties' interests
- Ends seeking agreement rather than dictating

## SCENARIO 6: Steward Questions Your Contract Knowledge

### SITUATION:

Steward: "I don't think you understand the contract. That's not what Article [X] means."

### WHAT TO SAY:

"You may be right—let's talk through it. Walk me through how you're reading Article [X], because I want to make sure I'm understanding it correctly. [Listen to their explanation] I hear what you're saying. The way I'm reading it is [explain your interpretation]. It sounds like we have a genuine disagreement about what the contract means here, and that's actually perfect for the grievance process. That's how we get clarity when the language isn't as clear as we'd like. File the grievance and cite the specific language you're relying on, and we'll work through it together. I'd rather get it right than insist I'm right, you know?"

### WHY THIS WORKS:

- Opens with humility and curiosity
- Invites real dialogue before defaulting to process
- Models respectful disagreement
- Shows willingness to be corrected

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## SCENARIO 7: Steward Requests Information

### SITUATION:

Steward: "I need to see [employee's file / attendance records / other documentation] for a grievance."

### WHAT TO SAY:

"Absolutely, I want to make sure you have what you need to represent your member effectively. Here's what would help me get you the right information quickly: can you put the request in writing with the grievance number and specifically what you're looking for? That way I can make sure [HR/management] provides exactly what you need and nothing gets missed. I'll forward it right away and follow up to make sure you get it within the timeframe the contract requires. Sound good?"

### WHY THIS WORKS:

- Acknowledges their representative role positively

- Explains benefit to THEM of written request
- Shows proactive commitment to helping
- Maintains proper documentation

## SCENARIO 8: Steward Accuses You of Being Unfair

### SITUATION:

Steward: "You're playing favorites. You wouldn't treat [other employee] this way."

### WHAT TO SAY:

"I really appreciate you being direct with me about this, because the last thing I want is to treat people unfairly. Help me understand what you're seeing. [Listen] I hear you. From my side, here's what I'm trying to do: I follow the same contract provisions for everyone, but you're right that every situation is a little different based on the specific facts. If I treated [other employee] differently, it's because the circumstances were different, not because of who they are. If you think I'm applying different standards to different people, that's absolutely something I want to know about. Can you file a grievance with the specific examples so we can compare them side by side? That will help me see what you're seeing."

### WHY THIS WORKS:

- Thanks them for the feedback
- Asks questions to understand their perspective
- Explains reasoning while acknowledging nuance
- Invites them to help you see the issue

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## SCENARIO 9: Steward Tries to Involve You in Union Politics

### SITUATION:

Steward: "This grievance will make me look bad to the members. Can you help me out here?"

### WHAT TO SAY:

"I get it—you're in a tough spot with your members, and I respect that you have to balance a lot of different pressures. Here's my challenge: I can't make decisions based on how they'll play out politically for either of us. I have to follow the contract, even when that creates a difficult situation for you with your members. What I can tell you is this: if the grievance has merit under the contract, I'll work with you to resolve it fairly. If it doesn't, I have to deny it, but I'm happy to explain my reasoning so you can share that with your members. I'm not trying to make your job harder—I'm just trying to do mine right. Does that make sense?"

### WHY THIS WORKS:

- Validates the reality of their political pressures
- Explains constraint without being rigid
- Offers support within appropriate boundaries
- Shows care for their success in their role

## SCENARIO 10: Building a Positive Ongoing Relationship

### SITUATION:

*You want to establish a professional, respectful working relationship with a steward from the start.*

### WHAT TO SAY:

"I really want us to have a strong working relationship. I know we're going to disagree sometimes—that's just the nature of our roles—but I think we can disagree professionally and still work well together. Here's my philosophy: I'm going to follow the contract as I understand it, I'll try to be consistent with everyone, and I'm always willing to listen to your perspective. I won't bend the rules, but I will always explain my reasoning and I'm open to being shown I'm wrong. When you disagree with my decisions, please use the grievance process—that's not a failure of our relationship, that's the system working. I respect your role as a steward and advocate for your members, and I hope over time you'll see that I'm trying to be fair. I'm looking forward to working with you."

### WHY THIS WORKS:

- Emphasizes relationship goal, not just boundaries
- Normalizes disagreement as healthy, not adversarial
- Shows genuine respect for their advocacy role
- Sets collaborative tone for future interactions

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### QUICK REFERENCE: PHRASES THAT WORK

Use these go-to phrases in any situation:

- "The contract is clear on this..."
- "I'm required to follow the contract consistently..."
- "This is within management's rights under Article [X]..."
- "If you believe this violates the contract, file a grievance..."
- "I'm not aware of any past practice on this..."
- "I've applied the contract consistently to all employees..."
  - "That's something for contract negotiations, not something I can change..."

### KEY REMINDERS FOR EVERY INTERACTION

1. Stay calm and professional, even if they don't
2. Always point back to the contract
3. Never negotiate outside the contract
4. Don't be intimidated by grievance threats
5. Be consistent with all employees
6. Listen respectfully, even when you disagree
7. Explain your reasoning clearly
8. Direct disputes to the grievance process
9. Document everything important in writing
10. Remember: You earn respect by being fair, firm, and credible

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## THANK YOU FOR PARTICIPATING

Thanks for participating in the LRI Union Shop Benchmark Survey. Your input is very valuable.

## Your Personalized Benchmark Report is Coming

Remember, once we reach 500 survey responses, you'll receive a customized benchmark report showing how your organization compares to similar companies in your industry and region. This report will help you identify specific areas where you're outperforming peers—and opportunities to improve your labor relations outcomes.

## Need More Support Managing Your Union Shop?

Most mid-market companies don't have the luxury of a dedicated labor relations team. When workplace issues arise, they often avoid getting advice until small problems turn into big ones (this is called "The Help Trap").

**There's a better way.**

Fractional Labor Relations gives you access to experienced labor relations professionals who handle the 90-95% of union shop issues that aren't legal work—contract administration, grievance response, steward communication strategies, supervisor training, and operational decision-making. Enterprise labor relations, fractional cost.

Fortune 500 companies structure it this way: operational teams handle day-to-day labor relations, and attorneys focus on actual legal matters. Now mid-market companies can too.

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