

MEMORANDUM

State of Alaska Department of Administration Division of Labor Relations

To: All Division Directors
All Supervisors

Date: November 8, 2005

Thru:

From: Art Chance
Director

File: Interpretative Memorandum
Subject: Revision of Interpretative
Memorandum 03-X-001 Re:
Representatives and Stewards

This memorandum revises and supersedes the memorandum issued on March 25, 2003, and provides the Department of Administration's general interpretations and guidance regarding the State's rights and duties in dealing with non-employee union representatives and with union shop stewards or other employee representatives. For simplicity, all Supervisory Unit supervisors, managers, and elected or appointed officials are referred to as State officials and all other persons employed by the State are referred to as employees. Where the word "demand" is used, it means a request for something to which there is a legal or contractual entitlement without regard to the form of the request. Specific collective bargaining agreements may have specific rights or processes, and, as always, the precise words of the agreement should be your guide. For ease of use, this memorandum is a summary only. More detailed guidance should be sought from your agency group's Human Resources staff.

Non-employee Agents (e. g., Union Business Agents, Field Representatives):

While no such memorandum can encompass every possible circumstance, it generally may be said that a non-employee agent may as a matter of law or contract demand the following:

- To enter a work area on the same basis and for the same purposes as a member of the public;
- To enter a work area to meet with bargaining unit employees who are NOT on work time, e. g., before or after regular work hours, breaks, or lunch time so long as the request is for a meeting at a reasonable time and has prior approval from the cognizant State official;
- To use State facilities such as conference rooms for meetings with bargaining unit employees on the same basis as a member of the public could use such a facility;
- To contact bargaining unit employees personally, by mail, handbill, or e-mail on the same basis as a member of the public could contact a bargaining unit employee;

- To accompany a bargaining unit employee in an investigatory meeting from which the employee has reasonable cause to believe discipline may result;
- To meet with a State official who has collective bargaining authority, e. g., the delegatee of the Commissioner of Administration, at reasonable times for purposes of collective bargaining;
- To meet with a State official who is a designated grievance respondent, e.g., the first level supervisor out of the bargaining unit, the department's Senior Management Consultant, or the delegatee of the Commissioner of Administration, for the purpose of discussing a grievance (This duty to meet is satisfied by simply answering the grievance; a personal meeting is not required, but is usually recommended if demanded.).

Meetings between properly authorized State officials and non-employee agents for any purpose other than collective bargaining or grievance discussion as defined herein are strictly discretionary on the State official's part and should be conducted, if at all, in accordance with applicable policies.

Meetings between State officials who are not grievance respondents or who do not possess collective bargaining authority and non-employee agents are strictly discretionary on the State official's part and should be conducted, if at all, in accordance with applicable policies.

Shop Stewards, Facility Representatives, and other employee agents:

There is a line of State and federal cases as well as State practice that defines the appropriate role of a non-employee agent in an investigatory meeting. These guidelines also generally apply in a meeting for any other purpose as well.

Generally, a steward or agent **MAY**:

- Demand to be present in a meeting where an employee has reasonable cause to believe that discipline may result (The employee may waive this right, or the State may refuse to conduct the interview if the agent or steward is present – the employee may, of course, refuse to participate under this condition. The steward may not demand to be present if the subject employee waives representation. **DO NOT** refuse representation without contacting the Department of Administration, Division of Labor Relations.);
- Ask questions of a clarifying nature;
- Point out additional evidence for investigation;
- Identify other witnesses or persons with material knowledge;
- Point out obviating or mitigating facts and circumstances;
- Demand to discuss a grievance or complaint (stewards only at the level where they are authorized to file, agents at any level).

Additionally, a steward **may** use email in furtherance of these purposes or for other purposes specifically related to collective bargaining or contract administration (See discussion below).

A Steward or agent **MAY NOT**:

- Demand that the State produce witnesses (due process may require that witnesses be identified, however);
- Demand to examine or cross-examine witnesses (the line between examination or cross-examination and questions of a clarifying nature may be blurry and may ultimately be a matter of the steward or agent's style);
- Intimidate, harass, use profane or abusive language (the line between profanity and shoptalk is not clear and use of profanity is not *per se* violative);
- Refuse a proper order, e. g., an order that the meeting is terminated (there are, however serious implications in terminating such a meeting that should be well understood before doing so);
- Object to the form or substance of a question asked of the subject employee (Courtroom style objections are often a tactical maneuver or a means of coaching an employee as to the desired answer. The union representative should be told immediately that this activity is not appropriate and will result in the termination of the interview or the representative's removal.);
- Direct an employee to refuse to answer a question (There is an exception to this where the misconduct may also be a crime. In such a case, Labor Relations and the Department of Law should be consulted before the interview. The Division of Labor Relations **MUST** be consulted if there is an active criminal investigation);
- Demand to bargain concerning a potential disciplinary action in the course of an investigatory meeting (though there is a very blurry line between "discussion" and "bargaining.").

Any meeting between a State official and a steward except in an investigatory interview or in the official's capacity as a grievance respondent is strictly discretionary and should be conducted in accordance with applicable policy.

Use of Electronic Resources -

A persistently vexatious issue is steward use of the State's email system and other electronic resources. While the union as an institution and its agents are members of the public for this purpose, stewards are employees, and therefore have a different body of rights and duties. First, all employees, including stewards, are constrained by the State's Information Technology Policy. Consistent with that policy, stewards may also use email for purposes of collective bargaining and contract administration to the degree that law and contract authorize stewards to participate in collective bargaining and contract administration. The best rule is that if a steward can demand to do something,

e.g., handle a Step One complaint, then the steward can also use email for that purpose. A steward cannot use email to proselytize, discuss internal union affairs, or participate in any other exchange except in accordance with the *de minimis* use provisions of the IT Policy. It is the State's policy that employees generally, including stewards, cannot use State email to discuss internal union affairs since this usage fairly invites an employer interference or dominance charge (See former Commissioner Poe's memorandum on this subject).

Steward Time Tracking -

Departments are encouraged to monitor and track steward time and require prior approval for use of that time. Use of a leave slip is an easy method. The steward can check the "Other" block and write in "steward time" in the explanation area. Approval can be by the same processes as for other leave, but it must be in advance of the steward absenting him/herself from normal work.

The general government agreement now explicitly acknowledges that stewards must secure approval and record time spent in steward activities. ASEA has devised a form to which the State has agreed for this purpose. The form is available at: <http://dop.state.ak.us/index.php?id=90> GGU steward absence may be authorized using either this form or a conventional leave slip. See also the guidance memorandum regarding Steward Time tracking for more comprehensive guidance.

Again, no such memorandum can encompass all the possible permutations of the rights to representation and concerted activity for mutual aid and protection. Within the contours and limits of the rights set out above, good judgment and reasonableness are the best guidance. If you have any questions or require further information or guidance, please do not hesitate to contact the Labor Relations Analyst assigned to your agency group.

AC
cc:

Labor Relations staff
Division of Personnel

Reading File
Subject: Representatives
Article Files
Labor Relations Website