

# NTEU Chapter 52 Steward Reference Guide

## CHAPTER 3 MEETINGS

### **MEETINGS: Group Meetings**

Group meetings are an important way for stewards to maintain a visible presence in the workplace. The National Agreement provides that stewards are to be introduced as the Union Representative at group meetings and the steward has the right to present the "Union Position" on the subject of the meeting (the National Agreement). Stewards should be aware THE UNION has a position on every subject. Stewards should take full advantage of the opportunity that group meetings provide to speak on behalf of the Union and the employees in the group.

Occasionally, a manager will attempt to call a group meeting a "training session" and not allow you to speak on behalf of the Union. This area of the law is constantly changing. What was considered a group meeting five years ago is not the same today. In general, however, observe these rules:

- A. It is a group meeting if "working conditions" are in any way discussed during the meeting. "Working Conditions" are generally defined as "anything that affects the day-to-day working life of an employee." It does not matter how many employees are present -- if "working conditions" are discussed, the Union should be included.
- B. Remember that you are not prohibited from speaking at "training sessions"; you just have no contractual right to do so. If you are in doubt, say something on behalf of the Union and see if anyone objects. If management does not mind, you can present the Union viewpoint anywhere.
- C. If management asserts that you cannot speak on behalf of the Union, take detailed notes of the meeting/training session. If you believe you should have been allowed to speak at the meeting, immediately contact the person in charge of the meeting and explain your position. Advise him/her it is an unfair labor practice to deny the Union's right to participate in a group meeting.
- D. If you are still not allowed to speak, write down everything, including the reason(s) given for the denial and contact the Union office.

### **"Formal" Meetings with Management**

To be effective, a representative must be able to recognize the type of meeting to be held, must know the rights of employees and NTEU, and must understand the representative's role at such meetings. The Civil Service Reform Act (CSRA) sets out the rights of employees and unions and the corresponding duties of agencies at these meetings.

Section 7114(a)(2)(A) states:

- (1) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at —
  - (A) Any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment.

The law requires that when a formal meeting is held, NTEU has a right to be notified and the opportunity to be present. It is NTEU, through its representatives only, who may attend these formal meetings and represent the interests of employees. But before an agency is required to invite NTEU, there are four (4) distinct elements that must be present:

- (1) There must be a discussion intended;
- (2) It must be formal;
- (3) It must be between one or more representatives of the agency, and one or more employees of the unit; and
- (4) It must concern any grievance, personnel policy, practice, or general condition of employment.

If all of these elements are present, NTEU is entitled to advance notice and the opportunity to attend. However, the absence of any element eliminates the right to be present. Bureau of Government Financial Operations, Headquarters, 15 FLRA No. 87 (1984).

(See the National Chapter Manual, [Chapter 13](#) for additional information on what constitutes a "Formal" meeting.)

- Once you have been notified that a formal discussion will occur, and it has been determined that you will represent NTEU, what is your role?
- You have the right to attend, but you have no right to disrupt the meeting, to dominate it, or to interfere with the agency's statement or explanation. However, you have the right to participate.
- The agency has held that it will consider the purpose of the meeting and all of the surrounding circumstances in determining the extent of the representative's right to participate. NRC and NTEU, 21 FLRA, No. 96 (1986).
- You have the right to be recognized, and to make a statement on behalf of NTEU with respect to our position on the issue. You may explain NTEU's role in the process.
- The right to be represented means more than just the right to be present. It means the right to speak, to comment, and to make statements.
- Any effort by an agency to restrain you in exercising this right has consistently been held to be an unfair labor practice.

Remember:

1. NTEU, and you as its representative, have a right to be notified of and given the opportunity to be present at formal discussions.
2. To be a formal discussion, it must:
  - a) Be between management and unit employees;
  - b) Involve a discussion, but not necessarily consist of give and take;
  - c) Be determined according to who calls it; how it is called; whether attendance is mandatory; where it is held; how long it lasts; whether there is an agenda; and how it is conducted; and

- d) Cover grievances, personnel policies, practices or general conditions of employment.

### **“Informal” Meetings with Management**

As a steward, you will frequently be faced with a problem that needs to be resolved but does not lend itself to a grievance just yet. Perhaps the employee does not want a grievance filed, or maybe it is a personality conflict or other situation not involving a contract violation. Often it is just a matter of getting a question answered for an employee. Then, too, at times management will seek you out to discuss a particular situation of concern to them. Whatever the situation, you should not hesitate to speak to management on behalf of the employees in the unit whenever appropriate. But keep in mind — you are the employee’s advocate which means “One who pleads in another’s behalf”.

When speaking to management in these types of informal situations, it is best to follow these guidelines:

- A. Don’t say anything you would not want the employee to hear. Managers are notorious for not keeping their mouths shut, so you should assume the employee would discover the content of your informal discussion with management. In fact, a good practice is to tell the member what has occurred before anyone else does. Do not fall into the trap of agreeing with management that the employee is a troublemaker, etc. Even if it’s true, you and the employee gain nothing by admitting so. Don’t go “off the record”. Speak frankly if you feel it is appropriate, but on the record.
- B. Try to solve the problem, not "prove a point". Informal meetings, whether requested by management, the employee, or the steward, should be for the purpose of resolving a problem before it escalates to a formal grievance. Try not to be dragged into a personality conflict, or a “he said - she said” situation. If management wants to find fault, or argue, let them do it without your involvement. If management wants to solve a problem, talk to them informally. Stewards should perform the role of a mediator. Webster’s dictionary defines mediation as “The act of mediating; friendly or diplomatic intervention, usually by consent or invitation, for settling differences between persons, nations, etc.”

### **Meetings with TIGTA**

Unfortunately, meetings with the TIGTA can be very intimidating, for both the employee and the steward. Don’t allow yourself to be buffaloed. Remember the Inspectors are not your friends; they have a job to do. It is your job to ensure the employee’s rights are protected - not the Inspector’s. For example, the contract specifies that certain forms be given to all employees being interviewed (Form 8111, see copy in the National Agreement, Appendix 5).

When representing an employee, who has been summoned to an interview with TIGTA, you first just determine whether the employee is obligated to answer the questions.

#### **Meetings with TIGTA fall into one of three categories:**

1. Meetings in which the employee is given a **MIRANDA** warning. (Form 5228; see copy in the National Agreement, Article 5 and Appendix 5). These meetings are ones in which the employee can be held criminally liable for anything he/she says to the Inspectors. If the Miranda warning is given, you should **ALWAYS** advise the employee to exercise his/her right to **REMAIN SILENT BY NOT RESPONDING TO THE QUESTIONS**. After you leave the meeting with TIGTA don’t let the employee spill his/her guts to you. Tell them to get a criminal lawyer. You should also call the Union Office as soon as you can to inform the President or Chief Steward of the situation.
2. Meetings in which the employee is given a **KALKINES** warning. (Form 8112, see copy in the National Agreement, Article 5 and Appendix 5) In these meetings, the employee **MUST** answer

“material and relevant questions relating to the performance of his/her duties as an employee.” The employee faces removal for refusing to answer such questions. The answers, however, cannot be used against him/her in any criminal proceeding (although he/she is criminally liable for giving false answers). In these types of meetings, you should advise the employee to:

- A. Answer truthfully the questions from the Inspectors,
  - B. Not speculate, guess, give opinions, or state anything he/she does not know to be a fact,
  - C. Attempt to answer all questions with "yes" or "no" or "I don't know" or "I don't remember" and not to embellish or volunteer any information beyond what is asked.
3. Meetings where the employee is a **THIRD PARTY WITNESS**. (See copy in the National Agreement, Article 5 or appendix 5) In these interviews, the employee is not currently the subject of the investigation, although he/she can be held liable for any admissions of guilt made during the interview, or for any false statements he/she makes to the Inspectors. Because the employee has no criminal liability, the questions must be answered; therefore, these meetings should be handled as KALKINES warning meetings (see #2 above).

In addition to the guidelines in the National Agreement you should also:

In any meeting with TIGTA, the NTEU Steward should play a vital role. Before going to represent an employee, be sure to familiarize yourself with the National Agreement, Article 5, which sets out your rights and responsibilities.

1. Find out what time the meeting is scheduled, and if it's not convenient for you or the employee, call the Inspector and schedule another time. They may not like it but they have to accommodate you as long as you are reasonable.
2. Take good notes of the meeting, or better yet, tape the proceedings (authority given in the National Agreement, Article 5). We have a tape recorder in the Union Office available for this purpose.
3. Be sure to take regular breaks, and if the meeting runs long, go to lunch at the employee's usual time, and adjourn the meeting immediately whenever the employee's or your tour of duty ends.
4. Remember that it is very seldom advantageous for the employee to write an affidavit for the Inspector. If TIGTA wants a written statement, they can write their own. Advise the employees, **Do not to write a statement and do not sign a statement or an affidavit prepared by TIGTA.**

Also see NTEU National Chapter Manual, [Chapter 13](#), for additional information.

Always keep in mind the Inspectors have no authority over the employee you are representing. They are simply gathering information in order to make a report to management. The “You're lucky, we took this to the U.S. Attorney's office, but he decided not to press charges if you cooperate” line is the current favorite statement, but the old standby “Sure, you should write an affidavit, it will make your file look better” is still popular. No matter what tactics they use, they are not management, and they don't make decisions. There is no need for you or the employee to be worried about what they think. They cannot change the facts.

Just be professional, insist on your rights and the rights of the employee, and let the Inspectors think whatever they want to think.

## **INVESTIGATORY INTERVIEWS**

**The Weingarten Right** (5 USC Section 71 14(a)(2)(B))- An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at any examination of an employee in the unit by a representative of an agency in connection with an investigation if –

- (i) the employee reasonably believes that the examination may result in disciplinary action against the employee; and
- (ii) the employee requests representation.

The employee, who is the subject of an investigation or a witness, has the right to have An union representative attend any meeting which meets the following test:

- 1 Is it an examination or information gathering event?
- 2 Is the employee in the bargaining unit?
- 3 Does a representative of the agency conduct the meeting?
- 4 Is it related to an investigation of misconduct?
- 5 Is there objective evidence to believe that there is a potential for discipline?
- 6 Is the employee requesting union representation?

**Kalkines Right** - You are here to answer questions pertaining to your employment with..., and the duties you perform for the ... You have the option to remain silent, although you may be subject to removal from employment..., if you fail to answer material and relevant questions relating to your performance of your duties as an employee. You are further advised that answers you may give to questions propounded to you at this interview, or any information or evidence that is gained by reason of your answers, may not be used against you in a criminal proceeding except that you may be subject to criminal prosecution for any false answers you may give.

**Miranda Rights** - You have the right to remain silent, you have a right to an attorney, anything you say can be used against you in court or other proceedings. If you decide to answer questions now with or without a lawyer, you still have the right to stop the questioning at any time or to stop the questioning for the purpose of consulting a lawyer.

## **THE NTEU STEWARD'S ONE PAGE GUIDE TO INVESTIGATORY INTERVIEWS**

The steward can do the following things for the employee:

1. Prepare the employee by reminding him or her how seriousness these meetings. Removal and even prosecution is possible. Practice the employee with some test questions.
2. Urge the employee not to lie to the investigators and to generally brief you on the facts in advance. However, ask him to refrain from telling you of any criminal activity.
3. Remind him/her to volunteer nothing. This includes possible recollections or anything else about which he or she can claim to be uncertain.

4. Open the investigation by clarifying whether the employee is the subject or a witness, whether immunity from criminal prosecution is to be offered, and whether that can be confirmed in writing. If the investigators believe there is a possibility of criminal prosecution or if you and the employee believe there is, refuse to answer until immunity is granted. Also ask about the specific topic of the investigation.
5. Listen for anything during the meeting that suggests the investigator's interests in criminal activity by the employee. As soon as you hear it, invoke Kalkines or Miranda.
6. Try to clarify investigator questions so that they require only yes or no answers. Get in the way of requests that the employee just talk until stopped. Watch for the investigator trying to be the employee's friend.
7. Demand to see any documents or other evidence mentioned by inspectors before responding to a question about them.
8. Before the employee answers any significant question, caucus with him to advise him how to answer. Call for a caucus whenever the employee is ignoring your advice or getting intimidated. However, at no time should you deliver the answer for him or her.
9. Use your right to object to any trick or otherwise unfair questions. This should alert the employee to possible traps.
10. Insist on regular breaks, if necessary, call a caucus to get one. Stop at the end of the workday.
11. Try to record all questions and answers even if you have to ask the inspectors to go more slowly than they want. Record any memorable events that may help a defense immediately after the interview and have the employee initial it with you.

### **Labor Management Relations Committee (LMRC) Meetings**

In April of 1992 and again in July of 2000, in an effort to foster an atmosphere of honesty in communications, Chapter 52 entered into a Memorandum of Understanding with the Austin District. This memorandum established a committee made up of Union (representing Labor) and Management, to meet on a quarterly basis during the months of February, May, August, and November.

The intent is to operate in an atmosphere of mutual trust and cooperation to exchange ideas and address common concerns.

The earlier Agreement expired (like many local agreements) on the expiration of NORD III, was renewed by NORD IV and later MOU renewed the agreement for the period covered by the National Agreement. If any steward wishes to put forth an agenda item to be discussed at a quarterly LMRC meeting, contact your Chief Steward or Asst. Chief Steward. Representatives who wish to appear before management to discuss an item of concern at one of the meetings should contact the Chief Steward or Union President.

### **THE LAW AND FORMAL MEETINGS**

Formal Meetings Defined: An exclusive representative of a appropriate unit in an agency shall be given the opportunity to be represented at any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general conditions of employment. (Title 5 US Code Section 7114 (a) (2) (A))

### **Elements of a Formal Meeting:**

There is no mathematical formula for determining what is and is not a formal meeting. The FLRA looks at the “totality” of the circumstances to decide. A meeting is more likely to be ruled formal if,

1. a manager above the first line supervisor attends,
2. more than one manager attends,
3. it is held in a formal area for meeting rather than right at the employees' desk,
4. it lasted for more than a few minutes (10 minutes),
5. it was scheduled in advance rather than arose spontaneously,
6. the employees were required to attend,
7. a formal agenda was followed or minutes taken,
8. there was a discussion of general policy or practices versus the problems of one or two people.

### **SOME EXAMPLES**

You get into the following:

- 1- discussion about how to fill out newly required forms (37 FLRA 952)
- 2- orientation sessions of new employees (5 FLRA 458)
- 3- interviews of witnesses to an EEO complaint (46 FLRA 107)
- 4- meetings with grievant representing themselves (10 FLRA 172)
- 5- meetings to discuss changes in the AWS system (38 FLRA 671)

You do not get into the following:

- 1- EEO pre-complaint meetings
- 2- adverse action replies
- 3- routine and periodic counseling of employees

### **THE STEWARD'S RIGHT TO PARTICIPATE INCLUDES:**

Once you know which meetings you are entitled to attend, it is just as important to know what you can do in the meeting. Here is a list of your rights in connection with a meeting.

An NTEU Shop Steward has...

- 1 The right to receive formal advance notice of the meeting according to the terms of the contract,
- 2 The right to comment, speak, and make statements about anything reasonably related to the subject matter addressed by the manager,
- 3 The right to request necessary for the information the manager may have that is reasonable and union to consider a proposal he has made,
- 4 The right to ask questions - especially to clarify issues the manager brought up,
- 5 The right to assert the union's position on a matter, including objections to the management position and what the union can do about a matter, and
- 6 The right to invite employees to contact him or her after the meeting to discuss issues raised in the meeting.

About the only formal limit on the steward's participation is that he or she not “take charge of, usurp, or disrupt the meeting.” Do not become disruptive during the meeting. If you have questions about processes, it may be advantageous to ask for information at break or after the meeting. Not all office procedures are readily available and you may ask the manager for that information after the meeting.

When your rights to attend a meeting or to do something legitimate in a meeting is violated, you have the following options:

1. Filing a grievance,
2. Filing and unfair labor practice, even as a grievance.

### **TIPS FOR PARTICIPATING INFORMAL MEETINGS**

#### **In order to have a better relationship with the managers who run the meeting:**

- Introduce yourself and talk about what you want to do in her meetings.
- Talk about how you will participate, e.g., when to ask questions, when you will be introduced, how to address problems, etc.
- Explain the value of having some information about the agenda in advance.
- Talk about how to avoid scheduling problems.

#### **In order to have a better relationship with the employees in the group:**

- Formally introduce yourself via a letter or in your first meeting explain why you are there. Emphasize the positive things you can do.
- Tell employees where they can find you and invite them to call with questions or suggestions.
- Assure employees that whatever they tell you will be held confidential unless they agree to use of the information.
- Recruit one employee to be your contact (or assistant) focusing on that group's problems, rumors, etc.

#### **In order to increase your ability to recruit nonmembers through these meetings:**

- Know who the nonmembers are in the group.
- Bring SF-1187's to the meeting.
- Identify the concerns of the individual nonmembers and offer some help.
- Solicit NTEU members in the group to recruit individual nonmembers.
- Bring new information and other useful material to the meetings to underscore the service the union offers.
- "Even though the formal standard in the new manual section applies to everyone, I will be giving some waivers to individual employees."
- "The front office just sent me a new report that makes it clear we are not doing what we are supposed to do. So, I have two things to say. First, we have to work harder. Second, I want you to report to me if you

see any of your fellow employees in other groups doing something improper that makes our group look bad.”

- “What we say in our group meetings is strictly confidential and I will punish anyone who repeats anything to someone outside the group.”
- “I am here to listen to your ideas about how to soften the impact of the new work and hopefully we can agree today on what to do.”
- “Unless we get better as a group, I will deny any request for leave this summer.”
- A manager calls on an employee with her hand in the air that says, “I’d like to know what the union is going to do about your proposal and why it has not already fixed this problem.”

### **NTEU FORMAL MEETING REPORT FORM**

I attended a formal meeting in the following group at the date and time noted:

I collected some materials that the manager handed out and I have attached them for your information.  
Yes\_\_\_ No\_\_\_

A question(s) came up that I would like you to answer if you could.

I learned the following from the meeting, which I thought you, or other stewards might find interesting.

Steward’s Name: \_\_\_\_\_ Tele. No.: \_\_\_\_\_