



UAW ADMINISTRATIVE LETTER

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Volume No. 40

January 10, 1990

Printed in USA

Letter No. 1

IN THIS ISSUE

**UAW SUBSTANCE
ABUSE POLICY**

To All Local Unions

Greetings:

The purpose of this Administrative Letter is to clarify the current UAW policy dealing with the problem of substance abuse in the workplace. This letter supercedes Letter No. 8, Volume 36, dated September 17, 1986. This letter also clarifies Letter No. 1, Volume 31, dated August 27, 1979 and Letter No. 30, Volume 3, dated December 11, 1951 with respect to this same topic.

Since our last Administrative Letter on drug testing (Letter No. 8, Volume 36, dated September 17, 1986), the Drug-Free Workplace Act of 1988 (41 U.S.C. 701, et seq.) became law. The Drug-Free Work Place Act requires that federal contractors establish and publish a drug free awareness program.

There have also been a number of directives and decisions rendered by administrative agencies and courts on the related matter of drug testing. Pursuant to the Drug-Free Work Place Act, the U.S. Department, of Transportation and Defense and other federal agencies have also enacted regulations requiring federal contractors to establish drug testing programs. The Defense Department regulations mandate drug testing of only those employees in sensitive positions as defined by a specific contract between the Defense Department and the employer. The U.S. Department of Transportation has issued regulations calling for the drug testing of certain over-the-road truck drivers. Many UAW members work for federal contractors who are governed by these regulations.

The U.S. Supreme Court has approved drug testing for certain employees performing critical jobs of the U.S. Customs Service, or performing safety-related jobs as railroad employees. A few states have also passed laws dealing with drug testing that may impact on this problem, particularly as to public employees of the respective state.

The National Labor Relations board (NLRB) has held that employers must bargain over drug testing. However, the NLRB noted that employers are only required to offer to bargain about this subject. If an impasse develops over drug testing in bargaining, the employer may then unilaterally impose its collective bargaining position just as it could any other issue involving a "mandatory" bargaining subject. At the same time, the terms of many of our collective bargaining agreements make it clear that the parties are not required to bargain during the term of the agreement. In those situations, the union is justified in refusing to bargain over drug testing until the next round of open contract negotiations.

Where an employer is requesting bargaining over drug testing because of state law or federal agency directives such as those issued by the U.S. Departments of Transportation and Defense, we recommend that union negotiators enter into such bargaining

Nevertheless, our basic position on substance abuse has not changed. Drug and alcohol abuse are illnesses that create serious problems for workers, their families, the workplace and the community. These illnesses acknowledge no boundaries of age, race, and socio-economic status. Punishing the victim will not eradicate the problem. Efforts instead must focus on treatment of the illness and restoration of the victim to a meaningful, productive life.

Our collectively bargained agreements should include provisions for an employee assistance program (EAP) and treatment benefits. Such EAP should be jointly sponsored and implemented according to standards that ensure confidentiality, training, assessment, staffing, resources, referral systems and after care treatment designed for early detection and treatment of problems. Such programs should also include education of workers and their families about the danger of substance abuse and information detailing what benefits are available. Company-paid benefits should include a full array of services, including residential, outpatient, and detoxification to better ensure a quality, cost effective approach.

Even though the impact of substance abuse goes beyond the workplace, while in the workplace, workers must be judged on job performance alone. A worker having problems with performance that may be caused by substance abuse must be given every opportunity to seek and receive confidential, quality treatment. As long as the employee is actively participating in a recovery program, his/her job must remain secure. Each employer, in conjunction with the union, should establish a substance abuse policy that espouses such philosophy.

We have opposed drug testing programs because they are an unjust invasion of worker privacy, can result in discipline regardless of any showing of on- the-job impairment, the procedures are often unreliable and may violate certain provisions of the U.S. Constitution. We continue to oppose employer drug testing.

Despite our continued adherence to these principles, the fact remains that federal and state laws and regulations are causing some UAW employers to bargain for drug testing programs. Where some form of drug testing is therefore inevitable, UAW negotiators need guidelines for establishing acceptable programs which deal with the broader issue of a substance abuse while also addressing the employer's narrower interest in drug testing.

It is therefore the policy of the UAW that:

- 1) Substance abuse by our members must be addressed within the collective bargaining agreement in a cooperative and constructive effort to overcome its impact on safety, productivity, quality of work and morale. A comprehensive substance abuse policy must also apply to "legal" drugs, such as alcohol, prescribed medicines and over-the-counter medications as well as illegal drugs. We shall therefore continue to pursue employee assistance and benefit programs to educate and inform our members of the dangers of substance abuse and to make effective treatment programs available to workers and their families.
- 2) Employer proposals for drug testing are a matter of collective bargaining and cannot be implemented unilaterally absent an impasse in bargaining.
- 3) While we are opposed to employer drug testing, where some form of a drug testing program is inevitable due to federal agency requirements or otherwise, it should include the following elements in order to ensure that the rights of our members are fully protected:
 - (a) Drug testing programs should be closely monitored through a joint oversight committee to identify potential abuses and immediately implement corrective action.
 - (b) Drug testing should only be permitted on a showing of probable cause of on-the-job impairment which has a direct and measurable impact on the safety, productivity or the quality of work of the suspected worker. Random drug testing is not acceptable, and it should therefore be confined to those very limited instances mandated by government regulations.
 - (c) Treatment, rehabilitation and counseling should be the prime objective and focus of any testing program.

- (d) Testing procedures and laboratories should be jointly selected and must meet or exceed standards established by the U.S. Department of Health and Human Services. Only reliable test procedures and facilities (with established records of accuracy, precision, sensitivity and specificity of toxicological testing) are to be used. Positive test results must be subject to verification by approved scientific methods. All test data and evidence must be clearly identified and preserved for further verification.
- (e) The privacy rights of workers must be protected to the maximum extent possible. Sanctions must be imposed for violations of confidentiality.
- (f) Workers with an on-the-job impairment should have the opportunity, for rehabilitation rather than discipline.
- (g) Discipline is only appropriate for proved impairment of the worker's on-the-job performance. Any discipline must be subject to review under the grievance procedure and through arbitration.
- (h) The UAW Social Security Department should be consulted on the selection of testing procedures, laboratories and treatment facilities.

4) While we have great sympathy for the victims of drug abuse, we have no tolerance whatsoever for drug pushers and providers. We will, therefore, not pursue grievances for workers who have been disciplined or discharged by their employer who are guilty of engaging in drug pushing or drug trafficking. This prohibition applies not only to those persons who are in control of these activities, but those who knowingly assist in permitting such activities to occur by acting as couriers, dispensers, bankers or as other key participants in the drug trafficking operation. Where participation of a worker in such activities is clear and established, the grievance should be withdrawn or closed. Where the evidence is not conclusive that the worker is guilty of participating in a drug trafficking operation, the grievance should be processed consistent with the UAW's established standards for grievance handling. (See UAW Administrative

Letter, Volume 38, Letter No. 4, dated September 22, 1988, Grievance Handling and the Union's Duty of Fair Representation.)

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We continue to support efforts directed toward treating rather than punishing the victims of substance abuse. At the same time, we will not support those who traffic in illegal activities or who contribute to the problem of substance abuse in the workplace. We simply will not assist those who help spread the scourge of drugs. Drug traffickers must have no place to hide in either the workplace or the union.

There are no easy answers or single solutions to the problems of substance abuse. One of the major tasks facing our society is to treat those who abuse drugs while protecting the basic rights of every person to due process and privacy. This UAW policy statement is our attempt to balance these competing objectives.

In order to ensure consistent application of this policy, all requests for assistance in developing or modifying substance abuse insurance benefits, employee assistance programs or drug testing procedures should be forwarded to the appropriate National Department or if your Agreement is not under the jurisdiction of a National Department then your Regional Director, who will review these matters with the UAW Legal and Social Security Departments.

Fraternally,

Owen Bieber
President