

Steward's Guide

What Is A Grievance?

A general definition -- It sounds like an easy question, yet there is often a basic misunderstanding of what exactly constitutes a grievance. Some (especially management) believe that only a violation of a specific article or section of the contract can be the basis for a grievance. This is not true.

A grievance is any unjust act, practice, or condition that management has the power to correct.

You can and should grieve any unjust act, practice, or condition which management has the power to correct. Not every problem or complaint may be a grievance. But union representatives should investigate and take seriously all members' problems and complaints. Your investigation may uncover a situation where a complaint that did not seem to be a grievance may in fact lead to one. Also, other solutions may be found to a member's problem without using the grievance procedure. Union representatives should also look for ways to use the grievance process to build the union by involving members in the resolution of problems and complaints.

Categories of Grievances

There are thousands of possible grievances, but they all should fall into one of the following general categories:

1. Violation of the Contract

This is the clearest, most blatant type of grievance. They include such matters as seniority hours of work, staffing, wages, working conditions, holidays, vacations, and disciplinary action without just cause.

2. Violation of Written Precedent

Written precedent is as enforceable as contract language. Examples include company rules, procedures, or written interpretations of the contract from prior grievances or arbitrations.

3. Violation of Past Practice

Even when the contract says nothing, and you have no written precedent, there can be a grievance based on established "past practices". (For example, a practice like "clean up time" which has existed over a period of time and allowed by both management and the Union) A practice that has been in place for an extended period of time and is accepted by both parties either explicitly (orally or

in writing) or implicitly (neither side has ever objected) may be the basis for a grievance if it is violated.

4. Violation of Fair Treatment

There doesn't have to be a contract clause covering supervisor's assaults or abuse of employees to make it possible to grieve this kind of violation. Discrimination and workers' rights cover a broad range of incidents or practices. Management cannot discriminate on the basis of race, sex, age nationality, religion, sexual preference or union activity.

5. Violation of the Law

Laws written to protect workers are implicitly part of the contract, and violation of municipal state or federal laws can constitute a grievance.

6. Violation of Management's Rules or Responsibilities

Management has the responsibility to provide safe and healthy working conditions Likewise management has a right to certain policies under the contract. If management fails to fulfill its responsibilities or violates its own policies, it may be necessary to file a grievance.

Even if none of the above applies, if there is a bona fide unfair practice or action by management, you should file a grievance and demand representation and a hearing.

REMEMBER -- Don't let management refuse to settle disputes just because there is no particular article of the contract to base it on. Anything that is of concern to the members and is a dispute which management has the power to settle should be the subject of a grievance. The strategy that you choose to pursue the grievance, however, should be determined by what type of grievance it is.

Investigating Grievances

GET THE FACTS: REMEMBER THE 5 W's and 1 H

WHO...is involved? Name(s) of the grievant(s), department, shift, job classification seniority, etc. Are they on probation? Have they been disciplined before? Has a similar grievance been filed on this same issue? Who is the supervisor? Who are the witnesses?

WHEN...did the incident or condition occur? Give dates and times as accurately as possible.

WHERE...did the grievance take place? Give the exact location, department, area, etc.

WHAT...is the grievant's story? Management's position? The reports of witnesses? Are there any records that might help support your case? Collect all the facts you can, always looking for the hard facts, but accepting and weighing "less convincing evidence" and different versions.

WHY...is this a grievance? Has the contract been violated? What about violations of past practice, the law, or health and safety rules. Is the issue one of unjust action or application of company rules, contract interpretation, etc?

HOW...should the grievance be settled? What adjustments are necessary to correct the injustice? You want to return the aggrieved worker to the same condition he/she would have been in, had the violation not occurred.

Writing Grievances

- 1. Limit details to basic information.** Provide only enough information to identify the grievance so that management understands 1) what the basic problem is, 2) what violations have occurred, and 3) how the problem should be fixed (the remedy).
- 2. Omit union's arguments, evidence, and justification for position.** This information could be used by management to prepare a better case against the Union. For example - instead of writing "The grievant, John Doe, was suspended for smoking in the hallway when three other people who did the same thing in the past were not." It would be better to write "Management unjustly disciplined John Doe."
- 3. Don't limit contract violations**
In stating WHY there is a grievance, use the phrase "violates the contract" and the words "including Article..." when citing specific articles or sections in the contract. For example – instead of writing: "Management's action violates Article VI, Section 4 and 5. It would be better to write: "...in violation of the contract, including Article VI Sections 4 and 5." (You can always add more violations if found later)
- 4. Don't limit the remedy**
If you limit the remedy: 1) you don't allow the Union room to bargain on the grievance. 2) You might limit the Union to something less than full compensation for the grievant by leaving out something you remember later. This can be accomplished by using the general phrase "made whole in every way" and the word "including" when referring to specific remedies. For example – instead of writing: "The Union requests that John Doe be recalled to work with full back for wages lost." It would be better to write: "The Union requests that John Doe be made whole in every way including immediate recall with full back pay for all lost wages."
- 5. Avoid personal remarks**
The grievance states the Union's position, not yours (or the grievant's) opinion. Avoid the use of phrases like "I think", or opinions about management officials.

Presenting Grievances

(Reprinted from AFSCME Steward)

1. **Act as management's equal at the grievance table.** While respecting their position, insist on respect for you and the grievant as well.
2. **Use a friendly, positive approach.**
3. **Discuss issues, not personalities.**
4. **Stick to discussing your grievance.** Don't allow management to sidetrack you by talking about topics unrelated to the grievance. Politely but firmly keep the discussion on the facts of the grievance and the contract, nothing else.
5. **Listen for the main point of management's argument.** Try to narrow the area of your differences. Look for possible solutions.
6. **Avoid becoming excited, angry, or hostile.** Management sometimes attempts to provoke you into losing your temper. Remain calm and cool. It's hard to think straight when you are angry.
7. **Avoid arguing with the grievant in front of management.** If a disagreement occurs, ask for a caucus where you can leave the meeting room to iron out the problem.
8. **Don't make empty threats.** This weakens your ability to resolve the grievance.
9. **When you disagree with management, do so with dignity.** Remember that you and the supervisor will have to settle other issues in the future.
10. **Be prepared to go to the next step.** If you can't settle the grievance, you can always appeal it through the process.

Settling Grievances

Make sure management understands your position.

- Argue for your remedy.
- Emphasize the seriousness of your position.
- Indicate your willingness to proceed to the next step as well as your preference for settling at the lower step.
- Indicate your willingness to be reasonable.

Make sure you understand management's position.

- Ask the supervisor what his/her obstacles are to settling.
- Ask the supervisor about his/her solutions to the grievance, if he/she doesn't agree with yours.
- Listen closely for indications of management flexibility.

Look for a favorable settlement

- Analyze the strengths and weaknesses of your case.
- Know what you're looking for and what flexibility you have, if any.
- Don't box yourself into only one solution.
- Persuade the supervisor that it is in management's interest to settle.
- Give positive reinforcement for any movement made by management.
- Give management a chance to save face.
- Don't offer a compromise unless you have been given reason to believe it will be accepted.

Using Solidarity to Win Grievances

Grievances can sometimes best be won by relying on the solidarity of union members rather than, or in addition to, the contract language. Before initiating collective action, you should consider the following questions:

- Is the grievance winnable?
- Who is the grievant? How is s/he viewed by his/her co-workers?
- Which other workers are/could be affected by this grievance?
- Can the workers be organized around this grievance?
- Will collective action be effective?
- What is the "common denominator" of this grievance for all members?
- Could this be settled by the formal approach? Should it be?
- Who in management has the power to resolve this grievance?
- How is the management vulnerable? i.e. What are the pressure points?
- What tactic(s) will the members participate in? Which tactic(s) will be most effective with management?

Buttons

Petitions

Leaflets

Bulletin boards

Arm bands

Creative disobedience

Lunch room meeting/rally

Shift change rally

Brief work stoppage

Group confronting supervisors

Informational picketing

Press release

State/Federal agencies

Group grievances

Silent treatment of supervisor

Rule book slow down

"Write-up" supervisor

Cartoons

Boycott

Remember: All collective actions require a high level organization and unity; otherwise the Union will look weak.

Defending Disciplinary Cases

Union representatives and stewards must always handle grievances with the possibility of taking the case to arbitration. This is especially the case in disciplinary cases. Special care should be taken, because of the union's increased obligation of duty of fair representation in disciplinary cases. For this reason good note-taking, a thorough investigation, and filing the grievance in a timely manner are extremely important in disciplinary cases.

In a disciplinary case, management must prove that they had "just cause" to administer the discipline. Management has the burden of proof, but unlike in a criminal court, management must prove its case by a "preponderance of evidence" or "substantial evidence", not "beyond a reasonable doubt."

An Arbitrator's Seven Tests of Just Cause

1. **Proper Notice:** Was the employee given advance warning of the probable consequences of his or her conduct?
2. **Reasonable Rule or Order:** Was the controlling rule or order reasonably related to efficient and safe working conditions?
3. **Full Investigation:** Was the alleged violation of the rule or order fully investigated before discipline was administered?
4. **Fair Investigation:** Was the investigation fair and objective?
5. **Substantial Proof:** Did the investigation uncover substantial proof of guilt?
6. **Equal Treatment:** Was the employer's treatment even-handed and non-discriminatory?
7. **Appropriate Penalty:** Was the disciplinary action reasonably related to the employee's record of service with the organization and the gravity of his/her offense?

(As used by Arbitrator Carroll Daugherty in Enterprise Wire Company and Enterprise Independent Union, 46 LA 359)

Defending Disciplinary Cases

Lines of Defense

1. Is the worker guilty as charged i.e. has management proved its case?
2. Were there mitigating circumstances i.e. a good excuse?
3. What is the worker's prior disciplinary record? Was there prior discipline for similar or different offenses?
4. What is the worker's record? How are his/her yearly evaluations? Any letters of commendation?
5. How many years has the grievant worked for the company?
6. Was the rule allegedly violated clearly understood, properly communicated, and consistently enforced among all workers?
7. Was there disparate treatment i.e. have other workers been treated differently in similar circumstances?
8. Has progressive discipline been applied? Could a lesser penalty be equally effective?
9. Was the worker given due process i.e. was the case handled fairly by management?
10. Was management also at fault?
11. Does the punishment fit the crime?

Union Representatives' Legal Rights

1. Equality Principle

Under the NLRA, steward and union officers have a protected legal status. When engaged in representational activities, stewards and union officers are considered to be equals with management. A union representative performing union business is protected from retaliation or discrimination for raised voices, gestures, forceful expressions, or threats of legal action. However outrageous or indefensible conduct, such as threats of violence, extreme profanity racial epithets, physical violence, illegal work-stoppages, work disruptions, slow-downs, and filing grievances in bad faith are not protected.

2. Grievance Process

Both the grievant and the union representative are protected in the grievance process. Union representatives can solicit grievances and investigate grievances before work, after work and during breaks. Such union business can be conducted during work if it is provided for in the contract or by past practice.

The union is the exclusive bargaining agent for all employees in the bargaining unit. Therefore, while an individual member has the right to bring a grievance on his or her own behalf without a union representative being present, management may not "adjust" a grievance without a union

representative being given the opportunity to be present (unless this right is waived in the contract).

A union can also engage in a variety of concerted activities to support a grievance.

3. **Right to Information**

Under the NLRA the union has a right to obtain information from employers regarding grievances. Requests must be specific and relevant and should be in writing. The kinds of information relevant to the grievance that can be requested include: accident records, disciplinary memos, personnel files, insurance policies, payroll records, promotion records, bargaining notes seniority lists, job descriptions, evaluations, company memos, health and safety reports, non-bargaining unit personnel files, etc.

4. **Weingarten Rights**

Union members have a right to union representative during investigatory interview. An investigatory interview involves a supervisor asking questions to obtain information which could lead the employee's discipline. Employers are not obligated to inform members of their Weingarten rights. It is the union's role to do so. Employees must request union representation before or during the interview. During the interview the steward or union representative has the right to:

Speak

Request information, clarification

Advise on how to answer

Provide additional information

Caucus

Protect grievant from self-incrimination

A private, pre-interview conference with worker

You **cannot** advise a worker to refuse to answer or to lie.

5. **Unilateral changes**

Management has the following obligations before implementing new rules, job practices and significant work assignment changes during the life of the contract:

- Management must notify the union to give opportunity to bargain.
- The union must request bargaining prior to the implementation of the change if the union fails to request bargaining, then it loses its bargaining rights on the change.
- After receiving the union's request, management must suspend implementation until bargaining is completed.
- The parties must bargain in good faith to agreement or impasse.
- If the negotiations come to impasse, then management can implement its proposed change (and the union can grieve if it wishes to).

Based on The Legal Rights of Union Stewards by Robert Schwartz

Employee Rights

Under the Supreme Court's Weingarten decision, when an investigatory interview occurs, these rules apply:

- The employee may request union representation before or during the interview.
- After the request, the employer must choose from among three options:
 1. Grant the request and delay questioning until the union representative arrives.
 2. Deny the request and end the interview immediately.
 3. Give the employee a choice of: (a) having the interview without representation (usually a mistake) or (b) ending the interview.
- If the employer denies the request for union representation, and questions the employee, it commits an unfair labor practice and the employee may refuse to answer.

If called to a meeting with management read the following to management or present this statement to management before the meeting starts.

“If this discussion could in any way lead to my being disciplined or terminated, or affect my personal working conditions, I respectfully request that my union representative, officer, or steward be present at this meeting. Without representation present, I choose not to participate in this discussion.”

Grievance Handlers' Rights and Responsibilities

Under the National Labor Relations Act, stewards and other grievance handlers have the following rights:

1. The right to police the contract, solicit grievances and represent employees through the grievance procedure free of harassment or discrimination from supervisors,
2. The right to freely to speak their minds while fulfilling their representational roles.
3. The right to request and get from the employer information that is relevant to the grievance at any point during the grievance process, including prior to filing a formal grievance.
4. The right to be present during a pre-disciplinary investigatory management interview with an employee if the employee requests representation.
5. The right to assist the employee during such an interview through helping clarify and giving advice.
6. The right to meet with the employee prior to such an interview to become familiar with the basic facts of the case.
7. The right to sign up new members and, within legitimate workplace distribution rules, to distribute union literature.

8. Negotiated rights in the contract and by custom/past practice may expand on these statutory rights. -

(Source: Labor Guide to Labor Law, by Bruce Feldacker)

Duty of Fair Representation

The union, through certification or recognition, is established as the "exclusive" bargaining representative for all employees in the bargaining unit. In exchange, the union must fairly represent all employees in the unit, members and non members alike. This responsibility applies in contract negotiations and in contract administration and enforcement (grievance handling and arbitration). The legal term for this is "duty of fair representation."

The following set of guidelines will help you meet your duty of fair representation:

1. Consider all grievances solely on the merits.
2. Investigate the grievance thoroughly.
3. Process the grievance promptly - do not miss time limits for filing and appealing grievances.
4. Take notes and keep written records.
5. Keep the grievant informed.
6. Treat all members of the bargaining unit the same.
7. Have a valid reason for any action taken on a grievance.

"Obey Now, Grieve Later" Principle

1. Supervisor must have the authority to give order.
2. Order must be clear and concise.
3. Employee must perceive/understand order.
4. Allow employee time to reflect upon the "alternative" of work or discipline.
5. Ask employee for his/her answer.

Exceptions:

1. Where the order would endanger the employee's health or life.
2. Where the order is illegal or immoral.

LISTENING: A VITAL COMMUNICATION SKILL

Leaders learn when they learn to listen. Listening is a skill that involves more than simply "hearing" what is being said. By watching facial expressions, catching the inflection of the voice, and by trying to understand what the speaker is trying to say, leaders can learn a great deal about how to handle problems.

How well do we listen?

- Do I stop talking?
- Do I concentrate?
- Do I listen for the main idea?
- Do I control my emotions'?
- Do I get distracted by arguing mentally?
- Do I jump to conclusions?
- Do I interrupt?
- Do I antagonize by my attitude?

When we really listen:

- We can learn.
- We can help relieve tension.
- We can show respect for others
- We can show we care.
- We can solve problems.

TIPS FOR STEWARDS

STAY "IN THE KNOW"

KNOW your contract or work rules. Keep a copy handy.

KNOW how the contract or work rules have been interpreted in your work place.

KNOW your grievance procedure.

KNOW who's in the union and who's not. Keep trying to sign up new members.

KNOW your union members.

KNOW your union's policies and programs so you can keep fellow members informed. Attend meetings. Read your union publications.

KNOW the supervisors and how they operate.

KNOW where to go for advice or information. You don't have to know everything, but you should know where to get answers.

That's a lot to keep track of. But staying "in the know" will make you an effective union steward.