

# Grievances/ Unfair Labor Practices



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What is a  
Grievance?



# What is a grievance?

- Two types:
  1. An allegation that management violated the contract, the law or a past practice.
  2. An appeal of a disciplinary action. A grievant can file a claim alleging that management did not have “just cause” to invoke disciplinary action if the contract has a “just cause” provision in the discipline policy.

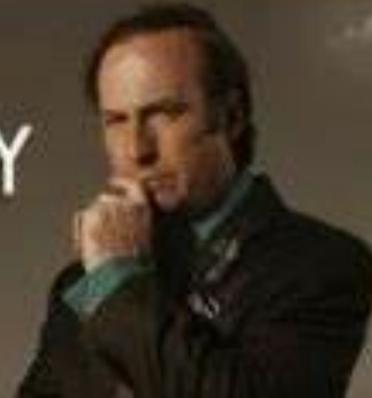


Grievance  
or  
Complaint?



Who  
handles  
grievances?

I KNOW A GUY  
**WHO KNOWS A GUY**  
WHO KNOWS  
**ANOTHER GUY**



# Grievance Committee

- **Forming the committee:**
- **Do your Constitution and By-Laws dictate?**
  - *Elected or Appointed?*
  - *Size?*
- **Make-Up of Committee:**
  - *Representative of the Local*
  - *Objectivity*
- **Experts:**
  - *Attorney's*
  - *DVP*
  - *State Rep's*
  - *ELS Graduates*



# Grievance Chair

- Union President? ...Does it Have to be? Should it be?
  - *Directs the committee*
  - *Assignments*
- Effective communicator (verbal and written)
- Educated, Knowledgeable in the Contract, Policies, Past Practice



# Grievance Committee Responsibilities

- Must be willing to devote a significant amount of personal time to work on grievances and attend applicable workshops.
- Must use logic and evaluate grievances from an outside, neutral viewpoint.
- Must never let personal feelings affect decision making.
- Must be willing to seek advice and assistance from qualified sources such as advocates, attorneys or others with practical experience when needed.
- Must develop the same traits and skills as those of an advocate. Grievance committee members represent and argue facts and issues through the steps of the grievance procedure as well as research the merits of the grievance.
- Must keep accurate and thorough records for each grievance throughout the grievance process.
- Must consist of an odd number of members to break a tie vote.



CBA/ Past  
practice  
violations



# The five tests for a grievance

1. Violation of the contract
2. Violation of the law
3. Violation of company rules
4. Violation of well-established practices
5. Violation of workers' rights



# Past Practice

- A past practice is an unwritten rule that involves a condition of employment. It is widespread, long-standing and well known to both labor and management (e.g., times fire fighters can shop for meals or times fire fighters do their physical training). If management proposes to change a past practice, the union generally has the right to bargain over it.



Discipline/  
Wrongful  
Termination



# Listen carefully to the facts

- Listening is a lot harder than most people realize.
- You will probably need to ask questions to get the facts clear and to get important information that the worker leaves out.
- The more information you gather from your initial conversation with the worker, the easier it will be to handle the grievance.
- Spend enough time to get all the facts before you make any judgments about the problem.
- Pay close attention to the facts that apply to the case, not the “back story.” Upset people offer a lot of opinions and inferences.
- A statement like “Joe has always had it in for me” is an opinion and usually of no use in a grievance. If you probe the worker, you might learn that, in fact, Joe has been giving other workers preferential treatment, a fact which can be used to win a grievance.



# Before the discipline

- Members who are called into the office should have their steward with them, if permitted under law or contract.
- Members should be prepped to keep their answers short and simple.
- Members should be informed that if they are asked about something and don't remember, just say so.
- The worst thing someone can do is to make up a story and give management an excuse to try to discipline the member for dishonesty.



# Investigate Thoroughly

- Before writing the grievance, double-check the facts with whatever records are available and other people who might have information.
- Check for corroborating witnesses, records and facts.
- Check as thoroughly as you can, but make sure you don't exceed the time limit for filing a grievance given in your contract.
- Do the proper investigation early.
- Keep good notes.
- Prepare as if the grievance is going to arbitration.
- Pass copies of everything up to the representatives handling each Step.



# The seven W's and one H

- Who was involved?
- What happened?
- When did it happen?
- Where did it happen?
- Why did it happen?
- Witnesses
- Written documents
- How did it happen?



# Think like a lawyer

- Anticipate arguments and prepare to defend.
- What is the best case that the employer can present to prevail on this grievance?
- What are the arguments and defenses that the employer is likely to advance during the grievance and at arbitration?
- How can I defeat the employer's arguments/defenses or show that they should not prevail?



# The Burden of Proof in a discipline/discharge case

- In a discipline/discharge case, it is up to management to prove an infraction and to justify the level of discipline. But a common trick is for management to try to shift the burden of proof onto the employee.
- In some cases, management will even start out a meeting by saying, “Do you know why you’re here?” or “Give me one good reason why I shouldn’t fire you right now.”
- Don’t let management turn the tables. In a grievance meeting for a discipline/discharge case, the shop steward or union representative should always insist that management present its case first.
- Make management answer the question, “Is that your entire case?”
- Use the Seven Tests of Just Cause to show that management failed to meet its burden of proof or that the discipline is too severe.



# Just Cause for Discipline – Seven Point Test

1. Is the rule or work order reasonable?
2. Did the employee receive adequate notice?
3. Was a sufficient investigation conducted?
4. Was the investigation fair and objective?
5. Is there sufficient proof of a violation of a rule or work order?
6. Have employees been dealt with equally?
7. Is the discipline appropriate for the violation?



# Burden of Proof in contract violation cases

- Union has burden of proof to establish that contract violation occurred
- This means the Union has to prove its case
- Document that a contract violation has occurred
- This often means obtaining documentary evidence that is in the Employer's possession needed to prove the Union's case
  - *Attendance records*
  - *Overtime records*
  - *Work schedules*



# Preparing Grievances

Grievance Procedures



# Write the grievance

- Write a simple statement of the situation and conclude with the relief you are seeking.
- Short and sweet
- Basic problem, violations that have occurred, how problem needs to be fixed
- Your written grievance should be as simple and clear as you can make it without leaving out any pertinent facts.
- Make a list of all the important facts. Not only will this help you put the grievance on paper in a logical, step-by-step fashion, but it can help you see whether you need to get more information to make your point.
- Use flexible language. When citing dates, precede the actual date of the event with the phrase, “On or about.” A grievance dealing with supervisors doing union work might read, “On or about March 21, supervisor Brown performed bargaining unit work by operating a press.”
- Don’t use company language. Your grievance should use the words you are comfortable with, not how the boss characterizes the situation. It’s not “disputed work”, it’s “bargaining unit work.” The grievant does not have a “bad attitude”, she has been denied “due process.”



# Don't limit contract violations

- “Management violated contract provisions including, but not limited to Article II, Section 3.”
- By adding the wording "including, but not limited to" you can always add additional violations of the agreement if they are found later.



# Stick to the facts

- Avoid personal remarks.
- The grievance states the Union's position, not your opinion or the grievant's opinion. Avoid the use of phrases like "I think", "I want" or opinions about management officials.
- You should not include arguments, evidence, and justifications on the initial form, unless your contract states otherwise.
  - *Save these items for the first meeting when you go in to speak with the boss.*
  - *Writing them into the grievance tips your hand and gives the employer ammunition before you arrive on the scene.*



# Don't limit the remedy

- Use the general phrase “and made whole in every way”.
- But just because you use the general phrase “and made whole in every way” does not mean that an arbitrator or management will search out all the specific benefits management denied the grievant for you.
- You should list any remedies you can plausibly assert.
- Whenever possible, use remedies that would benefit your entire membership as well as the grievant.
  - *For example: If the problem is pervasive throughout the department, when appropriate, you could demand that management meets with all supervisors to instruct them on how to comply with certain provisions of the contract. This remedy or others like it could be used in addition to making the grievant whole.*



# Review the grievance with the grievant

- Consult with the grievant.
- Go over the written grievance with the grievant.
- Explain the requested remedy to the grievant.
- Get the grievant's full understanding and agreement of the grievance.
- Whether the contract calls for a grievant's signature or not, consider getting the member to sign. It empowers the member and at the same time makes clear that the union and member will speak as one.



# Group grievances

- For contract violations, weigh the benefits of group grievances compared to filing a number of individual grievances
- Group grievances can bring the leverage of a large monetary remedy
- Group grievances can rally the members in the shop
- Group grievances can raise the stakes for employers causing lawyers to get involved earlier and making settlement more difficult



# Filing and tracking the grievance

- Make sure that your grievances are timely filed and timely appealed to each Step and the arbitration.
- Whatever the issue, never lose out because you missed the time limits set up by your contract.
- Make sure that you sign the grievance if required.
- If the first step is an oral meeting, make sure that you document the meeting in writing after its conclusion.
- Institute a tracking system to ensure grievances are kept track of and timely moved through the grievance/arbitration system.
- Include notifications to the grievant of each Step and its outcome



# Presenting the grievance

- Be Confident
- Know Your Facts
- Know your contract and your rights under it
- Insist on discussing the issue raised by the grievance only, nothing else
- See if the grievance can be settled on acceptable terms
- Don't be timid or convey the feeling to the supervisor that you are presenting the grievance because it is an obligation on your part
- Avoid being apologetic
- Impress to the supervisor that there is no possible doubt in your mind that the grievance has merit and should receive an equitable settlement
- Declare your intentions of taking the grievance to the next step. Supervisors often prefer to settle complaints before the complaint is carried to a higher management level.



# Settling the grievance

- Don't engage in horse-trading
- Management will occasionally ask a steward or union rep to drop one grievance to get a settlement on another.
  - *Once you go down this road, management will never settle a grievance without trading it for something.*
  - *Grievance settlements can involve compromise. But all grievances should be pursued on their individual merits.*
- If possible, try to get a good settlement early.
- Try to deal with people who have authority to settle/resolve grievances.



# Unfair labor practices

- It shall be an unfair labor practice for a public employer:
  1. To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;
  2. To control, dominate, or interfere with a bargaining representative;
  3. To discriminate against a public employee who has filed an unfair labor practice charge;
  4. To refuse to engage in collective bargaining with the certified exclusive bargaining representative.



# Duty of fair representation

- What is “Duty of Fair Representation” and how does it apply to the grievance process?
- Duty of fair representation is the obligation of a union to safeguard the rights of all members of the bargaining unit (including union, non-union, and fair share members).
- This means that union officers must process grievances for all unit members in the same manner regardless of the race, sex, religion, position, union status, political position, etc. of the grievant.
- In general, arbitrators use the following criteria when determining whether the union breached its responsibility for Duty of Fair Representation:
  - *Did the union apply the rules consistently or arbitrarily?*
  - *Did the union discriminate illegally when processing grievances?*
  - *Did the union apply the rules in bad faith?*



# Union Obligation

- In closing:
- The Union is required to ensure due process.
- An independent investigation by the Union may be required. It is not enough that the Union rely on an investigation or report conducted by management.
- Contract enforced equally
- When in doubt file the Grievance

