

## III: GRIEVANCE HANDLING

The negotiated contract (or work rules) is the union steward's most important document. It contains the wages, hours, working conditions and rights of bargaining unit employees. But management sometimes forgets or misinterprets or ignores what they agreed to at the bargaining table. To help address these management violations of employee rights, the contract also contains a grievance procedure (or, in areas without collective bargaining, the work rules may contain a grievance procedure).

### *The Grievance Procedure*

Grievance procedures contain a series of steps. While contracts and work rules differ in the number and specifics of these steps, here is a common approach:

**Step 1:** Typically, this is a meeting — with the immediate supervisor and the grievant participating — to discuss the problem. Sometimes this is an informal step that takes place before a written grievance is presented to management. In other instances, the formal written grievance is initiated at this step.

**Steps 2 to 4:** The written grievance, when it is not satisfactorily resolved, can be appealed to progressively higher stages of the management structure. (If not submitted at Step 1, the written grievance is initiated at Step 2.) Typically, these might include a department director, a division head and the agency administrator.

**Arbitration:** If the grievance is still not resolved, the final step is a hearing with a professional arbitrator whose decision is final and binding — if that is what is specified in the contract. (See Pages 25-26 for information on arbitration.)



### **Bright Ideas** *Using Grievances to Build Union Strength*

- Enforce the contract when a management action, or inaction, has violated the agreement.
- Interpret contract language when the union and management have differing views about the meaning of a particular section in the agreement.

- Improve the contract by revealing problem areas and deficiencies in the current agreement, which the union can address when it negotiates the next contract.
- Protect the rights of individual workers, groups of workers or the union itself.
- Organize workers who haven't yet joined the union by publicizing victories that are won through the grievance procedure.
- Gain respect from management by showing that the union will not allow abuses or violations of the collective bargaining agreement or work rules.

## *A Five-Step Approach To Grievance Handling*

Almost every workday stewards hear complaints about something on the job. To help determine whether or not these are legitimate grievances, there is a five-step formula that you can follow when handling any workplace problem or complaint that may be grounds for a grievance:

- 1) Identification
- 2) Investigation
- 3) Documentation
- 4) Preparation
- 5) Presentation

### *Step 1: Identification*

Know the definition of a grievance found in the contract or work rules. In addition to stating what a grievance **is** (as an example, “any dispute over the interpretation or application of the agreement”), there may also be some contract provisions that are **excluded** from the grievance procedure.

Armed with this basic information, you should next answer the following questions:

- Did management **violate** any of the following?
  1. the contract
  2. a work rule or regulation
  3. a policy or procedure
  4. any federal, state, county or municipal law
  5. any health and safety regulation
  6. past practice (see Pages 16-17 for more on this topic)

- Did management's action constitute unfair or disparate (unequal) treatment of an employee or group of employees?
- Did management engage in discrimination or harassment?
- Did management take disciplinary action against an employee or group of employees? (See Section IV on discipline cases.)

If the answer to any of these questions is "yes," there is a good chance that grounds for a grievance may exist.



### **Bright Ideas** **Past Practice**

In general, a past practice is not covered in the contract but, over time, has come to be accepted as an employment condition. To cite "past practice," these four elements should be present:

1. *A Clear and Consistent Course of Conduct:* The practice has to be normal activity. A "past practice" is not a vague activity or an occasional lapse in the usual way of doing business.
2. *Activity Over a Reasonable Duration:* The phrase "reasonable duration" is subjective and indefinite. Arbitrators decide — on a case-by-case basis — whether a practice has gone on "long enough" to be considered a condition of employment. One or two occurrences a year won't be considered consistent over a reasonable duration. However, the same activity repeated once a week for five years might be.
3. *Full Knowledge:* Both parties, management and the union, must know the practice exists. This does not have to be officially stated or recognized, but it does have to be verified.
4. *The Contract Is Silent or Ambiguous:* When the contract is silent on the activity, the practice may be considered to be an implied term of the contract if all of the above elements are present. Where contract language is vague or ambiguous, it is implied the two parties intended the activity to be covered by the contract. Arbitrators look to the past practice to determine the intent of the contract.

In addition to these four principles, the union must demonstrate that harm has been done to affected employees by management's changing the practice.

## An Example of Past Practice

**Scenario:** At a state hospital, the workday in the Grounds Department ends at 4:30 p.m. Every day at 4:15, the workers return to the building where the tools and equipment are kept. The supervisor’s office is also located there. The workers clean up before they punch out for the day and go home. Though there is no language in the contract covering “wash-up time,” this practice has been going on for as long as anyone can remember.

**Conclusion:** All four past practice elements are in place — consistent activity, lengthy duration, knowledge of the parties and a silent contract. Should management decide to change the practice, the union would have solid grounds for filing a grievance based on past practice.

## Step 2: Investigation

Investigation of a problem or complaint begins with talking to people, often several people. They include:

- The affected employee (that is, the potential grievant).
- Any witnesses who might have seen or heard anything related to the event. Interview witnesses separately — this helps gather information and sort out inconsistencies. Don’t settle for hearsay information. If someone says to you, “Harry told me ...,” go talk to Harry.
- The supervisor involved in the event. By meeting informally with the supervisor, you can sometimes learn helpful information and you may find a way of resolving the problem without having to file a grievance. (Before talking to a supervisor, always let the employee know you are going to do that.)



### **Bright Ideas** **Asking the Right Questions**

Start by asking the same basic questions — known as the “5 W’s” — to each person you talk to.

- |                            |                                   |
|----------------------------|-----------------------------------|
| ■ Who was involved?        | Names of people involved in event |
| ■ What happened?           | Description of the event          |
| ■ Where did it happen?     | Location of the event             |
| ■ When did it happen?      | Date and time the event occurred  |
| ■ Why is this a grievance? | Contract sections being violated  |

Use the “AFSCME Grievance Fact Sheet” (Appendix C, Pages 59-60) to make sure each of these questions is asked and answered.

Listen carefully to what each person has to say.

Take notes during or after each conversation. Review these notes to make sure the information is accurate and complete.

Follow up to verify information; fill in gaps and clear up discrepancies.

### *Step 3: Documentation*

Documentation is the step of collecting the evidence — mostly on paper — that will support your grievance case. Collect as much information as you can; you can never be sure which piece of evidence will turn the case in your favor.

Documentation — the “physical evidence” you collect — will be used to verify the information you learned from each of the people you talked to in the investigation step.



### ***Bright Ideas*** ***Collecting Evidence***

- Research the contract, work rules, policies, procedures, etc., to determine which of these — and what sections or rules — management has violated.
- Be sure and check the employee’s official personnel file, which contains a wealth of information — e.g., date of hire, evaluations, promotions, transfers, leave use, past disciplinary actions, letters of commendation, etc.
- Gather evidence from any and all sources and collect whatever you think may have a bearing on the case. Remember, that it is better to have something and not need it than to need something and not have it.
- Make copies of any needed documents.
- Evidence may be something other than paper. A faulty piece of safety equipment or a photograph of where the event took place could be part of your case.

## Information Requests

The National Labor Relations Act (NLRA) and most state collective bargaining laws covering public-sector workers grant the union the right to information maintained by the employer that concerns a grievance or potential grievance.

Make your information requests in writing. The union can make additional information requests based on material gained from the first request. Failure by management to supply information that is relevant to a grievance may be grounds for unfair labor practice charges. Examples of information you can request are:

- attendance records
- correspondence
- discipline records
- equipment specifications
- inspection records
- job assignment records
- job descriptions
- management memos
- Material Safety Data Sheets (MSDS)
- payroll records
- performance evaluations
- personnel files
- photographs
- seniority lists
- supervisor's notes

## Sample Information Request Letter

To: Howard Watson, Human Resources Manager  
From: Pat Bell, Union Steward  
Re: Grievance of Gail Webb regarding overtime

To prepare for Gail Webb's grievance, I request the following information:

1. Gail Webb's personnel file and job description.
2. A current seniority list for the bargaining unit and for Gail's department. I would like the job classification listed for each employee.
3. A list of all overtime assignments made in the past six months. For each assignment I would like the name of the employee and the amount of overtime worked.

Sincerely,  
Pat Bell

## Step 4: Preparation

Preparation is the key to success in most things we do. Grievance handling is no exception. The outcome of a grievance very often depends on how well the steward prepares ahead of time.



### **Bright Ideas Preparation**

- Review all your evidence; fill in any gaps you discover.
- Determine the importance and relevance of each fact and piece of information.
- Distinguish between allegations and opinions on the one hand and facts on the other. (Example: Allegation — “Sarah gets most of the overtime.” Fact — “Sarah worked overtime on the 7th, 14th, 21st and 28th of last month for a total of 16 hours.”)
- Research the local’s grievance file for any past grievances on similar situations.
- Discuss the grievance with other stewards or officers to gain their insights on the case.
- Write the grievance (see below for pointers on writing a grievance).
- Prepare the grievant for the grievance meeting with management; remember, the grievant may have never filed a grievance before and will not know what to expect in a grievance meeting. Describe the setting, who will be there, and how the grievance will be presented. Review with the grievant what he/she will and will not say during the meeting. Some stewards role-play the hearing with the grievant.
- Anticipate management’s arguments, questions and point of view; know how you and the grievant will respond to each of these.

## Writing the Grievance

Many AFSCME locals have an official grievance form that should be used when filing a written grievance. If your local does not have its own form or one provided by the employer, you can use the standard “AFSCME Grievance Form” — see Appendix C, Pages 59-60.

All grievance forms contain four main sections that ask for:

1. Basic information about the grievant: name, job title or classification, department, work location, etc.
2. Information about what happened (or failed to happen) that brought about the grievance.
3. A description of what contract provision, work rule, past practice, etc., that management has violated.
4. A requested remedy for the grievance.



### ***Bright Ideas*** ***Writing a Grievance***

- State the grievance in a concise description of the basic facts and information.
- Don't include statements of personal opinion.
- Don't include your evidence or arguments in the case — save those for when you meet with management.
- List any and all management violations of the contract, work rules, etc., which apply; after you list specific contract articles, you may want to include a phrase such as "and all other applicable sections of the contract." This allows the chance to expand your arguments should additional details become known at a later time.
- Clearly state the desired remedy (that is, exactly what the grievant and/or the union want as a solution to the problem); make sure you ask the grievant what he/she wants before writing the remedy.
- When appropriate, conclude the remedy by asking that the grievant be "made whole" (see Page 28).
- Complete the grievance form with the knowledge and assistance of the grievant. Have the grievant sign the grievance form.
- Make a copy of the grievance form before submitting it to management and add it to your file on the grievance.

## *Two Examples of How to Write a Grievance*

Each sample shows a poorly written grievance followed by a much better version.

### Example 1 — Change in Starting Time

#### ***Poorly Written***

##### **Statement of the Grievance**

Without even talking to the union about it, management decided to change the starting time of the swing shift and the evening shift. Changing the start time for these shifts by 45 minutes would wreak havoc in the lives of employees. Management never listens to the union and they can't just go around doing whatever they want. This is unfair for all workers on these two shifts.

##### **Remedy**

That management stop pulling stunts like this and start following the contract.

#### ***Much Better***

##### **Statement of the Grievance**

On October 30, management changed the start times of the swing shift and the evening shift. This action violates Article VII (Hours of Work), Article XIV (Definition of Shifts) and any other relevant articles of the contract.

##### **Remedy**

That management immediately return to the schedule described in the contract.

### Example 2 — Personal Leave

#### ***Poorly Written***

##### **Statement of the Grievance**

Last week Mary Roberts had to stay home and take care of her child who was sick. Mary's babysitter was sick that day and she couldn't find someone on such short notice. Her husband was out of town so he couldn't help. So she asked for personal leave because the contract says you can use personal leave for emergencies. But Mike Carr, her supervisor, told her she couldn't have personal leave. He gave her an unexcused absence. He said everyone should have back-ups in place in case this kind of thing happens.

## Remedy

All the employees in the department from all the seven work locations should be gotten together for a meeting and Mike Carr should have to publicly apologize to Mary and promise to never do something like this again. Mary should get her day back.

### **Much Better**

#### Statement of the Grievance

Mary Roberts was improperly denied personal leave for May 18. This action violates Article XIII (Personal Leave) and any other relevant contract provisions.

#### Remedy

That Mary Roberts be granted a personal leave day for May 18 and that she be made whole (Page 28).

## Step 5: Presentation

Before meeting with management, prepare an outline for your case. This helps organize the presentation you will make to management. It can also help you define exactly what you want to accomplish in the meeting. Some stewards practice their verbal presentation in front of a mirror.

Remember: In a grievance meeting, you are on equal ground with management. It is no longer boss and employee. Carry yourself and present yourself as management's equal in the meeting. Treat the supervisor with respect, and expect and insist upon respect in return.



### **Bright Ideas** **Grievance Presentation**

- ✓ DO Use a positive, friendly down-to-business approach.
- ✗ DON'T *Make threats or try to bluff your way through a grievance.*

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- ✓ DO Stick to the subject of the grievance.
- ✗ DON'T *Allow the discussion to be sidetracked on other issues, past problems or irrelevant subjects.*

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- ✓ DO Discuss issues.
- ✗ DON'T *Discuss personalities.*

- ✓ DO      Remain calm, cool and collected.
- ✗ *DON'T*      *Become angry, belligerent or hostile.*

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- ✓ DO      Keep notes of what is said during the meeting.
- ✗ *DON'T*      *Lose focus of the objective: resolving the grievance.*

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- ✓ DO      Listen for the main point of management's argument and for possible openings to resolve the grievance.
- ✗ *DON'T*      *Get into arguments with the grievant during the meeting; if need be, ask for a caucus and step outside the room to iron out differences and clear up any confusion.*

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- ✓ DO      Attempt to resolve each grievance at the lowest possible step, but, if management is not willing to fairly resolve the case, be prepared to appeal to the next step.
- ✗ *DON'T*      *"Horse trade" or swap one grievance for another (where the union wins one, management wins one). Each case should be decided on its merits.*

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- ✓ DO      Get every grievance settlement in writing.
- ✗ *DON'T*      *Accept management's verbal assurances that "it will be taken care of."*

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- ✓ DO      Give your understanding of what (if any) resolution has been reached or what will happen next after the conclusion of the meeting. This helps avoid misunderstandings later.

### Grievance Procedure Time Limits

Every grievance procedure contains specific **time limits** for each step of the process. There are **time limits** to file the grievance at the first step; **time limits** for management to hear the case and respond; and **time limits** for the union to appeal to the next step.

**Know the time limits.** If the union fails to file or appeal a grievance within the specified time limits, it is grounds for the grievance to be dismissed. In other words, the grievance is lost. (Appendix D, Page 61, contains a chart you can fill out to keep track of the time limits in your local's grievance procedure.)

**Time limit extensions.** Sometimes you may want to extend time limits for various reasons (e.g., gathering additional evidence, needing more preparation time). To extend the time limits, management must

agree to the request. Sometimes management wants to extend the time limits; the union would have to agree to that request as well. If you ever wish to extend time limits, get the agreement **in writing**, signed by the steward and the management representative.



### **Bright Idea** *Keep the Grievant in the Loop*

Throughout the process, keep the grievant up to date on the status of the grievance, the date of the next meeting or when the appeal is due back from management, and any discussions that take place concerning the grievance. The employee should never be left in the dark about his/her grievance.

## **Arbitration**

In many grievance procedures, the final step is arbitration. This step is negotiated in the contract and it is not automatic. The union must formally appeal a grievance to the arbitration step.

A professional arbitrator hears the grievance. It is the most “legalistic” and formal of all the steps. The arbitrator is selected jointly by the union and management following procedures contained in the contract. The arbitrator is selected from an outside group, such as the American Arbitration Association, the Federal Mediation and Conciliation Service or a similar panel created by the state. This, too, is specified in the contract.

### **Pros and Cons of Arbitration**

- ✓ **PRO** Grievance is heard by a third party.
- ✗ **CON** *Usually a long period of time passes before the case is heard and decided. It is **not** a quick process.*
- ✓ **PRO** Decision is no longer made by someone in management.
- ✗ **CON** *Lower steps in the process tend to become a “going-through-the-motions” formality where little effort is made to resolve the problem.*
- ✓ **PRO** Decision is final and binding (if this is called for in the contract) and both parties have to adhere to the decision.
- ✗ **CON** *There are more compromise solutions, which may mean that justice is compromised.*

- ✓ **PRO** Decision can establish a precedent so the union doesn't have to file grievances again and again on the same issue.
- ✗ **CON** *Arbitrators usually come from a professional background (e.g., college professor), which may create a bias in management's favor.*
- ✓ **PRO** By appealing grievances to arbitration, the union can gain respect from management by showing it will fight hard to defend employees' rights.
- ✗ **CON** *It costs money to take a case to arbitration. In addition to other costs, arbitrators charge a fee for their services. In most contracts, the union splits those costs with the employer.*

## Types of Grievances

There are four types of grievances that the union steward can file:

**Individual:** This is when a management violation of the contract affects only one employee. *Example: If Mary Adams was not allowed to take her afternoon 15-minute break, which was called for in the contract, she could file a grievance.*

**Group:** In some cases, a management violation of the contract affects more than one person. *Example: If Mary Adams, Nick Brown, Patty Carson and Roger Davis were not allowed to take their afternoon 15-minute breaks, they could file a group grievance.*

**Union:** Sometimes a contract violation may affect the union as an institution. *Example: If management failed to provide space for a union bulletin board required by the contract, a union grievance could be filed.* Union grievances protect the right of the union to function as the certified employee representative. In other instances, management violates the contract but employees may be unwilling or afraid to file a grievance. The steward has the option of filing a union grievance on behalf of the affected bargaining unit members.

**Class Action:** A class action grievance is one that is filed on behalf of a "class" of affected employees. The class may be as broad as the entire bargaining unit, or it may be more narrow — e.g., a particular job classification, job title or shift or, for example, "all women in the bargaining unit." *Example: If Office Assistant IIs were not given back pay after a reclassification of the position, a class action grievance could be filed for all employees with that job title.*

## *What if There is No Grievance?*

Not every employee complaint is a legitimate grievance. After conducting a thorough investigation and consulting with other stewards and local officers, you may conclude that management has not violated the contract, work rules, policies, past practice, etc., or done anything that falls within the definition of a grievance. In these cases, what should the steward do?



### ***Bright Ideas***

#### ***What to Do if It's a Gripe, Not a Grievance***

- Inform the worker of your conclusion.
- Provide the employee with the opportunity to explain why he/she thinks a grievance should be filed — based on the contract or work rules or other criteria for filing a grievance.
- Even in cases where it might not be appropriate or effective to file a grievance, it is likely that a problem still exists. Attempt to work with the employee and look at ways to resolve the problem or discuss the issue with other employees to see if a broader problem exists.
- Work with the employee — and other workers if the issue affects them — to develop an action plan to solve the problem.

## *Glossary of Grievance-Related Terms*

### ***Burden of Proof***

When management takes disciplinary action against an employee, management must then prove it had cause to take the action. Management has the burden of proof — this incorporates the theory of “innocent until proven guilty.” In all other instances, when the union is claiming that management has violated the contract or work rules, the union has the burden of proof.

### ***Discrimination***

Discrimination is the unequal treatment of workers because of race, gender, age, religion, disability, marital status, sexual orientation, nationality, union membership or union activity, political affiliation or some other unfair basis. Discrimination may occur in hiring, types of jobs given, rates of pay, promotions and transfers, layoffs or other areas. Some employee classes are protected by law while protection for others is negotiated.

### ***Equal Treatment***

Management's rules, policies and procedures must be applied in the same way to all bargaining unit employees.

### ***Grievance Arbitration***

Grievance arbitration is often the last step of the grievance procedure. A third party makes a decision that is usually final and binding on both parties (see Pages 25-26).

### ***Grievance Mediation***

Grievance mediation is a voluntary and less formal method of dispute resolution in which a neutral party serves as a facilitator in efforts to resolve a grievance. The ultimate acceptance, rejection or modification of a settlement remains with the two parties.

### ***“Made Whole”***

Phrase that unions include in their remedies for grievances that involve loss of pay and/or other benefits (e.g., disciplinary actions or improper denial of overtime or promotions). The term means that the grievant is treated as though management never took the improper action. In discipline cases, it asks that the grievant be restored to the status he or she had before management took the action. In instances such as when a promotion or overtime has been denied, it asks that the grievant be treated as though management had taken the correct action. When “be made whole” is included in the remedy — and the grievance is upheld — it ensures the grievant will receive all back pay and any benefits that are due. It would cover such areas as seniority, vacation and sick leave, pension and medical coverage. Being made whole covers all the bases, so the steward doesn't have to remember each and every possible injury when writing the grievance.

### ***Management Rights Clause***

This section in the contract specifies that management retains certain functions and rights regarding the “method and means” of managing of the workplace. These often include such areas as hiring, promoting, transferring, laying off, establishing work standards and policies, scheduling, deciding qualifications for positions, deciding locations of facilities, and so on.

### ***Precedent***

A precedent is a decision that is later used as a guideline for making a decision on a case that has similar circumstances. Precedents may be used to interpret and apply the collective bargaining agreement or work rules. Precedents can be established by grievance settlements, arbitration awards or even union withdrawal of a grievance (thereby letting management's interpretation stand).



## ***Bright Ideas*** ***Warnings About “Management Rights”***

- Sometimes management will cite the “management rights” section of the contract to justify an action — when, in fact, management is violating another article of the contract.
- While management may have the right to establish policies, those policies cannot contradict the contract.
- Management must implement its policies, procedures and work rules in a fair and equal manner.

