

CHAPTER 5

PROCESSING GRIEVANCES

Within the context of the history of the American labor movement, the modern grievance procedure is a relatively recent development. In the early years of collective bargaining, the labor-management relationship had not evolved to the point where unions and managements differentiated the process of negotiating the basic contract from the processes of administering or changing the agreement or interpreting related differences which periodically arose. Rather, the collective bargaining relationship -- including negotiations and contract interpretation -- was grounded on the principle of force. The party with the greatest economic leverage won.

Gradually, labor and management came to realize that although economic force may be required to reach basic contract agreement, other devices were available for resolving employee grievances and questions of contract interpretation. Following the passage of the National Labor Relations Act in 1935, the practice of including grievance procedures in labor contracts rapidly expanded. By 1945, the President's Labor-Management Conference had recommended that all labor contracts include grievance procedures, culminating in arbitration.

In the federal sector, the Civil Service Reform Act (CSRA) requires that labor contracts between federal sector unions and agencies include grievance procedures, terminating in binding arbitration.

I. The Grievance Procedure

A. Definition Of A Grievance

As defined in Section 7103 of the Civil Service Reform Act (CSRA), a grievance is any complaint:

1. by any employee concerning any matter relating to the employment of the employee;
2. by any labor organization concerning any matter relating to the employment of an employee; or
3. by any employee, labor organization, or agency concerning:
 - a). The effect or interpretation, or a claim of breach of a collective bargaining agreement; or

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- b). any claimed violation, misinterpretation or misapplication of any law, rule, or regulation affecting conditions of employment.

B. Coverage

The broad scoped grievance procedure authorized by the CSRA covers all matters addressed in your contract, including past practice. As noted in the definition section, above, that list includes not only the specific contract provisions, but any law, rule, or regulation. If an employee files a grievance, management must accept the grievance, regardless of how trivial the agency considers the matter.

C. Exclusions

Section 7121 of the Act excludes certain issues from coverage by any negotiated grievance procedure.

1. prohibited political activities.
2. retirement, life insurance, and health insurance.
3. suspension or removal for national security reasons.
4. any examination, certification, or appointment.
5. the classification of any position which does not result in the reduction in pay or grade of the employee.

Furthermore, the parties to a federal sector labor agreement are authorized to mutually agree to exclude any matter from coverage of the negotiated grievance procedure. Therefore, you should review your contract to determine its specific exclusions.

In cases in which the grievance procedure covers discrimination complaints, adverse actions, or actions based on unacceptable performance, covered employees may use either the negotiated grievance procedure or the statutory appeals process (i.e., EEOC or MSPB), but not both.

D. Types Of Grievances

1. Employee: a grievance filed by an individual employee.
2. Union: a grievance filed by the labor union on behalf of a unit employee or itself.

3. Management: a grievance filed by the agency against the union.

Note: Grievances filed by the union or management are sometimes referred to as INSTITUTIONAL grievances.

E. Purposes Of The Grievance Procedure

1. To resolve, in an orderly manner, disputes arising in the workplace.
2. To provide contract interpretations.
3. To protect the employees' and union's negotiated contract rights.
4. To establish precedent.
5. To ensure uniform treatment of employees.
6. To maintain relative peace in the workplace.

II. Grievance Investigation, Preparation, And Presentation

The primary responsibility for investigating a grievance rests with the union representative handling the case. Whether the grievance is eventually won or lost is often determined by how thoroughly the representative investigated the complaint. The steps involved in the investigation process are described below.

A. Interview The Grievant

1. Talk to the grievant. Listen closely to every word that is said.
2. Ask clarifying questions. Depending on the circumstances, the grievant could be emotionally upset and, therefore, factually unreliable. Distinguish between fact, fantasy, and opinion.
3. Restate the complaint to the grievant in summary form to ensure your full understanding. Ask the grievant to correct any mistakes or misunderstandings.
4. Obtain a complete description of the situation which generated the complaint:
 - a). Who committed the alleged violation(s)?
 - b). What was the violation? Talk to each person -- both in and out of the bargaining unit -- who may have observed the incident or

otherwise may have first hand knowledge of the situation.

- c). When did the violation occur? Obtain the date, time, and the relationship of the incident's occurrence with the employee's assigned working hours. For example, did the incident occur at a bar after work as opposed to its having occurred at the worksite.
 - d). Where did the violation occur? Determine the setting and the surrounding circumstances, e.g., room number, desk location, relative position of all principal parties and witnesses, etc.
 - e). Why did management take the action it did, thereby generating the alleged violation?
5. If appropriate, determine the past practice controlling previous, similar incidents.
 6. Determine the grievant's requested remedy.

B. Analyze the Complaint

1. Review the available information.
2. Analyze the case.
3. Determine if the complaint is actually a grievance or a gripe which could be resolved through a method other than the grievance procedure.

C. Conduct the Necessary Research

1. If the complaint appears to be a grievance, identify and research all related contract articles and sections, local orders, operational directives, agency orders and manuals, supplements to agency orders and manuals, relevant FPM chapters, laws, and all other written publications which relate to the alleged violation.
2. After researching the contract and various other publications, write your case on paper, study it, and identify any inconsistencies.
3. Be alert for and collect all documents which support your case.

D. Develop Your Arguments

Carefully plot the strategy you will use in guiding the grievance through its various stages. Anticipate management's arguments. Draft your arguments accordingly.

E. Grievance Preparation

1. Prepare a file folder for each grievance. Insert and begin using a copy of the GRIEVANCE CHECKLIST. (See Attachment No. 1).
2. Write a brief, concise statement of the grievance and remedy. Do not assume anything. State the FACTS -- not arguments -- surrounding the grievance. This written record will be important at later stages.
3. Do not philosophize or argue your case on paper. When you do, you:
 - a). limit future avenues of argument; and
 - b). provide management an escape route by affording it an opportunity to channel its response to your arguments' assumptions which may not be valid.
4. In the case of the individual employee grievance, always indicate that an oral presentation is requested. Failure to do so may result in an arbitrator's ruling that since the union and the grievant denied management an opportunity to learn all of the facts associated with the case, a make whole remedy would be inappropriate.
5. Be accurate, be brief, be concise, be complete.
6. Always state the remedy requested. There should be a realistic correlation between the desired corrective action and the stated grievance. Ask for everything to which the grievant is entitled. Failure to properly perform this task could severely damage a grievant's opportunity to be made whole.
7. Include only the information necessary to explain the grievance. Do not complicate the case unnecessarily.
8. Remember that the grievance is an official record. It reflects the image of you, your chapter, and our Union, NTEU. Be neat and professional. The typing of a grievance is highly recommended.
9. Complete the relevant portions of the GRIEVANCE CHECKLIST.

F. Grievance Presentation

1. Submit the grievance, in writing, in a timely manner. (See Attachment No. 2).
2. Represent the grievant at the grievance meetings. Remember that you represent the grievant; be supportive. Never side with management against the grievant or belittle or embarrass him/her.
3. Once a grievance has been filed, stick to the grievance machinery. Do not go outside of the established grievance procedure to settle grievances. Such conduct weakens the Union and jeopardizes your integrity in the eyes of management and union members.
4. Focus the discussion on the issue, not on personalities.
5. Before entering the grievance meeting, determine with the grievant who will present the case. Be aware of the possibility of the grievant's becoming emotionally upset during the grievance meeting.

Therefore, consider having the union representative do all of the talking.
6. Do not become defensive. Respond with the facts.
7. Do not bluff; it may cost you in the long run.
8. Act respectfully toward all participants. Your relationship must continue beyond the grievance meeting, so do not act in a manner that you may regret in the future.
9. Be conscious of your role as a union representative. Demand respect. By law, you are considered to be equal to any management official. Do not allow yourself or the grievant to be treated with anything less than a full measure of dignity.
10. Listen closely. Maintain a Record of Discussion. (Attachment No. 3).
11. Stay calm.
12. Do not horse-trade grievances. Settle each grievance on its own merits.

G. Grievance Forwarding

1. Determine the date on which management's response is due. The countdown for advancing the grievance to the next step begins on that date.
2. If the grievance has not been resolved, determine if it warrants pursuit.

3. If the grievance is to be pursued, forward it to the next level, in accordance with your contract's negotiated time limits. In each of its contracts, NTEU has negotiated specific time limits for not only initially filing the grievance, but for processing it through the various steps. Failure to process a grievance in a timely fashion could invalidate a case, thereby eventually diluting YOUR rights.
4. Ensure that each grievance response is signed and dated by the union representative receiving it.
5. Complete the relevant portions of the GRIEVANCE CHECKLIST.

III. Arbitration

Labor arbitration is the commonly accepted process to which America's unions and employers submit labor contract disputes which have not been resolved at earlier stages of the negotiated grievance procedure. Through arbitration the parties to a labor agreement are able to achieve final and binding resolution of questions regarding contract interpretation and application without unnecessary disruption to the work flow. Grievance procedures negotiated by federal sector labor unions and agencies are statutorily mandated to terminate in binding arbitration.

There are two types of arbitration: "rights" and "interest."

- A. **Rights arbitration** involves disputes related to the interpretation or application of the parties' rights under the labor contract, after its effective date.
- B. **Interest arbitration** involves the determination by an arbitrator hired by the parties to resolve a bargaining deadlock regarding which terms and conditions are to be included in a labor contract.

This discussion will focus on rights---or grievance---arbitration.

Labor arbitration is an extension of the collective bargaining process. It differs from other aspects of bargaining, however, by the fact that the parties have ended the negotiating phase and are trying to convince an arbitrator that their respective positions should be sustained. Some experts contend that arbitrators serve a judicial role, since they must decide the case presented to them. Others view the arbitrator's role as being more akin to that of a legislator, since the arbitrator is required to fill in the holes left by the contract's negotiators.

Arbitrators are frequently lawyers or professors who have developed expertise in the areas of labor management relations and collective bargaining. For the most part, they are selected jointly by the parties from lists provided by such organizations as the American

Arbitration Association (AAA), the Federal Mediation and Conciliation Service (FMCS), and the National Arbitration Association (NAA).

Arbitration is an expensive and imperfect process. Therefore, the decision to submit a grievance to arbitration requires serious deliberation, for the losing party can expect the winner to use the victory in demanding the similar settlement of grievances involving the same issue.

The criteria for deciding to arbitrate a particular grievance are many. The Union must take into consideration such factors as the meaning of the contract language; previous, related arbitration decisions rendered under the same contract and under similar provisions of contracts negotiated by other parties; agency regulations; laws; court decisions; regulatory decisions; the potential consequences of a negative decision; and the determination regarding whether the projected gains are worth the associated risks and costs. Unions must be extremely careful to protect their contractual rights at this stage.

In units represented by NTEU, the decision to submit a grievance to arbitration will be made by the National Union, after consulting with the chapter. NTEU's share of the costs are split equally by the chapter and the National Union.

In reaching a decision, the arbitrator's primary task is to examine the contract language in an effort to determine the parties' intent when they drafted their agreement. If the language is clear and unambiguous, the arbitrator will assign the words their ordinary meaning. When the language is vague, the arbitrator will look to such sources as the contract's bargaining history, the parties' mutually accepted past practice, and previous agreements that could be considered precedent. In fact, many arbitrators consider past practice and precedent to be an extension of a contract.

In order to assist the Union in deciding whether to submit a grievance to arbitration, chapter representatives must:

1. Fully investigate each complaint.
2. Write grievances in clear and concise language.
3. Maintain thorough and legible records.
4. Maintain an accurate list of witnesses.
5. Complete the GRIEVANCE CHECKLIST.
6. Send a complete grievance file to the NTEU field representative immediately after receiving the agency's final step response.

GRIEVANCE CHECKLIST

Grievance # _____

Date:

Type: Individual _____ Union _____ Chapter #

1. Grievant's name:

Job Title:

2. Work location/office:

Immediate supervisor:

3. Article(s)/law/rule/regulation violated:

4. Name of steward handling case:

5. Step 1

A. Date grievance filed:

B. Date meeting held:

C. Name of supervisor:

3 D. Date written decision due:

E. Date written decision received:

- F. Date related information requested:
- G. Date information received:

6. Step 2

- A. Date Step 1 response appealed:
- B. Date meeting held:
- C. Name of management official:
- D. Date Step 2 response due:
- E. Date Step 2 response received:

7. Step 3

- A. Date Step 2 response appealed:
- B. Date meeting held:
- C. Name of official:
- D. Date Step 3 response due:
- E. Date Step 3 response received:
- F. If arbitration is requested, date response and any other relevant information was mailed to National Field Representative:

8. Grievance Forwarding Checklist

- A. _____ Grievance Record Form
- B. _____ All Management replies (indicate on each reply the date received by the union and the name of the recipient).
- C. _____ All written correspondence related to this grievance in the chapter's possession.
- D. _____ All records of discussion related to this grievance.
- E. _____ All related interview and grievance investigation forms.

- F. _____ Detailed statement explaining the facts surrounding this grievance.
9. List the names of all witnesses, including titles and work phone numbers, or any other persons who may have observed or had knowledge of the complaint/contract violation:
- A.
 - B.
 - C.
 - D.
10. Cite all laws, C.F.R. provisions, FPM chapters, Agency regulations, local orders, standard operating procedures, or other related publications or documents which you believe pertain to this grievance:
- A.
 - B.
 - C.
 - D.
11. If the chapter president wants the grievance considered for arbitration, mail a copy of the grievance and all materials to your National Field Representative immediately after receiving management's response to the final step of the grievance.

Note: This form is for NTEU use only. It should not be submitted to management.

Employee's Signature

NTEU Representative's Signature

Attachment No 3

RECORD OF DISCUSSION

NTEU Representative _____ Date

Grievant _____ Grievance No.

Participants

Alleged violation

Summary of Discussion

SUGGESTED CONTENTS OF CASE FILES SENT TO FIELD REPRESENTATIVES

1. A "Briefing Memo" that contains at least the following sections:
 - A. Date that a representation decision must be made (arbitration invocation deadline, MSPB appeal deadline, EEOC filing deadline, FLRA filing deadline, etc.);
 - B. Agency's position, a concise statement of the Agency's factual allegations, legal arguments, and proof in support of its facts and arguments, including cited sources of authority, any relevant language in the step decisions, and comments made by management during meetings;
 - C. Union's position, a statement of the Union's factual allegations, legal arguments, and proof in support of its facts and arguments, including a response to every allegation and argument made by the agency, all cited sources of authority (applicable contract provisions, regulations, and law), any statements of past practice, any comparison to similarly situated employees, any expected witness testimony, etc.;
 - D. An analysis of all the reasons that the case should - and should not - be invoked for arbitration, including the ideal as well as minimum remedy acceptable to your chapter and the affected employee(s); and
 - E. Your recommendation and reasons.
2. Completed Grievance Checklist from pages 511-512 of the NTEU Chapter Manual.
3. Initiating document, e.g., the grievance, proposal letter, etc.
4. "Reply" file if there's an oral or written reply, containing any transcript, written submissions, documents, etc.;
5. "Decisions" file with management's step or reply decisions in chronological order and reflecting a copy of all information requests submitted and any responses received;
6. "Defenses" file with an analysis of the defenses you have raised;
7. "Documentation" file with documents clearly referenced to any allegation or defense it supports, and a copy of all information requests submitted and any responses received;

8. "Correspondence" file with correspondence (other than management decisions, your appeal memos, your information requests, and responses to your information requests) arranged in chronological order;
9. "Notes" file, including notes of all interviews and investigations, indicating in some way the portions to which your field representative should pay special attention;
10. Any other files that make sense or that help to organize the material.