

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

## **Step 1: Identification**

Almost every workday, stewards and other officers of the Union hear complaints about something on the job. As a local union leader, your role is to investigate every workplace complaint. There is a five-step formula that you can follow when handling any workplace problem or complaint that may be grounds for a grievance or other union action:

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

### **Step 1: Identification**

Know how the contract or work rules define a grievance. 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?
  - The contract
  - A work rule or regulation
  - A policy or procedure
  - Any federal, state, county or municipal law
  - Any health and safety regulation
  - Past practice
- 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?

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

## What is 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.

**NOTE:** 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.)

### **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** a standardized form to make sure 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.

#### **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.

## **Step 4: Preparation: Writing the Grievance**

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 union representative prepares ahead of time.

### **Preparation Steps**

- 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 IAM locals have an official grievance form as part of their agency contract 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 a standard IAM Grievance Form.

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.

### Tips for Writing a Grievance

- State the grievance in a concise description of the basic facts and information.
- Don't include statements of 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 the specific articles, you may want to include a phrase such as "and all other applicable sections of the contract." This allows you 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."
- 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**

### **Example 1 — Management 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.

### **Example 1 — Management Change in Starting Time** *(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.

### **Example 2 — Personal Leave** *(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.

## **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 union leaders 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.

<b>Grievance Presentation Do's and Don'ts</b>	
<p>✓ <b>DO</b> Use a positive, friendly down-to-business approach.</p> <p>✗ <b>DONT</b> Lose focus of the objective: resolving the grievance.</p>	<p>✓ <b>DO</b> Listen for the main point of management's argument and for possible openings to resolve the grievance.</p> <p>✗ <b>DONT</b> Get into arguments with the grievant during the meeting; if need be, ask for a caucus outside the room.</p>
<p>✓ <b>DO</b> Stick to the subject of the grievance.</p> <p>✗ <b>DONT</b> Allow the discussion to be sidetracked on other issues, past problems, or irrelevant subjects.</p>	<p>✓ <b>DO</b> attempt to resolve each grievance at the lowest possible level, and, be prepared to appeal to the next step.</p> <p>✗ <b>DONT</b> "Horse trade" or swap one grievance for another. Each case should be decided on its merits.</p>
<p>✓ <b>DO</b> Discuss issues.</p> <p>✗ <b>DONT</b> Discuss personalities</p>	<p>✓ <b>DO</b> Keep notes of what is said during the meeting.</p> <p>✗ <b>DONT</b> Lose focus of the objective: resolving the grievance.</p>
<p>✓ <b>DO</b> Remain calm, cool and collected.</p> <p>✗ <b>DONT</b> Become angry, belligerent or hostile</p>	<p>✓ <b>DO</b> Get every grievance settlement in writing.</p> <p>✗ <b>DONT</b> Accept management's verbal assurances that "it will be taken care of."</p>
<p>✓ <b>DO</b> 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.</p>	

## **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.



### **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 union and the management representatives.

### **Tip: 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.