

As a Building representative you are always representing the union as a whole in your daily conversations and actions. In order to be an effective Building Representative, you must know the grievance procedure and the rights of workers in the contract and under applicable laws. In addition, the Building Representatives represents workers in informal problem-solving efforts and discussions with management.

Types of Grievances

There are four types of grievances that the union building representative can initiate.

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, the union could file a grievance on her behalf.

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 or Memorandum of Understanding 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 some instances, management may violate the contract but employees may be unwilling or afraid to file a grievance. The building representative 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.

The Grievance Procedure

Grievance procedures contain a series of steps negotiated to address workplace issues. While contracts differ in the number and specifics of these steps, below you will find explanations of common steps found in grievance procedures in AFT contracts.

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 attempts to solve the workplace issue before a written grievance is presented to management. In some contracts, the written grievance is initiated at this step. Always refer to the contract to ensure that you are performing the correct grievance action at this and any other step.

Steps 2 - 4: If not submitted at Step 1, the written grievance is initiated at Step 2. When a grievance cannot be resolved at Step 1, it is reduced to writing. The written grievance can be appealed to progressively higher levels of the management structure in Steps 2-4. Those in the higher levels of management may include a department director, a division head and/or the agency administrator.

Arbitration: If the grievance is not resolved, the final step is the request for a hearing with a professional, neutral arbitrator whose decision is final and binding – depending upon the language in your specific contract.

Five-Step Approach to Grievance Handling

Nearly every workday, building representatives hear complaints about something on the job. Part of your role is to determine whether the grievance procedure is the right course of action in response to complaints or issues, or whether another course of action makes more sense. To help determine whether or not these are legitimate grievances, there is a five-step formula that you can follow:

1. Identification
2. Investigation
3. Documentation
4. Preparation
5. Presentation

Step 1: Identification

Know the definition of a grievance in your own contract or work rules. In addition to stating what a grievance is (for example, “any dispute over the interpretation or application of the agreement”), your contract may also include provisions that are excluded from resolution through the grievance procedure.

Armed with the knowledge of the contract, applicable work rules and workers’ legal rights, you should be able to 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, disparate or unequal treatment of an employee or group of employees?

- ✓ Did management engage in discrimination or harassment?
- ✓ Did management take unjust 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 a grievance may exist.

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 must be present:

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.

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.

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.

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, the union must demonstrate that harm was done to affected employees by management's changing the practice.

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⋮ **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 ⋮
⋮ continued 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. ⋮
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Step 2: Investigation

Investigation begins with talking to people, often several people. The gathering of information about the potential grievance is what can either make or break the case for the grievant and union.

A thorough investigation should include:

- ❖ A clear conversation with the affected employee that includes questions beginning with the 5Ws (who, what, when, where, why).
- ❖ 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 Ws**" – to each person you talk to.

- ✓ **Who was involved?** Names of people involved in event, including witnesses.
- ✓ **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 "Grievance Fact Sheet" to make sure each of these questions is asked and answered.

Remember

- ❖ 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.

What If There Is No Grievance

Not every employee issue is a legitimate grievance. After conducting a thorough investigation and consulting with other building representatives 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.

What to Do If It's Not a Grievance

- ❖ Inform the worker of your conclusion in a face-to-face conversation.
- ❖ 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. Talk with other building representatives and employees to see if a broader problem exists.
- ❖ Hold an informal meeting with management and the affected employee(s) to see if a resolution is possible.
- ❖ Work with a group of members to develop an action plan to solve the problem outside of the grievance procedure

Step 3: Documentation

Documentation means 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 – can and will be used to verify the information you learned from each of the people you talked to during your investigation.

Collecting Evidence

- ✓ Research the contract, work rules, policies, procedures, etc., to determine which of these – and what sections or rules –management 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 recommendation, 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 occurred could be part of your case.

Step 4: Preparation

Preparation is the key to success in most things we do. Grievance handling is no exception. The outcome of a grievance depends on how well the building representative prepares ahead of time. You do yourself and the grievant a disservice when you do not carefully, thoroughly prepare the case for presentation to management and/or an arbitrator in a professional, orderly and understandable manner.

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.”)

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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.

CBA, 2014-2016, Article XVIII, Section B, Number 2, Page 46

"Any grievance must be presented for disposition through the Grievance Procedure within fifteen (15) days of the occurrence of the grievance or the first knowledge of its occurrence, whichever is later."

Keep the Grievant in the Loop:

Throughout the process, keep the grievant updated 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 occur concerning the grievance. The employee should never be left in the dark about his/her grievance.

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