



The Grievance Procedure: Making It Work for Us



Training and Development Department
International Brotherhood of Teamsters

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Introduction

The Teamsters Union has always fought hard for strong contracts for our members. Members rely on the union through these contracts to guarantee wages and benefits as well as to protect their rights at work. As a Union representative, it's your job to make sure stewards and members understand their contract and know how to enforce it.

The vehicle to enforce most contracts and protect the rights of workers in the work place is the grievance procedure. The grievance procedure is perhaps the most valuable and commonly used section of the contract, and it is our responsibility to use it as effectively as possible.

However, the grievance procedure has limitations. Sometimes management lets grievance pile up and deliberately causes long delays in settling. Other times members have legitimate problems that cannot be solved by the grievance procedure because of the way the contract is written.

That means we sometimes have to look at other ways to address members' problems in addition to, or instead of, filing grievances. Some of the ways we do this include: showing membership unity, filing a complaint with a government agency, involving public officials, organizing community pressure or using the media. It is up to the union to figure out the most effective way to respond, but the goal is to show management that it is in their interest to take the grievance procedure seriously and make it work.

How we help members solve their problems can help shape the image of the union. Support from the members increases when they play a role in union activities. Some of the tactics mentioned above, as well as the grievance procedure, can be an opportunity to get members involved through investigating the situation, meetings with management, figuring out possible resolutions, and carrying out actions designed to encourage management to resolve problems quickly and fairly.

This section focuses on guidelines for more effective grievance handling. It is intended to give basic information to determine if a grievance exists, how to investigate, how to handle a meeting with management and what laws may affect the process of grievance handling. The information can be adapted to meet the particular problems in your local.

Using the grievance procedure effectively is one of the skills Teamster leaders need to represent our members. While there are no prescriptions for handling every problem, the manual will help you develop the confidence and techniques to build the membership support the union needs to be able to represent the members to the fullest.

Overview

Investigate and prepare

1. Get the who, what, where, when, why of the problem and be aware of time limits.
2. Interview the grievant and identify the contract clauses that may have been violated.
3. Interview the witnesses and get the relevant documents.
4. Re-evaluate the work problem after your investigation.
5. Discuss the strengths and weaknesses of the case with the member.

Handling a work problem that is grievable

1. Determine whether there is a violation of the contract.
2. Cite every provision of the contract which may have been violated.
3. The Employer must have “just cause” for disciplinary action.
4. Upon request, a member is entitled to your presence at a management investigatory interview that could lead to discipline.
5. You have a Duty of Fair Representation of grievant.

Handling work problems that are not grievable

1. If the work problem is not grievable explain and discuss why with the grievant.
2. Discuss alternate ways to resolve the problem.

Try to resolve the grievance informally

1. Find out management’s position.
2. Explore settlements (see “Settling the Grievance” below).
3. Discuss the strength of the case and next steps with the grievant.
4. If an informal settlement is not reached, tell management a written grievance may be filed.

Writing the grievance

1. Write a clear, simple, brief description of what happened to cause a grievance to be filed.
2. Cite contract articles violated and add, “and all other relevant contract articles and rules.”
3. Ask for a remedy and include, “and all other benefits to which the grievant is entitled.”
4. Watch for opportunities to file group grievances, policy grievances, or union grievances.

Presenting the grievance

1. Follow the contractual time limits at each step of the grievance procedure.
2. Never present the grievance without the grievant being there.
3. Keep copies of the grievance at each step and each written response. Also, keep notes of management's statements in grievance meetings.
4. You have a protected right to vigorously represent members.
5. If employees want to handle their own grievances, the employer must notify you; you have a right to be present, and the adjustment must be consistent with the contract.

Settling the grievance

1. Never settle a grievance without consulting the grievant.
2. Always get a grievance settlement in writing.
3. Don't miss a time limit while waiting for a settlement.
4. Be aware of any precedents you may be setting.

Arbitration

1. Investigate every grievance as if it might go to arbitration.
2. Learn about arbitrators' standards – check grievance guides and previous decisions.

What is a Grievance?

The dictionary defines a grievance as any “circumstance regarded as just cause for protest.” “Grieving” such a circumstance is the formal act of making a complaint. The person or persons on whose behalf you are filing a grievance is known as the “grievant.”

Teamster collective bargaining agreements, or contracts, may define a grievance in several ways. One agreement may state that a grievance is “a dispute between the union and management over the application and/or interpretation of the agreement.” Another contract may define a grievance more broadly as “any dispute or difference arising between an employee and management or between the union and management.”

Look at your Teamster contract to find the definition of a grievance as it applies to your workplace.

Many contract grievance procedures make it possible to grieve violations of state, provincial, municipal and federal law, company rules or policies, unfair or disparate treatment of workers and “past practice.”

To help you decide if an issue in your workplace is a grievance, look at each problem from different points of view with each of the following in mind:

The Contract

Contractual grievances include violations of the contract, memoranda of understanding, side letters, and previous arbitration awards that have interpreted the contract.

Grievances based on violations of the contract are the most common and often the easiest to win, especially where the violation is clear cut. A grievance may be more difficult to resolve when the contract language in question is unclear or ambiguous, two or more contract clauses are in conflict, the facts surrounding the problem are not clear, or management is being stubborn.

Even when the contract is silent, however, you still may be able to grieve a problem on one of the following grounds:

The Law

Local, state, provincial or federal laws always supersede the contract when the contract is in violation of the law. For example, if your state’s wage and hour law requires that employees be paid time and one-half after eight (8) hours and forty (40) hours, and your contract calls for time and one-half only after forty (40) hours, the law will prevail.

Filing a grievance based on an alleged violation of the law does not prevent you from also pursuing legal remedies. However, a grievance is often the quickest way to get management to comply with the law. Informing management of a violation of the law also can give the union the leverage it needs to resolve the grievance. Additionally, it may be necessary to first give management an opportunity to resolve the problem before pursuing a legal remedy.

Employer Rules and Policies

While employers are obligated to abide by the contract, they also have the right to make and implement rules related to the orderly and efficient operation of the business, so long as:

- they provide notice to the employees and the union,
- the rules are reasonable “on their face” and
- the rules are reasonably and fairly applied.

Management’s uneven or unequal enforcement or disregard for its own rules, are common grounds for a grievance. For example, the union may use the employer’s own policy prohibiting sexual harassment to defend a worker being harassed by a supervisor.

Unfair or Disparate Treatment

Disparate treatment occurs when two people are treated differently in the same or similar situation so as to harm or negatively affect one of them.

Grievances based on unfair or disparate treatment can cover a broad range of incidents and behavior. For example, there does not have to be a specific contract clause covering a supervisor’s harassment of employees in order to grieve such treatment.

The terms “disparate treatment” and “discrimination” are often used interchangeably, although the work “discrimination” may lead you to think of unfair or illegal treatment on the basis of race, color, national origin, gender, age, sexual orientation, etc.

Disparate treatment is much broader and includes treating someone differently because of their personality, appearance, past incidents and experiences, or union activity.

While disparate treatment complaints are common, they are often very difficult to prove. Successfully resolving a disparate treatment grievance requires a significant amount of documentation and often requires the union to show a pattern of objectionable behavior by a supervisor.

Past Practice

“Past Practice” is a term you may hear often as a steward. A short definition of a past practice is any long-standing practice that:

- occurs regularly
- both union and management have accepted and/or not challenged
- does not violate the contract or any written company rule

Past practices usually cover situations where the contract is silent or ambiguous. A past practice grievance usually arises when management unilaterally, and without notice to the union, changes an established procedure or disciplines a worker for following a past practice.

For example “wash-up time” was once a common practice. A company allowed workers to leave their work areas fifteen minutes before the end of the shift to wash-up before clocking out. When the company changes the practice without notice to the employees or union, then disciplines an employee for following the practice, the union can file a grievance based on a violation of past practice.

These guidelines will help you determine if a past practice violation has occurred.

- **Uniformity** – Was the policy consistently applied over a period of time and did at least a majority of the employees have the opportunity to enjoy the practice?
- **Longevity** – The longer the period of time a policy has been in effect, the stronger the case for it being considered a past practice.
- **Acceptance** – Both the union and management know that the practice has been in effect, and neither party has objected.
- **No Written Language** – There is nothing in writing either in the contract or in written company rules regarding the practice. Written language supersedes past practice.

Past practices are often difficult to establish. Past practice grievances have become less common in recent years, as there are fewer practices not covered by work rules or contract language.

For example, the NLRB has ruled that employer gifts such as a Christmas bonus or a Thanksgiving turkey are gratuities and cannot be considered past practices. Management’s right to direct its work force and change operating procedures if it does not conflict with contract language has been upheld in numerous arbitrations. Furthermore, lax enforcement of a rule does not create an enforceable past practice. Finally, even if a past practice meets all of the criteria listed above, an arbitrator still may refuse to uphold the grievance.

Determining “Just Cause”

In nearly all Teamster contracts, and as a matter of law, an employee can only be discharged (fired) or disciplined for what is termed “just cause.” Determining whether or not the employer has, in fact, established just cause for the discharge or discipline of an employee can be a complicated matter.

Answering the questions below can help you determine whether or not a discharge or discipline is based on just cause.

Was the employee adequately *warned*? (Exceptions: insubordination, drinking on the job, stealing)

Was the rule or order *reasonable*?

Was the investigation *fair and objective*?

Did the investigation produce substantial *evidence or proof*?

Were the rules, orders and penalties *applied evenhandedly* and without *discrimination*?

Was the penalty *reasonably related* to the seriousness of the *offense* and the *past record*?

Steps in the Grievance Procedure

There are typically three steps in a grievance procedure. However, each Teamster contract spells out the particular process that applies to you and your co-workers. **Read the contract carefully.**

Step 1

The steward and the grievant meet with the supervisor to resolve the grievance.

Step 2

If there is no settlement at **Step 1**, a representative of the union, the grievant, and a representative of worksite management meet to try to resolve the grievance.

Step 3

Some Teamster contracts provide for an additional meeting between the local union and company management. Others involve a grievance panel composed of representatives of both the union and management. Still others involve arbitration by a third party chosen by both sides.

Investigation

There are many ways to investigate and handle workplace problems. Teamster leaders develop methods that work best for them in the various situations they confront. Refer to the **Investigation Checklist** at the end of this handbook. The following are suggestions to help you along the way.

Listen to the Problem

Workers come to you with a wide variety of problems. Before you can determine the best way to handle a situation, you need to find out as much as you can about the problem. The first step is to hear the worker out – give him/her a chance to describe the problem and cool off. This means **active listening**.

- Stop what you are doing.
- Take the person aside to a place you can talk without being interrupted.
- Face the person squarely. Make eye contact, but do not stare the person down. Assume a relaxed, attentive posture – even if you don't like the person.

- Start your interview with “open” questions. For example, “What seems to be the problem?” or “Tell me what happened.”
- Give the person feedback with your body and words that encourage him/her to speak. Show him/her that you are listening. For example, “Uh-huh,” “Yes, go on,” “I see,” nods of the head, lean forward slightly, etc.
- Recap the points made by the person periodically to make sure you understand. For example, “So this happened and then that happened....?”

After the worker has told his/her story and you have a general understanding of the nature of the problem, you can then begin to use specific questions to elicit more detailed information.

Investigate and Get the Facts

Here are some questions that can help you get information about a potential grievance. They are often referred to as the “Six W’s:” Who, When, Where, Why, What, and Witnesses.

Who is involved?

This includes the full name, employee number, department, job classification, pay rate, shift and seniority date of all the people involved: the worker(s) with the complaint, witnesses, and the supervisors(s).

When did it occur?

Be as accurate as possible about the time and date the grievance and related events took place.

Where did it occur?

The exact location where the grievance occurred, i.e., machine, aisle, department, floor, etc.

Why did the situation occur?

What contract language, work rules, laws, etc. were violated?

What happened? What are the demands for settlement?

What does the grievant want? What is needed to restore the worker to the same position she/he would be in if the injustice had not occurred? For example, if any employee was discharged, the demands for settlement may be reinstatement with back pay and benefits.

Were there any *Witnesses* investigating the grievance such as:

- the grievant
- co-workers
- witnesses to events
- other union representatives and officers

It is usually best to get management's side before you begin to fight the case. Hearing both sides gives you a better idea of the facts and lets you know management's reasoning for its decision.

Records that can supply information: (For a more complete list, see Access to Employer Information, pages 28 and 29)

- grievance files, arbitration decisions (available from your local union business representative)
- the contract and any supplemental agreements
- company rule books and work rules
- seniority, job classification and payroll lists
- personnel, production, absentee and medical records and files.

Keep Records of Workplace Problems

As you carry out your investigation, it is a good idea to record all the information you receive on a Fact Sheet. It is meant to be used before you have determined whether or not there is a grievance.

It is also beneficial to keep all Fact Sheets and other records on members' workplace problems in a convenient location – in a file folder, notebook or a centrally-located file cabinet or drawer. This information and the records of other stewards would then be available to refer to when similar problems occur.

Often the difference between winning and losing may depend on the completeness and accuracy of the investigation, the records and the union's ability to evaluate it properly.

Investigation Fact Sheet

DEPARTMENT _____ DATE _____

SHIFT _____ STEWARD _____

NAME OF EMPLOYEE(S) _____

CLASSIFICATION _____ SENIORITY DATE _____

NAME OF SUPERVISOR _____

WHAT HAPPENED:

EMPLOYEE STORY: WHEN _____ WHERE _____

DATE OF INTERVIEW WITH EMPLOYEE(S) _____

SUPERVISOR STORY: WHEN _____ WHERE _____

ALLEGED CONTRACT/ RULE VIOLATION _____

DATE OF INTERVIEW WITH SUPERVISOR _____

WITNESSES' NAMES:

WHAT THEY WITNESSED:

DOCUMENTS NEEDED (CHECK "YES" WHEN RECEIVED AND ATTACH TO THE FACT SHEET)

___ ATTENDANCE RECORD ___ WORK RECORD ___ MEDICAL RECORD

USE BACK OF THIS FORM TO RECORD ADDITIONAL INFORMATION

The Three Rules of Evidence

Before proceeding, review the **Fact Sheet** and evaluate the information using the "Three Rules of Evidence."

1. **Opinions are not facts** – All opinions must be specifically qualified. If a person says "always," ask "how often/when?"
2. **Hearsay evidence is not factual** – Search for the original source and witnesses and get the first-hand scoop. If someone says, "Mary heard..." or "John told me that..." find out directly from Mary or John what happened.
3. **Facts must be relevant** – You need to identify the facts that directly bear on each particular grievance. Review the Fact Sheet again and underline those facts that are relevant to proving this is a grievance.

Should We Grieve?

Now that you have the information necessary to decide whether or not a grievance exists, evaluate all the information carefully, make the decision, and plan a course of action.

If you have fully investigated the problem and still feel the case is not strong, ask for advice from more experienced union representatives and officers. However, always give the grievant the benefit of the doubt. A good rule of thumb to follow is: even if you have a *reasonable* doubt that a grievance exists, GRIEVE!

If after your investigation, you decide there is no basis for filing a grievance, discuss the problem with the grievant. Even though you may not believe a formal grievance can be filed, there may be other solutions to the problem.

For instance, the problem may involve complaints against other members, the union or off-the-job problems. In these situations, you can refer the member elsewhere for help: to government, professional or community service agencies.

Also, inform the member of his/her right to appeal your decision through the local union. Your responsibility of fair representation is fulfilled if you fairly and completely investigate the case and make your decision to grieve (or not to) based solely on the merits of the case (See Duty of Fair Representation pp. 17 - 20).

Writing the Grievance

Here are some suggestions for completing a written grievance form.

1. **Limit statements to the basic facts.** The purpose of the written grievance is to trigger the formal steps of the grievance process and notify the employer of the basic facts, alleged violation and the requested remedy. Limit the grievance to those essentials by using the “Six W’s” as a guide.
2. **Leave out arguments, evidence and justifications.** Arguing the merits of the case is reserved for face-to-face meetings with the employer. Disclosing this information in the written grievance could give the employer an edge in preparing their case against the union.
3. **If required, refer to all contract violations.** If your contract requires including reference to contract language, include all contract provisions that may be applicable to this particular grievance. You can use the phrase "violates the contract, including but not limited to Article ____." This may allow you to add additional violations of the agreement later.
4. **State the union's position.** In clear, affirmative statements, express the union's position i.e., "Mary Smith was unjustly discharged." Avoid using phrases such as, "I think" or "Mary believes."
5. **State a full, possible remedy.** The purpose of the grievance procedure is to "make the grievant whole" by putting the worker in the same position he/she would have been in had the injustice not occurred. If a worker has been discharged, ask that he/she be made whole: immediate reinstatement with full back pay and all rights, privileges and benefits restored, and the entire matter expunged from his/her record. This makes it possible for the grievant to receive his/her job back, plus back pay, seniority, vacation time, fringe benefits, etc. Remember, you get only what you ask for.
6. **Consult with the grievant.** Go over the written grievance with the worker(s) on whose behalf the grievance is being filed, explain what the requested remedy is and make certain the grievant fully understands.
7. **Have the grievant sign the grievance form.** This guarantees that the grievant has seen and read the grievance and provides legal protection for the union when determining the final settlement of the grievance. The exception is that if the grievance does not concern discipline, the steward may sign a grievance on behalf of the union in order to stop a contract violation.

Sample Grievance Report Form

DATE MEMBER'S NAME EMPLOYER

HOME PHONE HOME ADDRESS

DATE OF HIRE CLASSIFICATION OR JOB TITLE DEPARTMENT

TYPE OF GRIEVANCE (CHECK):

DISCHARGE DATE _____ WAGE CLAIM DATE _____

SUSPENSION DATE _____ WORKING CONDITIONS DATE _____

WARNING LETTER DATE _____ OTHER DATE _____

HAS GRIEVANCE BEEN DISCUSSED WITH SUPERVISOR? YES NO

DATE IF NO, STATE REASON

HAS GRIEVANCE BEEN DISCUSSED WITH SHOP STEWARD? YES NO

DATE IF, NO STATE REASON

STEWARD'S NAME _____

SUPERVISOR'S NAME _____

WITNESSES' NAMES (IF APPLICABLE) _____

CONTRACT ARTICLES VIOLATED *and any other relevant articles of the contract.*

FACTS OF THE CASE
(MEMBERS SHOULD RECORD HERE THE CIRCUMSTANCE OF THE GRIEVANCE MAY USE BACK.)

REMEDY ASKED *and all other benefits to which the grievant is entitled.*

STEWARD'S SIGNATURE

MEMBER'S SIGNATURE

Presenting and Settling the Grievance

Once you have fully investigated the case and decided it should be grieved, prepare yourself and the grievant to give the best possible presentation to management. Your goal is to solve the problem at the lowest step of the grievance process. Careful preparation will make this more likely.

Building Your Case

Your presentation to the supervisor may use all the facts you have written down on the Fact Sheet or only part of them. You may want the grievant to participate in presenting his/her case, or you may want them to remain silent. As a rule, the steward should do the talking.

Nevertheless, you should decide these issues beforehand and discuss with the grievant how you think the case can be presented. In order to be effective, you should:

If you and the grievant are well prepared, you may be able to resolve the grievance at Step I.

1. **Build the Best Case** - Decide what issues, facts, arguments and remedies you think are most convincing. Write them down separately so you can refer to them as you talk with the supervisor. Know what you want to say before meeting with management.

2. **Anticipate Management** - Based on what you found out during your investigation of the grievance, put yourself in the supervisor's shoes. Anticipate what facts, arguments and remedies he/she is likely to offer.

3. **Prepare Responses** - Based on what you expect the supervisor will argue, prepare responses, counter arguments and compromises (regarding the facts and remedies) you and the grievant are willing to accept.

The Oral Presentation

You are now ready to present the grievance. Here are some suggestions to keep in mind:

- **Take Control.** In any meeting with management, the objective is for you to control the tone, direction and outcome of the meeting. You do not have to be overbearing, aggressive or argumentative to do this. Try to make management present first. It is easier to poke holes in their arguments than to prove a worker innocent.
- **Set the Tone.** The "proper" tone will depend largely on the situation and the type of relationship you have with the supervisor. Usually the best approach is to be direct and positive.
- **Be Calm, Don't Threaten.** Shouting and pounding on the desk rarely accomplishes anything. Don't make threats that you and the supervisor know you can't carry out. If you and the supervisor can't come to an agreement, there are additional steps to follow, including arbitration.
- **Avoid Personalities.** It is not *who* is right, but *what* is right that counts. Stay focused on the issue at hand, and don't allow yourself to be sidetracked. When you must disagree with what the supervisor says, do so with dignity. Remember, you are seeking agreement, not conquest. You will have to settle other issues with the same supervisor in the future.
- **Listen.** Despite your best efforts, you may not know all the facts. You want to make sure you understand management's real position.
- **Acknowledge Valid Points, Then Redirect the Discussion to the Union's Position.** Example: "We understand your concern about meeting production standards, however, that does not mean you can ignore the contract." You are asking for justice, not favors; be as fair as you expect management to be.
- **Caucus.** Take a short recess if you need to regroup, discuss matters or settlement proposals, or when there is division or disagreement among members on your side – never disagree in front of management.
- **Don't Trade Grievances.** Don't give up one grievance case in order to get a favorable decision on another.
- **Management Has Rights.** Both the workers and management must live up to the terms of the agreement. Always leave the other side some graceful way out of a mistake.

Finally, and most importantly:

- ***Keep written records of all grievances.*** After the meeting with management, write a brief summary of who participated in the meeting, what happened and any settlement that was discussed or offered. Keep this in a file or envelope with the other materials pertaining to the grievance.

- ***Keep the worker(s) informed about their grievance.*** You always should have the grievant with you in any meeting with management regarding their grievance. If the grievant begins to lose his/her cool, ask for a caucus to give the member an opportunity to calm down - then proceed with the meeting.

Settling the Grievance

Remember that in the grievance procedure, the supervisor and Teamster steward or representative are equals and share the responsibility for settling the grievance. Keep in mind the following:

IF the supervisor wants to trade (you win a grievance and management wins one), insist on settling each grievance on its merits. This is the only *just* way to settle a grievance. IF the supervisor stalls, try to push for an immediate answer. If you can't get a decision, try to set a definite time (as early as possible) to get an answer.

IF you can't settle the grievance, determine if you are going to take the case to the next step of the grievance procedure. Be aware of time limits and be sure to keep the grievant informed.

NEVER settle a grievance without consulting the member and ALWAYS get a grievance settlement in writing. Throughout the grievance handling process, NEVER miss a time limit that is spelled out in the grievance procedure of the contract!

Arbitration

The Last Step of the Grievance Procedure

Some contracts specify that unresolved grievances be heard by a grievance panel, sometimes called a Board of Adjustment, prior to arbitration. Arbitration is the last step in nearly all grievance procedures. In arbitration, a neutral person agreed upon by both the union and management hears the positions of both sides and makes a ruling that is final and binding.

A **grievance panel** is comprised of an equal number of labor and management representatives. The parties present their case to the panel similar to an arbitration presentation and the panel tries to render a decision.

Cases that cannot be decided by the grievance panel are normally called “deadlocked” and are often submitted by the local for final and binding arbitration.

Since any grievance that cannot be settled at lower steps of the grievance procedure may go to arbitration, it is important that the initial investigation and writing of the grievance are done with knowledge of how arbitrators rule. For example: arbitrators won't grant more to a grievant than the remedy requested on the grievance form; a case could be weakened in arbitration if important facts or key witnesses were not discovered and handled properly at the initial steps of the grievance procedure; and you can better evaluate whether to settle a grievance at a lower step if you are familiar with how an arbitrator might decide the grievance.

Choosing Arbitrators

The grievance procedure in your contract will specify how an arbitrator is chosen. Many contracts name one or more arbitrators who will hear all grievances arising from that contract. Other contracts say that whenever it is determined that a grievance is going to arbitration, the parties will request a list of potential arbitrators from the American Arbitration Association, the Federal Mediation and Conciliation Service or a state mediation agency. The parties take turns removing (or striking) one name from the list until only one name remains. The remaining name is the arbitrator for that case.

Most arbitrators are attorneys, college professors and mediators. You can learn more about a potential arbitrator by reading his or her publicized decisions and by talking to union representatives and labor attorneys who have had cases before that arbitrator. In choosing arbitrators, keep in mind that each case is a little different, arbitrators are not bound by precedent, and an arbitrator may rule differently on your case than he or she did on a past case.

The Arbitration Hearing

Usually arbitrations are held around a table in a conference room sometimes with a court reporter who takes notes of the hearing and prepares a transcript for the parties. The arbitrator swears in witnesses and rules on objections made by either party. The representatives of the parties (often attorneys) make opening statements, question and cross examine witnesses and make closing statements. Often the parties submit written briefs to the arbitrator after the hearing has ended. In discipline cases the burden of proof is on the employer, while in contract interpretation grievances the burden of proof is almost always on the union.

Arbitrators' Standards

For discipline cases arbitrators use the "just cause" standard explained elsewhere in this booklet. Arbitrators also have standards they use to decide grievances over contract interpretation disputes. First and foremost the arbitrator tries to determine what the contract actually says rather than what he or she thinks is a fair solution to the dispute. Sometimes unions lose cases because of contract language, even though what management did is not fair or logical. When the contract language is not clear the arbitrator may try to determine what the parties tried to accomplish when they agreed to the contract language during negotiations. Arbitrators will also consider how similar language has been interpreted in the past, what are the common practices in the industry and which interpretation is most reasonable and equitable, among other standards.

The Time and Cost of Arbitration

The contract will usually state how many days the union has to request arbitration and may further specify a time limit on how long it takes to choose an arbitrator and schedule the hearing. In addition, while some contracts mandate that the arbitrator make a decision within a certain number of days after the hearing, this is difficult to enforce. Consequently it can take from two to three months or more from the time the union requests arbitration until a decision is made. Arbitrators charge from \$500 to \$1000 per day, which includes days spent hearing the case and writing the decision. The cost is normally divided equally between the union and management.

Deciding Whether to Arbitrate

Just because arbitration is the last step of the grievance procedure doesn't mean that every unsettled grievance proceeds to arbitration. Local unions have the right to decide whether or not to arbitrate a case as per the duty of Duty of Fair Representation and as long as the standards used are applied fairly and equally to all cases.

Note: Information on the Duty of Fair Representation regarding the decision whether to arbitrate a case is in the next section of this booklet.

Arbitration Decisions are Final and Binding

It is extremely rare and difficult to have an arbitrator's decision overturned. The courts are reluctant to even review an arbitration decision and will do so only on procedural grounds such as fraud, arbitrator misconduct, hearings ending before the losing party presented its case, if the arbitrator exceeded his or her authority under the contract or if the union violated its duty of fair representation.

On the other hand the courts will enforce an arbitrator's ruling if the losing party fails to comply with the decision.

The Law and Grievance Handling

Filing a grievance involves both an individual Teamster member's rights and the duty of the union to provide representation for *all* workers covered by the contract. While a full discussion of the legal aspects of grievance handling is beyond the scope of this manual (see **For More Information**) Teamster stewards need to be familiar with the following in order to fully represent their members.

"Weingarten Rights"

The U.S. Supreme Court's 1975 decision in the *Weingarten* case held that if the employer requires an employee to submit to an investigatory interview and denies the employee's request for union representation, then the employer is in violation of the National Labor Relations Act. Some important factors in *Weingarten* rights are:

- Union members have the right to a union representative at an investigatory hearing if they *reasonably* believe that the investigation could lead to disciplinary action.
- The member *must request* a representative; the employer has no obligation to inform the employee of that right, unless your contract language says otherwise.
- Management does not have to call the representative. Instead, the employer can stop the meeting or just issue the discipline.
- Once a union representative is called, he/she has the right:
 - to know the subject of the investigatory hearing
 - to confer with the member prior to the hearing
 - to speak and participate in the hearing

However, the representative cannot argue the case; this is not a grievance hearing.

- An employee cannot choose which union representative he/she would like to represent him/her.

The department representative will be called, if available.

If not, the nearest available representative will be called.

If the employer is responsible for the representative not being available, then the supervisor must end the meeting until the representative is available;

If the union is responsible for the representative not being available, then another representative or employee can be called in, unless the supervisor chooses to postpone the meeting.

The Duty of Fair Representation

Labor law provides for a swap. The union, through certification or recognition, is established as the "exclusive" bargaining representative for all employees in the bargaining unit. In exchange, the union must fairly represent all employees in the unit, both members and non-members alike. The legal term for this is the "duty of fair representation."

The most important area in carrying out a union's duty of fair representation is the processing of grievances. Most "failure to represent" lawsuits brought against unions are filed by persons who have been discharged. Therefore, Teamsters Union staff, officers and stewards need to be particularly careful in handling discharge grievances. The following guidelines will assist you in processing grievances in a way that meets the union's legal responsibility.

- **Consider all grievances solely on their merits.** The decision whether or not to process a grievance must be based on the merits of the particular grievance. This means that you must look at the facts underlying the grievance in determining whether a grievance has occurred, and if so, whether to pursue the grievance through the grievance procedure.
- **You may not refuse to process a grievance because you do not like the grievant.** Your determination whether there is a legitimate grievance may not be based on personal hostility (you think the employee is a pain in the neck), political opposition (the employee ran against you in the last election), or racial prejudice (you do not like people of a particular ethnic background). You must look at the merits of the particular grievance, not at the individual employee.
- **Investigate the grievance thoroughly.** You have a responsibility to thoroughly investigate grievances. A superficial investigation may not uncover all the important facts. Interview the grievant. Locate and interview witnesses. Follow up on all leads. Particularly with discharge grievances, be sure to get the grievant's complete story and talk to all witnesses offered by the grievant.

Do not accept without question anything which is said -- check it out. Always use the "Six W's" as a guide to your investigation.

You have a responsibility to investigate a grievance before you decide whether it has any merit.

- **Process the grievance promptly and do not miss time limits for filing and appealing grievances.** Timeliness is extremely important in grievance processing. You have a responsibility to file and appeal grievances within the time limits established by the grievance procedure in your contract. Failure to comply with the time limits can result in having the grievance "die," leaving the grievant with no recourse against the employer.

If additional time is needed to investigate, file the grievance so as not to miss the time limits. An investigation does not have to be completed before a grievance is filed.

- **Take notes and keep written records.** Begin to take notes as soon as practical. The longer the delay, the greater the danger of omitting small but important facts. Notes must be accurate, understandable and as complete as possible. Your notes will become the foundation upon which decisions will be made as the grievance moves through each step in the grievance procedure.

Keep a record of all discussions with the grievant, all discussion with the employer about the grievance, and all internal union decisions whether or not to proceed with the grievance. Keep a copy of all correspondence and documents relating to the grievance.

Your written record establishes that the union investigated the grievance and made an **objective decision on the merits**.

- **Keep the grievant informed.** Many lawsuits are filed against unions because discharged grievants (and their lawyers) believe the union is hiding something by not keeping the grievant advised of the progress of his/her grievance.

The grievant should be kept informed of the status of his/her grievance, where it is in the grievance process, and any management responses. Any union decision on the grievance should immediately be communicated to the grievant, preferably in writing. This includes decisions not to file a grievance, to drop, withdraw or settle a grievance, or not to go to arbitration on a grievance.

Besides being fair to the grievant, written notification starts the clock on the grievant's six month time limit for filing a duty of fair representation suit against the union (see below). The law does not **require** that the grievant be present at meetings with the employer or at internal union discussions concerning the grievance. However, if your union permits the participation of grievants at these meetings, then it must do so for everyone (or for no one at all).

- **Treat all members of the bargaining unit the same.** It is unlawful to refuse to process, or to give superficial treatment to, the grievance of a person who is not a member of the union. Likewise, grievants who have been political opponents of the current officers, or dissidents within the union, must be treated the same as all other bargaining unit members.
 - Of course, the union cannot discriminate against grievants because of their race, gender, age, or ethnic background. All employees should be given equal consideration in the handling of their grievances. You should take a similar position on similar cases.
 - **Have a valid reason for any action taken on a grievance.** The law requires a union to consider a grievance in good faith and to make a determination to process the grievance on its merits.
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- Don't let the time limits expire before making a decision. Make a determination whether and how far to process a grievance on the basis of the investigation of the grievance, past success or failure in arbitrating similar grievances, and the importance of the grievance to the entire membership. Document this decision in writing.
- ***If the grievance clearly lacks merit and cannot be won at the lower steps or in arbitration, drop it.*** Don't let an attorney or the threat of a lawsuit influence the union's judgment on the merits of the grievance. The courts recognize a union's right – and its obligation – to keep the grievance procedure free of meritless grievances that clog up the dispute-resolution machinery. However, the grievant must be informed of the decision and the union should make a written record of the ***objective*** reasons why it declined to file or dropped the grievance. The steward should make a sincere effort to convince the grievant of these reasons.
- ***The settlement of grievances.*** A union has a right to settle grievances as it sees fit. Again, there should be a written record made of the settlement itself and the reason(s) why the settlement was made. Of course, when a grievance is settled, the grievant should be promptly informed.

What should be avoided is the appearance that one grievant receive a better settlement than another because of who the grievants were. In addition, there should be no “horse trading” whereby one grievance is sacrificed in order to save others. Nor should there be even the appearance of such action.

Arbitration and the Duty of Fair Representation

If your Teamster contract includes arbitration at Step 3 of the grievance procedure, there are a few additional considerations that Teamster stewards need to be aware of:

- An employee does not have a legal right to insist that his/her grievances go to arbitration.

Just as with the lower steps of the procedure, the decision whether to arbitrate a grievance must be made based on the merits of the particular grievance. This decision should take into account the facts of the grievance and the importance of the particular case, the past success or failure in arbitrating similar grievances, and the importance of the grievance to the entire membership. Cost of arbitration may be one factor considered, but should not be the sole reason for deciding against arbitration.

- The internal union procedure must be the same for all employees. For example, if a committee decides whether or not to move grievances to arbitration, then this must be the procedure in all cases.
- The grievant should be given written notice of the date, time and location of the arbitration hearing. At a minimum, the grievant should always be invited to be present at the hearing.

- If a decision is made not to take a grievance to arbitration, the decision and the reasons for the decision should be communicated to the grievant, both verbally and in writing. The goal should be that the grievant understands that he/she was treated fairly.
- The duty of fair representation includes the duty to arbitrate the grievance to the best of the union's ability. This means that whoever is handling the arbitration should meet with the grievant and any witnesses in advance of the hearing and make certain that all relevant information is available, including requesting information from the employer. The union should make the strongest case for the grievant and present the case in the most favorable light.
- It is not necessary to use a lawyer at the arbitration hearing. The use of a lawyer at the hearing does not protect the union from a possible duty of fair representation violation.
- The grievant does not have a legal right to have his/her own attorney represent him/her at the arbitration hearing. However, the union may permit an attorney to be an observer or to take an active role at the hearing.

Time Limits and Remedies in Fair Representation Lawsuits

A 1983 Supreme Court ruling limited the period of time for initiating a duty of fair representation lawsuit to six months after the date of the union's alleged violation. In cases where a union decides not to process a grievance, this is the date the union notifies the grievant of its decision. Therefore, it is in the union's best interest to promptly notify a grievant of such a decision.

Another 1983 Supreme Court case significantly increased the amount of money damages which may be assessed against a union in a fair representation lawsuit. In a case where an employer wrongfully discharges an employee and the union violates its duty of fair representation by wrongfully failing to arbitrate the grievance, the union now can be held responsible for most of the employee's back pay (previously only the employer was liable for back pay).

Access to Employer Information

Under the National Labor Relations Act (NLRA), unions have the right to request and receive information from the employer that is relevant to processing grievances.

The right to information stems from the concept that for the grievance procedure to function properly and the union to effectively represent its members, the union needs access to information that will enable it to intelligently evaluate grievances or potential grievances.

The employer, as part of its duty to bargain in good faith, is obligated to provide the requested information. Failure to do so subjects the employer to an unfair labor practice charge under Section 8(a)(5) of the NLRA.

Requirements for having access to employer information are:

- The union must request the information.
 - The information requested must be relevant to an actual or suspected grievance.
 - No alternative means for obtaining the information is available.
 - There are cases where an employee may not be required to provide information to the union, even though the information requested may be relevant. These situations arise when other interests override the union's need for information. They include: employee confidentiality/privacy (employee test scores, medical records) and business interests (trade secrets).
 - The request for information need not be in written form. However, it is always a good idea to make the request in writing in order to document the request.
 - The employer must provide the requested information to the union in a "timely manner." What is considered "timely" depends on each situation. Failure to provide information in a timely manner may be grounds for an 8(a)(5) charge.
 - The employer will be required to comply with the union's request – so long as the information is in its possession and compliance with the request does not create an undue burden on the employer. For example the cost/time to compile/prepare the information is not unreasonable.
 - The information must be provided in a useful form.
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- The request for information must be specific and related to the grievance. The union cannot go on a "fishing expedition."
- The duty to provide information also applies to the union as part of its duty to bargain in good faith.

Information You Can Request From The Employer:



Investigation Checklist

Good investigation at the early stages of a grievance can lay the foundation for your case. Poor or sloppy investigation can harm your case because facts not recorded early tend not to be recorded at all.

Investigate at the first step as if the grievance will go to arbitration. A good investigation will expedite settlement. A good investigation will help build your confidence.

This checklist will assist you in completing a good grievance investigation.

- Interview the grievant. Listen carefully to his/her story.
- Have grievant write his/her rebuttal to discipline (if appropriate).
- Interview grievant's co-workers.
- Interview the witnesses and management, asking the Six W's. Get a written, signed statement from witnesses.
- Keep written records of all interviews.
- Request copy of personnel file (if disciplinary grievance).
- Request any other management records needed (personnel policies, payroll records, seniority list, attendance records, etc.)
- Determine if the problem affects others in the workplace.
- Determine if this is one of the five violations and the remedy desired.
- Determine if filing a grievance is the best strategy for solving the problem.
- Check previous grievance settlements for precedents.
- Check the experience of other stewards in similar cases.
- Seek advice, if needed, from other union representatives.
- Review the case with the grievant.
- Anticipate and prepare for management's arguments.
- Outline your presentation in writing.
- Inform other workers about the issue and organize support activities for the grievance.



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