

I GRIEVANCE PROCEDURE – KNOW YOUR CONTRACT

A. What is a grievance? What can be grieved?

Determine whether or not it is a grievance or a gripe

DEFINITION Grievance is a dispute between the City of..... and one or more employees covered by this Agreement, or between the City and the Association pertaining to wages, hours, or conditions of employment.

B. Use the grievance worksheet as a guide.

C. Do you have alternatives; i.e. a grievance vs a law suit or unfair labor practice

D. Determine what remedy is needed to resolve the grievance and at the same time what the ramifications are should you not prevail or withdraw the grievance.

II INVESTIGATING THE GRIEVANCE

A. Investigate the complaint, noting the time, date, who, what where, when, and why.

B. Conduct an interview. Listen carefully to the employee's statement, writing down such things as the "5 W's" (Who, What, When, Where and Why).

C. Have the employee put the information in writing.

E. Examine necessary department records pertinent to the complaint. Make copies of ALL records, memos, etc., that you can possibly come into contact with. It can be determined later whether such information is useful or can be discarded.

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F. Distinguish between fact, fiction and opinion.

- G. Determine which facts are relevant to the matter under discussion.
- H. Determine what the violations are as they pertain to the contract, rules and regulations, past practices and unequal treatment,
- J. Determine specifically what the desired settlement (remedy) is.
- K. With all your notes, statement on the grievance worksheet, and your investigation you can, if you wish, write your grievance. Some suggest that you use the grievance at the first step of the grievance procedure with the first step usually being the oral step. In doing so, whether or not you present the grievance at the oral step, make sure you comply with your CBA's grievance procedure, i.e. some contracts require a specific statement of the facts, a listing of the contract provisions at issue, and the requested remedy. Be as concise as possible. **DO NOT EDITORIALIZE.** Make sure that the statements of the contract are correct to the best of your knowledge.

III **PROCESSING THE GRIEVANCE**

A. **NUMBER ONE ISSUE** is time limits!

Know Your Contract Grievance Procedure, especially in regards to the time limits starting with how soon must a grievance be filed. Upon receiving an answer to the grievance, how much time do you have to move the grievance to the next step. This is important at each step of the grievance procedure.

Equally important is what are the time limits on management to respond to the grievance?

Most important is, What are the ramifications for failing to abide by the time limits? You certainly do not want to lose a grievance because you failed to abide by the time limits.

B. Writing the grievance, if you have not already done so.

Whether or not you have written the grievance prior to the oral steps, **TYPE** the grievance error free, with **CORRECT PUNCTUATION AND CORRECT SPELLING.**

C. Depending on your contract, a face to face meeting may be involved at the different steps of the procedure. If, you do have a meeting, even at the oral step, and other members are attending, keep a united front. Usually, the union rep should be the primary spokesperson. Never disagree in front of the supervisor or administrator. Don't be afraid to call a timeout for discussions among members.

Use good communication skills; thank them for their willingness to meet; use eye contact; keep a friendly tone of voice and manner; listen to their explanations; argue your point without being arrogant and arbitrary; use a positive approach and stick to the point; keep personal elements out of the picture; learn to ask why; demand the same respect from management representatives as you have given management (as a union rep, you are on the same ground as the management rep when discussing Union-Management issues); and at the end of the meeting. As much as you want to bite their head off; thank them again for meeting with you.

List all the members and supervisors who are at the meeting. Take notes of what is being said and by whom.

At the end of the meeting, make sure that both side's positions are known. **DO NOT ASSUME ANYTHING.** Make sure both sides agree that the grievance is either (A) resolved; (B) to be processed to the next step. If you agree to an extension of time limits, limit it to a specific time period and put it in writing, signed by both parties.

D. **KEEP THE GRIEVANT INFORMED**

- E. Even if the grievance is resolved, keep a file on it with all the supporting documents.

IV GRIEVANCE ARBITRATION

- A. What can be arbitrated? This may differ from what can be grieved.
- B. What is the impact of the arbitration decision? That is why it is extremely important to make the decision on whether or not to proceed in the first place. The biggest mistake is taking the position that “WHAT DO WE HAVE TO LOSE.”
- C. Your investigation, your preparation and your presentations of the grievance at the lower levels of the grievance procedure can play a critical role in the outcome at arbitration.
- D. Along with your BA, and pursuant to your CBA, decisions will have to be made as to the selection of an arbitrator, the location of the arbitration hearing (employer, union or a neutral site).
- E. We put our best foot forward in the presentation of the grievance, typed, punctuation, concise, etc. It is now before an arbitrator in a professional presentation. The same holds true for your appearance at the arbitration. You should come in business attire and well groomed.
- F. Most arbitration hearings loosely follow a court hearing. That is, it is less formal, testimony by both parties, management and union, including cross examination, witnesses, rebuttal witnesses, exhibits, etc
- G. If called upon to testify, do it professionally answering any questions truthfully and to the best of your ability. There is nothing wrong with saying “I don’t know or I don’t recall”. Remember the arbitrator is assessing the witnesses’ and their testimony and credibility.

- H. Most contracts with an arbitration clause in the grievance procedure states that the arbitrator shall have no power to add to, subtract from, amend, alter or change the provisions of the contract.
- I. The arbitrator will issue their decision and in most contracts the arbitrator's decision binding. Good Luck!

V Past Practice

- A. Many times we hear the term past practice. What is it?
Generally, it is an employment custom or condition that the contract does not include specific language or the language is ambiguous. It must benefit both parties and be accepted by both parties. This is undoubtedly the shortest version of past practice and there have been volumes been written on the subject.
- B. A lot of times we have a propensity to call things past practice when in reality it was management's way of doing things.
- C. A past practice sometimes develops from unambiguous contract language. Which means that even though the contract language is clear a practice has developed which does not follow that language. In most cases, either party would have a right to halt the contract deviation and return to the contract language moving forward.
- D. You should consult with your business agent before using the term past practice as your main violation in a grievance.

VI DISTRIBUTION OF GRIEVANCE

- A. You must contact the POAM office to get a number for your grievance.

- B. After you have a number for the grievance and TYPED the grievance on the grievance form, follow the instructions on the bottom of the grievance form. Send the yellow copy to the POAM along with all the proofs and evidence (or at least a copy of same). While not listed on the form it is recommended that a copy be provided to the grievant.

Regardless of which you send, the original or a copy, always have a second copy.

- C. Some of the problems the BA's and Association have experienced is a copy of the grievance has never been sent; statement of grievance states "See Attached Sheet" and the office does not get the attached sheet; no contract violations are listed; and the time limits have not been adhered to.

THE BUSINESS AGENT AND THE POAM OFFICE ARE ALWAYS AVILABLE FOR ASSISTANCE