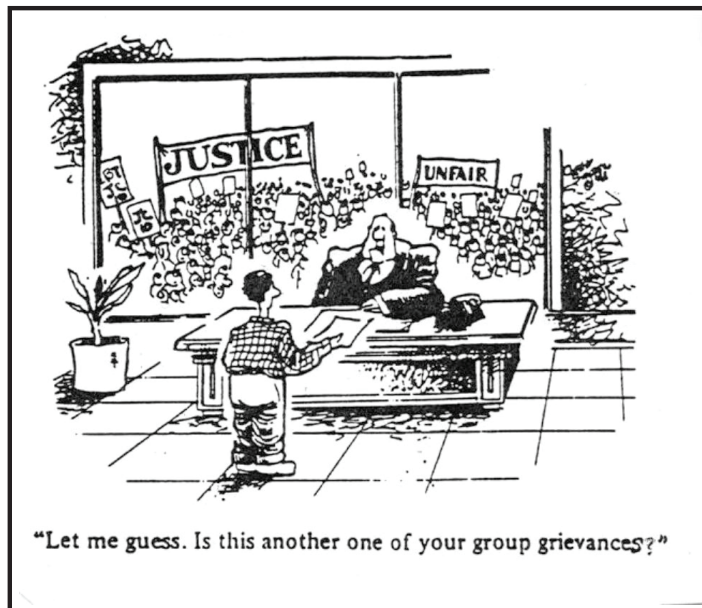




SEIU Local 888

Stewards Training



October, 2011

UMass. Labor Extension Program
Amherst • Boston • Dartmouth • Lowell

Stewards Training**Participants Outline**

10:00 Welcome/Introduction to Program 15 min

10:15 Icebreaker: Super Steward 40 min

Sum up: The Role(s) of the Steward

Where do our rights come from?

10:55 Legal Rights & Responsibilities 50 min

- The Right to Organize
- The Equality Principle
- Right to Information
- Weingarten Rights: What would you do?
- Duty of Fair Representation

11:45 Problems in the Workplace: An Activist Approach 45 min

12:30 Lunch 30 min

1:00 The Grievance in Context 15 min

- What is it?
- What can it accomplish?
- What can't it accomplish?

1:15 What is a Grievance? 45 min

- Two Kinds of Grievance
- The 5 bases for grievance
- Is it a grievance?
- Know your contract

2:00	Practice with the Grievance Procedure	45 min
	• Investigating a Grievance • Grievance Time lines • Writing the Grievance	

2:45 Break 15 min

3:00	The Grievance Hearing	45 min
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3:45	Sum Up and Evaluation	15 min
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4:00	End	
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The Roles of a Union Steward

Problem Solver

- _____
- _____
- _____

Leader

- _____
- _____
- _____

Communicator

- _____
- _____
- _____

Educator

- _____
- _____
- _____

Organizer

- _____
- _____
- _____

Where Do Our Workplace Rights Come From?

Our workplace rights come from 3 fundamental sources:

- The Law
- The Union Contract
- The Solidarity of our co-workers

Of these, the most important is worker solidarity. Without that, the company can easily break the laws or the union contract and get away with it.



The Advantage of a Union Contract

In addition to better wages, benefits and working conditions, almost all union contracts guarantee the following three important rights:

- **"Just Cause"** This provision prohibits the employer from firing or disciplining a worker without justification (i.e., without just cause). Unfortunately, this does not protect you against layoffs.
- **Seniority:** In case of layoffs, recalls, promotions, vacations, etc, the employer must take into account the length of time a person has worked in the company, or in the department (depending on the contract). This can protect workers against favoritism, capriciousness and discrimination.
- **Grievance Procedure/Arbitration.** Union contracts generally provide a procedure which the company must follow to solve workers' grievances. If the company and the union cannot agree on a solution to the problem, the last step of the procedure sends the problem to a neutral third party, the Arbitrator, who makes the final decision.

The National Labor Relations Act As Amended by the Taft-Hartley Act

Key Provisions:

Rights of Employees (In NLRA these are in Section 7)

Employees have the right:

- To self-organization, to form join or assist labor organizations
- To bargain collectively through representatives of their own choosing
- To engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection
- To refrain from such activities except to the extent that this right may be limited by an agreement requiring membership (union security clause or agency agreement)

Unfair Labor Practices (In NLRA, these are in Section 8 (a))

It shall be an unfair labor practice for an employer to:

- Interfere with, restrain or coerce employees in the exercise of the rights guaranteed in Section 7(or in these of the public sector laws, this will refer to a different section)
- To dominate or interfere with the formation or administration of a union or to give it illegal support, financial or otherwise
- To discriminate in hiring or in any term or condition of employment in order to discourage membership in the union
- To discriminate against an employee because he or she filed charges or gave testimony under the Act.
- To refuse to bargain with the Union representatives

Massachusetts General Laws, Chapter 150e

- Covers public sector employees
- Similar to the NLRA, except that it does **not** include right to strike.

Right to Information

Your **right to information when investigating a potential grievance** comes from the part of the law that says the employer has a duty to bargaining in good faith. While you may not have thought of grievance handling as bargaining, under the law it is looked at that way. So, you have a right to information from the employer- you cannot prove your case without the facts, and if management has those facts, you should have access to them.

In order to get information, make a specific, written request of the employer and be prepared to explain why you need it. Keep a copy of your letter!!

The employer has an obligation to get information to you in a prompt manner, but they often delay. Keep copies of their responses, and keep requesting the information. The employer has an obligation to get you the information in a form that you can use- but that does not mean it has to be exactly the way you would like it. The employer can require that you keep the information confidential.

Sample Information Request Letter:

TO: Tom Boss, Personnel
FROM: Kelly Doucette, Steward
RE: Discharge of Georgette Sawyer for Tardiness

DATE: Oct. 19, 2011

In order to prepare the discharge grievance of Georgette Sawyer, the Union requests the following information:

1. Georgette Sawyer's personnel file
2. The tardiness records of all bargaining unit employees over the past two years
3. The names of all employees disciplined for tardiness within the past two years and descriptions of each discipline and the amount of tardiness that led to each.

Please provide this information by Nov. 2, 2011. If any part of this request is denied, please provide the remaining information which the Union will accept without prejudice to its position that it is entitled to all of the information requested here or in further requests that the union may submit.

Employee's Rights to Representation (Weingarten Right)

The **Weingarten Right** is the right to have a Union representative present when a supervisor asks an employee questions which the employee reasonably believes may lead to discipline. This right was established for private sector employees by the U.S. Supreme court in a case known as Weingarten. Most states recognize these rights for public sector employees as well.

Weingarten Rules:

Rule 1: The employee must make a clear request for Union representation before or during the interview. It is illegal to punish the employee for making this request.

Rule 2: After the employee makes the request the employer must choose from three options-

- Grant the request and delay questioning until the Union representative arrives and has the chance to talk privately with the employee;
- Deny the request and end the interview immediately; or
- Give the employee the choice of: (a) having the interview without representation or (b) ending the interview.

Rule 3. If the employer denies the request for Union representation, and continues to ask, questions, it commits an unfair labor practice and the employee has the right to refuse to answer. It is illegal for the employer to discipline an employee for refusing to answer under these circumstances.

NOTE: The Steward cannot advise an employee not to answer questions, but can advise them on how to answer questions

How Would You Handle This Situation?

A Weingarten Rights Worksheet

Directions: Read the following questions and decide how you would respond as a Steward. Refer to the **Weingarten Rules** on the previous page to help guide you.

1. At the start of shift, Sylvia Supervisor says to Norm, "Hey Norm, come to my office at the end of your shift, I have a problem I need to discuss with you." After shift is over, Norm appears in Sylvia's office.

"Thanks for coming, Norm. We have a problem I think you may know something about."

Norm replies, "I'm not sure I know what you're talking about, but I want a steward."

Sylvia refuses, stating Norm should have told her that morning that a steward should be there— there was no time now.

How would you respond? _____

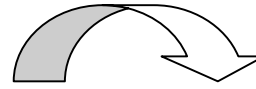
2. Lisbeth has been called into the office for being late three weeks in a row. She asks for JoAnn, her regular steward, but he is off today. Instead, the supervisor gets Tony, who works two buildings over and doesn't even know Lisbeth. Lisbeth objects and asks to have the meeting postponed.

What, according to Weingarten, is the way to proceed? _____

3. You, the shift steward, are walking down the hall when Harold Headhoncho grabs you and pulls you into the office. Your co-worker Doreen is already in the office. Headhoncho, pointing at you, barks to Doreen, "There's your steward, now give me an answer!"

How would you respond? _____

4. Eddie Employer takes Denise aside and starts going over her attendance record.



"We're going to have a new policy here, and I have your record these last two months- what happened?"

a few questions about

Denise replies, "Well, my daughter was sick a lot and I had to take her into the doctors and then one time my car broke down."

"You seem to be having a lot of car problems lately, Denise. Do you know how many times in the last year you have had problems with your car?"

At that point Denise asks for a Steward. Eddie refuses, "We're almost done here anyway- just one more question..."

What should Denise do next? If you were giving Denise advice for the future, what would you tell her? _____

5. You have been called into the office as a steward for Rose whose been accused of stealing from petty cash. The supervisor asks, "Rose, when was the last time you were near the cash box?"

You speak up, "We're going to step outside for a minute, we'll be right back."

The supervisor replies, "You'll step outside after I get an answer! We take this very seriously, you know."

How would you respond? _____

Duty of Fair Representation

The **Duty of Fair Representation (DFR)** is the duty of the Union to represent all employees in the bargaining unit fairly. In the case of open or agency shops, this extends to all bargaining unit employees no matter whether they are members or agency fee payers or neither. This duty is very important for stewards, who can find themselves representing people they may not like or that has never joined the Union.

While the Union must be fair, it does not have to take every grievance to arbitration. You, as a steward, and the Union officers have **discretionary power** to decide on grievances. In making these decisions the NLRB has said that a union cannot reject a grievance or because of personal animosity or gross negligence.

Personal Animosity: Union cannot engage in: **Discrimination, Arbitrariness, Hostility, or Dishonesty.** A union cannot reject or drop a claim because of the worker's race, gender, nationality, age, religion, politics, personality or membership status.

Gross negligence: An example is missing a filing deadline because of indifference or laziness. Another is failing to discuss a case with a grievant before an arbitration hearing commences.

Is the Duty of Fair Representation Upheld in the Following Examples?

1. A worker was suspended for a week. The company has offered to reduce the penalty to one day. The union thinks this is a good settlement but the grievant want to go to arbitration to get full back pay. Can the union accept the company's offer?
2. James wants to drop his grievance because he is afraid his supervisor will hold it against him. But the union decides to take the case to arbitration anyway. Can James file a DFR?
3. Two workers bid for a vacancy: one with nine years seniority, the other with two years. The company gave the job to the junior worker. The contract says seniority governs when applicants are qualified. If the union grieves for the senior employee, could the junior employee sue the union for violation of DFR?
4. Julia, a new Steward, was working on two grievances, but missed the filing deadline because she lost her briefcase.
5. Although Hannah was first on the seniority list, she was not called in for overtime. When she went to her steward to complain, the steward said that the workers only stayed for 45 minutes and that it was a waste of time to file a grievance.

Legal Principles Concerning Mid-term Collective Bargaining and Union Representation

The National Labor Relations Act Section 7 - Right to Organize and Collectively Bargain

"Employees shall have a right to self-organization, to join, form, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection."

Note: The duty to bargain and the union's rights under bargaining law, exist at all times, not only at contract time. The Supreme Court has ruled in *Conley v. Gibson* 355 U.S. 41 that: "...collective bargaining is a continuing process, involving day-to-day adjustments in the contract and other working rules, resolution of new problems not covered by existing agreements, and the protection of employee rights already secured by contract..." In *NLRB v. Acme Indus. Co.* 385 U.S. 42 the court stated: "Similarly the duty to bargain unquestionably extends beyond the period of contract negotiations and applies to labor-management relations during the term of the agreement." Section 8(a)(5) of the NLRA makes it an Unfair Labor Practice (ULP) for the employer "...to refuse to bargain collectively with the representatives of his employees..."

The Duty to Bargain

➤ What it is

- The employer and the union must "meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment."
- The terms of the union contract are fixed for the duration of the contract; there is no duty to bargain over these terms until the contract is due to expire.
- The employer has a continuous duty to bargain over any wages, hours, and other terms and conditions of employment that are not covered by the contract.

➤ Mandatory and non-mandatory subjects

- "Mandatory subjects" of bargaining are any "wages, hours, and other terms and conditions of employment." The parties must be willing to bargain over these issues in good faith.
- A "non-mandatory subject" is anything else, such as matters concerning the nature and direction of the business or internal union affairs. There is no duty to bargain over such subjects under the law.

➤ No unilateral changes

- The employer must give the union adequate notice and an opportunity to bargain.
- If the union demands to bargain, the employer may not make a change without either gaining agreement from the union or reaching a good faith impasse in bargaining
- If the employer makes a change without meeting one of these conditions, it has made a "unilateral change", and the union may file an unfair labor practice charge.

➤ Management rights and deferral to arbitration

- Management rights clauses may waive the union's right to bargain
- The NLRB only finds a waiver when it is "clear and unmistakable"
- The NLRB usually defers to the arbitration process to decide disputes over the interpretation of management rights clauses.

Building a Campaign

An Effective Campaign:

Includes Education. Before taking action, your members should understand the issue thoroughly. Include member education in your campaign. You will also need to educate the employer and the general public on the issue.

Involves as many members as possible. Collective action not only sends a strong message to the employer, but also builds morale and enthusiasm for participation among members. When possible, have members take action together (e.g., a picket line) rather than alone (e.g., phone calls).

Includes community and other allies. Community groups or supportive politicians at your rallies can be very helpful in capturing media interest and getting your story out to the public.

Is fun. Using humor keeps people interested, and can catch the attention of public and media.

Builds in Momentum. Be realistic about how much your members can do in the available time. Be careful not to "peak" early!

Escalates Actions. Never start with your strongest action! Start small, and build up to stronger actions. Some actions work at the beginning to build member confidence. Others are better at the middle or end of the campaign. Here are some ideas for actions, in escalating order. Use your creativity to come up with others.

Solidarity Actions

- + "Delegation" to management
- + Petitions; postcards to employer
- + Newsletter article/post on union website
- + Union buttons, T-shirts
- + Buttons, balloons with message
- + Symbolic (non-disruptive) job action: cough-in, stand up....
- + Informational picketing
- + Rallies (start small, get larger)

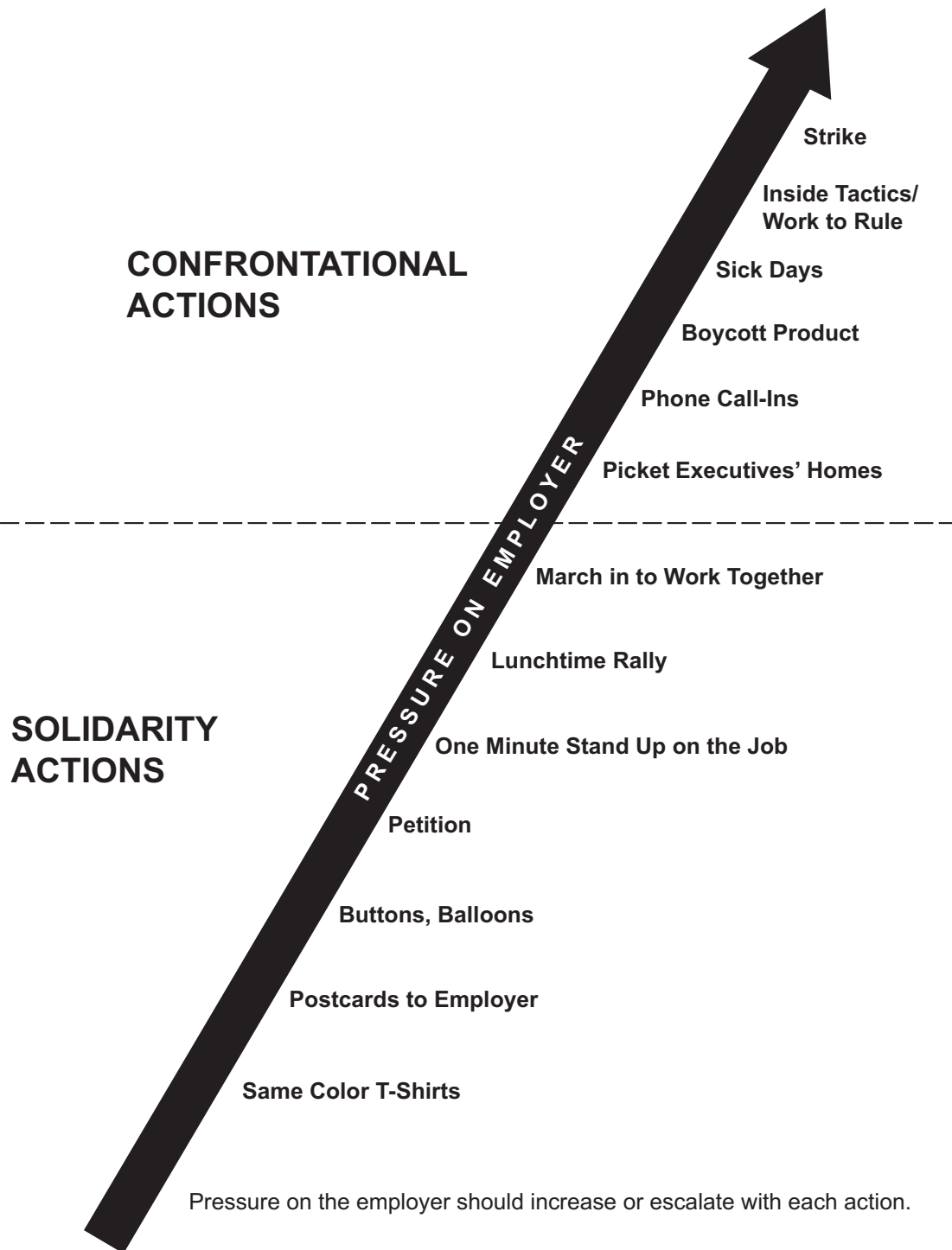
Confrontational Actions

- + Sit-in at management office
- + Picket Executives' homes
- + Jam phone lines/fax lines
- + Work to rule
- + Sick days
- + Strike

Can result in a real win!!! A solid campaign, involving members and community supporters, provides your leaders with the clout they need to win.

Builds the Union or Organization. A good campaign can result in not only a short-term win around an issue, but in a stronger union or community organization overall as more members become active and engaged.

Escalating Actions



--Adapted from CWA

Resolving Workplace Problems When Grievances Aren't Enough

What is the issue you are working on? _____

What steps would you take to resolve this problem?

Step One:

Step Two:

Step Three:

Step Four:

Recruiting Members to Act

HOW DO I GET PEOPLE TO DO A TASK?

Ask them. Few people will volunteer their services. People usually wait to be asked.

WHO SHOULD ASK THEM?

If possible, someone they know and trust; someone whose interest they respond to -- a friend, someone influential in the union. But, if you cannot get someone else, ask them yourself.

WHAT DO I TELL THEM?

- Tell them what exactly you would like them to do. Be clear about the responsibilities of the task.
- Ask what they would want to do and what they think. Listen to their concerns. Respond to the questions they raise.
- Ask them to do things they are comfortable with and that they feel they can do well. Later they will be ready to move on to new tasks.
- Let each person know their help is needed - you need them and the union needs them.
- Let each person know how their task fits in with the rest. People want to know and understand the things they are part of and work best when they know that others are depending on them.
- Ask in person. **Face-to-face contact is the best way to get results.**
- Be positive

WHAT SHOULD I DO AFTER THEY FINISH THE TASK?

- Thank them! Let them know that their efforts are appreciated.
- Ask them to do something else.

(Adapted from materials created by Kate Bronfenbrenner)

A Grievance

A grievance is a conflict between union and management caused by the violation of an agreement between the two parties, and having a specific *grievance procedure* for resolving it. The exact definition of "grievance" and the procedure to be followed for resolving it may be different from one shop to another. They are spelled out in the Collective Bargaining Agreement.

Five Grounds for Grievances

1.) Violation of the contract.

Because the contract specifically covers what goes on in the workplace, this is the first place to look. Violations of the contract also make the strongest case for a grievance.

2.) Violation of state or federal law.

Violations of Federal and State law may be processed through the grievance procedure.

Some important laws that cover the workplace are:

- The Occupational Safety and Health Act (OSHA)
- The Fair Labor Standards Act (FLSA) - *minimum wage, overtime*
- Title VII, 1964 Civil Rights Act - *discrimination by race, sex, national origin, etc.*
- The Family & Medical Leave Act (FMLA)
- Mass. Payment of Wages Law
- Workers Compensation

3.) Violation of Company rules or policy.

Even if the union was not involved in negotiating them, rules set forth by your employer govern what goes on in the workplace. If management violates them arbitrarily, you may file a grievance.

4.) Violation of fair treatment.

The Company cannot arbitrarily treat one worker by different standards or rules from those it uses for other workers.

5.) Violation of past practice.

The basic philosophy behind this grievance is that workers have the right to expect the continuation of certain practices they have received over time, even if they are not specifically granted in the contract. Past practice grievances are generally hard to prove, unless you have a specific past practice clause in your contract.

“Just Cause” in Discipline Grievances

There are two basic kinds of grievances: **Disciplinary grievances** and **all other grievances**. It is helpful for you to know what kind of grievance you are dealing with in order to know how to proceed.

"Just Cause" is an important term in discipline grievances. Many contracts state that a member cannot be disciplined without "just cause". Even if this language is not in the contract, many arbitrators look for "just cause" when determining whether management disciplined a member properly.

Seven Tests of Just Cause:

- Was the grievant adequately warned about rule or conduct disapproved of and the consequences of the behavior?
- Is the rule or standard being enforced reasonably related to safe and efficient operation of the company?
- Was there a investigation?
- Was the investigation fair and objective
- Did this investigation produce substantial evidence of "guilt"?
- Were the rules and penalties applied even-handedly, without disparate treatment of discrimination?
- Is the penalty reasonably related to the seriousness of the offense, the employee's past record, and any mitigating or aggravating circumstances?

Just Cause in Discipline Grievances

- Employer has burden of proof
- Employer must meet "just cause" standard

Steward Must:

- Investigate
- Determine if there was "just cause" for discipline:
- Determine whether progressive discipline was used
- Weigh years of service and past record to see whether discipline was too harsh

Other Grievances

- Union has burden of proof

Steward Must:

- Investigate
- Prove violation of contract, Law, past practice, policy, or fairness ("5 grounds for a grievance")

Adapted from the UNITE New England Region Steward Handbook, & the Teamsters Union Education Department materials

Is It A Grievance?

- 1) All the workers in the following scenarios have problems, but not all of them are grievances. Using your contract decide which of these cases might be grievable, and which are not.
- 2) If you think it might be, what would be the grounds for a grievance (contract, law, company rules, etc.)? What are some sources of information you might use?
- 3) Whether or not the problem is grievable, what other actions might you take to resolve the problem? What are some underlying issues that might be common issues?

- Sylvia says that she was denied the week she requested for her vacation, but they gave that same week to an employee with less seniority.

- George accuses Mario of stealing his jacket, and wants to put in a grievance against Mario.

- Margaret was injured at work, and is recuperating at home. She says that the money she gets from workers' comp isn't enough for her family to live on.

- The Administration said today that in 2 days they are going to change the schedule for one Department. Now, they are open from 8:30 – 5:00. Starting Friday, hours will be 9:00 -5:30

- Mary Anne requested a two week leave of absence to care for her mother, who has just had an operation. Her request was refused.

Grievance Worksheet

What happened?

Who would you talk to?

What information do you need and where are you going to get it?

What is the solution/remedy?

Is this a grievance? What, if any, section (s) of the contract are violated? Is there anything else you can base your grievance on?

If you don't think this is a grievance, what would you do about this problem?

Investigation

Good investigation can be the key to winning a grievance or solving the problem.

I. Interview the Grievant

Listen

Workers will come to you with a variety of problems. When they do, you need to:

- Set aside a time, either right at that moment, after shift, or another agreeable time, to talk to them.
- Begin by asking an open-ended question like, "So, tell me what happened." or "What seems to be the problem?"
- Then ask *specific questions* to make sure you get as much relevant information from the worker as possible.

Questions to Ask

WHO: Names of worker(s) involved, names of witnesses, names of management

WHERE: The location, department, job site, etc of the problem/incident

WHEN: The time and date of the incident OR the time when the grievant found out about it

WHAT: What happened— use the above four W's to put this together

Once you have this information, you will be ready to figure out:

WHY: The section(s) of the Contract, the past practice, the law, the management rule and/or the management responsibility that has been broken or violated
and...

HOW: How can management "make the grievant whole"? What is the remedy or solution to the problem?

II. Look for Corroborating Evidence

Other Sources of Information

- | | |
|------------------------------------|--|
| 1) The Grievant | 6) Management Involved in the Problem |
| 2) Other Workers | 7) Management Handbooks or Memos |
| 3) Witnesses | 8) Management's Time Sheets, Medical Records, etc. |
| 4) Other Stewards, Union Officials | 9) The Contract |
| 5) Files of Past Grievances | |

Others: (be creative) _____

Active Listening

HEAR what the speaker is saying

- Concentrate on listening—not on answering.
- Don't let yourself be distracted; give your full attention.
- Avoid mental arguing or criticism.

EMPATHIZE with the speaker

- Display an interest in the speaker's point of view, even if it is different from yours.
- Listen for the thoughts and feelings behind the words—those the speaker is **not** expressing.

ACCURACY: Check whether you understood accurately

- Ask clarifying questions.
- Use open questions to draw out the speaker's thoughts.
- Paraphrase and summarize to verify that your perceptions are accurate.

RESPOND

- This is the last step, not the first.
- Hear the speaker out before replying, but **do** reply.
- Make sure to respond to speaker's concerns.
- Don't lecture! Avoid reacting in a way that might cause the speaker to "shut down".
- Check to make sure that speaker understood your response accurately.

Writing the Grievance

Grievance forms vary, but virtually all include these 3 elements: the incident (or omission), the violation, and the remedy. Here are some suggestions for completing a written grievance form.

The Incident (or Omission) that gave rise to the grievance

- 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 "6 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.

The Violation

- 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. If you're not sure whether a provision is relevant, put it in. Use the phrase "violates the contract, including but not limited to Articles _____", or "...violates Article _____ and all other relevant sections of the contract."
- 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."

The Remedy

- 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 only get what you ask for.

Make Sure the Grievant Agrees

- 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.

Tips for Presenting a Grievance

- Prepare the Grievant for the Meeting.
- Initiate the Step One Meeting
- Bargain as an Equal (Remember the Equality Principle)
- Keep Your Cool
- Keep Your Goals in Mind
- Don't Assume Management Knows the Contract Better than You do.
- Don't Get Sidetracked
- Negotiate Each Grievance on its Merit
- Don't Trade Grievances
- Don't Argue with the Grievant in Front of Management

AND

- Caucus, Caucus, Caucus!

(Adapted from NALC)

UNIVERSITY OF MASSACHUSETTS
LABOR EXTENSION PROGRAM
AMHERST • BOSTON • DARTMOUTH • LOWELL

The Labor Extension Program at the University of Massachusetts is a regionally based, state wide effort to provide training and education to workers, their unions, and other workers' organizations. The focus of the program is on strengthening these organizations, increasing activism, and building the skills necessary to effectively advocate for the needs and concerns of the workforce.

The Labor Extension Program helps unions and other worker organizations to fully and effectively represent an increasingly diverse membership, to train a new generation of union leaders to face the challenges of the future, and to prepare all workers, organized and unorganized to exercise their full rights in the work place and the community.

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