

Handling Grievances Under the Railway Labor Act



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Introduction

Thank you for being active in your union and serving as a steward. What you do is important. What you do is difficult. Hopefully, this guide will give you some information that is useful to you in your day-to-day role as a union steward.

While this grievance guide presents some general information on the Railway Labor Act and how disputes can be fielded, investigated and raised with management, we ask you to make sure that you consult with your Business Agent, Committee members or other union officials regarding specific issues and contractual matters.

This guide offers some general ideas on how to interact with your fellow union members and management counterparts. At no time should any information in this guide or other program materials substitute for the language found in your collective bargaining agreement or other protocols established by your Local Union

Many Thanks

What you do as a member, volunteer or activist, union steward, committee person, union official or Business Agent is important. Please take the time to learn as much as you can so that you can be an effective advocate for your members.

The Railway Labor Act of 1926

The **Railway Labor Act** was enacted in 1926 to cover disputes involving railroad employers and their employees. Amendments to the Act in 1936 extended coverage of the Railway Labor Act to airline employees and their employers.

Adjustment of Grievances

One of the main purposes of the Railway Labor Act was to ensure the uninterrupted flow of commerce deemed essential to U.S. security. Therefore, the Act requires parties in conflict to resolve "minor disputes" through conferences and, if necessary, through arbitration mechanisms called **Adjustment Boards**. In the airline industry, the parties typically refer to the mechanism as the **System Board of Adjustment**.

There are **two types of contractual disputes** under RLA, called "major" and "minor," as follows:

- **Major**, an "intended change in agreements affecting rates of pay, rules or working conditions." These are subject to **Notice, Negotiation, Mediation** and, if needed, **Self-Help**; and,
- **Minor**, those "arising out of grievances or out of the interpretation or application of agreements. These are subject to **System Board**."

Exceptions To Adjustment Board Jurisdiction

The courts have created exceptions to the exclusive jurisdiction of the Adjustment Board. Courts may hear minor disputes when:

- The employer has repudiated the grievance machinery;
- Resort to the administrative remedy would be futile; and/or,
- The employer is joined in a breach of duty of fair representation claim against the union.

A Summary Of Grievance Handling in the Airline Industry

When Is A Work Problem A Grievance?

1. A grievance is a violation of the contract by the employer. It can also be a violation of law or past practice. Check your contract for the definition of a legitimate grievance.
2. Cite every provision of the contract that may have been violated. Check with business agent on ways a grievance form should be properly prepared.
3. Remember "work now, grieve later" rule. Some exceptions: health and safety issues, serious violations.
4. In most cases, the Employer must have "just cause" for disciplinary action.
5. Stewards must uphold what's known as their "Duty of Fair Representation."

Investigating and Preparing a Grievance

1. Check to see when and where the potential grievance occurred.
2. Interview the grievant and identify which contract clauses may have been violated.
3. Interview witnesses and assemble relevant documents.
4. Re-evaluate the work problem after your investigation.
5. If your investigation shows the grievance lacks "merit," discuss the problem with the member. Lacking "merit" means there may not be sufficient proof or evidence to support the claim or that the union does not have rights to grieve the issue, for one reason or another.
6. Make sure you abide by the time limits spelled out in your grievance procedure. Familiarize yourself with the procedures that describe System Boards of Adjustment.

Writing The Grievance

1. Fill in all the information about the employee. Don't write a book on the grievance form.
2. Generally describe the grievance.
3. Name the contract articles violated and include the phrase "and all other relevant contract articles and rules."
4. Ask for a remedy and include the phrase "and all other benefits to which the grievant is entitled."
5. Be alert for 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. If grievant cannot be present, make every effort to keep the grievant informed each step of the way.
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 a member so requests, he/she is entitled to your presence at an investigatory interview that could lead to disciplinary action. Sometimes, if stewards cannot be present, the members have a right to bring a witness to the meeting.

Settling The Grievance

1. Don't meet with management about a grievance unless the grievant is with you.
2. Never settle a grievance without consulting the grievant.
3. Always get a grievance settlement in writing.
4. Don't miss a time limit while waiting for a settlement.
5. Be careful of winning the battle but losing the war.
6. Conduct yourself professionally at all times. Be prepared. Don't "wing it."

Processing a Grievance

1. Consider all grievances solely on the merits.

The decision whether or not to process a grievance must be based on the merits of that 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, systems board and/or arbitration.

You may not refuse to process a grievance because you do not like the grievant. Your determination as to 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). The point is that you must look at the merits of the particular grievance and not at the individual employee.

2. Investigate the grievance thoroughly.

You have a responsibility to thoroughly investigate grievances. A superficial investigation is not enough because it 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 everything that is said -- check it out. Always use the "7 W's" (who, what, when, where, why, witnesses, write it down) as a guide to your investigation.

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

3. Process the grievance promptly - 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. Failure to comply with the time limits can result in having a grievance "die" and leaving the grievant with no recourse against the employer.

To meet these deadlines, it is important that all grievances be investigated as soon as possible. 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.

4. 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, since they will become the basis on which decisions will be made as the grievance is moved into the procedure and perhaps to arbitration.

Some record should be kept of all discussions with the grievant, of all discussions and meetings with the employer on the grievance, and of all internal union decisions whether to proceed with the grievance. Copies of all correspondence and documents should also be kept.

Your written record is very important in later establishing that the union did investigate the grievance and did make an objective decision on the merits.

5. Keep the grievant informed.

Many lawsuits are filed because discharge grievants (and their lawyers) believe the union is trying to hide something by not keeping the grievant advised of the progress of the grievance.

Let the grievant know what is happening with his/her grievance. The grievant should be kept informed of the status of his/her grievance, where it is in the grievance procedure 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 or withdraw a grievance, to settle a grievance, or not to go to arbitration on a grievance.

The law does not require that the grievant be present at meetings with the employer or at internal union discussions concerning the grievance. If your union permits the participation of grievants at these meetings, however, then it must do so for each one (or for no one at all).

6. 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, as mentioned before, 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, sex, 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.

7. Have a valid reason for any action taken on a grievance.

As mentioned, the law requires that a union consider a grievance in good faith and make a determination whether to process the grievance on its merits. Don't let the time limits go by 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.

8. 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 which simply 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 failed to file or dropped the grievance. The steward should honestly attempt to convince the grievant of these reasons.

9. 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 are any appearances that one grievant got 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.

BUSINESS AGENTS ARE RESPONSIBLE FOR DISCUSSING, INVESTIGATING AND PREPARING GRIEVANCES FOR DISCUSSION/RESOLUTION WITH THE COMPANY.

- **Union Stewards will help members understand their rights to raise the issue with their employer by working with the Business Agent.**
- **Union Stewards will be equipped with Grievance Work Sheets to take notes of issues and incidents, and will work closely with the Business Agent to investigate the facts.**
- **Committees oversee specific areas such as safety.**

The Duty of Fair Representation

What is 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, members and non-members alike. This responsibility applies in contract negotiations and in contract administration and enforcement (grievance handling and arbitration). The legal term for this is the "duty of fair representation."

Although federal and state laws do not refer specifically to this duty, the law has been interpreted by the courts to require the duty of fair representation. This applies to private and public sector unions.

Grievance Handling and the Duty of Fair Representation

Perhaps the most important area in carrying out a union's duty of fair representation is the processing of grievances. Most of the failure to represent lawsuits are filed by persons who have been discharged. Therefore, union staff, officers and stewards need to be particularly careful in handling discharge grievances. The following guidelines are intended to assist union representatives in processing grievances in a way designed to meet the union's legal responsibility.

Arbitration and the Duty of Fair Representation

1. An employee does not have a legal right to insist that his/her grievance go to arbitration.
2. Just as with grievance handling at 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.

3. The internal union procedure by which the decision whether or not to arbitrate is made must be the same for all employees. For example, if a committee decides, then this must be the way it is done for all cases.
4. 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.
5. 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, verbally and in writing. The decision should be explained to the grievant with the goal of the grievant understanding he/she was treated fairly.
6. 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 put forward the grievant's strongest arguments and present the case in the most favorable light.
7. 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.
8. 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.

What Is A Grievance?

Contracts define a grievance in various 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 as any dispute or difference arising between an employee and management or between the union and management. Look in your contract and find the definition of a grievance.

Matters that can be grieved are not limited to specific contract violations. Grievances can be based on a number of grounds, including violations of: **the contract; laws; Carrier rules/policies; disparate/unfair treatment; and, past practice.** To decide if the problem you are handling is a grievance, look first for a contract violation, then go to the other grounds.

Five Grounds for a Grievance

1. Contract

This includes the contract, memoranda of understanding, side letters, arbitration awards that have interpreted the contract.

2. Law

Filing a grievance based on an alleged violation of law does not necessarily limit pursuing legal remedies; however, a grievance is often the quickest, most expeditious way to get management to comply with the law. Informing management that it is violating the law can provide the union with the leverage it needs to resolve the grievance. Additionally, it may not only be unnecessary, but unwise to pursue a legal remedy without first giving management an opportunity to resolve the problem.

3. Carrier Rules/Policies

An employer has the right to make and implement rules related to the orderly and efficient operation of the business, so long as it provides notice to the employees and the union, the rules are reasonable on their face and they are reasonably and fairly applied. Management's uneven enforcement or disregard for its own rules is common grounds for these kinds of grievances. One example is the use of Carrier policy against sexual harassment to defend a worker who is being harassed by a supervisor.

4. Fairness/Disparate Treatment

Fairness or disparate treatment grievances cover a broad range of incidents and behavior. There does not have to be a specific contract clause covering a supervisor's assault or harassment of employees in order to grieve such treatment.

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

The terms disparate treatment and discrimination are often used interchangeably. The word "discrimination" leads many people to think only of unfair treatment on some illegal basis such as race, color, national origin, sex, age, etc. Discrimination or disparate treatment is much broader and includes treating someone differently because of their personality, appearance, past incidents and experiences or union activity.

Note of caution - While disparate treatment complaints are common they are very difficult to prove. To successfully resolve a disparate treatment grievance requires much documentation and often being able to show pattern of objectionable behavior by a supervisor.

5. Past Practice

A short-hand definition of a past practice is a long-standing practice that occurs regularly; that both union and management have accepted or not challenged; and does not violate the contract or any written 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 a past practice or disciplines a worker for following a past practice. For example, "wash-up time" used to be a common past practice. For years, a Carrier has allowed workers to leave their work stations/areas fifteen minutes before the end of the shift to wash-up before clocking out. When the Carrier, without notice to the employees or the union changes the practice and disciplines an employee for following the practice, the union can file a grievance based on a violation of past practice.

Note - Past practices are difficult to establish and have become less and less common in recent years since there are few practices not covered by work rules or contract language. Where a practice conflicts with a work rule or contract provision, the latter will prevail, **not** the practice. Additionally, lax enforcement of a rule does not create an enforceable past practice.

Past Practice Pointers

A perennial issue in grievance-arbitration proceedings is an alleged violation of a "past practice." Generally arising in situations where a bargaining agreement is unclear or silent, past practice cases can be quite complicated, with an arbitrator's ruling often having long-term and large-scale effects on the workplace.

Advice on identifying possible past practices and interpreting the role of contractual language in such areas appears in an arbitration manual prepared by Allan Harrison of the University of Illinois' Institute of Labor and Industrial Relations, some of which is summarized in the following pages:

Defining the Term

A working definition of a "past practice", Harrison asserts, is "a uniform response to a recurring situation over a substantial period of time," with the added proviso that the response "is known or should be known by responsible" representatives of both management and the union. Taking a closer look at each of the essential components, Harrison focuses on:

1. Uniformity. While the observance of the alleged practice "need not be without an exception or two", Harrison says, in order to qualify as a full-fledged custom, the policy must be so "overwhelmingly consistent" as to leave "no doubt that the parties have regularly handled the matter in an established way." Stressing that "the more uniform the occurrence, the stronger the evidence of a past practice," Harrison says that any "exceptions must be rare enough to be looked upon as unintended errors."

2. Recurrence. To be considered recurring, Harrison says, an action must have happened "more than a few times, and not only under exceptional circumstances."

3. Time Period. The longer that a workplace custom has been observed, Harrison continues, "The better one can argue that a past practice exists." When, for example, the existence of a non-contractual procedure has overlapped two or more

bargaining agreements, an arbitrator will often rule that "the parties have accepted it," since "both had an opportunity to deal with it."

4. Acceptance. The fact that both management, and the union have assented to a practice "cannot always be proven," but often can be "inferred from the uniformity, repetition, and duration" of the alleged custom.

5. Responsibility. Arbitrators tend to assign the responsibility for accepting a past practice to "the same person or position that had responsibility for negotiating the written agreement," Harrison says. However, "depending on the union and management structure, a lower level of management or labor may well be ruled sufficiently 'responsible'." Moreover, a convention "within a department" usually is not binding if it differs from practices in other units.

Contractual Conditions

Even if a past practice meets all the criteria above, an arbitrator still may refuse to uphold it if there is clear contractual language to the contrary. Conflicts between a past practice and contractual language usually occur in one of three settings:

1. The contract is silent. If the bargaining agreement fails to contain any language addressing the past practice issue, arbitrators tend to follow a general rule. If the disputed practice involves an obvious employee "benefit", such as a dinner allowance or Christmas turkey, it has been formalized as a "perk" of employment. If, however, it involves operating methods or the direction of the work force, management usually will retain the right to change procedures.

2. The contract is ambiguous. In the case of ambiguous language, Harrison says, "past practice is critical and, in most cases, controlling." For example, a contractual overtime clause might call for premium pay for "hours worked in excess of 40 in any work week or eight in any workday." Under this provision, if an employee takes sick or annual leave during the regular Monday-Friday schedule, should required work on Saturday be compensated at an overtime rate? In the absence of specific language governing such situations, many arbitrators will uphold a past practice of paying premium wages for Saturday work.

3. The contract is clear. If the bargaining agreement is unambiguous, Harrison says, "The near unanimous opinion of arbitrators is that the language should control rather than a contrary past practice." However, if there is evidence that the parties simply made an error in drawing up the contract or indicated their "intent to continue the practice regardless of the language," an arbitrator may rule for continuance of the practice despite the written terms. (Preparing and Presenting Your Arbitration Cases, Allan Harrison, June 1978, Institute of Labor and Industrial Relations, University of Illinois, Urbana-Champaign, Ill.)

The Right to Union Representation During an Investigatory Hearing

In most cases, union members have the right to have their union representative present during an investigatory hearing. However, in aviation sometimes it's not possible to get released from our current assignments in a timely manner. In most cases, contracts spell out a process whereby the union member can secure union representation. Union members need to remember that they will often need to invoke these rights if and when a meeting turns investigatory or disciplinary in tone or direction.

- What does your contract say about a union member's right to union representation?
- Talk with your Business Agent and Stewards for further information on these and other issues.

Determining A Grievance: A Checklist for Union Stewards

1. Is it a violation of the collective bargaining agreement? Is it a violation of a past arbitration award?
 2. Is it a violation of law?
 3. Is it a violation of past practice?
 4. Is it a violation of management's own rules? What about FAA regulations? Other statutes or guidelines?
 5. Is it an inherent area of employer responsibility, such as health or safety?
 6. Is it discriminatory treatment compared to the way other employees are treated?
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REMEMBER...

- There are ten sides to every story. Get the facts.
- Union members need to know union stewards and Business Agents are on their side.
- Educate and communicate with the members. It's the right thing to do.
- We're all on the same team. And, grievance investigation and presentation takes a team effort.
- Members play an important role in making sure the Business Agent understands the issue and what the member is looking for.
- Sometimes we're not entitled to a fair remedy.
- Filing a grievance accomplishes two things – to get a measure of justice, equity and fairness for the grievant, our member and to prevent management misconduct or unfair actions in the future.

Grievance Investigation Fact Sheet

Union Member's Name:
Union Steward of Record:
[Other pertinent information]

WHAT HAPPENED – Grievant's Account –

Interview date:
Incident date (if applicable):
Location of incident (if applicable):

WHAT HAPPENED -- Manager's Account –

Interview date:
Incident date (if applicable):
Location of incident (if applicable):

WHAT HAPPENED -- Witness Account –

Interview date:
Incident date (if applicable):
Location of incident (if applicable):

CONTRACT –

Article No.:
Section No.:
Issue/Category:

DOCUMENTS NEEDED

(Check off when received and attach to the fact sheet)

Time & Attendance Record Work Record Medical Record

Other Records/Documents (specify):

USE BACK OF THIS FORM TO RECORD ADDITIONAL PERTINENT INFORMATION

Factors Determining Just Cause For Discipline

- Was the employee adequately warned?
Exceptions - Insubordination
Drunk or drinking on the job
Theft
Drug use, distribution
- Was the rule of 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?

INVESTIGATION STRATEGIES FOR UNION STEWARDS

A member approaches the steward with a grievance. What should you do?

STEP ONE: LISTEN

Stewards need to listen carefully to a member's problem or complaint. You might ask the member some questions and even have the member review the facts more than once. The facts may change as more information is given.

STEP TWO: INFORM

Let the member know how you will proceed in investigating his/her claim. Inform the members as to: time frames, delays, investigative steps, relevant contract language, similar cases, etc. Be upfront and honest. Don't make promises.

STEP THREE: INVESTIGATE

Use the 7 W's and the Investigation checklist

STEP FOUR: CONTRACT LANGUAGE

Not everything's in the contract. Check previous settlements as well. Not all cases carry precedent setting actions; but cases that are similar should guide you on how management is likely to proceed.

STEP FIVE: PROCEED OR WITHDRAW

Stewards are more successful if they have a violation that can be proven with good evidence. Being right doesn't always mean that your case has merit.

STEP SIX: MEETING

Prepare yourself and your grievant(s) for the meeting. Never "wing it." Ask more questions than you yourself answer. Use the time wisely. Don't be afraid to "get back to management" if and when a settlement offer is made. Take your time and confer with the grievant and with your business agent.

STEP SEVEN: WRITING A GRIEVANCE

Stewards need to make sure that you write legibly on the grievance form, being very careful to provide just the essential details of your grievance. Don't argue the case on paper: just provide the basic facts.

STEP EIGHT: CONDUCT

Stewards need to be informed and prepared. Don't react to management. Be proactive. Try to anticipate what management will say in the grievance meeting beforehand. Prepare your grievant for management's game plan.

Grievance Checklist - Discipline

1. Was there sufficient **PROOF** or was management's action based on other evidence (like hearsay)?
2. Did management **INVESTIGATE** and **VERIFY** the charge **BEFORE** taking action or did they "shoot from the hip" first and investigate after the fact?
 - a. Did the grievance get due process rights (their day in court)?
 - b. Was management's charge premature?
3. Did management selectively **STACK THE DECK** by over-emphasizing certain facts and points (perhaps taking them out of context) while playing down those factors which would favor the grievant?
4. Did management **OVER-REACT** (drastic or emotional, rather than objectively)?
5. Was the **discipline PUNITIVE and VINDICTIVE** rather than **CORRECTIVE AND REMEDIAL**?
6. Was the discipline **TIMELY**?
 - a. Did it follow the alleged commission or omission within a logical and

reasonable time?

- b. Did management wait until an incident occurred before suddenly clamping down?

7. Was the penalty consistent with the principle of **PROGRESSIVE DISCIPLINE**?
8. Was the grievant adequately **INFORMED** as to what level of **PERFORMANCE** or **COMPLIANCE** would be expected of him/her?
9. Did the penalty violate any applicable or relevant provision of:
 - the collective bargaining agreement?
 - an addendum to the C.B.A.?
 - a supplementary Letter of Understanding (Side Letter)?
 - a policy or work rule not spelled out in the C.B.A.?
 - an administrative directive?
 - a past practice?
 - an applicable law?
 - an applicable and relevant arbitration award?
10. Was the **penalty arbitrary, capricious, unjust, unfair, unreasonable, inequitable, or discriminatory**?
11. Did the penalty otherwise affect the welfare of the grievant, union, or the individual or collective rights of the other employees in the bargaining unit?

Grievance Handling

Creating Your Own System

There are many ways to investigate and handle grievances. Experienced union representatives eventually develop methods that work best for them in the various situations they confront. The following are some suggestions to help you develop an effective grievance handling system.

STEP ONE: LISTEN TO THE PROBLEM

Workers will come to you with a wide variety of problems and stories. Before you can determine the best way to handle the situation, you have 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 if they are upset. This means active listening:

- Stop what you are doing.
- Take the person aside where you can hear them out.
- Face the person squarely.
- Make eye contact, but do not stare them down.
- Assume a relaxed, attentive posture (even if you don't like this person).
- Start your questions with "open" questions. "Tell me what happened."
- Give them feedback with your body and words that encourage and convey that you are listening. "Uh-huh," "I see," nods of the head, etc.
- Recap periodically to make sure you understand. "So this happened and then this...?"

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

STEP TWO: COMPILE INFORMATION: INVESTIGATE AND GET THE FACTS

The information about the grievance/potential grievance should answer the following questions:

Who is involved? - Full name, clock number, department, job classification, pay rate, shift, and seniority date of all involved - the worker(s) with the complaint, others involved, witnesses and the management representative who made this a grievance.

When did it occur? - Be as accurate as possible, 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.

What are the demands for settlement? What does the grievant want? - What is needed to place the aggrieved worker in the same position she/he would have been in, had not the injustice occurred?

SOURCES OF INFORMATION

Some of this information will be available from the person with the potential grievance. But some information they will not have or have only their side of the story. There are other sources of information you should not neglect.

- **People** who can supply information:
 - the grievant,
 - fellow workers,
 - witnesses to events,
 - other union representatives and officers,
 - supervisors.

It is usually best to get management's views before you actually begin to fight the case. Hearing both sides will give you a better idea of the facts and let you know management's reasoning for their decision.

- **Records** that can supply information:
 - past fact sheets, grievance files, arbitration or umpire decisions,
 - the contract and supplemental agreements, side letters & letters of understanding, past arbitration decisions
 - Carrier rule books and work rules,
 - seniority, job classification, and payroll lists,
 - personnel, production, absentee and medical records and files.

STEP THREE: IDENTIFY RELEVANT FACTS: REVIEW THE FACT SHEET

One of the advantages of using a Fact Sheet is that we can check and double-check the completeness of our information, the accuracy of our thinking on all aspects of the case, and the factual support for any action we take later. Often the difference between winning and losing a grievance case may depend on the completeness and accuracy of what we have recorded and our ability to evaluate it properly!

Review: Before proceeding, go over the Fact Sheet. Evaluate the information recorded by using the "Three Rules of Evidence":

1. **OPINIONS ARE NOT FACTS** - All opinionated information must be specifically

qualified - if "always" ask "how often/when?"

2. HEARSAY EVIDENCE IS NOT FACTUAL - Search for the original source and witnesses and get the first-hand scoop.
3. FACTS MUST BE RELEVANT - You need to identify those facts that have something directly to do with the grievance.

Go over your Fact Sheet and mark (underline, asterisk*, etc.) those FACTS that are RELEVANT to proving this is a legitimate grievance.

Now are you ready to decide: **IS THIS A GRIEVANCE?**

STEP FOUR: SHOULD WE GRIEVE?

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

If you have fully investigated and still feel the case is borderline, ask for advice from more experienced union representatives and officers, but always give the grievant the benefit of the doubt. If you have a reasonable doubt that a grievance exists, GRIEVE!

But, if you are sure no legitimate grievance exists, say so and tell the worker! Also tell the worker of their right to appeal your decision through the local union. Your responsibility of fair representation is only fulfilled if you fairly and completely investigate the case and make your decision to grieve based solely on the merits of the case.

FACT SHEET: This complete set of information usually becomes long, detailed and difficult to remember. Write it down! You will need as complete and detailed information as possible when you argue the case, fill out a written grievance form, or potentially prepare for arbitration - many months later. Also, it can be used as a reference by you, other stewards or union leaders involved in future grievances and contract negotiations. The information you compile today must be readily available. You may never use all of this information, but often something that looks unimportant or indirect at the beginning of a case may become vital information later.

The fact sheet is the easiest way to insure that you have asked all the necessary questions, compiled all the available information, and created a reference that can be used later. Attached is an example of a fact sheet you may want to use.

NOTES:

Keep the Worker Informed: It is also your responsibility to keep the worker informed of the status of his/her complaint including:

- 1) What the next course of action will be (conducting an investigation, reviewing the contract, etc.);
- 2) When you will get back to them;

- 3) The status of the complaint even after it is out of your hands.

Promises, Promises: Promise only what you can personally deliver and no more. You do not control the grievance process nor can you promise that management will respond in a specific way. Do not raise the worker's expectations. You can promise that:

- 1) You will investigate the situation and do the best you can for the worker;
- 2) You will get back to the worker at the time you promise.

Non-grievances/other solutions: There will be some situations when you know immediately that the problem is a non-grievance that requires another kind of response or solution. (They include: complaints against other workers or the union; off the job problems; personal gripes.) In these situations you can refer the worker to other channels to resolve the problem including internal union procedures; government, professional or community service agencies, etc. Remember: You are a problem solver. That means that you need to know what resources are available to the member -- through the Local Union, International Union, local community, etc.

STEP FIVE: WRITE THE GRIEVANCE

Make sure you include all the information you need on the grievance form. Write clearly. Summarize the information. Don't include too much detail.

STEP SIX: PREPARE YOUR CASE AND PRESENTATION

PREPARE THE CASE: Now that you have fully investigated the case and decided it should be grieved - get yourself and the grievant ready to give the best possible presentation. **Your goal is to solve the problem at the lowest step of the grievance process possible.** Careful preparation makes this more likely. Before you and the grievant make the oral presentation of the grievance to the supervisor - Build your case.

In your presentation to the supervisor you may use all the facts you have written down on the Fact Sheet or you may only use a 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 best presented. In order to be effective, you need to prepare before you go in to the supervisor.

Build Your Best Case

Decide what issues, facts, arguments and remedies you think are most convincing and outline these so you can refer to them as you talk with the supervisor.

Anticipate Management's Case

Put yourself in the supervisor's shoes - based on what you found out while investigating the case - so you can anticipate what facts, arguments and remedies they are likely to offer.

Prepare Responses

Based on what you expect the supervisor will argue, prepare responses, refutations, and compromises (regarding the facts and remedies) you and the grievant are willing to accept.

STEP SEVEN: ORAL PRESENTATION

Now you are ready to present the grievance. Be positive and direct and:

- Present your best arguments;
- Stand your ground and stick to the issues;
- Know the supervisor's values and anticipate their case; and,
- Be prepared to effectively respond.

But if the supervisor is unwilling to settle the case on its merits, move to the next step of the grievance procedure. If you and the grievant are well prepared, the oral step may resolve the grievance.

A Few Suggestions For Presenting Grievances

1. Prepare/outline your case. Know what you want to say before meeting with management. Anticipate management's position.
2. Take control. In any meeting with management, the objective is to control the tone, direction and outcome of the meeting. You do not have to be overbearing or aggressive or argumentative to do it. Try to make management go first. It is easier to poke holes in their arguments than to prove a worker innocent.
3. Set the proper tone. The "proper" tone will depend largely on the relationship you have with the supervisor and the situation. Usually the best approach is to be direct and positive.
4. Be calm. Shouting and pounding on the desk rarely settles anything.
5. Avoid personalities. It is not who is right, it is what is right that counts. Stay focused on the issue at hand.
6. When you must disagree with what the supervisor says, do so with dignity. Remember that you and the supervisor are going to have to work together and settle other issues in the future. Remember, you are seeking agreement - not conquest.
7. Listen. You may not know all the facts. You want to make sure you know/understand management's real position.
8. Don't make empty threats that both you and the supervisor know you can't carry out. If you and the supervisor can't come to an agreement, there are further

steps to be followed, including arbitration.

9. Stick to the point, do not get sidetracked.
10. Acknowledge management's valid points, then redirect 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; you are expected to be fair as you expect management to be.
11. Use caucuses. Take a short recess whenever 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.
12. Don't horse trade on grievances. Don't give up one grievance case in order to get a favorable decision on another.
13. Remember that management has rights, too, and that 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.
14. Keep written records of all grievances.
15. Keep the aggrieved worker constantly informed as to what is being done about the grievance.

Local Union Access to Employer Information

Under the RLA, unions are some what restricted from access to all information and documents, though some unions have pursued the rights successfully in negotiations.

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.

BEST STRATEGIES

- 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 certain cases where an employer may **not** be required to provide information to the union even though the information requested may be relevant. These situations are where other interests override the union's need for information. They include: employee confidentiality/privacy (employee test scores, medical records); business

interests (trade secrets).

INFORMATION YOU SHOULD REQUEST & EVALUATE:

- accident records
- attendance records
- bargaining notes
- Carrier memos
- contracts
- correspondence
- disciplinary records
- equipment specifications
- evaluations
- inspection records
- insurance policies
- interview notes
- job assignment records
- job descriptions
- material records
- payroll records
- performance reviews
- personnel files
- photographs
- reports and studies
- salary and bonus records
- scheduling
- seniority lists
- supervisors' notes
- time study records
- training manuals
- videotapes

Information Related To Airline Industry

There are many items or records you may want to evaluate as you consider the merits of a grievance. These include: weather conditions; aircraft maintenance records; flight logs; etc. Check with your Local Union Business Agent on the kinds of information you can legitimately request from the Employer and those records you will need to secure by other means, i.e. FAA; airport operations; etc.

Points On Writing A Grievance

1. LIMIT STATEMENTS TO THE BASIC FACTS:

The purpose of the written grievance is to trigger the formal stages of the grievance process and notify the employer of the basic facts, alleged violation and requested remedy. Limit the grievance to those essentials. Use the five W's as a guide.

2. RESERVE ARGUMENTS, EVIDENCE AND JUSTIFICATIONS FOR FACE-TO-FACE MEETINGS:
Arguing the merits of the case is reserved for face-to-face meetings. Disclosure of this kind of information in the written grievance could be used by the employer in preparing the case against the union.
3. IF REQUIRED BY THE CONTRACT REFER TO ALL CONTRACT VIOLATIONS:
If your contract requires including reference to contract language, include all contract provisions that may be applicable. 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 if they are found later.
4. STATE THE UNION'S POSITION:
In clear, affirmative statements, state the union's position, with the grievant's or the steward's "opinion"; i.e., "John Smith was unjustly discharged." Avoid using phrases such as, "I think," "I believe."
5. STATE A FULL, POSSIBLE REMEDY:
The purpose of the grievance procedure is to "make the grievant whole" by putting the aggrieved 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 including 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 grievant, explaining what the requested remedy is and make certain the grievant fully understands.
7. HAVE THE GRIEVANT SIGN THE GRIEVANCE:
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. If the grievance does not concern discipline, the steward may sign a grievance on behalf of the union to stop a contract violation.

How To Deal With Management

BEFORE YOU SEE THE SUPERVISOR, ASK YOURSELF THESE QUESTIONS

- Have I gotten all the facts from the worker?
- Do I have all the other information I need?
- Have I checked the contract, regulations and policies?

Have I explained the case to the worker?

**REMEMBER!! IN THE GRIEVANCE PROCEDURE,
THE SUPERVISOR AND STEWARD ARE EQUALS**

1. The supervisor and steward share the responsibility for settling grievances.
2. Try to establish a cordial but business-like relationship.
3. There is no reason to bow or scrape OR to have a chip on your shoulder.
4. If the supervisor is unreasonable, you can always go on to the next step.
5. Ask him/her why the grievance happened. The supervisor may have facts you don't have.

**STATE THE FACTS AND TELL THE SUPERVISOR
HOW THE UNION WANTS THE GRIEVANCE SETTLED**

IF the supervisor tries to sidetrack you by discussing other issues, let him/her talk, but don't be misled and lose sight of your position. Stick to your case and bring the supervisor back in a tactful but firm way.

IF the supervisor wants to trade one grievance for another, insist on settling each grievance on its merits. This is the only just way to settle a grievance.

IF the supervisor makes you angry, BEWARE!!! Few people can think straight when they are angry. This is a victory for the supervisor if he/she can make you lose your temper.

IF the supervisor stalls, try to push for an immediate answer. If you can get a decision, try to set a definite time, as early as possible, to get an answer.

IF you and the Grievant disagree, DON'T do it in front of the supervisor. Determine the way you will present your case before you see the supervisor. If you hit a snag, ask to adjourn (You have a right to do this). Then straighten out your case and resume talks with management.

IF you win your point: STOP TALKING! Don't continue to hash it over. Be sure to inform the grievant about it. Good stewards listen 80% of the time, talk 20%.

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

Conclusion: Role of the Union

The airline industry is far more complex today than ever before. In an age of global partnerships and expanding markets, workers need a strong, responsive union like the Teamsters Union. Our union is proud that we represent workers in every craft within the industry from ramp employees and reservation agents to pilots, flight attendants and mechanics.

To help our union representatives better represent us, it's important that all members understand what the contract says, how it has been interpreted, what the law provides and how FAA and other agencies interact within an organized collective bargaining framework.

Union Stewards are on the frontlines of the workplace. You help our rank and file members understand their rights and who can work with them to get issues addressed or resolved.

What you do will reflect on the viability of the union as a whole. Read your contract. Keep abreast of the industry, your carrier and its competitors. Knowledge is power and we all have to work together to get the very best we can for our hardworking brothers and sisters in aviation.

■ **Work together**

■ **Make a difference**

■ **Get involved!**