



How to Prepare an Effective Grievance



REVISED JANUARY 2011

Introduction

This booklet has been produced by SEIU Local 1000 to provide basic information on the grievance procedure and to assist stewards in their enforcement of the contract between Local 1000 and the state of California. While informal resolution is generally preferable, this guide addresses those instances in which a formal grievance or other member action is necessary to secure a remedy.

Table of Contents

Problem solving 1
How to file a grievance 3
Facts collection form 6
Grievance form 9
Grievance timelines 11-13

SEIU Local 1000 Area Offices

Coastal Area

1433 Webster St. Ste. 200
Oakland, CA 94612
(510) 452-4357

Central Area

1551 Shaw Ave. East, Ste. 139
Fresno, CA 93710
(559) 226-0756

Sacramento

1808 14th Street
Sacramento, CA 95811
(916) 554-1200

Southeast Area

10600 Trademark Parkway No., Ste. 405
Rancho Cucamonga, CA 91730
(909) 466-5044

Southwest Area

4221 Wilshire Blvd., Ste. 388
Los Angeles, CA 90010
(323) 535-2970

San Diego

3456 Camino Del Rio North, Ste. 104
San Diego, CA 92108
(619) 624-0515

Problem Solving

When workers have problems on the job, one of the tasks of a Local 1000 steward is to work toward a possible solution. A problem may or may not be a formal written grievance. In fact, most issues are settled without resorting to the grievance/arbitration system. Or, management may have indeed violated the contract, but a better strategy is organizing co-workers to take action. Most of the time, worker direct action produces quicker results! In fact, filing a grievance should be one part of an overall strategy to resolve the issue and build the union in the workplace. The grievance system is lengthy, time-consuming, expensive and less militant, because the problem has been removed from the workplace.

Problem Solving Steps

To determine what action should be taken, a job steward should follow these problem solving steps.

1. Thoroughly interview the worker using the Facts Collection Form (see page 6). Find a private area where the worker is comfortable. Tell your supervisor that you and the worker involved will need State Release Time (Article 2.6 & 2.7) to discuss a representation issue.
2. At the end of the interview, explain that you will investigate the situation and get back in touch as soon as possible. Make sure you have the necessary contact information for the worker.
3. Make a list of people you need to speak with, such as supervisors, eye witnesses, co-workers, etc.
4. Make a list of documents you may need to investigate, such as the worker's personnel file (with the worker's permission to do so).
5. Investigate the problem. Never depend on a single version of what happened.
6. Determine if other workers should be involved in resolution of the issue.
7. Get back to the worker as soon as possible with your findings and next steps.
8. Always keep in communication with the worker on a regular bases even if you have nothing to report.

The Art of Interviewing

Active listening is the key to a good interview. Here are some tips:

- Be relaxed and take your time.
- Control your feelings so you can concentrate.
- Write down everything.
- Always show the worker you are interested. Look her or him in the eye.
- Encourage the worker to tell you everything – facts, opinions and feelings – and sort out the differences later.
- Ask open-ended questions when you don't understand something such as:
Why do you think this happened?
What do you think should be done about this?
Can you give me an example?
When has this happened before?
When did you first notice this?
How do you know you are being treated differently?
- Now and then, repeat back what you have so far. This checks your accuracy and often brings out previously overlooked facts.
- Avoid making judgments during the interview. Form your strategy or opinion after you get all the facts.
- Don't make promises about future action. Just say you are going to do your best to thoroughly investigate the situation.
- If you don't know the answer to a question, don't guess. No one expects you to know everything. Call your labor representative or DLC President for help.

Conducting an informal meeting with management

According Article 6.6 Informal Discussion of the Local 1000 contract,

“An employee's grievance initially shall be discussed with the employee's immediate supervisor. Within seven (7) calendar days, the immediate supervisor shall give his/her decision or response.”

This is an opportunity to solve a problem before filing a written grievance. You have gathered all the facts, interviewed all witnesses, analyzed the problem and decided the best strategy is to tell management you want an informal meeting.

Steps for Meeting Preparation:

1. Have a preliminary strategy in mind and at least a tentative remedy. If it helps, write out a discussion plan that you can refer to during the meeting.
2. Make sure the worker understands the strategy and their role in the meeting. If this is their first experience, explain how you think the meeting will proceed.
3. Write out questions you may want to ask management. Remember you are there to get their side of the story as well as outline the union's theory.
4. Make sure that you include all necessary parties – such as witnesses – and that management knows everyone is on State Release Time.
5. After the meeting, debrief with everyone on the union's side and plan your next steps.

Ten important rules whenever you deal with management

1. On union business, you are management's equal. Insist that everyone on your side is treated with respect.
2. Discuss issues, facts, and procedures, not personalities.
3. Be positive and maintain a business-like demeanor.
4. Don't ramble or get side-tracked. Always bring management back to the problem you are addressing.
5. Don't lose your temper – use it! Don't allow yourself - or workers present - to become over excited, hostile, or angry. Do be aggressive and assertive when necessary. Don't let management control the meeting or badger the worker(s).
6. Be imaginative and look for creative solutions. Don't be bound by a narrow interpretation of the facts. Don't lie, exaggerate or sacrifice credibility, but don't give up.
7. Listen to the main point of management's position. This is the area in which your possible solution may be found.
8. Take careful notes on management's position. Interrupt when necessary to make sure your notes are complete.
9. Remember that this is not an ego trip. You are

looking for a solution to a human problem for the good of everyone. Let management save face when possible and retreat with dignity.

10. Ask questions. This breaks up any attempt to turn the meeting into a management lecture. It also brings out new information or exposes weaknesses in management's position. Asking the simple question: "Why did you take this action," puts management on the defensive.

Filing a written grievance

As defined by Article 6.2 of the current contract between SEIU Local 1000 and the state of California:

Please note that there are separate grievances for out of class or misallocation disputes (Art. 14) and expedited health and safety disputes (Art. 10.30)

- A. "A grievance is a dispute of one or more employees, or a dispute between the state and the union, involving the interpretation, application, or enforcement of the express terms of this Contract."
- B. "A complaint is a dispute of one or more employees involving the application or interpretation of a written rule or policy not covered by this Contract and not under the jurisdiction of SPB. Complaints shall only be processed as far as the department head or designee."

So what does this language mean? First of all, a written grievance can be filed by one or more employees – which means a group grievance. Secondly, a grievance can be filed by the union even if there is not a grievant who steps forward. In fact, it is the steward's duty to file grievances when management is not following the contract.

This is how language gets interpreted in the workplace.

1. If management violates the contract and the union fails to act, this inaction is the same as approving what management has done. Failure to act has consequences.
2. It encourages more violations, which eventually erodes both employee and union rights.
3. It sets a precedent for an arbitrator to tell the union, "*You didn't grieve these actions the other times management did them. So, if they were acceptable then, I see no reason why they are unacceptable now.*"

4. It deprives negotiating teams of recorded violations of the contract. When preparing for contract negotiations, one of the first things the bargaining teams look at are past contract violations. If there are several grievances over a particular contract provision, the team might choose that area of the contract to rework or improve.

Some issues that are not grievable:

- Actions that have not yet occurred.
- Actions by other rank-and-file members.
- Actions that do not violate the contract.
- Merit issues such as hiring, firing, promotions or discipline.

NOTE: While these issues may not be grievable, there are other administrative processes that may be used to remedy them.

How to file a grievance

Step One – Investigate

Go back to the Facts Collection Form that you filled out when the worker first reported the problem. Make sure that you have investigated all possible areas. Sort out facts from opinions. If necessary, go back and re-interview anyone involved to make sure their story has not changed.

Step Two – Formulate the Union’s Theory of the Case

Facts are the building blocks of any grievance. Without them, a grievance usually has no credibility. This is the who, when, what, where and why of the investigation. Some facts or evidence is better than others. For example, direct evidence – original documents or credible eye witness testimony – is better than circumstantial evidence or hearsay.

After you have all of the facts and evidence for the case, formulate the union’s theory of the case. This is a set of facts or evidence that will lead to the conclusion that the union should win the grievance. For example:

- Employee Jane called in sick on Friday morning before starting time.
- Jane spoke directly with her supervisor.
- Jane’s supervisor did not indicate that she needed a doctor’s excuse or that anything was wrong.

- Jane has not used all of her accumulated sick leave hours.
- Jane has not excessively called in sick on Fridays in the past.
- Jane has been a state employee for seven years and has a satisfactory work and attendance record.
- Therefore, Jane’s supervisor has no right to accuse her of sick leave abuse just because she was sick on a Friday.

Step Three – Define an Appropriate Remedy

If the union does not ask for a remedy on the Grievance Form, there is a chance the arbitrator may not grant one. Always ask the worker what they think will be a satisfactory outcome. However, it is the steward’s job to be realistic. Ask for what you want, but don’t overdo it.

An appropriate remedy corrects a violation of the contract. Arbitrators generally do not have the authority to grant remedies that go beyond what the grievant would have gotten had the contract not been violated.

Examples of appropriate remedies:

- Make grievant whole for all losses.
- Cease and desist engaging in retaliation.
- Grant grievants’ request.
- Other such relief deemed just and proper.

Examples of inappropriate remedies:

- Fire the supervisor or manager.
- Discipline the supervisor or manager.
- Send supervisor or manager to training.
- Asking for something not covered by the contract.
- Asking for “damages.”

Step Four – Filling Out the Grievance Form

After you fill in the pertinent information, there are three lined areas on the form. These are:

1. Where you write a clear, concise statement of what management did that makes this a grievance. Usually one sentence is enough.
2. Where you specify the articles of the contract allegedly violated.
3. Where you specify the remedy you are seeking.

For example:

Statement

“On Monday, Jane was unjustly docked eight hours by her supervisor who claimed she was abusing the sick leave policy.”

Contract Violation

“Article 8 and all other pertinent articles, laws and policies.”

Remedy

“Make Jane whole in every way for the eight hours, and remove all references of sick leave abuse from her personnel files.”

You do not have to – nor should you – put all of the union’s facts, or theory of the case, on the grievance form. Management must do their own investigation! And don’t worry if your spelling or grammar isn’t that precise – the arbitrator only cares about what makes this a grievance!

The following are action verbs commonly used in grievance statements to describe actions, failure of actions and remedies:

denied	permitted	established
changed	prevented	neglected
sanctioned	abolished	authorized
failed to	transferred	directed
issued	eliminated	refused
ordered	refused to grant	forced
required	allowed	rescinded

Remedy verbs:

grant	permit	restore
provide	remove	withdrew
allow	rescind	issue
return	reimburse	pay
comply	credit	reinstate

Step Five – Elevate the Grievance

The written grievance should be filed with the department’s designated first level of review. At any level, if the response is accepted, the union has won and this should be communicated to the worker, and all others in the department if appropriate. If the response is unsatisfactory, you should receive a written explanation of the denial and you have the option to elevate the grievance to the next level. It is extremely important to follow the timelines that are in Article 6 of the Master Agreement.

Organizing Direct Actions

Organizing direct actions, by informing and involving co-workers in the workplace, can also help win resolutions. Possible actions include; solidarity breaks, email campaigns, march on the boss, petitions, leafleting outside the office, etc. Organizing around an issue builds workers’ power. It builds solidarity and union visibility. It sends a strong message to the employer that our rights must be respected. A grievance can still be filed while pressure is applied on the employer through job actions.

Checklist

- Check the time limits in the charts on pages 11-14.
- Assemble and analyze the facts. Ignore rumor, and strive to answer the question: What happened and when? Where and who was present?
- Do not jump to conclusions. Investigate thoroughly.
- Distinguish between facts, opinion, allegations and assumptions.
- Check the facts on both sides.
- Check the grievability, reasonableness and merits of the issue.
- Gather all the relevant documents; identify all witnesses.
- Try not to personalize the issues. Maintain objectivity.
- Clarify any doubtful or ambiguous points.
- Check the relevant past practices.
- Check previous settlements, if any, for precedent and guidance.
- Locate and interview witnesses.
- Check the experience of others in similar cases.
- Seek the assistance of the chief steward or labor relations representative.
- Determine the appropriate remedy.
- Determine if co-workers should be involved and whether or not to organize direct actions.



SEIU LOCAL 1000 FACTS COLLECTION FORM

FOR THE EXCLUSIVE USE OF SEIU LOCAL 1000

EMPLOYEE

Name: _____ Bargaining Unit: _____

Work address: _____

Home address: _____

E-mail (work): _____ E-mail (home): _____

Work phone: _____ Home phone: _____ Cell phone: _____

Department: _____ Classification: _____

Work status: _____ Years of service: _____

Hours of work: _____

EMPLOYEE'S SUPERVISOR / MANAGER

Name: _____

Phone: _____ E-mail: _____

SEIU LOCAL 1000 LABOR RELATIONS REPRESENTATIVE / ORGANIZER

Name: _____

Phone: _____ E-mail: _____

SEIU LOCAL 1000 STEWARD

Name: _____

Phone: _____ E-mail: _____

What Happened (statement of the facts): _____

Where did this occur? _____

List all witnesses (work location, home address, work and home phone, work and home e-mail, cell phone): _____

What is management violating (contract, past practice, DPA rule, SPB rule, Government Code, Dills Act)? _____

What must management do to correct the situation (Remedy)? _____

Follow-up meeting scheduled for: _____

EMPLOYEE CONTRACT GRIEVANCE

STD 630 (Rev 7/00)



BARGAINING UNIT NAME AND NUMBER (Grievant's Bargaining Unit)		
GRIEVANT'S NAME (Person Effected)		HOME TELEPHONE NUMBER
MAILING ADDRESS (NUMBER/STREET)	(CITY)	(ZIP CODE)
DEPARTMENT	DIVISION OR FACILITY	SECTION, BRANCH, UNIT ETC.
POSITION CLASSIFICATION	NORMAL WORKING HOURS	WORK TELEPHONE NUMBER

REPRESENTATION INFORMATION (COMPLETE IF APPLICABLE)

REPRESENTATIVE'S NAME	TELEPHONE NUMBER	ORGANIZATION OR AFFILIATION
-----------------------	------------------	-----------------------------

TRACKING INFORMATION

DEPARTMENTAL TRACKING NUMBER	DEPARTMENTAL SECOND TRACKING NUMBER	UNION TRACKING NUMBER
------------------------------	-------------------------------------	-----------------------

***Please Refer to The Bargaining Unit Contract
For Specific Information Regarding Employee
Grievance Procedures and Time Frame Requirements for That Unit.***

GRIEVANCE INFORMATION



DATE OF ACTION CAUSING GRIEVANCE	DATE OF INFORMAL DISCUSSION WITH IMMEDIATE SUPERVISOR	DATE OF INFORMAL RESPONSE
CLEAR CONCISE STATEMENT OF GRIEVANCE (ATTACH ADDITIONAL SHEETS IF NECESSARY)		

SPECIFIC ARTICLE(S) AND SECTION(S) OF CONTRACT ALLEGEDLY VIOLATED



SPECIFIC REMEDY SOUGHT

SIGNATURE OF GRIEVANT 	DATE FILED
---------------------------	------------



GRIEVANCE REVIEW--LEVEL I

DATE RECEIVED	DATE OF RESPONSE	LEVEL I DECISION TO BE ENTERED BELOW	
SIGNATURE OF LEVEL I REVIEWER 		PRINTED NAME AND TITLE	
TELEPHONE NUMBER			
<input type="checkbox"/> I CONCUR AND DO NOT APPEAL TO THE SECOND REVIEW LEVEL	<input type="checkbox"/> I DO NOT CONCUR AND APPEAL TO THE SECOND REVIEW LEVEL (IF CHECKED, STATE REASON BELOW)	GRIEVANT'S SIGNATURE 	DATE
REASON FOR APPEAL			


GRIEVANCE REVIEW--LEVEL II

DATE RECEIVED	DATE OF RESPONSE	<input type="checkbox"/> DECISION ATTACHED	
SIGNATURE OF LEVEL II REVIEWER 		PRINTED NAME AND TITLE	
<input type="checkbox"/> I CONCUR AND DO NOT APPEAL TO THE THIRD REVIEW LEVEL	<input type="checkbox"/> I DO NOT CONCUR AND APPEAL TO THE THIRD REVIEW LEVEL (IF CHECKED, STATE REASON BELOW)	GRIEVANT'S SIGNATURE 	DATE
REASON FOR APPEAL			

GRIEVANCE REVIEW--LEVEL III

DATE RECEIVED	DATE OF RESPONSE	<input type="checkbox"/> DECISION ATTACHED	
SIGNATURE OF LEVEL III REVIEWER 		PRINTED NAME AND TITLE	
<input type="checkbox"/> I CONCUR AND DO NOT APPEAL TO THE FOURTH REVIEW LEVEL	<input type="checkbox"/> I DO NOT CONCUR AND APPEAL TO THE FOURTH REVIEW LEVEL (IF CHECKED, STATE REASON BELOW)	GRIEVANT'S SIGNATURE 	DATE
REASON FOR APPEAL			

GRIEVANCE REVIEW--LEVEL IV

DATE RECEIVED	DATE OF RESPONSE	<input type="checkbox"/> DECISION ATTACHED	
SIGNATURE OF LEVEL IV REVIEWER 		PRINTED NAME AND TITLE	

Article 6

GRIEVANCE PROCEDURE

All Units (1, 3, 4, 11, 14, 15, 17, 20, 21)



GRIEVANCE: A dispute of one or more employees or a dispute between the state and the union involving the interpretation, application or enforcement of the express terms of their contract.

Article 10.30

HEALTH & SAFETY GRIEVANCE TIMELINES

All Units 1, 3, 4, 11, 14, 15, 17, 20 & 21

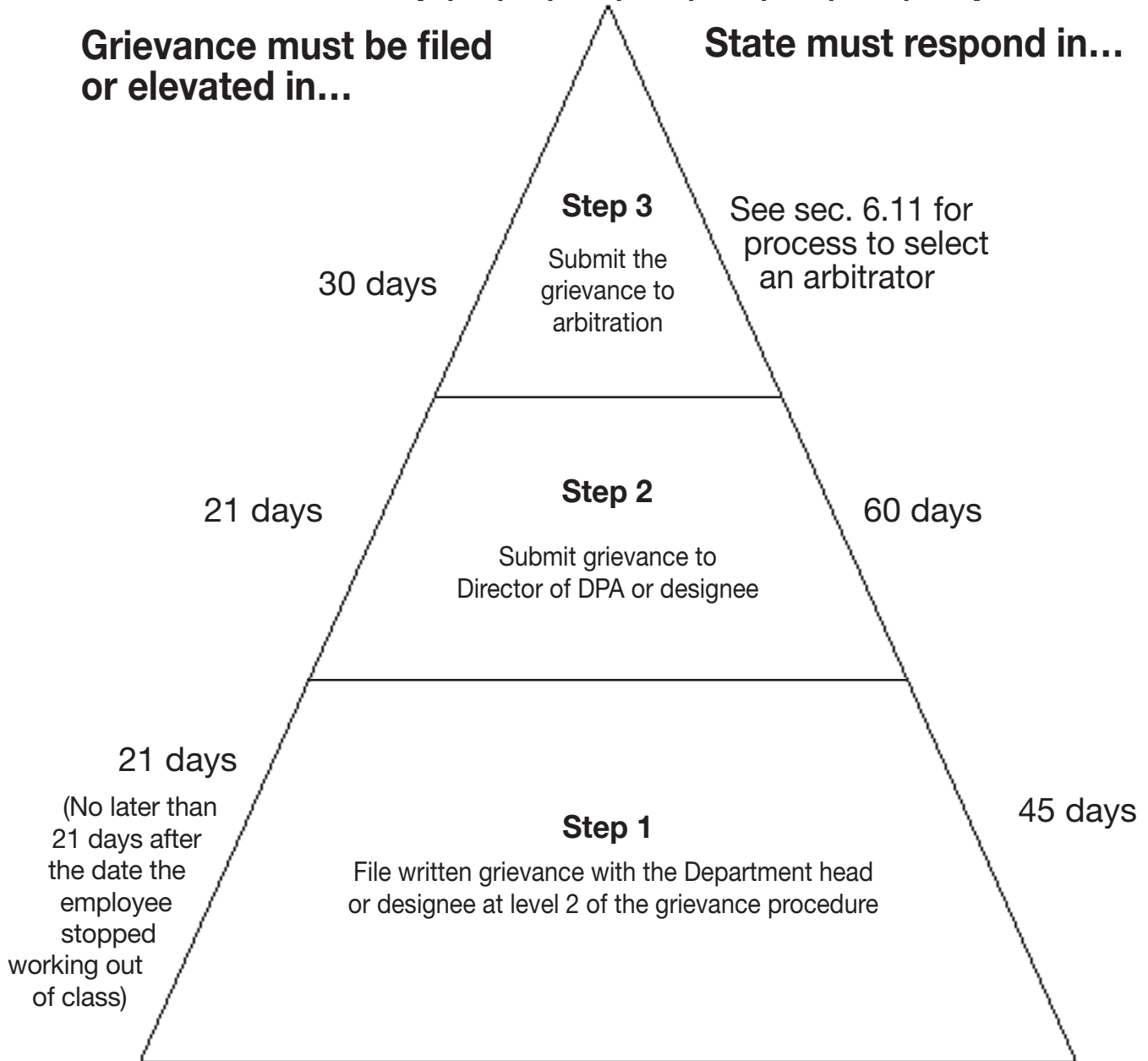


HEALTH AND SAFETY GRIEVANCE: Situation exists which constitutes an immediate and recognizable threat to one or more employees' health and safety.

Article 14

WORKING OUT-OF-CLASS AND POSITION ALLOCATION GRIEVANCE TIMELINE

All Units (1, 3, 4, 11, 14, 15, 17, 20, 21)



Working Out-Of-Class and Position Allocation Grievance: Situation occurs when an employee spends the majority (more than fifty [50%] percent) of his/her time - over two (2) weeks)- performing duties in a higher existing classification.

LOCAL 1000



SEIU

Stronger Together