

Audio Script

REP 220 - Effective Grievance Writing

This is the actual audio that was recorded for REP 220.
Use it for a reference or study guide.

Representation 220

Welcome to Representation 220

This course is required for the Representation certificate and should take you about an hour to complete.

Representation 220 is divided into three sections:

Section 1: Definition of a Grievance

Section 2: Before You File a Grievance

Section 3: How to File a Grievance

Overview

Grievance writing is one of several ways that we represent our members.

If there is a violation of the negotiated MOU, and under the terms of the MOU it is subject to the grievance procedure, the issue will be pursued within the grievance process.

At the end of this course you should be able to investigate a situation thoroughly, know the timelines necessary to file a grievance, and complete the grievance form accurately.

Section 1

Definition of a Grievance

Grievance Definition: Local 1000 Master Agreement

Article 6 of our contract with the state defines a grievance and a complaint.

Article 6.2 a. says, "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."

Article 6.2 b. says, "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 the State Personnel Board. Complaints shall only be processed as far as the department head or designee."

Another way to say this is:

A grievance is a dispute between the union and the state about the express terms of our contract.

A complaint is a dispute about anything else that is NOT in the contract.

The major difference is: a grievance is about the contract and can be elevated as high as State Personnel Board and a complaint is not about our contract and can only be elevated as far as the department head.

For the purposes of this class, we will only deal with grievances.

Grievance Language

The grievance language means that a grievance can be filed by one or more employees - this is called a group grievance. In addition, a grievance can be filed by the union even if there is not a grievant who steps forward.

It is the steward's *duty* to file grievances when management is not following the contract

Non-Grievable Actions

There are some actions that are considered non-grievable and are resolved by other means. These non-grievable actions include:

- 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
- Violations of law
- Any other matters not covered by the contract

For example: If an employer violates a law, it is not grievable, but the employee can file an Unfair Labor Practice.

Section 1 Review Questions

1. The definition of a grievance can be found in what section of the contract?

- a) Article 10 b) *Article 6* c) Article 2

The answer is B - Article 6 defines grievances.

2. A grievance can be filed by only one employee.

- a) True b) *False*

False - a grievance can be filed by one or more employees. This is called a group grievance.

3. To file a grievance, an actual grievant is not needed.

a) True b) False

This is true - a grievance can be filed by the union even if there is not a grievant who steps forward.

Section 2

Steps to follow before filing a grievance

Problem-Solving Steps

Here are some problem-solving steps to determine what action should be taken.

First, interview the employee.

Find a private area where you and the employee will be comfortable.

Be sure to remove all distractions so that all of your focus is on the employee.

Allow the employee to do most of the talking and listen to everything before you respond.

Ask questions to clarify your understanding, and get names of possible witnesses.

Remember, you have the right to state-release time (with management approval) to discuss a representation issue (Articles 2.6 and 2.7).

Second, at the end of the interview, explain to the employee what your next steps in the grievance process will be. Assure them that you will be back in touch as soon as possible - give them a date that you will contact them.

Third, make a list of the people you will need to talk with to collect additional facts. This list could include supervisors, eye-witnesses and co-workers. This is one place where the good notes you have been taking will be very helpful!

Fourth, make a list of documents you'll need for your investigation - Examples include the employee's personnel file, witness statements, emails or notes from the employee and employer, etc.

Fifth, thoroughly investigate the situation.

Never rely solely on one version of what happened.

And remember; keep communicating with the employee, even if you have nothing new to report, to keep them posted about what is happening.

The Art of the Interview: Active Listening

Active listening is one key to conducting a good interview.

Active listening means intentionally focusing on the other person to fully understand what they are saying.

Repeat back, in your own words, what they have said to check for accuracy and encourage more comments from the employee.

This does not mean you agree with the employee. It means that you understand what they are saying.

Read these tips and think about using them in an actual interview.

- Don't rush through the interview. Take your time so you don't miss anything.
- Concentrate only on what the employee is saying, not on what you are planning to say.
- Look the employee in the eye to let them know you are interested
- Encourage the employee to tell you everything—facts, their opinions and feelings— and don't forget to write it all down.
- Ask open-ended questions when you don't understand something, like "what did you say then?" or "what happened next?"
- Check for accuracy. Occasionally repeat back what you have written so that no facts are overlooked.
- Avoid making judgments during the interview. You are accurately recording the facts of what happened.
- Form your opinion and your strategy after you have all of the facts.
- Don't make promises about future actions. Talk about working with the Union Resource Center to decide on next steps.
- If you don't know the answer to a question, don't guess, just say, "I don't know, but I'll find out and get back to you."

After the Investigation

After you have completed your investigation, take some time to make sure you have investigated all possible areas of the grievance. Sort out the facts from the opinions.

If necessary, go back and re-interview anyone involved to make sure their story has not changed, then formulate the theory of the case...determine what facts and evidence you have that will lead to winning the grievance.

Be sure you have all of the information to answer the 5 "W" questions about the grievance: Who, What, Where, When, and Why.

Then, determine if the union can win the case.

Consult with the Union Resource Center to make this decision...they have history and statistics that will make it clear if this case is one that the union will pursue.

Can the union win the case?

If this decision is yes, define the appropriate remedy and fill out the grievance form.

Keep the URC posted as you proceed through the process.

If it is decided that this case is *not* going to be grievable, talk to the employee - face-to-face if possible - and use your best people skills to let them know there is not a grievable case.

Be sure to explain the reasons *why* it is not grievable.

Section 2 Review

Read through this situation for the review question for section 2.

- *The employee called in sick on Friday morning before starting time.*
- *She spoke directly to her supervisor on this phone call.*
- *Her supervisor did not indicate that she needed a doctor's excuse or that anything was wrong.*
- *She has not used all of her accumulated sick leave, and she has not excessively called in sick on Fridays in the past.*
- *This person has been a state employee for seven years and has a satisfactory work and attendance record.*
- *Jane's supervisor has accused her of sick leave abuse.*

Based on these points, can you win this grievance and therefore should proceed with filling out the form?

The answer is YES!

We can win this grievance and should start filling out the form.

Section 3 - How to file a grievance

Informal Discussion (Article 6.6)

The first step toward filing any grievance is for the employee to have an informal discussion with their supervisor about the possibility of a grievance.

This first informal discussion is required if *either* the employee or the employer requests it.

If both parties agree to waive this discussion, always get *confirmation in writing* from the supervisor.

Why?

Because if the case goes to arbitration, the arbitrator can deny the grievance on technical grounds if the grievant failed to have the informal discussion with the supervisor.

After this informal discussion, the supervisor has 7 days to respond.

However, keep in mind that the written grievance must be filed in a timely manner – do not miss the timeline to wait for a response from the supervisor.

If you file the formal grievance and the supervisor grants the grievance at the informal discussion, you should withdraw the formal grievance in writing.

Formal Grievance - The Steps

There are four steps to filing a formal grievance.

1. The original filing
2. Elevating the grievance to the employee's department
3. Elevating the grievance to the Department of Personnel Administration
4. Arbitration

You will need to read the contract carefully to find out if the specific issue you are working on can go through all four of these steps or not.

Let's look at each step in detail.

Formal Grievance - Step 1: Filing

The grievance must be filed on the proper form, provided by the state as stated in Article 6.7 of the contract.

Note that the date of the grievant's signature at the bottom of the form and the date of the action *cannot* be more than 30 calendar days apart.

It is critical that the steward keep copies of the grievance, the cover letter, and any other supporting documentation.

Throughout this process, stewards should be working with their Union Resource Center representative when filing formal grievances to help keep up with timelines.

The grievance timeline is crucial...

The formal grievance is done in writing and is *filed no later* than 30 calendar days after the date of the action.

The employee's department has 30 calendar days after receipt of the grievance to respond in writing.

Filling Out the Grievance Form

As you are completing the basic information on the grievance form, there are three *lined* areas on the form for short answers.

Use these to fill in the specifics of the grievance: the statement, the contract violation, and the remedy.

When filling out the grievance form you don't have to – nor should you – put down all of the union's facts or theory of the case.

Management should do its own investigation.

Area One: the Statement Area

The first of the three areas is the statement area - in this area be Clear and Concise.

Use a one-sentence statement describing what management did that will explain what you are grieving.

Here is an example of a one-sentence statement: On Monday, Jane was docked eight hours by her supervisor in violation of the union contract."

Area Two: The Contract Violation

Area two is the "Contract Violation Area" of the grievance form. It is for the specific articles of the contract, laws or regulations that were allegedly violated by the employer.

For example, "Article 8 and all other related articles, laws and policies."

Area Three: The Remedy

The third area is where you specify the remedy, or the solution to the grievance, that you and the employee are seeking.

Keep it to one sentence for clarity.

For example: "Make Jane's record whole in every way for the eight hours, and remove all references of sick leave abuse from her personnel files."

Formal Grievance - Step 2: Elevate to Department Level

After you have filed the formal grievance, Article 6.8 of the contract says, that if the grievant is not satisfied with the response in Step 1, the grievance is elevated to the employee's department head or designee at Step 2 within 30 calendar days.

The employee's department then has 30 calendar days after receipt of the grievance to respond in writing.

Be sure to mark your calendar with the due date of the department's response.

Always keep the URC up-to-date with all of your filings and agreements.

Document with the URC *in writing* any agreement to extend grievance timelines, and keep a copy of that agreement in the grievance file.

The grievance can be elevated to step 2 as soon as the deadline for the State's response has passed, but *never* AFTER the timeline for filing the employee's response.

You can take the grievance to step 2 whether the state has responded or not.

Example: If the department's response at Step 1 is due on November 1, the grievance must be elevated to Step 2 no later than November 30.

Formal Grievance – Step 3: Elevate to Department of Personnel Administration

In Article 6.9 of the contract, it states that If the grievant is not satisfied with the response at Step 2, the grievance can be elevated to the Director of the Department of Personnel Administration at Step 3 within 30 calendar days.

The grievance file, including all copies of correspondence and supporting documentation, must be turned in to the Union Resource Center before elevating the grievance to the Department of Personnel Administration.

Submit the whole file to the URC as soon as the Step 2 response is received, or as soon as the due date for the response has passed.

DPA has 30 calendar days after receipt of the grievance to respond in writing.

The State's Response

Article 6.10 of the contract says that the grievance is not "won" if the State fails to answer at any level – including the Department of Personnel Administration, but it can be elevated to arbitration if the state DPA does not respond.

If the Union or the grievant fails to elevate the grievance in a timely manner, the grievance is lost.

Remember to read the entire article in the contract to see if your grievance is arbitrable.

Formal Grievance – Step 4: Arbitration

What is Arbitration?

Arbitration is a process for resolving disputes outside the courts. Not all grievances qualify for arbitration - be sure to read the contract carefully for each grievance.

Both parties agree on an impartial, third-party arbitrator and agree to abide by the arbitrator's decision.

The arbitrator reviews all of the evidence in the case and makes a decision.

The contract, Article 6.11, states that if a grievance is not resolved at Step 3, the Union has the right to elevate the grievance to arbitration within 30 calendar days of receipt of the Step 3 response.

Failure to elevate the grievance to arbitration within 30 calendar days results in the grievance being withdrawn.

After a grievance is elevated to arbitration at Step 4, it goes through two more stages of review.

1. First, an Arbitration Panel decides whether the grievance should be submitted to the Legal Department.
2. Then, the Local 1000 Vice Presidents of Bargaining and Organizing/Representation, in consultation with the Statewide Arbitration Coordinator and Bargaining Unit Chair, determine which grievances should be arbitrated.

If the Union denies arbitration at either stage, a letter is sent to the employee and the steward.

The grievant can then appeal to the Statewide Chief Stewards' Committee within 10 days.

If the *state* denies arbitration of the grievance, the grievant and the steward will be sent a letter of explanation.

The grievant then has the right to appeal the denial to the State Personnel Board.

Formal Grievance - Recap of The Steps

So, to briefly review...

There are four steps to filing a formal grievance.

The original filing - there is a strict timeline; investigate thoroughly; use the proper form; fill out all three short answer areas of the form; keep copies of everything; and work with your URC representatives

Elevating the grievance to the employee's department: Again, there is a strict timeline you must follow; mark the calendar for each step; keep the URC updated; you can elevate to DPA whether you get a response from the department or not.

Elevating the grievance to the Department of Personnel Administration: Another strict timeline you need to follow; the grievance goes to the director of the DPA, or their designee; and submit the whole file to the URC.

Arbitration: there is a panel; the state and the union agree on the arbitrator from that panel; if there is a denial you can appeal it; and, not

all grievances qualify for arbitration, so consult the contract.

Read the contract carefully to find out if the specific issue you are working on can go through all four of these steps or not.

Section 3 Review Questions

What is the first step of filing a formal grievance?

- a) Filling out the form
- b) Informal discussion*
- c) Investigating the situation

The correct answer is B - The first step of filing a formal grievance is an informal discussion between the grievant and the employer.

The formal grievance must be filed 21 days after the action occurred.

- a) True
- b) False*

The answer is False - the grievance must be filed 30 days after the action occurred.

It's not that important to elevate the grievance in a timely manner.

- a) True
- b) False*

False - if you miss a deadline, the grievance will be dismissed.

End Of Course

This completes Representation 220.

Your next step is to take the Final Exam to complete this course.

Continue to take the four other required courses in the Representation track to complete your certification.