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## Disputes and Grievances: Rights, Procedures and Best Practices

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Now that you know some of the rules that apply in discipline cases, you're ready for a special kind of meeting called a "Weingarten representation."

*Weingarten* was a U.S. Supreme Court case that gave workers the right to have a steward present in some circumstances "when a supervisor asks for information that could be used as a basis for discipline."

It's important to remind your members about their Weingarten rights now and then: Workers should always request a steward if a meeting could lead to discipline. One way to do this is with "Weingarten cards" [business card size] with the legal formula on one side ...

*"If this discussion could in any way lead to my being disciplined or terminated, or affect my personal working conditions, I respectfully request that my union representative be present."*

... and all the shop stewards and their phone numbers on the other.

There may be times when a manager ignores an employee's Weingarten rights. If that happens, counsel the worker to stay in the room to hear the manager out, take detailed notes stating that he or she requested a steward and the request was denied, and upon leaving the meeting to contact a steward *immediately* to file a charge with the NLRB.

Be sure you remember all the things you're responsible for in a Weingarten meeting:

☐ If you have advance notice, ask management what it's about. Then you can prepare yourself (and the worker) for the questions they'll ask.

☐ What to tell your worker before the meeting:

- Be cool. Be real cool.
- Be careful. Anything you say can be used against you.
- Keep answers short. Don't volunteer anything. You can't refuse to answer, but you don't have to go out of your way to be helpful.

☐ Your presence should inhibit management from browbeating the worker. If it doesn't, you can protest such behavior and include it in your notes.

☐ (You *are* taking careful notes on the whole meeting. They'll be needed if the whole thing "goes to steps.")

☐ You can (during the meeting) give the worker advice on how to answer. You can also ask management to state the questions clearly, and request brief recesses to confer with the worker.

You're there to make sure the worker is treated fairly and to show that the union stands behind the workers. Do that and you've done well.

**THE STEP PROCEDURE**

Your contract will spell out the terms of the grievance procedure your union has negotiated.

Grievance procedures escalate in "steps" (from early discussions with low-level supervisors all the way up to full-fledged arbitrations), with specific time limits assigned to each step. You must try to meet the requirements of each step within the specified time limits. If you fail to do so, without proper cause, you could lose the grievance on a technicality.

Typically, the progression goes something like this:

- **STEP 1** Steward meets with low-level supervisor.
- **STEP 2** If no solution, steward meets with higher management.
- **STEP 3** If no solution, there may be another meeting as in Step 2, or perhaps a grievance "panel," or else the whole thing may go to:
- **ARBITRATION** Where nobody wants to be, but the problem will get settled here by a neutral third party.

To make sure you'll never lose a grievance because you let the time limits run out, we're providing you with this little chart. You should know exactly when the clock starts ticking. Now, step over to your contract and fill out this table right now, before you forget.

Step	Union	Employer
<b>STEP 1</b>	Must file within ___ days from day problem occurred.	Must respond within ___ days.
<b>STEP 2</b>	Must appeal to Step 2 within ___ days after employer reply to Step 1.	Must respond within ___ days.
<b>STEP 3</b>	Must appeal to Step 3 within ___ days after management reply to Step 2.	Must respond within ___ days.
<b>ARBITRATION</b>	Must appeal to arbitration within ___ days after management reply to Step 3.	

The decision to go to arbitration will not be made lightly. It will depend on such things as importance of the issue (problem), severity of the case, cost, and chances of winning. Your investigation, notes, and reports will become really important when such decisions have to be made.

#### WRITING THE GRIEVANCES

The Step 1 written grievance gives the employer official notice that the union is pursuing the matter. It's not hard, but you should pay careful attention to a few little legal phrases we're going to give you. It could become really important later if the case should go to arbitration.

A good written grievance contains three parts:

**Circumstances** A one-sentence description of what happened (or didn't). This sentence includes the grievant's name or names and indicates where and when the incident occurred. Keep it short. You're not arguing the case here. You're telling what happened.

**Statement** A sentence that indicates why this is a valid grievance. For example, "The employer violated Section \_\_\_ of the contract and all other relevant sections of the contract." If you're aware of any past practices or other violations relevant to this grievance, you can include them.

You should be able to cite the specific sections of the contract that were violated. In a pinch you can write, "This action was in violation of the contract."

**Remedy** This tells the employer what the union is asking for. Basically, we consider what the worker(s) would have if the violation had never occurred: wages, back pay, seniority rights, benefits, and so on.

If you know the remedy you seek, write "that the worker be made whole, including but not limited to [remedy]." If you haven't determined the remedy, you can write simply "that the worker be made whole in every way."

If it's a broad policy change, you can ask that management "rescind this change and restore former conditions" or "cease and desist this practice."

If this is a grievance involving discipline of individual workers, don't forget to show them what you've written and explain what you're doing. Make sure they're in agreement.

A few sample Step 1 written grievances are provided just to give you the hang of it.

#### A FEW SAMPLE GRIEVANCES

**What happened**

Joe Jones, an orderly at Manor Nursing Home, worked 45 hours last week but received only 40 hours pay.

**How it was written up**

"Joe Jones received only 40 hours pay for the 45 hours he worked during the week of June 23. This violates Section VIII, Hours of Work, and all other relevant sections of the contract. Joe Jones should be made whole, including but not limited to, being paid for five hours at time and a half."

**What happened**

Without any notification from management, the employer instituted changes in shifts for the Dietary Department and the Maintenance Department.

**How it was written up**

"The union grieves the shift changes established in the Dietary and Maintenance departments on October 2. This action violates Section II, Hours of Work, and all relevant sections of the contract as well as management's past practice of prior notification. Management should rescind this change and restore the shifts."

**What happened**

Sue Miller, a clerk in the Motor Vehicles Department, was transferred out of the department after she refused to go out with her supervisor.

**How it was written up**

"Sue Miller was unjustly transferred from the Motor Vehicles Department on July 5. This violates Section IV, Promotions and Transfers; Section XX, Non-Discrimination clause; and all relevant sections of the contract, as well as Title VII of the Civil Rights Act. Sue Miller should be made whole, including being reinstated to her department with restoration of any pay, benefits, and seniority; and supervisors should cease and desist sexual harassment as required by law."

**MANAGEMENT PLOYS**

Now might be a good time to mention some popular management tactics designed to frustrate you and your union. Managers might use them "tactically" during your Step 1 meeting, or "strategically" over the weeks and months of a grievance. But use them they will. They always have.

- **STALLING**

Probably the all-time favorite. By foot-dragging, management hopes you'll lose interest and go away. This is why the grievance steps have time limits, and why we've asked you to write them in this book. (You did write them, didn't you?)

- **SIDETRACKING, WATER-MUDDYING**

Like a magician who misdirects your attention, bosses love to bring up issues not related to the grievance you're dealing with. Don't let them.

- **THREATS AND INSULTS**

Crude, but often effective. Don't let management provoke you into losing your temper. If you have a grievant with you at a meeting, be sure they're prepared for this one. Call a caucus (outside) if you think somebody's about to lose it (including you).

- **HORSETRADING**

When several issues are on the table, management may offer you a "trade": win one, lose one. Don't fall for it. It's a sure way to lose the trust of your members, and it may expose you to fair representation claims. Never risk your integrity to buy a "win." If you lose both grievances, so be it. If you should ever horsetrade, management will demand a concession from the union for every agreement ever after.

- **STONEWALLING**

Like stalling, only worse. Sometimes they're bluffing, sometimes not. This is the tactic arbitrators are made from. The only way to find out is to invoke the time limits in your contract. That's why they're there. It's the union's job to move the grievance along.

**THE STEP 1 MEETING**

The "step meeting" (usually Step 1 in a formal grievance) is like the "pre-step" meeting, only more so: more preparation, more planning, and more at stake.

Step 1 meetings usually involve a low-level supervisor. This can be good or bad. On the one hand, the supervisor may want to solve the problem before it gets to his or her superiors. On the other, the supervisor may lack the authority to make things right.

☐ Review the eleven rules for dealing with management.

☐ Write down your main points and the facts that support them.

☐ Anticipate the arguments management will use. Try to "think like a boss."

☐ If the grievant(s) will attend the meeting, prepare them in advance. Decide what should and should not be said.

☐ Take good notes. If the case goes to Steps 2, 3, or arbitration, your notes can make the difference between winning and losing.



- ☐ Always maintain a united front. Call a caucus if any member has an objection or suggestion (or if management springs any surprises on you).
- ☐ Never volunteer information that doesn't help.
- ☐ Don't admit to charges that hurt your case. Make management prove their case.

#### A FEW QUESTIONS AND ANSWERS

- Q** What if a worker is violating the contract or otherwise doing something that will get them in trouble?
- A** Consider having a private talk with the worker yourself, or asking a friend of theirs to do so. You should be perceived as a fellow worker concerned that the worker will be disciplined and the union will be the weaker for it.
- Q** What if management disciplines a worker with no steward present?
- A** Management doesn't have to tell workers their rights. It's up to each worker to request your presence during a discipline meeting. However, if the worker did so and management refused, you can file a grievance on those grounds.
- Q** What if I can't make a full investigation within the time limits to determine if a complaint is a valid grievance?
- A** File the grievance and continue your investigation. Later you can always withdraw the grievance.
- Q** What if a grievant reveals a fact in a step meeting that I was unaware of?
- A** Call a caucus and begin damage control. Good interviewing can help prevent this, but it's almost a rite of passage for stewards. In all pre-meeting interviews, always ask, "Is there anything else you haven't told me that I should know?"
- Q** What if a worker's complaint is not a valid grievance?
- A** Diplomatically explain why to the worker. And, of course, you will have explored all the other ways of solving the worker's problem. Most workers can understand how everyone in the union loses if it backs a groundless complaint. However, a worker may decide on their own that a grievance needs to be filed. In such cases, the steward needs to be very careful so as to avoid DFR charges.

#### WATCH YOUR PRESSURE GAUGE

Let's be straight about something. Being a steward is a high-pressure job.

Anyone who's done it will tell you it's nothing like air traffic control or lion taming, however. It's worse.

You'll have days when your own members are in your face, management double-crosses you, and everything goes wrong. We can't take the stress away. It goes with your territory, as it always does when someone volunteers to lead other people against tough obstacles.


But we can at least let you know we understand. Here are three things that can help:

- 1. Recruit helpers and delegate some of the work. You can't do it all yourself. You'll ease your own stress and give other members a chance to learn.**
- 2. Talk to your chief steward or union officers. They'll understand.**
- 3. Participate in your stewards council. Other stewards and activists can help you solve problems and support you.**

Being able to handle all that and still keep on toward your goals is what makes SEIU stewards very special people indeed. Take pride in that. *We do.*

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