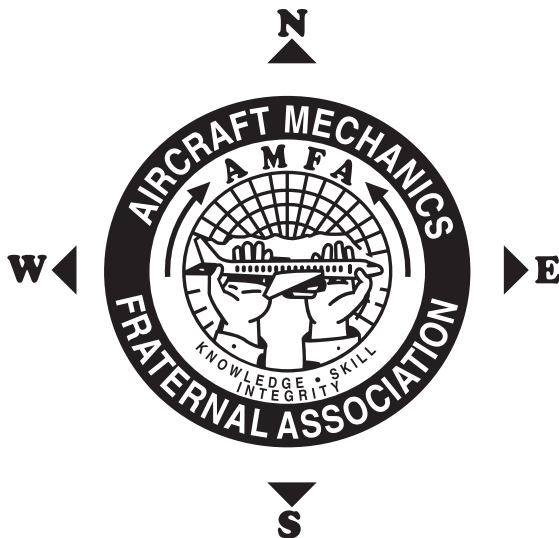


**SHOP REPRESENTATIVE MANUAL**  
of the  
*Aircraft Mechanics Fraternal Association*



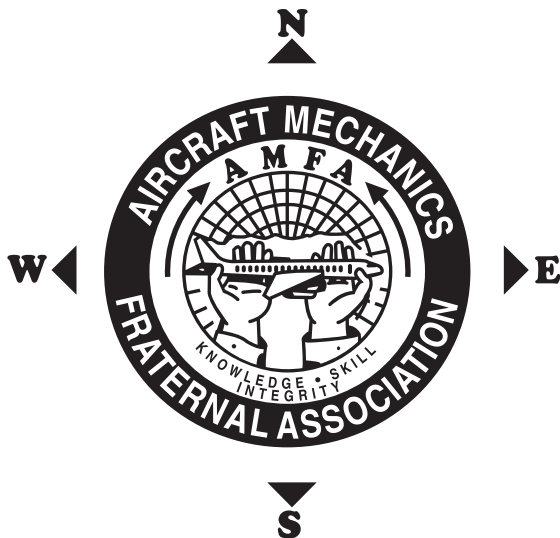
KNOWLEDGE — SKILL — INTEGRITY

2021

*SAFETY IN THE AIR BEGINS WITH QUALITY MAINTENANCE ON THE GROUND*



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## **What is a Grievance — A dispute between the Association and management**

### **Grounds for a Grievance**

- (1) *The Contract*. These are often the easiest grievances to win, especially where the violation is clear-cut. Complications may arise due to conflicting contractual provisions or contrary past practice.

Where the contract is silent on a point, you may be able to grieve on one of the other grounds below.

- (2) *Past Practice*. Where the contract is silent or ambiguous, the practices of the Association and management may prevail. These practices should be long standing, accepted by the Association and management, and not be in violation of the agreement. If, for instance, the company has allowed a fifteen-minute wash-up for years and then suddenly fires a worker for leaving his or her station fifteen minutes early, the Association would have a strong case.

Past practice cases can be tough to win, especially where the practice has not been consistent or there is a history of company discretion in that area.

- (3) *Company Regulations*. Management generally cannot violate its own rules to harm one or more workers. Uneven enforcement of company regulations, as well as management disregard for its own rules, can provide the grounds for a grievance. This type of grievance usually involves disciplinary matters.

- (4) *The Law*. Although the jurisdiction of the System Board is generally limited to contractual violations, statutory requirements frequently bear some relevance to contractual rights. For example, the termination of an employee while on a leave guaranteed by federal law would probably violate the just cause provision of the contract.



# **Investigating a Grievance**

## **How to Investigate a Grievance**

A Shop Representative (S/R) should investigate a case as fully as possible before making a determination as to whether there is a violation of the collective bargaining agreement.

Day-to-day disputes are a part of the normal workplace. Some problems, such as discharge, are serious. Many others are not as serious. S/R give attention to their co-worker's problems, whether those problems are major or minor. The S/R's duty is to investigate those disputes and to resolve them for their members.

Often, minor quality-of-life grievances can be resolved through investigation and a reasoned discourse with the company, without automatically resorting to the formal grievance process.

## **Ten Key Points of Grievance Investigation**

### **(1) Be ready to take notes**

Writing things down certainly can help us remember, and nothing is more important to a S/R than remembering that someone has a complaint that was brought to a S/R's attention.

It is also important that the person doing the complaining does not forget. Our memories are not all they should be at times. Forgotten facts of what happened or what

was said could later prove vital to solving the problems or resolving the grievance. *Take notes* before the facts are lost forever.

Also, when someone goes to an S/R with a problem and the S/R starts to take notes, it is visual proof to the member with the problem that the S/R is listening.

The action of *taking notes* also helps the person that is doing the talking to slow down. The speaker will often try to speak only as fast as the note taker can write. Slowing down and repeating the facts may help to relieve the anger and reinforce logic.

The notes that S/Rs take serve as instruments of documentation and provide a safety net later, if it becomes necessary to defend the S/R and the Association from false allegations of a “failure to represent” the member.

## **(2) Answer the five W’s**

1. Who was involved?
2. What happened?
3. When did it happen?
4. Where did it happen?
5. Why is there a dispute?

### **(3) Keep information collected in a “series of events”**

This point helps the S/R relate the issues and the events in a logical way, which is an important factor when the S/R is trying to understand what happened and when it happened. This is often referred to as “drawing the picture” of a situation.

The S/R is often the person that passes on the notes of a situation to the Airline Representative (ALR) and ultimately the Local Executive Council (LEC), which performs the function of a grievance committee.

*Reorganize your notes* so that the facts are in the right time sequence. Keep track of the story and the events as they unfold. If the case is presented in an organized manner to management or to another Association officer, the S/R is in a better position to gain credibility and has a better chance to make sure that the other party recognizes the Association’s position on any particular case.

### **(4) Conduct thorough interviews**

After all the Who’s have been identified, interview them. Remember that everyone will not be as cooperative as you would like them to be. Always approach the interview in a non-threatening manner, but be intent on getting all the facts on what happened.

It’s important to ask management what happened and why. A S/R will be able to discuss with management their views without reacting in a way that gives away

the strengths or weaknesses of the Association's case. If management refuses to cooperate fully in justifying its position, make a note of this for later presentation to the arbitrator.

## **(5) Ask questions of clarification**

Do not be shy about seeking clarification where apparent inconsistencies arise in the grievant's account. Diplomatically bring these inconsistencies to the grievant's attention and emphasize that it is in his/her best interest to resolve inconsistencies with the Association rather than have these weaknesses explored by the Company.

## **(6) Get written statements**

There are times when several witnesses may have relevant information to offer in a serious manner. The S/R will normally ask that members present the information. In some cases, members will want to back out of presenting their information, or, the time between their interview with the S/R and a case being heard in arbitration may be long enough that a person will have forgotten important information. If a written statement was obtained early on, it may help transform a weak or forgetful person into a good witness.

Written statements may also be obtained in the form of letters from doctors or other professionals. When seeking this type of documentation, remember, there is nothing wrong in being specific as to how you want the

professional to write the letter provided the content is truthful.

As a general rule, for those grievances that proceed to arbitration, written statements are not a satisfactory substitute for live testimony before the System Board. Therefore, keep in touch with witnesses and ensure their ultimate availability for arbitration hearings.

## **(7) Separate facts from opinions**

Once the S/R has gathered all the information that is practical to the particular case, the S/R must begin to review the facts with assistance, if necessary.

Determine which information gathered is fact and which is opinion. The merit of any case is going to depend on the facts collected and presented in the case. Highlight the facts. Make sure they are listed in the sequence of events and are inserted at the proper point to support an argument.

While opinions should be separated from facts, they should not be disregarded out of hand.

The S/R should review them to determine whether there is any validity to those opinions and how they might affect the facts.

## **(8) Note how the facts may be supported**

Searching for additional information that supports the facts previously collected is often a worthwhile exercise. A fact that stands alone may not be sufficient to sway an argument.

Corroborative evidence should be sought where the S/R knows the fact in question to be a disputed one.

## **(9) Research the contract**

Now that we are in a good position to know all facts in a particular issue or event, a judgment can be made as to whether a violation of the collective bargaining agreement has occurred.

To attempt to make this determination before this point may lead to serious harm to the Association and the member raising the dispute. All too often, we jump to conclusions about the merits of a case without the necessary information. We assume we understand the situation before hearing all of the details.

Remember, analysis of the collective bargaining agreement must be accompanied with a look at company rules, laws, and past practices in determining whether or not a complaint should move to the grievance procedure.

## **(10) Find a resolution**

If a violation does not exist, be prepared to show the grievant the reasons why a grievance is not suitable for the complaint. However, it is important to think of a remedy even if it is not a grievance.

It is not uncommon for the S/R to be able to suggest to the worker or management solutions which will solve the problem. Also, the members see the S/R as

a problem solver. The S/R is in a better position to effectively advocate the employee view.

Seeking a satisfactory solution also shows the member that the S/R knows what he or she is doing, even if it is not a grievance issue.

If the issue at hand *is* a grievable issue, the S/R must present the matter to management and request that the grievance be resolved in accordance with the agreement.

Here again, if the S/R has conducted a proper investigation of the dispute, management's logical reaction should be to settle the dispute consistent with the facts of the case.

If management wishes to ignore the facts and the proper application of the contract, the S/R has no alternative but to process a grievance.

Remember, it is the S/R's obligation to enforce the contract. You, as the S/R, have given all concerned ample time to consider the consequences. They have seen you investigate a problem with great thoroughness. If you are right, they should know it.

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## **A Properly Conducted Investigation is Invaluable**

- ✓ Demonstrates that the Association cares about members' concerns
- ✓ Improves the credibility and image of the S/R with the membership
- ✓ Improves the S/R's credibility with management
- ✓ Satisfies the members' right to representation
- ✓ Helps the S/R to determine what is and what is not a violation of the contract
- ✓ Allows the S/R to impress management with the strength of the Association's case

***Be aware of time stipulations that exist to  
file a grievance***

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## **Grievances versus Complaints**

S/Rs must distinguish which problems are grievances under the terms of the collective bargaining agreement. There are other workplace rules, practices, and state or federal laws that should be considered in the matter of determining what is a legitimate grievance for the grievance procedure. At first, the new S/R may find some difficulty in making such a judgment and should always seek advice from legal when there is any doubt. In any event, a S/R must investigate the problem or complaint brought to his or her attention. Proper investigation of the issue often leads to the determination of that question and is imperative for many reasons.

## **Collecting Facts and Investigating for Grievances**

The Association representative in the first step grievance procedure must collect all information applying to the case. This complete set of facts usually becomes long and detailed, which means that no one can remember it all. This complete set of information must be written down for future reference by S/Rs or other Association officers involved in the grievance procedure. Remember that this should be as complete as possible and should include whatever might apply, even indirectly, to the grievance.

You may never use all of this information, but often, something that looks unimportant at the beginning of a case may become vital information later.

## **(1) Written grievance filed with management**

The written grievance that goes to the company must contain only the essential facts. These essential facts must include the five W's, answered as briefly as possible. There must be enough information for management to clearly identify the problem.

Almost always, the facts you include in the grievance handed to management will be fewer than those you have written down for yourself and other Association representatives.

## **(2) Negotiating the grievance**

During your discussions with the supervisor, you will develop strategies to support your case, which should be written down for your own information. Also, during discussions, the management representative may provide information that you did not have before. This information should be written down for future use.

Feel free to ask the supervisor questions and record his answers. If the supervisor refuses to respond to a particular question or questions, make a careful note of that as well.

## **Getting the Facts**

The facts must be presented, along with specific reasons for employee dissatisfaction, before corrective action can be taken by management.

How do you get the facts? A starting point is to become familiar with the five W's: Who, What, Where, When, and

Why, as well as the Resolution sought. Effective grievance resolution depends on the collection of and presentation of factual information, and using the five W's is a good way to accomplish this.

**Who** Identify by name, the employee or group of employees, the immediate supervisor, and any other person involved in the complaint.

**Where** Determine the precise location, department, shop, and job site of the incident.

**When** Determine the *time* and *date* of the incident. Be exact — what shift was involved, etc.?

**Why** What article or section of the labor agreement has been violated? Explain why the incident is a grievance.

**What** Describe factually the circumstances that caused the complaint. Be specific. Using the previous four W's, you can put together the story.

**Resolution** *What resolution do you want?* What should management do to make the grievant whole again? State explicitly how the employer can correct the situation. Err on the side of over-inclusiveness: you will never receive *more* than you ask for.

Keep the five W's in mind as you conduct your investigation of a complaint through a systematic inquiry of the facts. Proper investigation of an incident determines both the causes and the effect of the problem.

As you conduct your inquiry, look for reasons to explain the cause of the problem. As you might imagine, there are an infinite number of causes for employee (and employer) dissatisfaction that could result in grievances. This is where you, the S/R, must assume many different roles, from detective to psychologist. While your search for facts is being conducted, you should strive for objectivity and fairness; however, when you present the Association's position to the company, remember you are an advocate for your membership.

### **Interview to Get the Facts**

We have already stated that the key to successful problem investigation is to determine the facts. The procedure suggested below, although not necessarily in this specific order, may help you in this task.

- (1) Talk to the member. Listen to what is said and ask clarifying questions. Repeat what the employee has said, "Did I understand you to mean...?" Focus on facts and take notes.
- (2) Verify what factual information you have received.
- (3) You now have a better idea of what happened. Go back and interview the member again. Review your facts.

### **Use Witnesses Carefully**

Witnesses can greatly help a grievance, but there are several things to guard against when using them.

- (1) Be certain that you fully understand the witness's story. Go over it with him/her until you do, and make sure the same story each time. This is not a matter of a witness lying as much as it is people's memories acting in strange ways. Some people remember more clearly than others. Some people can tell a story more clearly than others. Be certain your witness clearly recalls the relevant facts and can repeat their story accurately.
- (2) Be sure that the witness is willing to help you throughout the grievance procedure. A person might tell you what happened, but later refuse to repeat it to management.

Make clear to the witness that you are depending on him/her to support the case by telling what they know. You must make him/her understand they might be called before management or an arbitrator. It is better not to have a witness than to have one on whom you are depending, but who later backs down and refuses to testify.

It helps to have the witness sign a written statement of their story, but this is not essential. Sometimes this will scare off a potentially good witness.

## **Know the Facts You'll Use as Evidence**

As a S/R investigating a potential grievance, you have to find and sift through a lot of information to find the facts of the issue. Decisions concerning which facts are both relevant and material to the issue have to be made. When presenting the issue to your supervisor, the best evidence

you have must be pushed forward. Anything less may cost you the grievance, which otherwise may have been a winner.

The question usually comes down to the type of evidence and its importance in the mind of the person deciding the issue, whether that person is a supervisor, manager, Association officer, or even an arbitrator. Is your evidence direct, circumstantial, or hearsay? Is the evidence relevant or material? These considerations are just as true for the S/R at Step 1 as they are for the AMFA Legal Counsel.

### ***Relevant and material***

In collecting evidence to support a grievance, the S/R should focus on those facts that will establish the key elements of the Association's position. Arbitrators may refuse to hear evidence that is not relevant to the case.

### ***Type of evidence***

Generally, there are two types of evidence: *direct* and *circumstantial*. A third type of evidence is called hearsay; it is also often presented during a grievance hearing or an arbitration hearing, but its value is at best minimal. In terms of which type of evidence carries the most weight, direct evidence is usually the most valid. Circumstantial evidence generally weighs in second, and hearsay comes in at a distant third. Please take this ordering of value as a guideline only because sometimes circumstantial evidence can prove more effective than direct evidence.

## ***Direct evidence***

Direct evidence is that which proves a proposition directly, provided by an “eyewitness” to a specific event. If an S/R or officer can present such a witness (and this witness knows what to expect and how to respond during the meeting), then the proposition will ordinarily be given weight by the decider of the issue. Direct evidence usually prevails against other forms of evidence, but not always.

## ***Circumstantial evidence***

Sometimes certain known facts may support a conclusion notwithstanding the absence of direct evidence supporting that conclusion. It is important to stress that when such circumstantial evidence is presented, the decider of the issue must draw inferences from evidence as it relates to the event or proposition that the Association or employer is attempting to prove. Since an inference is the result of such evidence, circumstantial evidence is usually of less value than direct evidence.

Nevertheless, if a witness (direct evidence) can be shown to have been in error or in a state of confusion, his/her proof may be considered valueless. When this happens, circumstantial evidence can assume greater than normal weight. Circumstantial evidence is merely the taking of known facts and determining if they support reasonable inferences concerning the occurrence under investigation. Thus, in the absence of creditable direct evidence, circumstantial evidence can win — or lose — a case for you.

## ***Hearsay evidence***

Of the three types of evidence, hearsay carries the least weight. Hearsay may be defined as a statement, other than one made by the declarant while testifying at the grievance or arbitration hearing, which is offered into evidence to prove the truth of the matter asserted. Hearsay evidence can be best understood when it is considered as a three-part process.

- (1) A statement or an assertion
- (2) Made or done by someone other than a testifying witness
- (3) Offered in evidence to prove the truth of the matter asserted in that statement or assertion

## ***The “Best Evidence” rule***

As you will recall, direct evidence applies to eyewitness testimony. Conversely, the best evidence rule calls for original written documents to be entered as evidence. For example, an employer’s set of time-cards to prove tardiness is preferable over a copy of a monthly absentee/ tardiness report filled out by a clerk. The report is preferable to a company memo, drafted by some supervisor, which alludes to one’s alleged tardiness. This rule has its roots in the importance attached to original documents in courts of law. The rule is invoked to help protect against fraudulent admissions, as well as intentional or unintentional misleading, which can occur through the introduction of selected portions of a comprehensive writing to which the other party has no access.



When submitting evidence, submit the most reliable evidence you have. Failure to do so could lead to a challenge from the other party to the effect that you have not provided best or direct evidence to support your proposition. Always work your way back to the eyewitness testimony and the original document when trying to prevail on your issue.

### ***Past Practices***

A “past practice” is a reasonably uniform response to a recurring situation over a substantial period of time, which has been recognized by the parties, implicitly or explicitly, as the proper response.

The term *practices* usually refers to local practices and working conditions, which can vary considerably at different workplaces, even within the same airline. They are often the customary way, not necessarily the best way, of handling a given problem. A method of handling a problem cannot be considered a practice if it is only one of several ways of doing it.

The practice must be recurring and deal with the same type of situation. It must have existed over a substantial period of time. The S/R should be prepared to present direct evidence of the past practice. Past practice has made the following contributions to the development of employee contractual rights:

- (1) It can be an aid to the interpretation of ambiguous contract language.
- (2) Even where contract language is clear, an agreed upon practice may modify it.
- (3) Past practice is important in defining jobs and classification lines, which may affect layoffs, wages, and promotions.
- (4) Under some circumstances, a long history of practice indicates a mutual agreement even though the contract is silent.
- (5) However, when a contractual provision is unambiguous, arbitrators often enforce the contractual provision despite the existence of contrary past practice.

The validity of a past practice argument can be determined only by knowing the individual agreement in effect in the workplace.

## Discipline

A basic principle underlying most disciplinary procedures is that management must have “just cause” for imposing the discipline. This standard is often written into union contracts or read into them by arbitrators. Even in the absence of a contract, it sums up the test used by employees in judging whether management acted fairly in enforcing company rules.

While the definition of “just cause” necessarily varies from case to case, an arbitrator has listed these tests for determining whether a company had just cause for disciplining an employee:

- ✓ Was the employee adequately warned in the past of the consequences of his conduct? An exception may be made for certain conduct, such as insubordination, coming to work drunk, drinking on the job, fighting, or stealing company property, that is so serious that the employee is expected to know it will be punishable.
- ✓ Was the company’s rule or order reasonably related to efficient and safe operations?
- ✓ Did management investigate before administering the discipline? The investigation normally should be made before the decision to discipline is made.
- ✓ Was the investigation fair and objective?
- ✓ Did the investigation produce convincing evidence of proof of guilt?

- ✓ Were the rules, orders, and penalties applied evenhandedly and without discrimination? If enforcement has been lax in the past, management can't suddenly reverse its course and begin to crack down without first warning employees of its intent. However, if employee A's past record is significantly better than that of employee B, the company properly may give A lighter punishment than B for the same offense.
- ✓ Was the penalty reasonably related to the seriousness of the offense and the past record?

In addition to the checklist outlined above, another arbitrator indicated that these guidelines are "well accepted:"

- ✓ The employer should enjoy reasonable discretionary powers to prescribe rules of conduct.
- ✓ The employer should publicize these rules either by direct publication or by consistent enforcement.
- ✓ The employer should apply its disciplinary policies "seriously and without discrimination."
- ✓ The employer should regard industrial discipline as corrective — not punitive.
- ✓ The employer should avoid arbitrary or hasty action when confronted with a situation.
- ✓ The employer should evaluate each situation in the light of the employee's disciplinary record.
- ✓ The employer should tailor the punishment to fit the "crime."

## Writing the Grievance

If you want to include all of the pertinent information to a written grievance, remember to use the five W's as a memory aid:

**Who** is involved in the grievance? Include the grievant, management representative, and any witnesses.

**Where** did the grievance occur? Give the exact location, department, division, and job site of the incident.

**When** did the grievance occur? Give the date and time as accurately as possible.

**Why** is this a grievance? Was it the contract, a past practice, a law, or a management policy? In order to have a legitimate grievance, there must be a violation of something.

**What** occurred? Given the previous four W's, put them together to form a convincing story to back up your arguments.

**Resolution** — Do not forget. What are your demands? What adjustments are necessary to completely correct the injustice or violation? What is needed to place the aggrieved person in the same position he or she would have been in, had the violation not occurred?

## Classifying Grievances

Presented here are *five ways* to classify or sort out grievances. Determining the classification may tell you something about the seriousness of the grievance and how you might go about handling it.

### (1) What general type of grievance is it?

Grievances fall into one of two general categories. When you determine which type of grievance you have, you can look for the type of information you need to support your case. Don't forget you can contact your Area Representative, if applicable, and/or the ALR for help, and he/she can contact legal if needed. You are never alone.

**Discipline/Discharge** — Management has disciplined a worker. There is no difference over the contract interpretation, but over management's disciplinary action.

**Contract Interpretation** — Association and management differ over what a contract clause means. (This is an appropriate time to check with legal.)

### (2) Who is affected?

**Individual** — The grievance affects only one person.

**Group** — The grievance may affect a whole department, everyone on the same job, or a certain classification of employees. It is also known as a class action.

**Principle** — The grievance affects all bargaining unit members. The Association must uphold a principle.

**Policy** — There are two types of policy grievances. The first is when the grievant is unwilling to sign a grievance and the grievance is filed on behalf of the Association. The second is when management announces a proposed application of the agreement in a certain area. Although no one's rights may be violated immediately, the Association submits a policy grievance or letter to prevent an injurious precedent, defending its interpretation of the contract.

### **(3) How does it affect solidarity?**

**Divisive Grievances** — These can cause problems since one person's gain is seen as another's loss, such as complaints that an individual or group is losing out on overtime.

**Collective, Unifying Grievances** — Everyone has an equal stake. The grievance may be filed in the name of an individual, but usually benefits the entire group.

### **(4) Is it a one-time occurrence or a continuation?**

Is management's action/inaction a one-time incident? Or is it ongoing? This may have an effect on grievance time limits.

## **(5) What is the cause or source?**

Look beyond the contract violation to the cause. Why did management violate the contract? Was it company policy, an individual mistake, personal problems, failure to manage? This may help you to head off potential violations in the future.

## **Questions on the Grievance Procedure**

### **(1) Who should the member go to first?**

Some contracts require discussion with a supervisor before the Association is called in. Others call for immediate representation.

### **(2) Should the Shop Representative bother with minor grievances?**

Many workers are afraid to approach supervisors on their own. This is one reason why we have S/Rs. When the members get representation from the Association, they tend to value the Association more highly. Grievances that are relatively simple to settle can help the S/R establish respect for his/her abilities and commitment to the rank and file.

### **(3) What is the best step for settlement of grievances?**

Ordinarily, settlement at the first step is most desirable. At higher steps, Association and management representatives are usually less familiar with the facts of the case and the people involved. The S/R,



of course, should keep in close contact with the Area Representative, if applicable, and/or the ALR, consulting them when necessary and informing them of impending settlements.

#### **(4) What about arbitration?**

Arbitration is something to be avoided wherever a satisfactory settlement can be reached without it. By becoming familiar with the arbitration procedure and particularly with some of the guidelines that arbitrators apply in deciding the merits of grievances, the S/R can learn to prepare better grievances and resolve them in the early steps.

#### **(5) Can a written grievance be changed?**

Mistakes can always be made in writing the grievance. Many S/Rs are unaware of possibilities for amending grievances after they are filed or have gone beyond the first step. Whether you can amend a grievance depends on your contract, your relationship with management, and the overall strength of the Association.

### **Two Types of Record Keeping**

S/Rs handling grievances should maintain two kinds of records. There is a difference in the records as illustrated in the following:

- (1) For the Association Files** — Using facts, write down everything: interviews, notes from meetings,

summaries of documents, etc. Write down everything, including your assumptions (be sure you identify them as such). Do not be concerned with style, be concerned with getting all of the information. Ideally, this writing should be done before your first meeting with management.

Realistically, the grievance is often filed first, and then the S/R does the research necessary to win the case. This information stays with the Association — management does not see it. You use it to plan strategy. (Please input *all* grievance data into the Local computers.)

**(2) For Presentation to Management** — A brief summary containing the basic elements.

**Situation** — what happened, when it occurred, and who was involved.

**Contention** — why you think it is a grievance; what was violated.

**Resolution** — what you want management to do to rectify the violation.

Save your arguments, proof, and documentation for when you present the case. Do not argue your case on the official grievance form that you submit to management.

## **Four Steps for Writing Grievances**

There are a number of steps or levels involved in the writing of a grievance. The most common is writing the grievance to present to management. This usually signals that the grievance has become formal, requiring signatures, testimony, etc.

In many cases, however, S/Rs are not involved in this particular level of grievance writing. This does not mean that the S/R should be unaware of the mechanics and techniques of this particular level of grievance writing.

By understanding what this level of grievance writing is all about, S/Rs will learn to become more effective at the lower levels of grievance investigation and writing.

There are other levels of grievance writing besides the formal one, and S/Rs are expected to be very active in these levels of writing. Following are the different levels of grievance writing, and some guidelines involved in moving through those levels.

### **Step I: Investigating the Grievance**

A. Interviewing the Grievant: the first job of the S/R in writing or collecting facts is to listen well, to let the grievant express his or her feelings about what happened. Get all the facts you can from the grievant.

Next, ask the grievant to listen as you give a recap of the story and to fill you in or to correct you when you have finished.

As you work together, take notes on the “W” questions included in the notes you are taking. Be sure to note any additional information you are going to need.

- B. Follow-up: Now is the time for research. Talk to people who may have witnessed the incident or be able to verify facts surrounding the grievant’s story. Check the contract and any other relevant documents, including the grievant’s personnel file, if necessary. Find out what past practices have been and include them in your notes.

## **Step II: Analyzing the Grievance**

- A. You can use a sheet titled “Analyzing the Grievance.” This is a working document. Its purpose is to help you get control of the problem, to understand and organize your material. You can use it to prepare for oral discussion with management or as the basis for the written grievance you may file later.
- B. Follow-up: After you have worked through the analysis, you may find you need more information before you can begin following the plan you have worked out. For example, you might have decided to file a grievance on behalf of an individual and to file a separate one on behalf of the Association. In this kind of situation, you would probably have more research to do.

### **Step III: Preparing for Discussion**

- A. Block out your strategy for moving the grievance into the formal stages, thinking through the personalities and special considerations involved. Develop your argument of the case. Be prepared for management's arguments.
- B. Follow-up: This is the time to do any last-minute research and to prepare the grievant if he/she is going to be participating in the discussion.

### **Step IV: Writing the Grievance Form**

This is the formal step of grievance writing. As you have seen, however, a S/R can be writing grievances in preparation for this step. Working from the notes you took during the interview and the analysis, you can write a short, concise statement of the grievance and the resolution.

### **Practical Hints of Grievance Writing**

- (1) Use planning techniques. They will help you do a better job. Although they may seem like extra work to you until they become automatic, they will save you time and trouble by helping you define the issues and identify what you want and how to get it.
- (2) Prepare grievances on the assumption that they are going to arbitration, then it will not be necessary to take as many to arbitration.
- (3) Generally, you want to limit your statement to management to the bare essentials of what happened.

This means omitting personal judgments, the nature of evidence that the Association may use later on, and full justification for the Association's position. In many cases, such information might only be used by management to prepare a better case against the Association. As a general rule, keep your documentation out of the grievance form. Have it ready with your notes.

- (4) State the why, the grounds for the grievance. Do not limit the Association position to a single section of the contract if other sections may also apply.
- (5) Cover yourself when stating specifics, especially in cases where technicalities have been used in the past to deny grievances.
- (6) Grievants have sometimes been sold short by poorly phrased remedies. In stating your demand, do not ask for anything else than full compensation for the grievant. Better still, use the phrase "make whole."
- (7) Do not get personal. Remember, you are stating an Association position. Never say, "I contend," "It is my position," etc. Always say "It is the Association position," or "the position or contention of the Association."
- (8) Use short, positive statements to write the grievance. Long sentences are harder to read and can be tedious and irritating to the reader. Sometimes, after you string a long series of thoughts into one sentence, it does not come out right anyway. Then, if your reader is picky

and wants to find fault with you, he or she may hold the faulty sentence against you. Stick to short, clear sentences.

- (9) Use simple descriptive words. Let people be impressed with how well you have researched the grievance and how clearly you have identified the issues, not by the complexity of your vocabulary or sentence structure. Stick to good plain speech and leave legalistic writing to the lawyers. Writing concisely can help clarify thinking.
- (10) Consult with the Area Representative, if applicable, and/or the ALR, in writing the grievance. Show the final draft grievance to them before submitting it to management. Do not be a burden, but do not be afraid to ask for help.
- (11) Do not automatically assume that you are locked into the original phrasing of the written grievance. In some cases, there are possibilities for amending the grievance at various steps in the procedure.
- (12) Thoroughly discuss the grievance with the grievant. Explain what you are doing. Explain the requested settlement and be sure he or she fully understands the agreement. Have him/her sign the grievance.
- (13) Always identify the grievant by name, clock number, seniority date, and department.
- (14) Make sure every statement of fact raised by management is checked thoroughly before you attempt to answer it.

- (15) Get all the facts in writing, no later than the date the case is presented at the first step of the grievance procedure. Do not attempt to withhold pertinent information.
- (16) When you prepare your grievance, remember: these facts are the Association's facts and property. Give the management representative the facts of the grievance. If it cannot be settled verbally, and if you have to reduce it to writing, give him/her the grievance. The written facts you have compiled from your investigation are the property of the Association and go to the ALR at the next higher step if the grievance cannot be settled satisfactorily by you. If you do settle a grievance, file the written facts from your investigation, along with the grievance itself, for permanent reference.
- (17) Recheck your case to make sure the five W's have all been answered. Remember, no new facts should be injected into the case in the step prior to arbitration.
- (18) The best chronology for the formal grievance is:
- a. Write your statement of facts. Raise no contentions; simply tell the story of what happened.
  - b. Answer the contentions that management raised in the first step procedure, including any first step meeting or discussion with supervisors or department heads.



- c. You are now on the offense and can write your supporting position in regard to the contract, previous decisions, and past practices.
- (19) Finally, do not automatically assume that you have to write a grievance at all. Before writing, S/Rs are often advised to explore the possibility of getting a satisfactory settlement through informal negotiation. Once a grievance is written, lines may harden.

## **Presenting the Grievance**

Once the S/R learns to recognize and prepare a grievance, there comes the often-difficult job of presenting the grievance to management. Here one of the main obstacles can be the great variety and complexity of people, personalities and situations.

Each member, supervisor, and grievance situation are different in some respects, but in others, they are all the same. The S/R must try to understand each of them: the member, in order to represent him/her better, the supervisor, in order to figure the best angle of approach, and the variables in each grievance situation, to develop the best style for handling each grievance.

There are no simple guidelines or principles that will work for all individuals and all situations. Some supervisors respond to a reasonable, logical, cooperative approach. Others have to be sweet talked or sold, and still others need to be hit over the head with the fact, bludgeoned verbally, and coerced into settling the grievance. Some grievants are mature enough to help with the grievance; others need to be told to keep quiet so they do not hurt their case. Consequently, the effective S/R must learn and apply some basic leadership skills in order to effectively present grievances.

S/Rs must look at the big picture, as well as the individual parties in the grievance. It is particularly important for the S/R to look at the full range of situational possibilities for handling each grievance.

## **The First Step in the Grievance Procedure**

The first step in the grievance procedure is usually informal. While the individual employee may have the right to meet with the supervisor and grieve, the S/R usually has the right to be present at the discussion.

Typically, the informal first step requires that the S/R and/or the grievant meet with the supervisor or manager to try to resolve the problem within a specified time period, say five days from the incident. The supervisor or manager makes an attempt to solve the problem. Keep in mind what you have learned about collecting facts in grievance preparation. If the S/R has prepared in advance for the formal hearing by collecting evidence to show a violation, then the next step may not be necessary.

Even before the first formal meeting, the S/R should stop and think. Consider the following questions to check on the thoroughness of the investigation. Failure to supply answers to these questions requires further review of the facts. Ask yourself:

- (1) What section of the contract has been violated? What law broken? What past practice has been violated?
- (2) Have I recorded all the facts from the employee? From any witnesses?
- (3) Do I have sufficient information from the principals?
- (4) Have I explained the case to the grievant?
- (5) Do I have a remedy in mind for the grievant?

## Grievance Checklist for Shop Representatives

When considering a grievance and how to handle it, the S/R should run through the following points. Each one may be critical to your success as a S/R.

- (1) *Grievant* — do you understand his/her point of view, the situation, and the problem he/she is explaining to you? Are you listening?
- (2) *Facts* — do you know the facts you will have to have to successfully handle the grievance and where to get them? In some cases, obvious facts can be routinely confirmed when approaching the supervisor.
- (3) *Basis* — why is this a grievance? Can you state the clause under the contract, the law, past practices, or the right that was violated?
- (4) *Type of grievance* — Is it unifying or divisive? Will it kick back on the people you represent or on the workers? Is there more than one issue involved?
- (5) *Personality* — what do you know about the human beings involved in originating the grievance and those you will have to deal with in handling it? What about yourself? Why do these people think, behave, and respond like they do?
- (6) *Origin of grievance* — can you make a fair guess as to why the grievance arose? Company policy, personality

of the worker or supervisor, mistake, buck passing, or an error in judgment?

- (7) *Solidarity* — how does the grievance affect solidarity? How can it be handled so as to increase solidarity?
- (8) *Anticipate* — what are the likely responses of the company and others you will be dealing with? What settlement will the grievant accept that will be fair to him/her and the other workers?
- (9) *Strategy* — based on the above, your experience with similar situations, and your knowledge of the people involved, what grievance handling strategy does the case seem to call for? If you are in doubt about this or other aspects of the case, it might be wise to consult with knowledgeable people.
- (10) *Involve* — as you proceed, involve the grievant and the other members in making decisions as much as possible. This often helps build support for you in handling grievances and solidarity in your entire shop.

## **Presenting the Case**

What are some points to keep in mind when presenting the case to the supervisor or manager? Below are some suggestions. Obviously, not all of them will apply to all situations and people. Keep in mind that all human beings are different and have to be approached differently. This is not an exhaustive list; feel free to add to it as you go along. These suggestions should help you avoid pitfalls and traps that await you as a grievance representative.

### **(1) Prepare your facts beforehand:**

- a. Include all notes with important written facts organized in a simple, logical sequence.
- b. Consider what the supervisor is likely to say and have your responses ready.
- c. Review the facts of the case with the employee alone, before you talk to the supervisor, if time allows.
- d. Check your case with other S/Rs, Area Representative, if applicable, and/or your ALR, or others who might be able to help you, if time allows.

### **(2) The problems of dealing with human beings:**

- a. No two people are approachable in the same manner. This applies to Association members and company officials alike.

- b. The S/R is after results that will benefit the employee and the group as a whole. He or she should submerge personal likes, dislikes, fears, and prejudices.
- c. The S/R should not assume that his/her thoughts are exactly the same as those of the people he/she deals with.
- d. Effective human communication with the members or managers, particularly when discussing complex issues, requires considerable patience and time.
- e. Continually evaluate the points the other person is making for substance. Look for underlying motives in his or her position. What is said and apparent on the surface may not be the real issue at stake.

(3) Settle grievances at the lowest level possible.

This saves time and tends to build morale in the Association. Also, the issues are clearer at the lowest level of the grievance procedure. Settlement at the lowest level may not bruise egos of the principals involved (except possibly in discipline/discharge cases) as badly as in later steps of the grievance procedure. Furthermore, if the S/R can solve the problem, he or she should do so. Do not pass the buck on a problem that the parties themselves could have worked out. It might wind up in arbitration.

(4) Do not delay settlement of the dispute. Remember that justice delayed is justice denied.

- a. Watch for stall tactics. If the supervisor postpones giving a response because of a lack of facts, try to determine the sincerity of the request. Is it valid? If not, what is the motive of the stall.
- b. The longer it takes to solve grievances, the shakier becomes the support and solidarity of the grievant and the Association and members. Even though the S/R cannot always solve complex problems immediately, he/she should always try to provide answers as soon as possible.
- c. The farther away the grievance gets from the incident, the hazier the facts in the case become. This undermines the original legitimacy of the grievance.
- d. Watch for trade-offs. If grievances arise during a time of crisis in contract negotiations, management may hint at contract proposal trade-offs for the settlement of grievances that should have been resolved earlier. Please Note: AMFA discourages “trade-offs.”
- e. Watch for horse trading. Grievances that pile up and remain unsolved become easy prey to horse trading tactics, in which a few grievances (some of which may be politically motivated or important) are settled in exchange for dropping others. Make sure not to let this happen; all of the employees



are counting on the Association to help, not just a few, and the Association should represent all of the members, not just a few.

- (5) Take a positive position — not a defensive one. Do not be timid or convey the feeling to the supervisor that you are presenting the grievance only because it is an obligation on your part. Avoid being apologetic; it is your right to present grievances to management.
- (6) Put the burden of proof on management. Although you do not want to put the supervisor on the defensive, let him/her prove that what management did or did not do was correct. Feel free to ask management representatives questions concerning their proof or position. If management representatives refuse to respond, make a note of this refusal.
- (7) Respect the employer representative and treat him/her as you would like to be treated. If this unspoken rule is to be broken, let it be by the other side. Let your discussion with the immediate supervisor explore solutions to problems — do not focus on personalities. Note that often the problem is beyond the scope of the supervisor's responsibility. Resist irrational outbursts that place blame on the supervisor's shoulders. Cooperation and trust decline in proportion to these types of confrontations.

- (8) Do not place the immediate supervisor on the defensive. Remember that the two of you must work together in the future. Try to maintain good relations.
- (9) Stick to the point when making your presentation. Do not jump from topic to topic. Be firm but fair. Do not get sidetracked by unrelated issues.
- (10) Avoid disagreements with the grievant in front of the supervisor. If differences come up, tell the supervisor that you need a minute to review some information. Ideally, you should consult with the grievant beforehand.
- (11) Listen to the grievant and the supervisor. Repeat key statements made by the supervisor. This makes him/her realize that you are listening and paying attention to what is being said.
- (12) Narrow the focus of the dispute, if possible. Look for possible areas of compromise and settlement.
- (13) Remember what you have learned about information and evidence. Get the supervisor to clarify the meaning behind the words. Do not accept “He has a bad attitude” as a reason for discipline.
- (14) Keep your cool. One quick way to blow your case is through an emotional demonstration. Do not let the supervisor see that you have lost control of the situation.
- (15) If you must disagree, do it with dignity. This will not be the end of the world and may even be an important first step in clarifying a part of the agreement that caused many problems.

- (16) Avoid bluffs and threats. While contract negotiations have often been compared to a poker game, negotiations between the S/R and the supervisor or foreman require a different set of rules. In contract administration, the risks are so high that no settlement will be reached if either side tries to bluff. One practitioner states, “Bluff consists in announcing a certain course of action even though you do not intend to follow it . . . If the bluff is called and the bluffer backs down, this will reduce credibility in future negotiations.”
- (17) Avoid win-lose situations. This strategy presumes that one’s loss is the other’s gain. In reality, playing this game may cause both sides to lose — respect, trust, and cooperation.
- (18) Save face. Help the other party out if you can, but not at the expense of the contract or the grievance. Often the supervisor will need your help to avoid being placed in an awkward position. Resist the temptation to be selfish; remember that you could be in that very same position yourself someday.
- (19) Be sure to follow through and follow up on the grievance.
- Make sure the grievance follows the proper channels, even after it leaves your hands.
  - Report back to the grievant about the status of his or her grievance.
  - Once the grievance is resolved, make sure that management implements the settlement.

- (20) Feel free to add your own hints and tips for presenting grievances. Remember, what works for you may not work for others, and vice versa.

## **How to Handle Yourself in the Grievance Presentation**

### **(1) Steps to effective grievance presentation:**

- a. Define the goal to be accomplished by presenting the grievance.
- b. Diagnose the situation.

Diagnose the readiness level of the management representative to accomplish this goal.

Diagnose the maturity level of the grievant to assist in accomplishing this goal.

Diagnose other relevant situational variables.

- c. Adjust your grievance handling style to adapt to the situation.
- d. Identify the power base necessary to accomplish the grievance goal and use the appropriate source.
- e. Apply the appropriate style and power base and proceed.

### **(2) Dealing with the people you represent:**

- a. Be honest. Do not promise what you may not be able to deliver.
- b. Commit the grievant to the issue. If possible, have him/her sign the grievance.

- c. Explain what you are doing in advance, but do not go into excessive detail.
- d. If the member does not have a viable grievance, carefully explain why not.
- e. Represent all employees in the same competent manner.

## **Methods of Reaching Agreement**

Agreement on a grievance is usually achieved through one of the following approaches:

- (1) *Decision* — both parties accept an interpretation, and the issue is settled.
- (2) *Compromise* — both sides yield part of their position to reach agreement.
- (3) *Integration* — both parties' interpretations are accepted. This is the basic win-win strategy, where both sides win and there are no losers.
- (4) *Concession* — either side yields the point or the issue completely.
- (5) *Enforcement* — arbitration is used.

The best method to use in reaching agreement depends on the problem as it arises, and on the potential of each approach to achieve a satisfactory solution based on the merits of each issue.

Discuss which approach you think is the best.

If the S/R wins a point and the grievance, stop talking. Do not continue to harp on the issue or stay around to gloat over the victory. Keep in mind that the tables might be turned someday. Tell the member immediately and share your experience with others. Let the satisfactory solution of this problem stand on its own merit. It is an Association achievement.

If you do not settle, go on to the next step. Be sure to tell the supervisor that you will follow the time limit procedures. Tell the member what the next step will be and that solving problems takes time. Do not build up the grievant's expectations by making statements like, "It's in the bag." It is not in the bag.

While the grievance is moving through the procedure, be sure to check with the ALR on its progress and report it to the grievant. Good communication builds support for the Association for it is an indication of concern and action.

Please Note: AMFA's standard two-step grievance procedure begins with a discussion between the member and supervisor, along with the shop representative. If a satisfactory resolution is not reached:

File a formal grievance. Get the Local ALR involved. Follow all steps per your collective bargaining agreement.

Last effort if unable to resolve with management involves the grievant, the ALR, the S/R, witnesses, and legal counsel in arbitration.

## **Arbitration**

Arbitration is a method for resolving disputes in which a third party is called in to make a decision on a grievance case. A hearing is arranged at which both sides present their cases. The arbitrator then makes an award. The arbitrator's decision is binding on both parties.

Arbitration is expensive. Generally, agreements provide that costs be shared equally by the company and the union regardless of which side prevails.

### **A General Explanation of Arbitration**

#### **(1) Purposes of arbitration**

- a. To resolve a dispute short of a strike or a lock-out
- b. A safety valve beyond the regular grievance procedure
- c. To resolve a situation that needs a decision
- d. To test the meaning of the contract
- e. Face saving

#### **(2) The basis of an arbitrator's decision**

- a. Not what he or she thinks is fair, or right, or wrong; rather, what he or she thinks the contract says in relation to the circumstances presented to him/her at the hearing; past practice may also be important.
- b. The jurisdiction of the arbitrator is usually limited to interpreting the contract and applying its provisions to the dispute before him. As a general

rule, the arbitrator has no authority to add to or subtract from the contract or modify it in any way.

### **(3) Selection of an arbitrator**

- a. Named in contract,
- b. By agreement between parties on a case-by-case basis, or
- c. Failing agreement on a specific arbitrator, on application to the National Mediation Board, the American Arbitration Association or other agency for a list of reputable arbitrators. The parties then select an arbitrator from the list by means of the alternate strike method.

### **(4) Procedures and methods**

- a. Formal and informal systems
- b. Stipulations of issues
- c. Quasi-judicial
- d. Opening statement: what it is all about, what you are going to show
- e. Who goes first: the party that bears the burden of proof (e.g. usually the company in a discipline case, and the Association when it has asserted a contract violation)
- f. Direct presentation: by our Legal Counsel, presenting evidence to the arbitrator, possibly introducing exhibits, and possibly using witnesses



- g. Examination and cross examination of witnesses and exhibits
- h. Summation: summary of major points in direct presentation, with counter arguments to what the other side has presented
- i. Post hearing briefs: one side or the other may request permission to file briefs. These should not include any new evidentiary materials

**(5) Follow up after receipt of an award in favor of the Association**

- a. Award should be used in a manner to build the Association. This may affect the manner in which it is presented to the individual and the membership.
- b. See that terms of the award are carried out and that the situation does not arise again. Management may be resentful and attempt retaliation in the same or another area.
- c. Enforcement: If the arbitrator did not exceed jurisdiction or engage in fraud, corruption or other misconduct, the decision is enforceable in court. Generally, an arbitration decision will not be set aside for errors in judgment as to law and fact.
- d. Award should be considered in relation to application to pending and future grievances, and the Association's goals in future contract negotiations.





