



# Basic Grievance

NYSUT Tarrytown Regional Office  
Summer Leadership Conference  
Crowne Plaza Princeton Conference Center

August 17-19, 2022

Presenter: Sam Buck, LRS

# Session One

**You will need:**

- **a copy of your contract;**
- **a copy of your Union's Constitution;**
- **something to write/take notes on; and**
- **at least one highlighter in your favorite color.**



# Introductions

## Activity:

*Before we begin I would like to know a bit about you: Not just name and Job, but whether you have had any experience with the Grievance Process. Have you ever filed a Grievance, for instance? What was your experience with the process?*



# Opening Ice Breaker Activity



## Activity:

*Make a list of at least ten things you have heard members complain about – this could be anything from incorrect wages to there being no toilet paper in the bathroom.*

*Take a minute to just jot down at least ten complaints that you have heard. We will use this list throughout the workshop, so please take the time now to do this.*



# Grievance Overview

Why is the Grievance Procedure important?





# Complaints vs. Grievances

Not all complaints are grievances. Complaints which are not grievances cannot be resolved through the Grievance Process. However, Building Representatives should investigate and follow-up on all complaints, as appropriate.

# Obey & Grieve

- It is a well-established principle that Employees:
  - Must obey management's orders and carry out assignments even if it is believed that such assignments are believed to violate the agreement; and
  - Then turn to the Grievance Procedure – or some other forum – to resolve the complaint over the assignment.
  - There is a very narrow health & safety exception (the employee may be privileged not to obey a management directive to climb a faulty ladder due to the immediate risk to the employee's safety).

Abstract geometric shapes in a dark blue color: a sphere in the upper left, a cube below it, and a large torus (donut shape) on the left side of the frame.

# Everything you need to know about Grievances in 10 Minutes



# What is a Grievance?

Check the definition of “Grievance” in your contract.

See the Grievance Procedure.

The typical definition of a Grievance is “A violation, misinterpretation, or inequitable application of clear language in the collective bargaining agreement.”

# Time Limits

- Filing the Grievance
  - Usually limited to a given number of days after event or knowledge of event.



# Stages of the Grievance Process

Times are provided for moving from one stage to the next as well as receiving responses from the Employer at each stage.

*The Procedure has stages of review. This permits management the ability to review the Grievance at an increasing level of authority within the organization. It also provides time for management to investigate the Grievance to determine whether it has merit.*

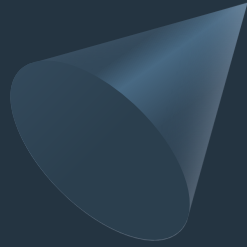


If the Employer does not answer the Grievance by the expiration of the provided time, the Grievance may be moved to the next stage as if a negative answer had been received.

*So, no answer is a No and you move on. While Grievance Procedures can be time consuming, the goal is always to move the Grievance along quickly in the hopes of reaching a resolution sooner rather than later.*

# Timeliness

- Grievances not filed on time or not advanced to the next stage within the provided time limits will be lost at that point. Time limits may, however, be waived or extended by mutual consent.



# Decision

- Grievance procedures are designed to resolve Grievances. This can happen at any point in the process. However, if the parties are unable to reach a resolution together prior to the last stage of the Grievance Procedure, contracts can differ in how a decision is ultimately reached. Does your Grievance Procedure provide for Arbitration as the final stage?

If so, is the decision binding or advisory?



# Distinguishing between “Grievances” and “grievances”

## “Grievances”

1

2

3

4

5

## “grievances”

1

2

3

4

5

# Analyzing Your Grievance Procedure



How does your CBA define a Grievance?




Are there things you cannot grieve?




Can you grieve a past practice?  
Can you grieve Employer policy?







**How many stages are in your grievance procedure? Who, ultimately, gets to make the final decision on a Grievance?**




*Grievance procedures are typically multi-step. This is to allow higher-up supervisors to review the matter to see if it should be resolved before advancing. Whether your procedure ends with arbitration and whether that arbitration is binding is important to know from the beginning.*



**Who can file a Grievance? A member?  
The Union?**


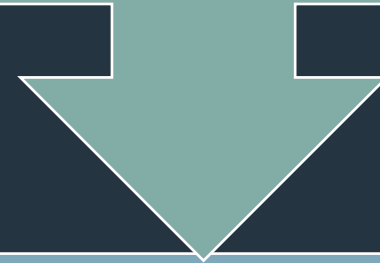


*Who is appropriately the Grievant? Some contracts require the Union to file the Grievance; others require the aggrieved person to file the Grievance.*






**When must a Grievance be  
filed?**



*A Grievance not filed within a certain  
number of days from the act  
complained of is considered waived.*




**At what Stage must a  
Grievance be filed?**


*Depending on the nature of  
the Grievance and sometimes  
the identity of the Grievant, a  
Grievance may be filed initially  
at Stage Two or Three instead  
of Stage One.*




**What are the time limits at each stage?**



*You must be mindful of the time limits at each stage – the failure to timely file or advance a Grievance will mean it is waived.*




**Are time limits  
measured in  
workdays or  
calendar days?**



*If the contract does  
not specify, always  
assume the shortest  
time period possible.*

**What does the CBA say can be done if the Employer fails to reply to a Grievance at any particular stage?**



*The typical Grievance Procedure allows a Grievant to advance the Grievance to the next stage if there is no timely response at any given stage.*

**Can time limits be waived? If so, how?**




*Parties can agree to stop-the-clock to allow for more time. Such agreements should be reduced to writing.*






**Are group grievances permitted? If so, how are they defined? Are they processed differently than individual Grievances?**



*Some contracts allow for “group grievances” meaning that there is more than one Grievant and the act complained of affects a large group. It is typical to allow such Grievances to be filed at an advanced stage of the Grievance Process.*





**Who files for  
arbitration?**



*Most contracts allow any member to file a Grievance. However, most contracts provide that at some point in the process the Grievance becomes the Union's obligation. When this happens it is only the Union that can decide to file for arbitration. This is an important consideration because there are circumstances where one Member's grievance can adversely affect the entire membership.*

# What We Have Covered in Session One?

- *Let's just look back and see how much we have covered so far. You know where to find your Grievance Procedure and you know how your procedure may differ from someone else's. You know that a Grievance must be pursued in a timely manner and may be waived if not timely pursued. You also should know now that not every complaint is a Grievance and what it takes to follow your own Grievance Procedure. Finally, you know that Members are obligated to follow the general rule: "Obey Now, Grieve Later."*

# Session Two

**You will need:**

- **a copy of your contract;**
- **a copy of your Union's Constitution;**
- **something to write/take notes on; and**
- **at least one highlighter in your favorite color.**





# Duty of Fair Representation

# There are generally 3 types of DFR claims related to Grievances:

That the Union failed to process a Grievance or did so incompetently.

That the Union acted inappropriately to protect one member over another where there is a conflict between two (or more) members.

Non-union members who claim that the Union failed to process their Grievances or did so incompetently.



# To avoid a DFR, the Union must do the following:

**Consider all Grievances solely on the merits presented.**

**Investigate the Grievance thoroughly.**

**Process the Grievance promptly – do not miss time limits for filing and advancing the Grievance.**

**Take notes and keep written records.**

**Keep the Grievant informed.**

**Treat all members of the bargaining unit the same. This includes union members and non-members.**

**Have a valid reason for any action taken on a Grievance.**

**If the Grievance clearly lacks merit and cannot be won at the lower stages, or in arbitration, drop it.**

**The settlement of Grievances.**

**Establish an internal appeals procedure.**

# 01

Look to the facts underlying the member's complaint in determining whether a Grievance has occurred;

# 02

If a Grievance has been committed, determine whether to pursue the Grievance through the Grievance Procedure;

# 03

You may not refuse to process the Grievance because you do not like the Grievant. Forget the Grievant!

Consider all Grievances solely on the merits presented.





# Investigate the Grievance thoroughly.



The Union has a responsibility to investigate the complaint thoroughly; a superficial investigation is not enough;




Interview the Grievant; locate and interview witnesses; ask for statements in writing;




Do not accept without questioning anything which is said; check it out!



The Union has a responsibility to investigate a complaint before deciding whether the complaint has merit as a Grievance.



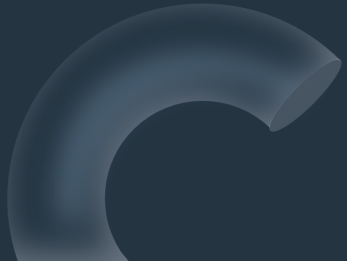
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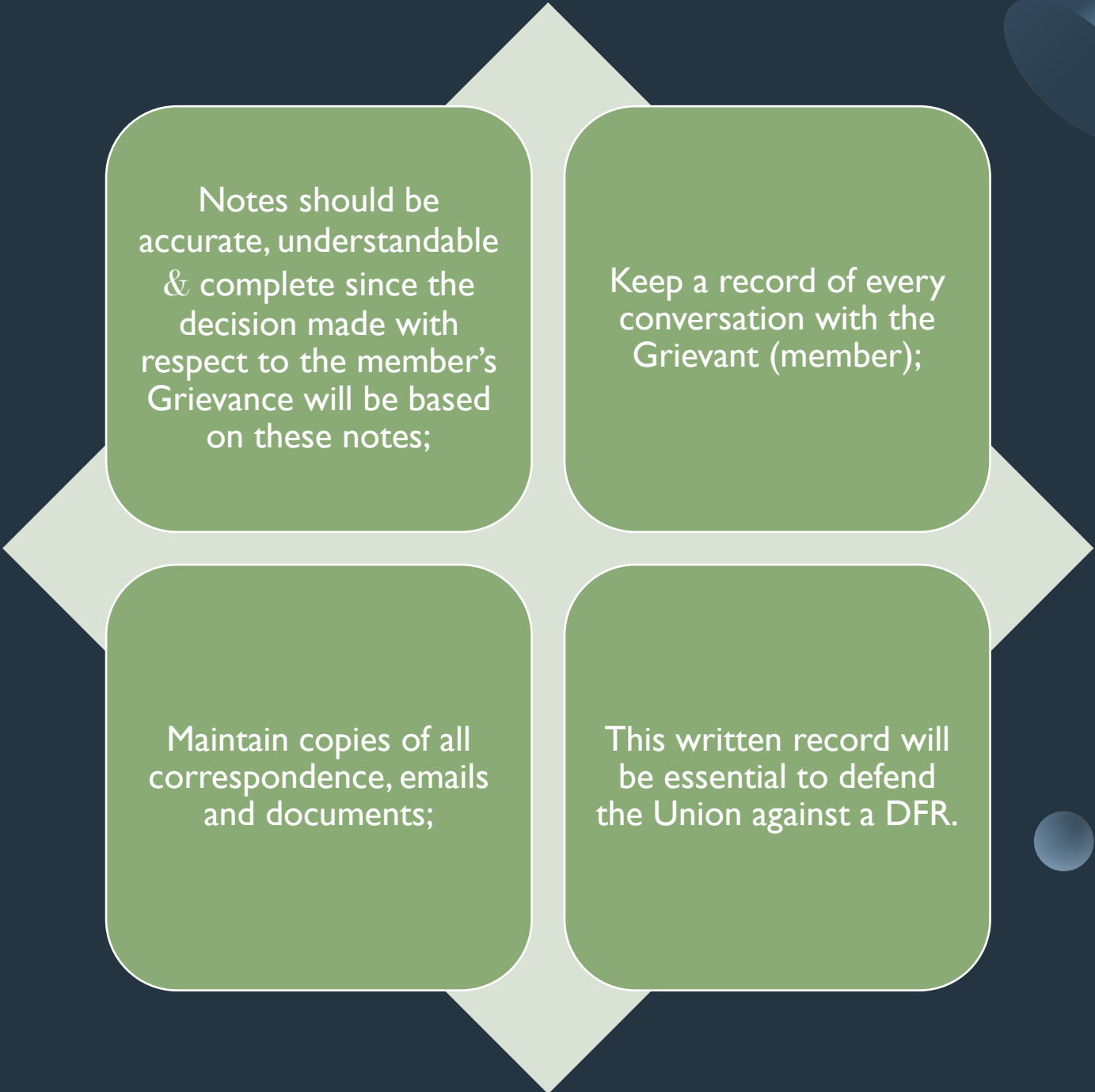


The Union has a responsibility  
to file and advance Grievances  
within the time limits  
established in the Grievance  
Procedure;

Failure to comply with the  
time limits can result in having  
a grievance 'die' and leaves the  
Grievant with no recourse  
against the Employer;

If the Union needs more time  
to investigate, make a written  
request to management to  
extend the time limit; No  
agreement to extend? File the  
Grievance anyway.





Notes should be accurate, understandable & complete since the decision made with respect to the member's Grievance will be based on these notes;

Keep a record of every conversation with the Grievant (member);

Maintain copies of all correspondence, emails and documents;

This written record will be essential to defend the Union against a DFR.

# Take notes and keep written records.

# Keep the Grievant informed.



Many DFR's are filed because the Grievant believes the Union is keeping something from the Grievant; avoid the appearance of this by sharing all information with the Grievant as it develops;



Once the Union decides not to file or advance a Grievance to any particular stage, communicate this to the Grievant *in writing*;



In denying to file or advance a Grievance, the Union must also inform the Grievant of her right to appeal the denial.




It is unlawful to refuse to process, or to give superficial treatment to, the Grievance of a member of a person who is not a member of the Union;

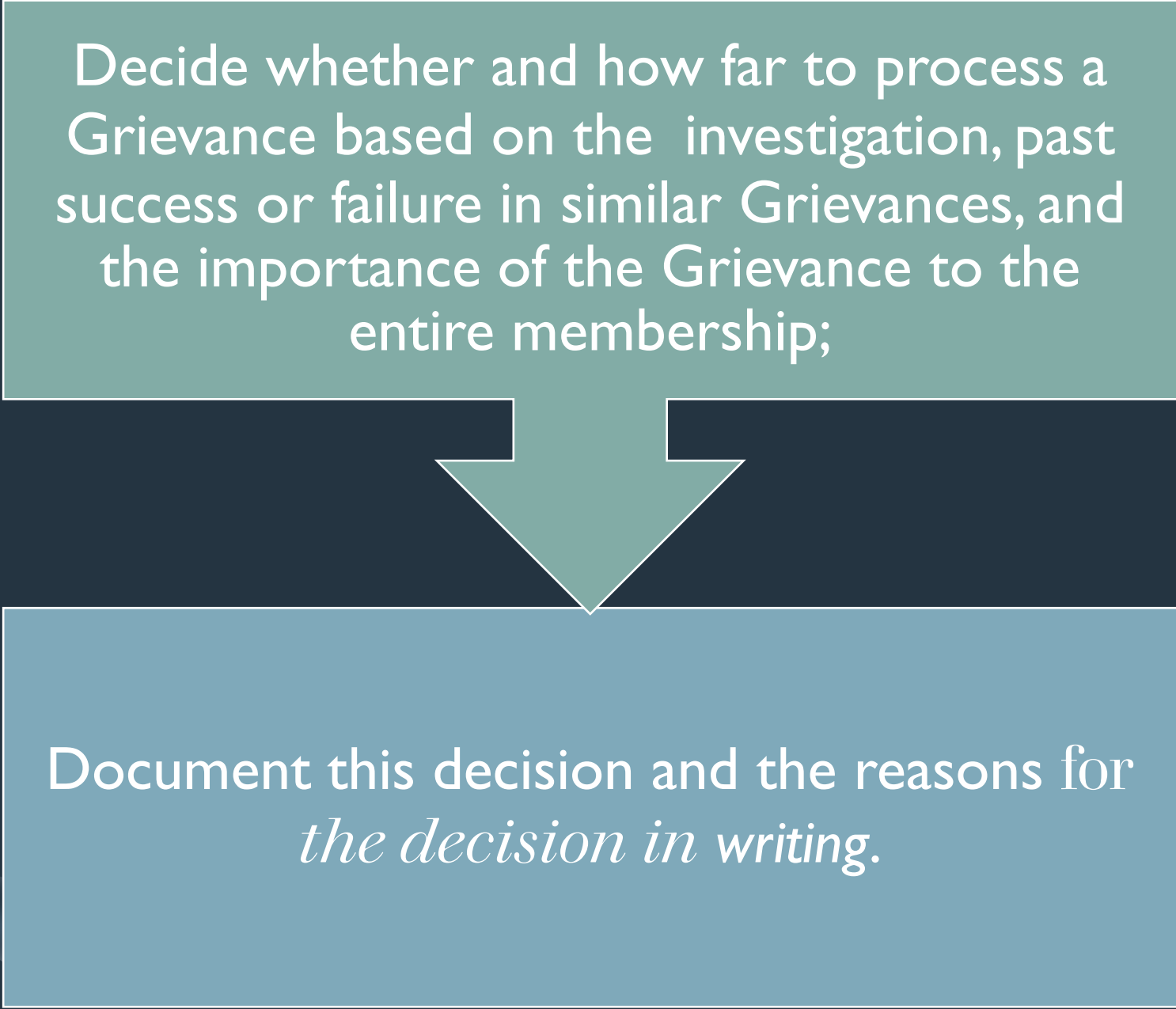


Additionally, a Union cannot discriminate based on certain factors (race, gender, etc.)

Treat all members of the bargaining unit the same.  
This includes union members and non-members.



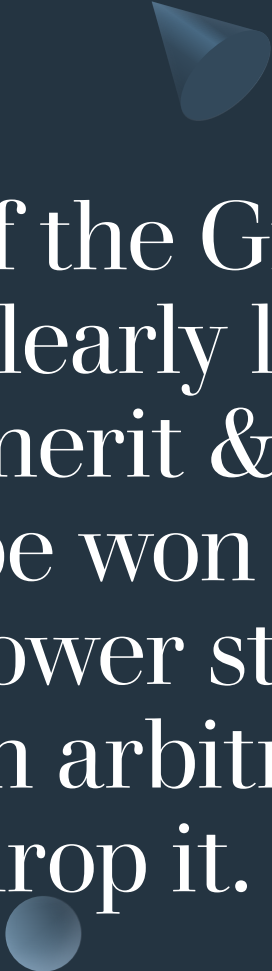
Have a valid  
reason for any  
action taken on  
a Grievance.



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graph TD; A[Decide whether and how far to process a Grievance based on the investigation, past success or failure in similar Grievances, and the importance of the Grievance to the entire membership;] --> B[Document this decision and the reasons for the decision in writing.];
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Decide whether and how far to process a Grievance based on the investigation, past success or failure in similar Grievances, and the importance of the Grievance to the entire membership;

Document this decision and the reasons for  
*the decision in writing.*



If the Grievance  
clearly lacks  
merit & cannot  
be won at the  
lower stages, or  
in arbitration,  
drop it.

Do not let a member's attorney or the threat of a DFR influence the Union's judgement on the merits of a Grievance;

Courts recognize a Union's right and obligation to avoid meritless grievances;

The Union Rep can speak with the Member and explain what more is needed to determine whether there is a Grievance to be filed or to explain why the Member has not presented a Grievance that can be pursued;

However, the decision must be made in writing and the Union should record the objective reasons why it did not file or advance the Grievance;

"I have reviewed your allegation(s) that \_\_\_\_\_. I have also reviewed the written statement you provided on (date) and the contract provision you allege has been violated (Article \_\_\_\_, Section \_\_\_\_).

"Unfortunately, I have determined that your complaint is not a grievance that can be pursued through the contractual Grievance Procedure. I reached this decision because: (explain reason and rationale for the denial).

"You may appeal this decision by notifying \_\_\_\_\_ in writing that you wish to appeal. Your appeal must be received no later than \_\_\_\_\_."



A Union has the right to resolve a Grievance as it sees fit;



There should be a written record supporting the resolution made;



Once a resolution is reached, the Grievant should be notified in writing, immediately.

# The settlement of Grievances



# Internal appeals procedure.

- The Union should have a Standing Grievance Committee;
- The Grievance Committee makes determinations that a Grievance has merit and should be pursued, or this can be done by the Grievance Chairperson;
- If the Committee makes each decision, then the Union's Executive Board can serve as the appellate body that hears a member's appeal (or, if the Grievance Chairperson made the initial determination, the Grievance Committee can hear the appeal);
- The Member must be permitted to present her appeal to the appellate body; the Grievance Chairperson (or the person who made the determination not to pursue the Grievance) presents the opposing position;
- The appeal must be made, and a decision reached, within the time allotted to file or advance the Grievance.



# The Grievance Committee

Formation & Purpose/Proceedings





# The Grievance Committee's Tools

The contract

Employer policies

Employer  
memoranda/emails

Building/Employee  
Handbook

Employer Meeting  
Agenda/Minutes

Law and Regulations

Prior negotiations  
notes, particularly  
those that contain  
proposals from both  
sides

Earlier  
Grievance/Arbitration  
decisions

Employee/Member List  
(address & phone)

Employee work  
schedules

Important telephone  
numbers

Grievance forms

Grievance investigation  
documents

# Key Criteria in Avoiding DFR Claims



- Be honest.
- Act in good faith.
- Be non-discriminatory.
- Be informed and communicative.
- Have a rational basis for making decisions.
- Have an internal review procedure.
- In distinguishing between Grievances and grievances remember that even where the complaint does not rise to the level of a Grievance, or cannot be pursued for some reason, the Union should still advocate on behalf of its members to resolve grievances (complaints).

# What We Have Covered Thus Far?

- The Importance of the Grievance Procedure
- How to Analyze Member Complaints
- How to Determine Whether You Have An Actual Grievance
- What It Means to “Obey Now, Grieve Later”
- Technical Elements of a Grievance:
  - Time Limits   Stages   Timeliness   Decision
- Gained Familiarity with Your Grievance Procedure
- How to Analyze a Potential Grievance
- How to Investigate Member Complaints
- How to Treat Members Throughout the Process
- Duty of Fair Representation:
  - What is a DFR and How do I protect the Union?
- The Grievance Committee: Formation, Purpose & Proceedings

# Session Three

**You will need:**

- **a copy of your contract;**
- **a copy of your Union's Constitution;**
- **something to write/take notes on; and**
- **at least one highlighter in your favorite color.**



# KNOW YOUR CONTRACT

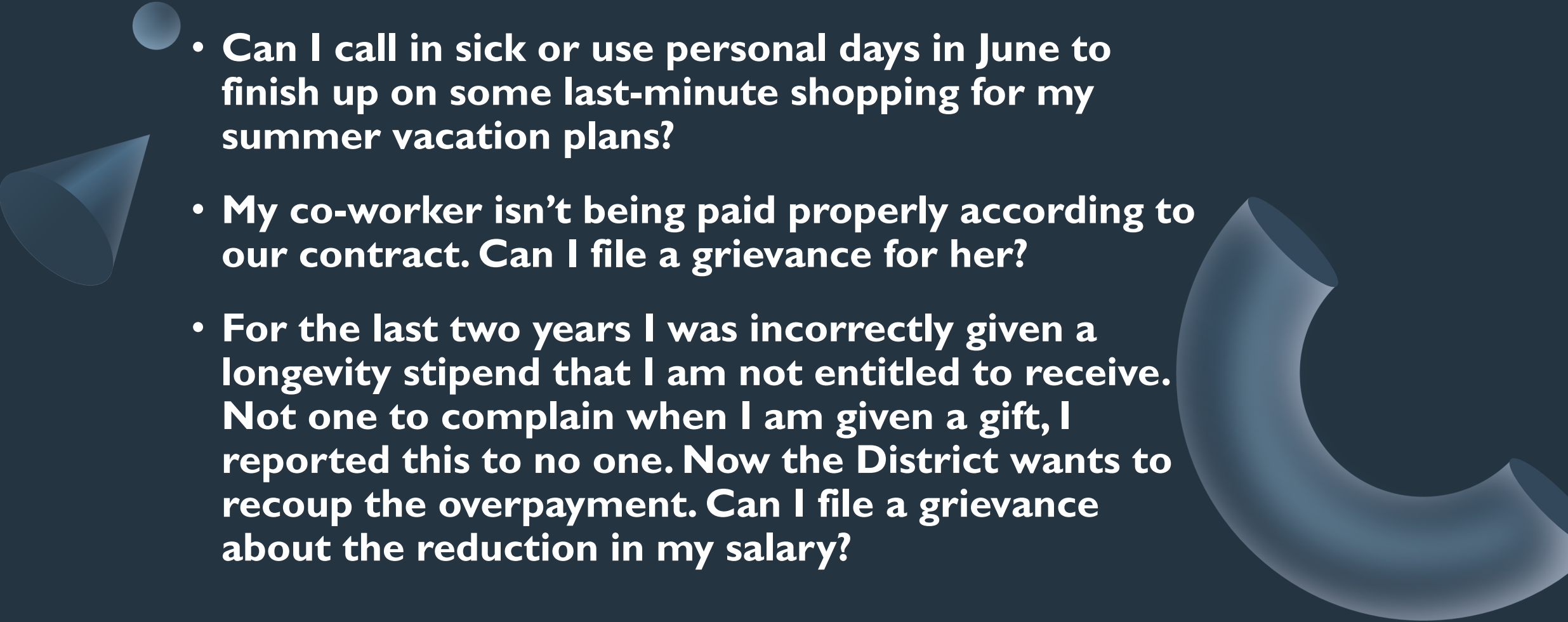
As a Union Leader you  
should actually read your  
contract. Most members  
won't!



# What Does the CBA Provide?

- **I am a substitute or part-time worker. Am I entitled to health insurance?**
- **I applied to fill a vacancy in my tenure/certification/work area but did not get the position. Have my rights been violated?**
- **T/F? I have the right to attach my comments to an evaluation report.**
- **A community member sent a letter of complaint to my supervisor. Can the supervisor place that letter in my personnel file without my knowledge?**
- **The Employer posted that starting September 1 the workday will be 15 minutes longer than this year. Can we file a Grievance?**
- **Before I started working here I did the same type of job in the City of New York for 15 years. All my experience is verifiable. Is my employer obligated to give me any salary credit for my prior experience?**

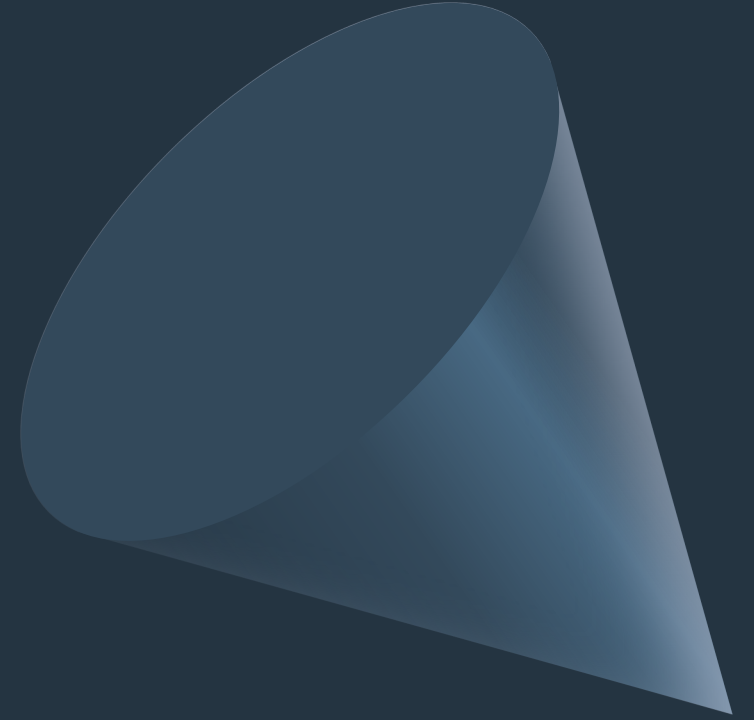


- 
- **Whew! I made it! This is my 30<sup>th</sup> year of working for our Employer. I earn \$45,316. Am I entitled to any other compensation?**
  - **Can I call in sick or use personal days in June to finish up on some last-minute shopping for my summer vacation plans?**
  - **My co-worker isn't being paid properly according to our contract. Can I file a grievance for her?**
  - **For the last two years I was incorrectly given a longevity stipend that I am not entitled to receive. Not one to complain when I am given a gift, I reported this to no one. Now the District wants to recoup the overpayment. Can I file a grievance about the reduction in my salary?**



# Grievance: Investigation & Preparation

How to work through  
members' issues.



**Treat every person who comes to you with a complaint or a question with dignity.**

**Try to meet with the Member in a private setting.**

**Devote enough time to give the matter a full hearing.**

**Be supportive, by make no judgements or promises until you know all the facts. Remember – when you speak with the Member all you know is what the Member knows.**

**Secure this minimum amount of information in this first interview:**

**WHAT** action/inaction is the person complaining about?

**WHO** is involved, on both sides?

**WHEN** did it first occur?

**WHERE** did it first occur?

**WHY** does the member think this is a “grievance”?

**HOW** should the problem be remedied?

**BASIC** work history of the potential Grievant.

**Take notes.**

**Collect all relevant correspondence, records, and/or documents.**

**Ask the Member to do something – i.e., draft a letter, write up the incident, write an explanation, etc.**

**Ask the Member to review the contract and identify the provision violated.**

**Tell the Member what steps you are going to take and when you are going to get back to them. Then be sure to do both!**

**Accept nothing as fact until you can verify it.**

**Try to identify specific contract provisions that may apply to this situation**

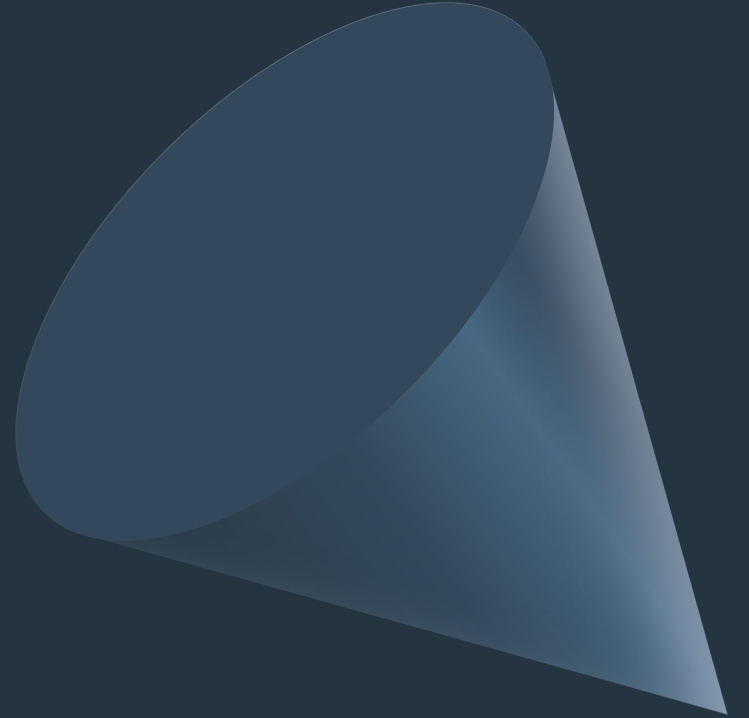
**Investigate and keep notes. Interview all concerned parties and potential witnesses on both sides.**






# IS THE COMPLAINT A GRIEVANCE?

What do you need to know?



# What Do You Need To Know To Determine Whether A Member's Complaint is a Grievance?

Is there CBA language that addresses the issue or problem?

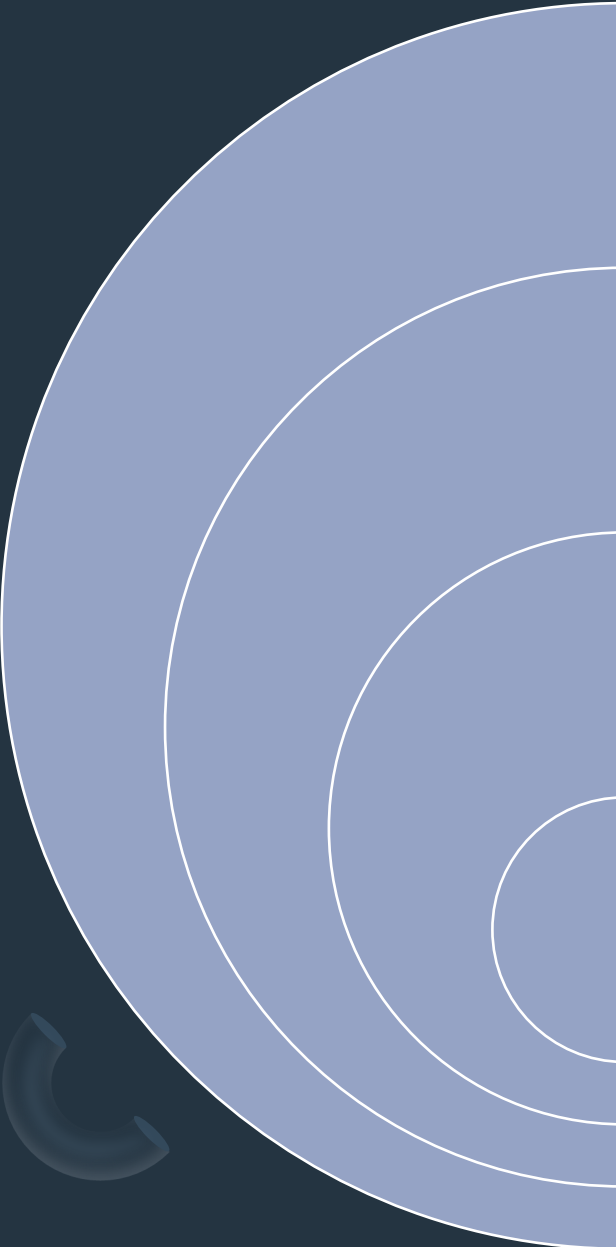


Is there a law or regulation that governs the issue?



Is there a 'past practice' that controls?

Does the action complained of (or inaction) violate any of these?



If you cannot answer the above, what information do you need before you can determine how to proceed?  
Complete the investigation.

If the action/inaction complained of violates express language of the CBA, are there ways of trying to resolve the problem before filing a grievance?

If the action/inaction complained of violates both the CBA and some other law or regulation, how should you proceed?

If the action/inaction complained of does not violate the contract, a law or regulation, how will you help this member? How do we advocate?


# Interim Summary





A decorative graphic on the left side of the slide. It consists of a solid blue sphere in the upper left and a larger, translucent blue ring or torus shape below it, partially cut off by the left edge of the frame.

# Drafting the Stage One Grievance



[UNION LETTERHEAD]

Grievance Form

Grievance No. \_\_\_\_\_

Date: \_\_\_\_\_

Grievant: \_\_\_\_\_

Date of Violation: \_\_\_\_\_

Nature of Violation: (cite CBA Article)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature of Grievant: \_\_\_\_\_

.....

Employer Response: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

Signature of Employer Representative/Title: \_\_\_\_\_

# Drafting the “Nature of the Violation” Section

## *Activity:*

- *Use one of the complaints you wrote on your list when we started the first session.*
- *Select one that you have decided is, in fact, a Grievance – uppercase “G”.*
- *Locate the contract provision that has been violated and draft the “Nature of Violation” section.*



# WHO is grieving?

List the name or names of all the Grievants. If you do not know or are unsure, list the names of those affected that you do know and add the statement “including all others who may be similarly situated or affected.”

If you have a large number of Grievants, then the Union may want to file a “group grievance”. In such a case, you need to find out as much information about “the group” – i.e., who may be affected by this grievance. Also, check your Grievance Procedure to see at what stage you should file the Grievance. Typically, group grievances are brought forward by the Union on behalf of the group and sometimes directly to a Director or other higher up management level person.

# WHEN did the grievance occur?

Or, when did the Member(s) first realize there was a problem?

# WHAT happened?

Describe the specific event or action complained of. Clearly list what the Union/Member claims the Employer did or failed to do that gives rise to the complaint (Grievance).

# WHY is it a Grievance?

What are the specific sections of the contract alleged to be violated? If the action complained of also violates a past practice or Employer policy, then also include the specific practice or policy that the Union is alleging was violated. Be specific! If you fail to cite a particular section of the contract in your initial grievance filing, you may be precluded from adding it to the Grievance later. You should also include the phrase “including but not limited to” as in “This violated the collective bargaining agreement, including but not limited to Article \_\_\_\_, Section \_\_\_\_.”

# WHAT remedy is requested?

Be sure to include in your remedy everything that the Member might be entitled to receive, even if you think it is a long shot. In grievances that involve monetary compensation, always request that the Member “be made whole” and that she should get “backpay with interest” from the time that the problem first occurred, even if that goes back to before you filed the Grievance. You should also work into your requested remedy the statement “and any other appropriate remedy”.

# What We Have Covered in Session Three?

- Know Your Contract
- Member's Complaint → Grievance: Listening, Investigation & Preparation
- Gathering Information/Conducting an Investigation
- Drafting the Stage One Grievance
- Drafting the Nature of the Violation:
  - WHO is grieving?
  - WHEN did the grievance occur?
  - WHAT happened?
  - WHY is it a Grievance?
  - WHAT remedy is requested?



# Session Four

*And now for something totally different ...*



# Subjective Considerations

Role of the Union Representative

Grievances and Relationships: Why take this  
Grievance?

Presenting the Grievance to the Administration

When the Member Doesn't Have a Grievance

How Best to Rely on Your NYSUT  
Labor Relations Specialist



# Role of the Union Representative

Develops the trust of those she represents.

Develop two-way communications in order to be aware of possible contract violations.

Determine how problems can best be handled – as **g**rievances or **G**rievances.

Prepare Grievances for presentation to the supervisor.

Present Grievances and be present at other steps in the Grievance Process, as required.

Preserve confidentiality of personal Grievances.

Act as liaison between the Grievant and the Union's resources.

Maintain records of all Grievances.



# Presenting the Grievance to Administration

## How To Present a Grievance

- Know Your Facts – Be Confident
- Stick To The Point – Be Businesslike
- Settle The Grievance At the First Step
- Take a Positive Position – Not a Defensive One
- Present as Though The Burden of Proof Is On The Supervisor
- Disagree With Dignity
- Maintain a United Position
- Be Prompt – Follow The Grievance Through



## *Know Your Facts! Be Confident.*

When you are going into the conference with the supervisor, do not try to outsmart her.

Don't carry a chip on your shoulder and don't anticipate being outsmarted or outwitted.

Know your contract – your rights under it – and stick to them.

State the facts plainly.

Avoid opinions and hearsay (rumor).

Too many Grievances are lost because the Union Rep did not have the facts.

Rarely does the presentation win the Grievance – it takes Facts!

If you have done the investigation properly, this should be easy.

During the conference have a designated note-taker. Let the supervisor see that someone is writing her words.



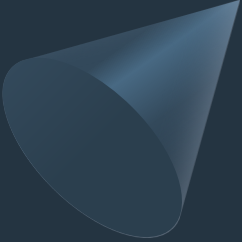
## Stick To The Point! Be Businesslike.

As the discussion progresses, the supervisor may try to sidetrack the real issue and lead you into a discussion of other, irrelevant issue, or inject additional complaints against the employee. Insist on discussing the issue raised by the Grievance – Only! And nothing else.


## Settle Grievance At The First Step!

The most desirable result is to have the Grievance resolved at the first step. The next step is an appeal step and it usually becomes more formal. (Some Grievance Procedures even allow for verbal Stage One grievances.) The next step will involve additional time and does not lend itself to a resolution as easily as the first step.


# Take A Positive Position – Not A Defensive One



Don't be timid or convey the feeling to the supervisor that you are presenting the Grievance because it is an obligation on your part. Avoid being apologetic – impress upon the supervisor that there is no doubt in your mind that the Grievance has merit and should receive an equitable settlement.



## Present as Though the Burden of Proof is on the Supervisor



Let the supervisor try to justify & prove that the action taken was the correct action. Don't try to show her where she is wrong. Let her carry the burden of proof in showing you how right she was in the first place.

A word of caution here: It is not wise to place the supervisor in a position where she cannot retreat from without a great deal of embarrassment to herself. If possible, leave the door open with an easy way out.





### Disagree With Dignity

Disagree with the supervisor in a calm, firm, positive manner. Avoid pounding the table, blowing up, or making empty threats. Declare your intention of taking the Grievance to the next step. As a rule, supervisors prefer to settle complaints before the complaint is carried to the higher management level.


### Maintain A United Position

Make sure you and the Grievant are both in accord on the facts and issues before you enter the conference with the supervisor. Make sure you have an opportunity to speak with the Member in private prior to the conference. If you have a difference of opinion during the conference, take a recess and work the problem out in private; present a united front to the supervisor.






## Be Prompt – Follow The Grievance Through



Refer the Grievance to the Grievance Chairperson when the matter is not resolved at the first stage. Give her all the facts, the entire investigation, all related emails, correspondence and documents. Provide the notes from the conference with the supervisor. Do not allow the Grievance to lay around. Keep a constant check on the progress of the Grievance. Report back to the Member and the other Members at the worksite – they are concerned, too!





## **When the Member Doesn't Have A Grievance**

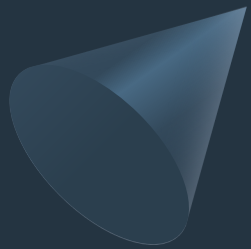
For most Union Representatives the process of handling Grievances is, or becomes, routine. And when a Member comes to us with a problem, we check it out. But what happens when we do everything we can but there is no live Grievance? (A live Grievance is referred to as “viable.”)

**What Not To Do →**

**File A Grievance  
Mislead The Member**

**What You Should Do →**

**Communicate With Your Member  
Empathize & Brainstorm**



If you do file a non-viable grievance, you leave the Member with the impression that you can achieve something with the Grievance Procedure that it is not designed to do. You also raise the Member's expectations when you already know you cannot fulfill them. Filing a non-viable grievance damages your credibility with management. If you file Grievances for every complaint you will quickly lose the Employer's respect and, more importantly, your judgement will be called into question when you present other issues which might very well be legitimate Grievances.



Tell the Member right out that the problem is not a Grievance under the contract. If, when you first listen to the Member's complaint you asked her to review the contract and locate the provision that is violated, this will help you communicate the news to the Member that she has no viable Grievance. In fact, she may have come to this conclusion herself. At this point, depending on the nature of the complaint, you can brainstorm other potential solutions.

## How Best to Use Your NYSUT Labor Relations Specialist

Notify your LRS at the earliest possible date and discuss the nature of any complaint. Consider her advice in proceeding during the investigation and through the formal Grievance Procedure.

Provide a duplicate file for the LRS's use and forward new material as it becomes available.

Normally, the LRS should not be asked to present the Grievance at any stage except at the arbitration hearing for the simple reason that her presence automatically creates a more formal climate at any preliminary stage. This more formal climate makes settlements far more difficult, particularly with an 'outsider' present. There are exceptions, of course.

The LRS typically prepares and files the “Demand for Arbitration” with the American Arbitration Association or PERB, as appropriate, but only after consultation with the Local Union President.

Allow the LRS to select the Arbitrator from the list provided by the AAA or PERB.

The LRS should present all grievances at Arbitration Hearings.

The LRS should prepare and file all Briefs and/or Memoranda of Law related to the case.

Finally, after the Arbitrator issues an award, forward a copy of the Arbitration Costs (filing fee, arbitrator’s invoice, stenographer) to the LRS for reimbursement dur from NYSUT.



## Conclusion

In this final session, we have discussed the importance of listening to a Member's complaint and establishing relationships with Members – the Grievant, any involved witness, non-Members, etc. Solid relationships improve the outcomes for any investigation.

We also reviewed how Grievances are presented to the Employer and outlined best practices for dealing with a Member whose complaint is not a Grievance.

Finally, we reviewed ways in which your LRS should be relied upon during the Grievance Process.

### **Analyzing Your Grievance Procedure**

- 1. How does your CBA define a Grievance? Is it a broad definition or narrow? Are there things you cannot grieve? Can you grieve a past practice? Can you grieve Employer policy?**
- 2. How many stages are in your grievance procedure? Who, ultimately, gets to make the decision on a Grievance? Can all Grievances be brought to arbitration? Is arbitration final and binding?**
- 3. Who can file a Grievance? A member? The Union?**
- 4. When must a Grievance be filed?**
- 5. At what Stage must a Grievance be filed?**
- 6. What are the time limits at each stage?**
- 7. Are time limits measured in workdays or calendar days?**
- 8. What does the CBA say can be done if the Employer fails to reply to a Grievance at any particular stage?**
- 9. Can time limits be waived? If so, how?**
- 10. Are group grievances permitted? If so, how are they defined? Are they processed differently than individual Grievances?**
- 11. Who files for arbitration?**



## The Crucial “W’s” of Grievance Investigation

WHO is involved?

1. Grievant (member, members, the Union) \_\_\_\_\_
2. Responsible management person(s) \_\_\_\_\_
3. Witness(es) \_\_\_\_\_

WHEN did it happen?

1. Time & Place of Event \_\_\_\_\_

WHEN must the Grievance be filed? \_\_\_\_\_

1. Stage One conference \_\_\_\_\_

WHERE did it happen?

\_\_\_\_\_

WHAT happened?

1. What did management do or fail to do that gives rise to the complaint?

\_\_\_\_\_

WHY is this grievable?

1. Contract language \_\_\_\_\_

WHAT must be done to make the Grievant WHOLE?

1. Corrective action requested \_\_\_\_\_
2. What would we settle for? \_\_\_\_\_

## **Interviewing the Grievant and Other Witnesses**

Once you have gotten the background information necessary to determine that the Member's complaint is a Grievance, you can then start to develop a list of additional witnesses who might be able to support your case. At times, people will be reluctant to be involved and witnesses may not come forward voluntarily. As the member's advocate, you may have to search out and identify those persons who can furnish information about the incident.

When interviewing witnesses, remember these rules:

- ❖ Treat each Member with respect and dignity, even if you do not like the person.
- ❖ Try to meet in a private, quiet setting. This will prevent distractions so you can give the member your full attention. Avoid interviewing witnesses in the presence of one another. Obtaining the details separately helps prevent one witness from being influenced by what the other witness has told you.
- ❖ Maintain an objective attitude. Do not express preconceived notions, ideas, or conclusions. You must be neutral in order to accurately gather all the facts.
- ❖ Ask open-ended questions in order to get as much information about the issue as possible, whether "good" or "bad" for your case. Recognize discrepancies in the Grievant's or witness's story and try to clarify it.
- ❖ Accept nothing as fact until you can verify it. Documents are always better than statements. Ask the Member and/or the Employer for copies of any relevant documents or other evidence.

## **Take accurate and complete notes**

It is a good practice to take notes while interviewing the Grievant or witnesses and while you are attending the various Grievance stage meetings. If for some reason you cannot take notes at the same time as the interview or meeting, then you should write the information down as soon as possible after the event so that it is fresh in your mind. The longer the delay, the greater the danger of omitting small but important facts.

Notes must be accurate, understandable, and as complete as possible. Record the time, date, persons involved, and what was said as accurately and completely as possible. Your notes will become very important later on when you are trying to recall what was said or not said at a particular meeting. And because memories fade, your notes may be the only written record of what transpired at a particular meeting.

## **Investigating the Complaint**

Investigation is the most important part of problem solving. When investigating a Member's complaint, ask questions that will enable you to determine the facts of your case. Do not believe everything that is told to you, as that person may have his/her own agenda. Be alert for discrepancies and contradictions in statements. Recognize the difference between facts and conclusions. If the Member says, "He harassed me" ask, "What specifically did he do?" **Remember there are usually three sides to every story – the Member's, the Employer's, and the Truth.** In order to properly investigate a Member's complaint, you should be able to answer the following questions.

### **WHAT?**

What is the problem? What is the Member alleging that the Employer did or did not do?

What specific section of the contract applies or was violated?

What past practice may apply to the situation? – i.e., What has been done in the past when this situation has occurred?

What remedy is the Member seeking? What does the Member or the Union want the District to do or not do in order to solve this problem?

### **WHO?**

Who are the persons involved in the incident?

Who else has this ever happened to?

Who is the best management person to talk with to try and resolve this problem?

Who from the Union should talk to the management representative? (The Building Representative? The Union President?)

Who can we get to testify as a witness to support our claim?

Who has the documents we need?

### **WHERE?**

Where did the problem occur? Is it isolated to one member or one work location, or is it happening to many members in several locations?

### **WHEN?**

When did the problem first occur?

When did the Member first learn/realize that there was a problem?

When does the Union/Member need to file the Grievance in order to comply with the time limits in the contract?

### **HOW?**

How has the Member(s) been affected or harmed by the Employer's action or inaction?

How have such matters been resolved in the past?

How should we proceed?

## **The Grievance Committee's Tools**

**Including, but not limited to:**

- 1. The contract**
- 2. Employer policies**
- 3. Employer memoranda/emails**
- 4. Building/Employee Handbook**
- 5. Employer Meeting Agenda/Minutes**
- 6. Law and Regulations**
- 7. Prior negotiations notes, particularly those that contain proposals from both sides**
- 8. Earlier Grievance/Arbitration decisions**
- 9. Employee/Member List (address & phone)**
- 10. Employee work schedules**
- 11. Important telephone numbers**
- 12. Grievance forms**
- 13. Grievance investigation documents**

**[UNION LETTERHEAD]**

**Grievance Form**

**Grievance No.** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Grievant:** \_\_\_\_\_

**Date of Violation:** \_\_\_\_\_

**Nature of Violation: (cite CBA Article)**

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**Signature of Grievant:** \_\_\_\_\_

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**Employer Response:** \_\_\_\_\_

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**Date:** \_\_\_\_\_

**Signature of Employer Representative/Title:** \_\_\_\_\_

## **Suggestions for Presenting the Grievance**

### **The Problem of Dealing with Human Beings**

1. No two people are approachable in the same manner; this applies to union members and employer officials alike.
2. The Union Representative is after results that will benefit the Member and the group as a whole; he/she must submerge personal likes, dislikes, fears, and prejudices.

### **Some Points to Remember When Presenting the Case**

1. Prepare the case beforehand!
  - Have your facts down in writing;
  - Have notes organized to guide your presentation;
  - Anticipate the supervisor's arguments and have answers ready;
  - Make an effort to talk to the Member or Members alone before you meet with the supervisor;
  - Talk the case over, if necessary, with other Union Representatives, your Union Officers, or others who might help you (be careful of confidentiality).
2. Avoid arguments among Union people in the presence of the supervisor.
  - If you have a difference of opinion during a meeting, take a recess and iron out the problem in private; present a unified front to the supervisor.
3. In your Grievance Procedure, the Grievant is required to be present. However, the Grievant should be encouraged to assume the role of an observer, and the Grievance representative or Union Representative should present the case.
4. Keep to the point! – avoid getting led off on side issues by the supervisor.
5. Get the main point of the supervisor's argument.
6. Try to narrow the area of difference between the Union and the supervisor;
  - Try to pin the supervisor down as to why he/she did what he/she did or failed to do that should have been done.
7. Avoid getting excited.

8. Treat the supervisor as you would like to be treated.
  - Let any break in good relations come from the other side first.
  - Remember that the representative to whom you are speaking is not always personally responsible for the Grievance; therefore, you may get less cooperation from him/her by trying to place the blame on his/her shoulders.
9. Avoid unnecessary delays.
  - If the supervisor asks for more time, try to determine whether it is an attempt to stall or is based on a sincere desire for more facts needed to settle the case.
10. Settle the Grievance at the lowest possible stage.
  - This saves time.
  - It helps build better relationships in the workplace.
  - The Union Representative will feel like the vital part of the Union that he/she is.
  - Don't pass the buck – if you can settle the Grievance in the first stage, do so.
11. Avoid bluffing.
  - It is only a matter of time until your bluff is called; it is in the long run wiser to develop a reputation for honesty.
12. Maintain your position on the Grievance until proven wrong.
13. Enforce the Contract.
  - If the Union has not complained about similar violations of the contract or past practice before, why should the supervisor give in now?
  - The best contract in the world has no value if the workers and Union Representatives do not require the Employer to live up to its terms.

## **Things To Keep In Mind:**

**Approachability:** refers to the level of comfort that another individual feels in disclosing information to you. Approachability also refers to the degree to which you, as an interviewer, are perceived as approachable. The degree to which a person is approachable is greatly influenced by the way in which that person communicates, verbally and nonverbally.

**Bias:** strong feelings for or against something, a distortion in the way we perceive or understand something. Be aware of personal biases - we all have them.

**Broad-Based Questions:** these types of questions challenge candidates to begin to discuss their qualifications for the position. This type of question is somewhat general, designed to get the candidate talking. Questions must, however, relate in some way to the requirements of the position for which the candidate is applying. Broad-Based Questions should require some degree of introspection, rather than a 'yes' or 'no' answer. They should also refer to topics with which the candidate is familiar, perhaps job-related preferences or choices.

**Close-Ended Questions:** these can be answered with a one- or two-word response. These questions discourage meaningful conversation/ interaction with candidates and can result in an interviewer unintentionally 'rapid firing' questions at a candidate. It is rarely appropriate to use closed-ended questions during an interview, unless you are trying to assess a candidate's willingness or ability to meet a specific job requirement (such as a specific work schedule, completed course work, etc.).

**Compare and Contrast Questions:** require candidates to identify the similarities and differences of two situations or discuss the advantages or disadvantages of two seemingly viable alternatives. Interviewers must ensure that candidates address both parts of the questions. This type of question challenges candidates to draw comparisons between similar - yet distinct - skills and areas of knowledge required for a position.

**Consistency:** As it pertains to interviewing, consistency relates to the need for all interviewers for a particular position to generate consistent information for use in making selection decisions. This should hold true even when several interviewers are involved, and even if not all interviewers meet every candidate.

**Hypothetical Work-Sampling Questions:** describe realistic work situations to candidates, and require them to describe how they would handle those situations. Sometimes, interviewers ask hypothetical questions to determine whether candidates know the right way to handle a situation. At other time, interviewers use hypothetical questions to describe situations for which there is no single right answer, in order to find out how the candidates approach problems and screen out candidates who offer clearly incorrect answers.

**Leading Questions:** These direct the candidate to respond in a particular manner. Avoid asking leading questions during interviews. Using leading questions as a test to see if a candidate has the ability to disagree openly with a person of authority is also ineffective.



**Open-Ended Questions:** These cannot be answered with a one- or two-word response, or with a short phrase. Rather, these questions invite meaningful conversation with candidates and minimize the likelihood that an interviewer will unintentionally 'rapid fire' questions at candidates.

**Validity:** The interview measures an applicant's skills for a specific job. An effective interview yields information that will predict job performance. Although it is difficult to establish good measures of validity, it is possible to make a case for validity if the interview is based on job analysis, if it contains questions that provide evidence about important job-related skills, and if information collected during the interview is systematically related to a specific job.

### **Interviewing Techniques**

- ✓ Have questions prepared in advance.
- ✓ Use same questions for all applicants.
- ✓ Avoid questions that result in having an Applicant indirectly reveal information about membership in a protected category.
- ✓ Interview questions should be based on the requirements/ expectations of the position.
- ✓ Avoid any statement that may be misconstrued as a job offer.

### **Guidelines**

- ◆ Start with broader questions and then work toward specifics. This approach builds rapport during the interview, helps candidates feel comfortable as questions become more challenging, and increases the likelihood of candidates offering candid responses.
- ◆ Candidates go into interviews expecting to showcase strengths and minimize weaknesses. Frame questions so that the candidate understands that the interviewer does not expect to find a perfect candidate (or that the perfect candidate is a somewhat imperfect person). Doing so conveys to the candidate that how he or she handles imperfect situations is more important than perfection.
- ◆ Avoid leading questions in favor of open-ended questions. Questions should not imply a correct answer. Neutrally framed questions encourage candidates to answer candidly and honestly - not in a way they think they are expected to answer.
- ◆ Do not use complex constructions. Make questions straightforward.
- ◆ Remember that an interview is not a test.
- ◆ Avoid asking questions that have been answered in an application or resume. Focus instead on learning about the applicant's skills, knowledge, and behavioral characteristics that are required for the position.
- ◆ Taking notes during an interview actually shows the candidate that you are concerned to

record what the applicant tells you in an accurate way. Recording information also helps you compare candidates days or weeks after interviews are over. Notes provide a written record of the interview which is particularly important if the hiring decision is ever questioned.

- ◆ Do not take notes on the application or resume. Prepare questions in advance and take notes on that paper. Notes should pertain to skills, knowledge, and behavioral characteristics that are required to perform the position, and nothing else. Do not use code, and do not create notes that are intended to help you remember the candidate (“round face” “long hair”). Such notations are unrelated to the position and could lead to allegations of unlawful discrimination. Remember candidates on the basis of qualifications, not appearance.

### Setting the Stage

- ▶ Be prepared for the interview in advance.
- ▶ Interviews should occur in a private setting, not an open cubicle. Disruptions should be minimized.
- ▶ Turn off your monitor and other electronic devices before conducting interview. Mute volume on computer and telephone. These disruptions are distracting to you and the candidate. The interview process and the candidate deserve your complete attention.
- ▶ Family photos invite disclosure of personal information. Be attentive to displays in your office. You should refrain from inviting revelations that are not germane to the interview (that is, to job-related information). Personal photos, etc. can invite such revelations.

### Conducting the Interview

- ▶ Be professional. Even if your working style is somewhat informal, conduct the interview in a structured and professional manner.
- ▶ Introductory Comments: important to establish immediate rapport and allow candidate the chance to speak aloud before the start of the actual interview.

#### Examples:

“Thank you for coming in to meet with me today.”

Rather than thanking a candidate at the end of an interview, as is customary, thanking someone at the start shows that you value their interest in the position and in the District. If you can add a specific reason (inclement weather conditions, a particularly early/ late appointment, etc.) thank them for coming in despite that factor.

“The weather certainly has been particularly cold (hot/windy/rainy/snowy) lately, hasn’t it?”

Weather is an ideal topic for rapport building for several reasons. First, we all experience it and it provides a common experience to discuss. Second, weather (usually) is unrelated to politics, religion, sports, or any other topic. Third, since weather is constantly changing most people take notice of it and form opinions about it. Weather provides an appropriate and neutral discussion opportunity for rapport building.

“Can I get you a glass of water?”

Building rapport involves what you do, not just what you say. Welcome the candidate by offering a beverage. A variety is not important; offer what you have.

“Let me tell you how we are going to proceed today.”

Providing the candidate with some idea of how the interview is going to proceed helps reduce anxiety by informing the candidate what he or she can reasonably expect. It will reassure candidates who are eager to ask questions that will demonstrate their knowledge of the position/ District, when you tell them that you will present an opportunity for them to ask you questions.

### **The Interview**

- ▶ Identify verbal and nonverbal cues that may indicate a need to probe for more information to ascertain credibility.
- ▶ Recognize when and how to ask probing follow-up questions during the interview.
- ▶ Recognize when to ask questions that probe for contradictory information to prevent basing decisions on first impressions.

### **Ending the Interview**

Again, remain professional and appropriate:

- ▶ Be consistent.      Whether the interview went well or not, whether you have a positive or negative impression of the applicant by the end of the interview, end the meeting as you would any other.
- ▶ Be neutral.          An interview is a meeting where information is collected and exchanged - not assessed. Transmitting positive or negative messages before the entire interview process has been completed is premature and potentially misleading. This is particularly true since the information gathered has not been compared yet to other applicants’.



WHAT DO YOU NEED TO KNOW TO DETERMINE WHETHER

A MEMBER'S COMPLAINT IS A **G**RIEVANCE?

Before filing a grievance, you should determine the following:

1. (a) Is there CBA language that addresses the issue or problem?  
Is it on point?
- (b) Is there a law or regulation that governs the issue?
- (c) Is there a 'past practice' that controls?

Does the action complained of (or inaction) violate any of these?

2. If you cannot answer the above, what information do you need before you can determine how to proceed?
3. If the action/inaction complained of violates express language of the CBA, are there ways of trying to resolve the problem before filing a grievance?
4. If the action/inaction complained of violates both the CBA and some other law or regulation, how should you proceed?
5. If the action/inaction complained of does not violate the contract, a law or regulation, how will you help this member?

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P.R.&R. FORM  
I THINK I HAVE A GRIEVANCE

DIRECTIONS: THIS FORM IS TO BE COMPLETED BY THE PROFESSIONAL STAFF MEMBER(S) WHO FEEL THAT THEY MAY HAVE A GRIEVABLE SITUATION. THE P.R.&R. (PROFESSIONAL RIGHTS AND RESPONSIBILITIES) COMMITTEE AND/OR ASSOCIATION OFFICERS WILL CHECK INTO THE SITUATION AND CONTACT THE MEMBER(S) TO RELATE FINDINGS OR DETERMINATION.

NAME: \_\_\_\_\_

DATE OF OCCURRENCE: \_\_\_\_\_

AREA/PAGE OF CONTRACT IN VIOLATION: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

THE SITUATION (NARRATIVE): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

THE BEST TIME TO REACH ME IS BETWEEN \_\_\_\_AND \_\_\_\_EXTENSION\_\_\_\_\_.

DATE: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

\_\_\_\_\_RESOLVED: (EXPLAIN) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_MOVE TO P.R.&R. COMMITTEE LEVEL

(Local)-REP: \_\_\_\_\_ DATE: \_\_\_\_\_