

Section 4
The Union Rep's Tools:
The Grievance

Problems vs. Grievances

The Building Representative is first and foremost a problem solver. She must be able to distinguish ordinary problems or complaints from grievances and/or violations of law. Further, she should know what questions to ask to determine whether the member's problem is just that, or something more. And she should know where to get the additional information she needs in order to make that determination. Most importantly, she should know and understand the contract, or at least its key provisions, so that she can accurately advise her members about their contractual rights. Lastly, she should know and understand the grievance procedure; the definition of a grievance, the time limits for filing, etc.

Most of the problems and/or complaints that members will ask your help with will not be grievances. In order to determine whether a member's problem is a grievance, you must look to the definition of a grievance in your contract!

Grievance definition. What you can grieve and whether something is a grievance depends on your contract's grievance definition. **Grievances can be either broadly or narrowly defined.**

Narrow Grievance Definition

- Most contracts define grievances very narrowly. An example of such a clause is one that defines a grievance as "*any dispute concerning the interpretation, application or claimed violation of a specific term or provision of the Agreement*".
- If your grievance definition only allows you to grieve a violation of a specific term or provision of the Agreement, then *unless you can cite a particular section of the contract that was allegedly violated, there is no grievance.*

Broad Grievance Definition

- A broad grievance definition is one that allows you to grieve more than just a violation of the Agreement itself. Broad grievance definitions may also allow you to grieve a violation of a "past practice", a "term and condition of employment" and/or a change in an employer's policy.
- However, even if your contract broadly defines a grievance to include the above, it may still limit your ability to arbitrate these issues. **YOU MUST READ YOUR CONTRACT AND KNOW WHAT IT SAYS IN REGARDS TO THESE ISSUES!**

Analyzing Your Grievance Procedure

A Building Representative should know the answers to the following:

1. How does your contract define a grievance? Is it a broad or a narrow definition? What specifically can you grieve? Past Practice? Board Policy? Can you arbitrate everything that you can grieve?
2. Who can file a grievance? A member? The Union? At what stage?
3. When must a grievance be filed?
4. What are the time limits at each stage?
5. Are time limits measured in workdays or calendar days?
6. What does the contract say the Union can do if the District fails to reply to a grievance at any stage?
7. Can time limits be waived? If so, how?
8. Are group (class action) grievances processed differently than individual grievances?
9. Who can file for arbitration? The Union? The grievant? At what stage?

What the Building Representative Needs to Know to Determine Whether a Member's Problem is a Grievance

Before filing a grievance, the Building Representative should determine the following:

1. Is there contract language that addresses the problem or issue? Is there a law or regulation that governs the issue? Is there a "past practice" that controls? Does the action complained of violate any of these?
2. If you cannot answer the above, what information do you need before you can determine how best to proceed?
3. If the action complained of violates the contract, are there *informal ways* to try to resolve the problem before filing a grievance?
4. If the action complained of violates both the contract and some other law or regulation, how should you proceed?
5. If the action complained of does not violate the contract, a law or a regulation, is there still something that you (the Building Representative or Union) can do to assist the member?

The Grievance Process

1. Filing –

Filing refers to the date when the grievance is reduced to writing and formally presented to the District. Usually a grievance must be filed within a certain number of days after the event or after the grievant first knew or should have known about the event that gives rise to the grievance. Days may be measured in "school days" or "calendar days".

2. Timeliness –

If a grievance is not filed within the time limits listed in the grievance procedure, then the member/Union may lose the right to file the grievance. Time limits can be usually be waived by mutual consent of the parties, or by either party's failure to raise an objection about timeliness.

3. Stages/Levels/Steps -

Stages refer to the various levels to which the grievance is processed. The grievance procedure usually states the time between stages or from moving from one stage to the next. Most contracts usually allow the Union to move the grievance to the next step automatically if the District fails to answer the grievance by the time limits provided. In most contracts, the last stage is binding arbitration.

4. Arbitration-

A quasi-judicial proceeding whereby disputes are resolved by a neutral third party called an Arbitrator. Arbitration is less formal, less expensive and a much faster procedure than going to court or to an administrative agency to resolve disputes.

Arbitration can be "*Advisory*" or "*Binding*" depending on your contract. Under "**Advisory Arbitration**", the District/Board does not have to accept the Arbitrator's decision, but can consider the opinion to be "advisory" only. Under "**Binding Arbitration**", the Arbitrator's award is final and binding and the parties must abide by the decision. If they do not, one side – usually the winner- can take the other side to court to enforce the Award.

Investigating the Complaint or Grievance

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 or contradictions in statements. Recognize the differences between facts and conclusions. If the grievant says, "He harassed me." ask, "What *specifically* did he do?" Remember, there are usually three sides to every story – the member's side, the District's side, 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 District did or did not do?
- What specific section of the contract applies or was violated (if any)?
- What past practices may apply to this situation? - i.e. - what has been done in the past when this situation occurred?
- What remedy is the member seeking? What does the member or (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 person in the District/BOCES to talk with to try and resolve this problem?
- Who from the union should talk with that District/BOCES person? The Building Representative? The Union President? Someone else?
- 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 school/building, or is happening to many members in several schools/buildings?

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 a grievance in order to comply with the time limits in the contract?

HOW?

- How has the member(s) been affected or harmed by the District's action or inaction?
- How have such matters been resolved in the past?
- How should we proceed?

Writing up the Grievance

Once you have investigated the member's complaint and have determined that the member has a viable grievance, you can then put the grievance in writing. **Make sure that you put in all relevant information** - names of all grievants or possible class of grievants, all known contract sections, past practices, and/or policies alleged violated. **If you fail to list an important piece of information in the initial grievance, you may lose the ability to bring it up or add it to the grievance at a later time.**

When putting the grievance into writing, you should minimally include the following information:

WHO is grieving?

List the name or names of all grievants. If you don't know or are unsure, list the names of those that you know and then add a statement "including all others who may be similarly affected".

If you have a large number of grievants, then the Union may want to file a "class-action" grievance. In such a case, you need to find out as much information about "the class" -i.e., who may be affected by this grievance. Further, check your grievance procedure to see at what step you should file the grievance. Normally, class action grievances are brought forward by the Union President directly to the Superintendent.

WHEN did the grievance occur? Or when did the member first realize that there was a problem?

WHAT happened?

Describe the specific event or action complained of. Clearly list what the Union/member claims the District did or failed to do that gives rise to the complaint?

WHY is it a grievance?

What are the specific sections of the contract alleged violated? If the action complained of also violates a past practice or Board 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, you may be precluded from adding it to the grievance later on.**

WHAT Remedy is the Union requesting?

Be sure to include in your remedy everything that the member might be entitled to receive, even if you think it's a long shot. In grievances that involve monetary compensation, always request that the member "be made whole" and that he/she should get "back pay" with interest from the time that the problem first occurred, even if that goes back to before you filed the grievance.

Interviewing the Grievant and Other Witnesses

Once you have gotten the background information necessary to determine that the member's problem 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 positively 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 your issue as possible, whether "good" or "bad" for your case. Recognize discrepancies in the grievant's or witness's story and try to clarify.
- ◆ Accept nothing as fact until you can verify it. Documents are always better than statements. Ask the member and/or District 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 level 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.

Suggestions for Meeting with Administrators In Order to Try and Resolve a Member's Problem or Grievance

1. **BE PREPARED!!!!** Plan ahead. Know the facts and the points you want to make before you go into the meeting. If you think that you might forget something, make notes and bring them in with you to the meeting. Bring any documents that support your position/case. Know your contract and your rights under it.
2. **BE CONFIDANT.** Don't let the Administrator try to intimidate you. Remember that when you meet with an Administrator to discuss a member's complaint/grievance, you are in the role of Union Representative and not the role of employee. As such, you are the Administrator's equal, not his/her subordinate.

Further, don't apologize for bringing the problem/grievance to the Administration or convey the feeling that you are only representing the member because you were asked to. Under the Taylor Law, the Union has the right to present grievances and the Administration must respond.
3. **MAINTAIN A UNITED POSITION.** Make sure you and the member are on the "same page" before you go into a meeting with the Administration. To avoid surprises, decide if you or the member will be doing the talking, and what you/he/she will say beforehand. If you and the member disagree during the meeting or if you need to clarify a point, do so in private. Request a brief recess to discuss the issue. Never discuss the issue in front of the Administrator.
4. **BE BUSINESSLIKE.** Be a professional. Limit your discussion to the problem or grievance at hand. Maintain a professional attitude, even if the Administrator does not. If the Administrator gets hostile, you stay calm. Don't get into a shouting match to try to prove your point. Remember, as the Union's Representative, your actions, whether positive or negative, reflect on the Union.
5. **DISAGREE WITH DIGNITY.** If you disagree with the Administrator on a particular matter, do so in a calm, firm, professional manner. Avoid displays of anger, raising your voice, swearing, or making threats, even if the Administrator resorts to these tactics. If the Administrator cannot or will not see your side, thank him/her for his time and leave. If it is a grievance, you can always take it to the next stage.

When disagreeing, try to leave the Administrator "an out"- a way to retreat from his/her position and still "save face". If you point out the Administrator's errors and embarrass the person, be assured you will not settle the problem or grievance at that meeting.

Good Communication Starts with Good Listening

1. **Stop talking** -- You can't listen while you are talking.
2. **Don't interrupt** the other person while he/she is talking; give them the same courtesy you would expect when you are speaking.
3. **Concentrate on what the other person is saying.** Pay attention to what words the speaker chooses, as well as his tone of voice.
4. **Look at the other person** -- This shows them that you are paying attention to them. Also, their body language will often convey additional signals; whether they are nervous, angry, truthful, etc.
5. **Leave you emotions behind** -- Try to leave your own worries, fears and problems behind. If you are busy concentrating on the imaginary voices inside your head, you cannot give your full attention to listening to the real conversations going on.
6. **Get rid of distractions** -- put down any papers, pencils, etc. you have in your hands that may distract you or your listener's attention.
7. **React to ideas, not to the other person** -- Be professional. Even if you don't happen to like the person, what he is saying may be valid. Don't let your emotions cloud your thinking.
9. **ASK QUESTIONS** -- if you don't understand something or if you need further clarification, ask. Communication is a two way street. Unless you understand what the other person is trying to say, you can't determine whether you agree or disagree with his/her point.

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Investigation Guidelines

1. Build rapport with the grievant and witnesses.
2. Interview grievant and witnesses separately.
3. Be objective – do not form hasty conclusions. Allow sufficient time to conduct interviews.
4. Ask specific questions.
5. Take notes.
6. Request relevant evidence.
7. Collect all relevant correspondence, records and/or documents.
8. Do not express preconceived notions, ideas or conclusions.
9. Get witnesses who have first-hand knowledge.
10. Be supportive but do not commit yourself or the Union until your investigation is complete.
11. Identify specific contract provisions that apply.
12. Notify your Executive Board or your Grievance Committee as soon as possible.
13. Process grievance as quickly as possible. Memories become dulled. A late grievance is a lost grievance.
14. Recognize discrepancies.
15. Know the weak parts of your case.
16. Ask the grievant to do something – i.e. draft letters, give you a written statement, write an explanation.
17. Keep the grievant informed at all steps of the process.

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Writing a Grievance

A grievance should be written simply. It is only a summary statement of the dispute. It should not reveal the entire union case.

Every grievance is composed of three parts and can usually be written in as little as three sentences:

1. Situation
 - tells who was involved, what happened, when & where
 - usually begins with the words, "On or about..."
2. Contention
 - explains why the union believes this is a grievance
 - usually includes the phrase, "...violation of the spirit of the agreement, including but not limited to..."
3. Remedy
 - outlines what the union wants to be done about it
 - often includes the phrase, "...wants the employee to be made whole by..."
 - lists the things that should be done

(insert name of local union) Grievance Form

Date:

To: (insert name & position of responsible management person)

From:

USE THE FOLLOWING AS A GUIDE. DELETE EVERYTHING FROM THIS LINE DOWN TO SIGNATURE AND INSERT GRIEVANCE WORDING.

The formal grievance should be written simply. It is only a summary statement of the dispute. It is composed of three parts and can be written in three sentences:

1. The situation tells who was involved, what happened and where.
2. The contention explains why the union believes this is a grievance.
3. The remedy outlines what the union wants to be done about it.

There are simple rules of thumb for writing each sentence.

1. Begin the situation sentence with the words, "On or about..."
2. In the contention sentence, indicate that the management action constitutes a "violation of the spirit of the agreement, including but not limited to..."
3. In the sentence defining remedy, state that the union "wants the employee(s) to be made whole by..." List the things that should be done.

Signature of Grievant

(insert name of local union) Grievance Record

	Starting Day	Responsible Union Representative	Responsible Management Representative	Reply Day
Informal Step				
Step One				
Step Two				
Step Three				
Arbitration				

When the Member Doesn't Have a Grievance

For most Association Representatives, the process of handling grievances is routine. We are out there on the property, every day making sure that management holds to the agreement. And when the member comes to us with a problem, we check it out. We do the proper grievance investigation to determine whether the issue is really grievable under our agreement.

But what happens when we do all we can but the problem is not a real live grievance? It's happened to all of us. Your coworker--someone you've worked with for ten years asks you to file the grievance that just isn't a grievance.

What do you do?

Let's start with what you shouldn't do. Don't file the complaint or issue if you know it isn't really a grievance. If you do, you are transmitting three pretty poor messages.

Wrong Message

First, the member thinks you can actually achieve something with the grievance procedure that it isn't designed to do. The member gets the impression that the grievance is a lottery and every entry has equal weight. That simply isn't true and it is isn't fair to the member or to other members. Besides you raise expectations which you can't fulfill.

Second, it damages your credibility with management. Part of the goal of grievance handling is to resolve problems; and grievance resolution needs the cooperation of both sides. If you go to management with lousy grievances, you will quickly lose the company's respect. Your judgment will be called into question when you present other issues which might be very legitimate grievances.

Lastly, filing frivolous or poor grievances can make management retaliate and poison the relationship with the union on even larger issues.

What should you do?

Tell the member straight out that the problem isn't grievable under the contract. Explain why. Don't take for granted that members understand the union's role in handling grievances and what the repercussions are for filing frivolous ones. Explain what the process can achieve and what it can't. Talk about the bottom line issue of justice for all members.

Don't procrastinate

Don't procrastinate but deliver the news directly and sympathetically. Expect some emotional heat at this discussion, but listen sympathetically so long as you personally don't have to bear the brunt of any outburst.

Also keep good notes as to your decision and if there is an Association Representatives' meeting at the local, make it part of your report so that the member does not go shopping around for another Association Representative to file the grievance.

Try to resolve the issue

See in what other ways you can resolve the issue. Some contracts have an informal meet and discuss clause with supervision to resolve problems. There may also be a negotiated procedure that deals with issues that are not formal grievances.

But even if there are not these routes in your contracts, there is no reason why you can't go with the member to discuss the issue with supervision. If the issue is serious enough, discuss it with your officers to come up with a strategy to deal with it.

If the problem is a personal one, direct the member to the proper community service counseling that is offered by the local central labor body. Local unions have pooled their resources together in many cities and areas to offer these kinds of services to our members who have personal problems and needs.

Saying no to the member about filing a grievance is one of the toughest responsibilities you have as an Association Representative. Some members will never be satisfied with the answer. But for most members, some demonstration of concern and possible resolution will go a long way in building the local union.