

Higher Education Edition

FOR COMMENT

Processing Gripes and Grievances

What every member advocate needs to know!



Building Full Capacity Locals

MEA

Michigan Education Association

Dear Local Leader,

One of the indicators of a full capacity local is strong, effective member advocacy. Of critical importance is the ability to successfully address and resolve the issues and concerns that members bring to their association. Whether they be grievances or gripes, the way that members' concerns are addressed at the local level is often the determining factor in how members feel about union membership at all levels. To that end, it is very important for local leaders to have a good understanding of their association's grievance process and other resolution strategies designed to provide the highest quality service and to achieve the best outcome for members.

This booklet is designed to provide the basics of processing members' "gripes" and grievances. It is filled with ideas, information and activities that will equip you to successfully deal with members' issues in a systematic, organized and constructive manner.

As with all BFCL publications, you can adapt it to fit the needs and limitations of your local. Use it as a training tool: distribute copies to association representatives and grievance committee members at the beginning of the year; cover various sections at special training session(s); select portions to highlight when you communicate with members. These are a starting point. Your UniServ director and MEA staff are available to provide more in-depth training and information on any of the topics addressed in these materials.

This booklet, along with other materials, information and support designed to help you strengthen your local association and get more members involved are available by contacting MEA Field Services at 800-292-1934, ext. 2941 or by downloading at www.mea.org/bfcl.

A few words about member advocacy...

Be an advocate not a judge!

As an association advocate, you have the duty to represent all members with absolute fairness and impartiality. It is very important to recognize that your personal belief in the soundness of a member's grievance or gripe is irrelevant. Members are entitled to the benefit of every remedy and defense available, and it is your job to assert every such remedy and defense. Your job is not to decide what is fair or right. Your job is to vigorously represent a member's cause and seek a remedy to which he/she is entitled. If you have reservations about a particular member concern or feel that you cannot be impartial and nonjudgmental, then you need to contact your local president and/or UniServ director immediately.

When your members ask what they get for their dues dollars, it's important to remember that one of the things they get is YOU—doing everything you can to the best of your ability to satisfactorily resolve their job-related issues.

Do You Think Like an Advocate?

Answer the following questions by circling the answer (Yes, No, Maybe) that most closely corresponds with your beliefs.

Y N M	1. I believe that all members' concerns are valid.
Y N M	2. I am committed to protecting the rights of all members.
Y N M	3. I believe in the right of due process for every member.
Y N M	4. I am committed to searching out all resources available through my local association, MEA and NEA to support a member's position.
Y N M	5. If it begins to appear that evidence supports the position of the other side, I am prepared to carry through on my responsibility to search out all facts supporting a member's position.
Y N M	6. Even if I develop some personal prejudices about this member or the circumstances surrounding an incident, I will continue to do all in my power to advocate for the member or will find someone who can.
Y N M	7. In advocating for a member, I believe that my personal opinion is irrelevant and that what is most important is finding every fact, argument, witness and resource necessary to advocate for the member.
Y N M	8. I am prepared to do some extensive listening.
Y N M	9. I believe that the burden of proof is on the other side, not ours.
Y N M	10. I will be honest and straightforward with all people concerned as I advocate for a member.
Y N M	11. I will be diligent in separating rumors from facts and insist that there always be a distinction between the two when advocating for a member.

If you responded to more than two of the statements above with a "no" or a "maybe," you may want to re-think what you believe the role of an association advocate to be.

Grievances—the basics

What are they?

The grievance procedure is designed as a process to constructively resolve disputes and questions regarding contract interpretation. In the state of Michigan, the definition of a grievance is negotiated by the parties at the local level. However, in general terms a grievance is defined as: a claim by member(s) that there has been an alleged violation, misinterpretation or misapplication of a specific article or section of the contract. In short, a grievance is a problem-solving device. It allows for a constructive and orderly resolution to contract disputes.

Generally, any person who is in a position covered by the bargaining unit may file a grievance. Review the Recognition language in your contract to determine the job classifications and positions assigned to your bargaining unit.

Grievances cannot be filed by one member against another member. Though you may be asked to informally mediate interpersonal disputes (and you certainly may do so), they are not grievances unless they involve alleged violations of the contract by the administration.

Generally, there are two types of grievances:

- Employee—a grievance filed by a bargaining unit employee, challenging an action by management.
- Association—a grievance filed by the association on behalf of an employee, a group of employees or the association as an institution.

Gripe or grievance?

All grievances are gripes, but not all gripes are grievances! Grievances address specific violations of contract language or contract practice. An important part of your job as an advocate for members is to know the difference when members bring their issues and concerns to you. In addition, you need to keep in mind that filing a grievance may not necessarily be the best first step to take. Many situations can be resolved without filing grievances. The approach you take and the tone you use may determine how quickly a situation can be resolved or if resolution is possible without a grievance being filed.

You may encounter members who feel that grieving is “unprofessional.” Others may feel that grieving is unnecessary because they can take care of themselves. Still others may feel that grievances could strain relationships between employees and administration. Keep in mind that your job as a member advocate is to make sure that the terms of the contract are upheld and that the terms and conditions of employment are applied equally to all in a fair and consistent manner. A grievance may be a necessary tool to employ in order to ensure this.

Pop Quiz

Is it a Grievance or a Gripe?

<input type="checkbox"/> Grievance <input type="checkbox"/> Gripe	<p>1. One of your members comes to you complaining that their co-worker is swearing at them about one thing after another. The member wants to file a grievance.</p>
<input type="checkbox"/> Grievance <input type="checkbox"/> Gripe	<p>2. Your member was required by his supervisor to work through his lunch break. The member wants to file grievance.</p>
<input type="checkbox"/> Grievance <input type="checkbox"/> Gripe	<p>3. During a conversation with your supervisor you mention that you need to stop by the dry cleaners on the way home. Your supervisor hands you \$10 and says, "Great that will save me a trip, pick up my cleaning too." You pick up the dry cleaning but after thinking about it you decide you should file a grievance.</p>
<input type="checkbox"/> Grievance <input type="checkbox"/> Gripe	<p>4. During the course of the year you have already used nine of the 10 sick days you were awarded at the beginning of the year. Your supervisor called you into her office and presented you with a letter regarding your excessive absences for the year.</p>
<input type="checkbox"/> Grievance <input type="checkbox"/> Gripe	<p>5. One of the members of your association has been complaining very publicly about the proposed increase in tuition. In fact, he recently participated in a radio call-in show where he criticized the university and the trustees for their lack of vision and leadership. His supervisor called him in and told him to stop making public statements on university related issues. He wants to immediately file a grievance.</p>
<input type="checkbox"/> Grievance <input type="checkbox"/> Gripe	<p>6. During a department meeting the supervisor of one of your members told the member to "shut-up and sit down." Your member wants to file a grievance.</p>
<input type="checkbox"/> Grievance <input type="checkbox"/> Gripe	<p>7. A member has complained to you that a colleague in another bargaining unit in the university has been sending her unsolicited love poems. She wants you to file a grievance against the other union.</p>

<input type="checkbox"/> Grievance <input type="checkbox"/> Gripe	<p>8. One of your members was unexpectedly called into the supervisor's office yesterday. When your member arrived another of your members was already there and the supervisor advised her that her colleague would be acting as her union representative. The member who was called in wants to grieve the meeting.</p>
<input type="checkbox"/> Grievance <input type="checkbox"/> Gripe	<p>9. Last week your member was injured during the workday. She hurt her ankle while going down wet stairs. Your member filled out an accident report and notified the supervisor that she was going to the emergency room for treatment. When she returned to work the next morning, she happened to pass her supervisor in the hallway. When the supervisor saw her, she said, "Oh, look at you limping down the hall. What a pansy!" Your member wants to file a grievance.</p>
<input type="checkbox"/> Grievance <input type="checkbox"/> Gripe	<p>10. All of the employees in a department at the university have received an e-mail from their supervisor saying effective next week they will be required to arrive at work 15 minutes earlier than their current work schedule. Several members have called asking that a grievance be filed.</p>

Answers to the above are on the last page of this booklet.

Effective communication is the key...

“Seek first to understand, and then to be understood.”
—Stephen Covey, author of *Seven Habits of Highly Effective People*.

Good advocates are great listeners!

We spend about 90 percent of our waking hours communicating in one form or another. It is estimated that we spend 7 percent of this time writing, 38 percent speaking and 55 percent listening. Despite all the “practice” we get listening, we only listen at about 25 percent of our listening capacity, which means we distort, forget, ignore or misunderstand 75 percent of what we hear! Good listening skills will dramatically affect your ability to effectively resolve member issues—both gripes and grievances.

There are 10 commandments for good listening:

1. Stop talking!
2. Put the speaker at ease.
3. Show that you want to listen.
4. Minimize distractions.
5. Put yourself in the speaker’s place.
6. Be patient.
7. Hold your temper.
8. Go easy on the criticism and argument.
9. Ask questions.
10. Listen “actively” (more on this later).

And there are eight wrong ways to listen:

1. Editing—you hear only what you want to hear.
2. Rehearsing—you think about what you want to say while the other person is speaking.
3. Deriving—you focus on finding a hidden message, rather than listening to what the other person is saying.
4. Daydreaming—you let your mind wander.
5. Personalizing—you relate everything the person is saying to your own life.
6. Switching—you change the subject quickly as soon as the person stops speaking.
7. Arguing—you focus on finding something to judge.
8. Agreeing—you nod your head to everything in order to avoid conflict.

Effective listening is ACTIVE listening!

Active listening means providing open, direct attention and encouragement to the speaker. It involves deliberately putting aside assumptions, prejudices, distractions and defensive or critical thoughts. An active listener makes direct eye contact with the speaker, speaks in a voice that is encouraging and supportive and uses body language and facial expressions that communicate interest, empathy and concern.

Follow the golden rule: Listen and respond to others the same way you would like them to listen and respond to you.

Responding to the Speaker

Nonverbally:

Good nonverbal communication includes making eye contact, leaning in toward the person speaking, nodding occasionally to show understanding or empathy, writing down important details (be careful not to concentrate so much on writing that you forget about the speaker) and appearing interested and relaxed.

Verbally:

If you want to be encouraging in order to convey interest or to keep the person talking, try using statements such as:

"Can you tell me more..."

"I'm glad to be here with you, and I want to hear what you have to say..."

"Why don't you start at the beginning..."

"I've got plenty of time, so take your time..."

"I see, please continue..."

If you want to clarify what has been said or get more information, try using statements such as:

"Can you explain this further..."

"When did this happen, where, how..."

If you want to show that you are listening and understanding and to check your interpretation of what has been said, try using statements such as:

"I thought I heard you say..."

"So, what you would like to see happen is..."

"I may need to check this out again..."

If you want to show that you understand how the other person feels, try using statements such as:

"You seem very upset..."

"Seems like you're under the weather today, want to talk..."

If you want to pull important ideas, facts and feelings together, try using statements such as:

- “These seem to be the key ideas you have expressed...”
- “So in a nutshell, you’re telling me that...”
- “If I understand correctly, these are the main issues...”

If you want to show empathy or acknowledge the worthiness of the other person, try using statements such as:

- “I appreciate your willingness to resolve this matter...”
- “I think I understand why you’d be confused...”
- “If I were in your position, I think I’d feel the same way...”
- “I certainly understand why you are angry...”

If you want to build upon or continue the discussion or to offer options, try using statements such as:

- “Have you considered...”
- “Do you think we should think about doing...”
- “Here’s what I’m thinking...”

If you want to clarify or address the speaker’s body language or other nonverbal signals, try using statements such as:

- “Are you crying because you’re hurt or angry...”
- “When you talk about your anger, you smile. This is confusing me...”
- “Your yelling makes me think you are angry with me...”

Sometimes people get defensive...

Oftentimes, when you discuss sensitive issues with members or ask questions about such issues, you may get some defensive reactions. The tone and wording that you use are very important. Members should always come away from a meeting feeling that you are on their side and that you understand their concerns. To reduce defensive reactions in others:

- Be aware of the difference between cold silence and warm silence.
 - cold silence—listening with no reaction—discourages speaking,
 - warm silence—listening while making eye contact and appearing intent and interested—encourages speaking.
- Always focus on the BEHAVIOR, not the personality.
- Use “I” statements, not “You” statements.
 - “I” statements are specific and make your desires clear.
 - “You” statements are accusing and put others down.

Communicating with difficult people...

Difficult people can be classified into 10 different types. What follows is a brief description of each type along with strategies that will help you communicate more effectively with each type.

THE BULL

This type comes out charging and attacking—usually because of feelings of frustration. Because this type often feels that others are inferior, this person feels powerful and often acts abusive, abrupt and intimidating.

To effectively deal with this type, be calm and strong. Don't fight fire with fire—be assertive, not aggressive; rational, not abusive. Always try to get this person to sit down (a less aggressive position) and allow him/her to blow off steam before attempting to problem-solve.

THE BUMP-ON-A-LOG

This type is always negative and affects others with their negativism. They tend to be very analytical and very critical.

To effectively deal with this type, always leave the conversation with a positive. Do not get caught up in the negativism. Ask questions such as, "What is the worst that could happen?" or "What would you like to see done about this?" Focus on solutions as opposed to complaints.

THE FOX

This type wants to be a bull, but doesn't have enough power. They tend to be sneaky and will try to undermine you. This type will attack you and claim it's just a joke.

To effectively deal with this type, either walk away and pretend you didn't hear or bring the "fight" out into the open. Foxes count on the "fact" that you'll want to avoid public conflict. Be assertive and approach them privately after problematic behavior or comments.

THE KNOW-IT-ALL

This type is smart and wants you to know that they know it all. If you disagree, it's taken as an attack. If you make a mistake, this type will say, "I told you so."

To effectively deal with this type, do your homework—know what you're talking about. Question without being antagonizing, listen attentively and point out their mistakes indirectly.

THE FAKE KNOW-IT-ALL

This type is not smart, but wants others to think they're brilliant. They tend to talk themselves into believing things that aren't true.

To effectively deal with this type, offer the real facts as an alternate viewpoint. Suggest that their facts don't support their conclusion and offer them an out—maybe they didn't have time to research or may not have been aware of new information,

etc. Allow them to save face while pointing out the error of their ways carefully and privately when possible.

THE PROCRASTINATOR

This type doesn't like to make decisions—particularly unpopular ones. They tend to get so emotionally involved in a situation that they miss obvious solutions.

To effectively deal with this type, bring issues out into the open. Help them to be direct and problem-solve by rating alternatives by desirability.

THE STONE WALL

This type ignores a problem and won't give out any information. Uses silence to get information from you to use against you. Doesn't like to speak.

To effectively deal with this type, ask questions that require more than a "yes" or "no." Use "the friendly, silent stare"—people hate silence and will eventually fill it in if you keep quiet long enough. Be persistent and supportive. This is the type that may open up if you preface the conversation with, "This is off the record..."

THE TIME BOMB

This type explodes under pressure. Their attacks are diffused and have no real directions. They often apologize later.

To effectively deal with this type, be patient and let them run down and regain control. Show respect by using phrases like, "I know this is important to you and I want to talk about it, but not like this..."

When they apologize later, don't say, "That's ok." This just reinforces the behavior. Instead, say, "I am always willing to talk to you, but not like that."

THE ULTRA-AGREEABLE

This type agrees to everything and with everyone. They tend to be overcommitted and never get anything done. They have a real need to have everyone like them.

To effectively deal with this type, help them prioritize and make honesty non-threatening.

THE WHINER

This type complains about everything and is unwilling to solve their own problems.

They feel powerless and usually talk in generalizations—using words like "always" and "never."

To effectively deal with this type you need to use active listening. Ask who, what, where and when to force specificity. Don't ask why—they'll start whining again. Ask them to be specific about what they need/want in order to resolve a situation. State the facts. Don't agree—just listen.

How does your local association handle grievances?

Every local association has different guidelines for processing grievances. In some cases, the local president and UniServ director handle all grievance processing while in others a grievance committee is in place to oversee the process. **Although the creation and operation of a local grievance committee is not mandatory, all local associations are encouraged to establish a grievance committee.** It is further recommended that:

- All grievances be monitored and reviewed by the local grievance committee.
- The grievance committee makes recommendations to the executive board with respect to arbitrating a grievance.
- A grievant has the right to appeal a decision regarding the processing of his/her grievance to the grievance committee and/or executive board.

To clarify the grievance process in your local, match the following individuals/groups with their responsibilities.

- A. Governance Body (Executive Committee, Representative Assembly, Board of Directors)
- B. UniServ Director
- C. Association Representative (AR)
- D. Grievance Committee
- E. Grievant (employee with claim of contract violation)

- ___ 1. Makes decision to advance a grievance to arbitration
- ___ 2. Initiates a grievance
- ___ 3. Provides members with grievance training
- ___ 4. Represents grievant at informal (building) level
- ___ 5. Determines whether a formal grievance should be filed
- ___ 6. Informs member that the association will not support the grievant's claim
- ___ 7. Settles a grievance short of arbitration
- ___ 8. Collects facts related to a grievance
- ___ 9. Maintains grievance files
- ___ 10. Determines who represents the grievant
- ___ 11. Assumes the cost for processing a grievance
- ___ 12. Handles grievance at Level 1
- ___ 13. Handles grievance at Level 2
- ___ 14. Handles grievance above Level 2

Note: Regardless of who handles each of the above, it is important the local association president and UniServ director be kept fully informed at every level.

You've Got to Know Your Contract!

In order to be an effective advocate for members, it is very important that you are familiar with what your contract contains regarding the grievance process. Use your contract to help you answer the questions below.

1. On which page in your contract will you find the definition of a grievance? ____
What is the definition? _____

2. On which page in your contract can you find the RECOGNITION language? ____
What positions are included in the bargaining unit and which are not?

3. Check your contract to see if it authorizes an employee to file and to process a grievance without the intervention of the association. If "yes," write the number of the article ____ and the section ____ where this language is found.
4. According to your contract, what rights does the association have to become involved in a grievance filed by an employee who has chosen to process a grievance without intervention of the association?

5. On which page in your contract will you find the issues that are excluded from coverage in the association's grievance procedure? ____
List those issues. _____

6. On which page(s) in your contract will you find the timelines for filing grievances? ____

7. Fill in the following using the information on the pages you indicated for question 6 on the previous page:

Employee Grievance (either formal or informal)

- Level 1: file within _____ days after _____
Grievance is to be submitted to: _____
- Level 2: file within _____ days after _____
Grievance to be submitted to: _____
- Level 3: file within _____ days after _____
Grievance to be submitted to: _____
- Arbitration: invoke within _____ days after _____
Invocation to be submitted to: _____
Invocation to be submitted by: _____

Association Grievance

- Level 1: file within _____ days after _____
Grievance is to be submitted to: _____
- Level 2: file within _____ days after _____
Grievance to be submitted to: _____
Grievance to be submitted to: _____
- Arbitration: invoke within _____ days after _____
Invocation to be submitted to: _____
Invocation to be submitted by: _____

The most common types of grievances...

Though you need to be sure you are familiar with the definition of grievable matters as established in your local contract, there are generally five major types of grievances.

1. ***Plain Violation of the Master Agreement***

This type of grievance may be the result of ignorance or carelessness. It is probably the simplest type of grievance to substantiate since it requires the simplest form of proof that some act occurred that violates a provision of the contract.

Example: The contract states, "The university recognizes the civic responsibility of employees to serve on jury duty and makes provision for eligible employees to perform such duty without loss of pay."

A member serves on jury duty but is required by his supervisor to use vacation days for those days in order to be paid.

Gathering evidence to show that the member attended jury duty and isn't required to take vacation time can be quickly substantiated. The administration is not contesting the interpretation of this clause in the contract, but is rather ignoring it.

2. ***Disagreement Over Interpretation***

In this type of grievance the facts of an issue are not usually in dispute. The grievance arises from a disputed interpretation of a term or condition of the contract.

Example: The contract states, "An employee is authorized a maximum of three days leave with no loss of pay on account of death of a member of the employee's family." A secretary's first cousin dies, and the secretary is absent for three days. The administration deducts three days' pay on the grounds that a first cousin is not "a member of the employee's family."

Resolution of this grievance requires an interpretation of the word "family." There is no question about the secretary's absence or the death of her cousin.

Nor would the association argue that the administration did not have the right to deduct pay. The matter rests on whether a first cousin is included in the term "member of the employee's family." If it does, then the salary deduction is not permitted.

In this type of grievance, you should keep in mind that specific language (wording that deals directly with an issue as opposed to inference) prevails over general language and clear and unambiguous language usually prevails over past practice. In the absence of specific, or clear and unambiguous language, past practice or evidence of intent by the parties may be the determining factor.

3. ***Factual Disputes***

In this type of grievance, the issue is whether a violation of the agreement did or did not occur. Evidence must be gathered to prove what actually happened. In factual disputes, eyewitnesses are often important in settling the dispute. Hearsay cannot be a substitute for eyewitness evidence. Disciplinary action often involves factual disputes. In such actions, the burden of proof rests with the employer. In all other disputes, the burden of proof rests with the grievant.

Example: The contract states, “All employees will be at their desk and ready to work 5 minutes before their scheduled start time.”

Your member is given a written warning for failing to be at his desk at the appointed time. The member claims he was there on time.

The case rests upon whether the member was or was not at his desk at the appointed time. Settling this grievance is easier if evidence can be obtained that the member’s claim is supportable. However, since the supervisor took the initial action, he/she would have the burden of supporting his/her contention.

4. ***Equity Disputes***

Grievances of this sort are usually based on the association’s claim that an administrator used his/her discretion unfairly—that is, in an arbitrary, capricious or discriminatory manner. Since equity disputes generally relate to matters that are within the area of administrative discretion, they most often involve issues not specifically covered by the contract. These disputes are among the most common sources of grievances, and because the contract offers no precise language on which to resolve such disputes, these tend to present a real challenge to handle. Grievances based on equity disputes are most likely to arise when there is an alleged failure to meet an employee’s “reasonable expectation of fair play.”

5. ***Past Practice***

This is a grievance based on a claim that a working condition of a long-standing nature, unchanged by specific contract language, and not specifically covered in the contract, has been altered, changed or ignored by the administration. The argument is that because the working condition was of such a long-standing nature, the parties gave tacit approval to it and, unless the contract expressly altered or changed it, agreed it would remain in existence for the life of the contract.

Past practice is binding on both parties to a contract. However in order for something to be considered past practice, it has to be MUTUALLY ACCEPTED and UNDERSTOOD.

The criteria used to determine whether something is a past practice are:

- Does the practice concern a major condition of employment?
- Were both parties involved in establishing the practice?
- Were both parties involved in administering the practice?
- What is the frequency of the practice?
- Is the practice long-standing?
- Is the practice specific and detailed?
- Do the employees rely on the practice?

An accepted past practice will generally continue to exist until one or both parties takes an action that waives the binding nature of the practice or eliminates or modifies it in accordance with appropriate procedures. For example, during negotiations, the union could decide to waive a specific practice by agreeing to a proposal to change the practice in exchange for some other improvement it is seeking.

You make the call.

1. Your contract requires that you must give at least 48 hours notice to take a personal leave day. For the past three years your members have found that as long as they let the Human Resources Director know about their absence the day before they are gone, it has usually not been a problem.

Is it a past practice? Yes / No Explain.

2. In 1996 the association bargained a new provision in your contract that allows members to take up to 10 credits of college level courses each semester at their university for half the price of in-state tuition. In 2001, the university and the association president agreed through an exchange of e-mails that the college credits could also be used for advancement of the salary schedule. Last year the university denied placement based on the use of those credits claiming that there was no contract provision allowing for the counting of those credits for salary placement.

Is there a past practice? Yes / No Explain.

Talking the talk...

Arbitration—the process to which unions and employers submit contract disputes that have not been resolved at earlier stages of the grievance procedure; a way in which both parties can achieve final and binding resolution of issues related to contract interpretation through the use of a neutral arbitrator.

Burden of proof—the responsibility of proving one's case. The burden of proof falls on the moving (grieving) party except in discipline cases where the burden is on the party administering the discipline.

Due process—meant to protect a person from a mistaken or unjustified deprivation of certain rights; based on the premise that an employer must comply with and honor basic standards of fairness when imposing disciplinary action on an employee.

Insubordination—failure on the part of the employee to carry out an order or directive given by a supervisor. The best course of action when given a questionable directive (unless health or safety is an issue) is to follow it while at the same time pursuing available remedies such as a grievance.

Just cause—a basic set of standards against which the appropriateness of management-imposed disciplinary actions are measured. An answer of NO to any of the following generally means that the employer did not have just cause:

- Did the employer adequately forewarn the employee of the possible or probable consequences of the subject conduct?
- Was the employer's rule or order reasonably related to an orderly, safe and efficient operation or to the performance that an employer could reasonably expect from an employee?
- Did the employer make a good faith effort to investigate the incident and to determine whether the employee did perform the subject act?
- Did the employer conduct a fair and objective investigation?
- Was the employer able to produce substantial evidence or proof of guilt as charged?
- Has the employer applied its rules, orders and penalties equally, fairly and without discrimination?
- Was the applied penalty reasonably related not only to the seriousness of the offense but also to the employee's record of service?

Management rights—those rights that management has to direct, control and operate a school district/college; a clause related to this is contained in most contracts.

Precedent—prior decision(s) that serve as a rule that must be followed in other comparable or identical situations.

Unfair labor practice (ULP)—an action by a management or union official that violates a specific provision of PERA (Public Employees Relations Act). Includes such things as: repeatedly failing to process grievances in a timely fashion; creating or interfering with the formation of any employee organization; and refusing to bargain with the exclusive representative.

Weingarten rights—the right of members to have union representation during an investigatory interview. An investigatory interview occurs when a supervisor questions a member to obtain information that could be used as a basis for discipline or asks a member to defend his/her conduct.

If a member has a reasonable belief that discipline or other adverse consequences may result from what he/she says, the member has a right to union representation.

Under the Supreme Court's Weingarten decision, when an investigatory interview occurs the following rules apply:

Rule 1

The member must make a clear request for union representation before or during the interview. The member cannot be punished for this request.

Rule 2

After the member makes the request, the employer must choose from among three options:

- Grant the request and delay questioning until the union representative arrives and has a chance to consult privately with the member; or
- Deny the request and end the interview immediately; or
- Give the member a choice of having the interview without representation or ending the interview.

Rule 3

If the employer denies the request for union representation, and continues to ask questions, the employer commits an unfair labor practice and the member has the right to refuse to answer. The employer may not discipline for such a refusal.

Without prejudice—a position taken by a party in a dispute that is understood not to establish precedent or prejudice in future positions of that party.

Duty of fair representation

The association has a legal obligation to represent the interests of all bargaining unit members in a fair and impartial manner, regardless of their affiliation with the association. In addition, the association also has the responsibility to make sure it does not put the interests of any one member above the collective interests of association members as a whole. Taken together, these responsibilities are called the association's duty of fair representation. This duty applies to all association procedures—bargaining, processing grievances, representing members, etc. To meet the obligations that duty imposes the association, and you as its agent, must ensure that you:

- Faithfully represent the interests of all employees in the unit, whether they are members of the association or not.
- Refrain from waiving, ignoring or attempting to change an employee's benefits and rights guaranteed by the contract.
- Settle similar grievances in a consistent manner as far as possible, recognizing the association's right to interpret ambiguous contract language as it deems appropriate.
- Not refuse to process a grievance for improper and illegal reasons—e.g., discrimination, social prejudices, personal hostility or association membership status.
- Consistently apply the same standards when deciding whether to process a grievance or to submit it to arbitration.
- Exercise care and diligence when investigating whether a grievance should be filed, when processing a grievance and when presenting it to management.
- Protect the confidentiality of all involved member(s).
- Properly and fully document all actions and related rationale associated with handling an employee's case, in order to respond to future questions.

There is one important exception to the duty of fair representation. The association's duty of fair representation does not require the association to represent bargaining unit employees in matters related to criminal activity. When you encounter a situation involving the possibility of criminal activity, inform the employee that you are not authorized to represent him/her in such situations and contact your local UniServ director immediately. The member should also be advised that he/she should not discuss the matter any further because the attorney/client privilege does not exist with association leaders.

Handling grievances...

A member appears with a possible grievance:

- Put the member at ease.
- Let the member tell his/her own story without interruption (except to refocus discussion).
- Give the member your full attention.
- Keep an open mind, and do not personalize or jump to conclusions.
- Take notes, but not too early or too quickly.
- When the member has finished recounting the incident, ask questions regarding who, what, when, where, how and why.
- Determine what the member has already done with regard to the situation.
- Ask the member what the remedy should be—do not assume to know what the member really wants. Help keep expectations realistic.
- Recap your understanding about what the possible grievance is and what remedy is being sought to ensure accuracy on all parts.
- Consider obtaining a written statement from the member to reduce potential for inaccuracy.
- Remember, you're on the member's side and want to do the best job you can in seeking a remedy for his/her problem.

Do the research: (use the *Grievance Investigation Form* on page 25 of this booklet)

- Determine your goal or the remedy you are seeking. A grievance remedy should: be realistic; appropriately fit the issue; be specific; and be referenced to contract language, practice or prior award. Creativity is also a plus!
- Attempt to determine management's reason for taking the action on which the complaint is based.
- Determine which information you will need and its sources, e.g., contract, district rules and policies, witness accounts, past practices, etc.
- Obtain copies of every document management used for taking the action being grieved.
- Interview witnesses if there are any.
- Identify which articles and sections of the contract are applicable.

Analyze the problem:

- Distinguish between fact and conclusion when looking at the problem.
Example: An observer sees smoke in the distance and reports a fire in the area.
Smoke—fact Fire—conclusion
- Identify any discrepancies—do the facts, as reported, make sense?
- Decide whether the problem is actually a grievance or a gripe, i.e. did the action violate a specific contract provision or could the problem be resolved through more informal action?
(Caution! There always exists the danger that not using the formal grievance procedure may send the signal that the association is either weak or is intimidated. It is critical to be familiar with your local association's policy on informal settlements. Be sure to consult with your local president and/or UniServ director before making a decision.)

Prepare the grievance: *(don't be afraid to ask for help from your local UniServ director, president or grievance committee chairperson)*

- Develop the main arguments.
- Attempt to determine management's arguments. Meeting with management at the informal step should help you do this.
- Write a brief statement of the grievance.
- State the issue(s) in such a way that the evidence will support the factual allegations.
- Present only the facts. Do not argue the case on paper unless the contract specifically requires this.
- Be accurate; be brief; be complete.
- Clearly and simply state the remedy being sought. Never ask for anything less than that to which the grievant is entitled. Be sure that there is a realistic correlation between the remedy and the violation.

Submit the grievance:

- Be sure to verify your contract's grievance filing deadlines and comply with them.
- Communicate with local president, grievant and UniServ director and grievance committee until grievance is resolved.
- Maintain an organized file for the grievance and note filing deadline dates on a calendar.

Grievance Investigation Form

Name of grievant _____ Work phone _____

Home/cell phone _____ Personal email address _____

Work location _____

Position _____ Name of immediate supervisor _____

What happened? Describe the event in as much detail as possible. Use the back if necessary.

Where did the problem occur (office, lab, university grounds) _____

When did it happen? Date _____ Time _____ AM PM

Who was involved? Give names and whether person is a student, employee, administrator, etc.

Were there other witnesses to the event in addition to those above? YES NO

If yes, provide names and other contact information if available.

Is there a potential grievance? YES NO

Give reasons for your answer.

What has been the procedure the administration has followed in the past toward this type of situation?

Has the contract been violated? YES NO

Which sections? _____

What is the remedy sought by the grievant?

Recommendations _____

Effectively presenting a grievance

How you present your member's grievance is often as important as what you present. Striking the right tone is often critical to achieving the desired outcome. You may not want to act like a Pit Bull, but you also don't want to look like a potted plant. Listed below are some of the things you and your grievant need to consider as you develop your strategy for your grievance presentation.

Meet with the grievant to develop your strategy:

- Who is going to speak, and to what extent? Generally, the association's representative serves as the spokesperson in a grievance meeting. The grievant may be so emotionally caught up in the issue that he/she may react in a manner detrimental to your position. However, you and the grievant need to discuss how and whether he/she can signal you in order to speak.
- Decide how either of you will signal the other that you want to call a caucus to discuss something during the grievance meeting. Discuss how you will recognize and resolve differences that arise between you during the meeting so as not to signal management that they can split you.
- Decide how you will handle any new facts that may be presented during the meeting.

Vigorously and respectfully advocate for the grievant:

- Never side (or appear to side) with management against the grievant.
- Always be amicable, even when disagreeing with management.
- Remain calm, but firm and reasonable. There is nothing to gain from being argumentative.
- Because you are acting as an association representative during a grievance meeting, always act as an advocate, not an employee. Never humble yourself—you are an equal party.
- Focus on the issues, not on personalities.
- Never bluff. Do not make any claim that you do not have the authority or ability to follow through on.
- Do not allow management to mistreat you or the grievant. If this happens, state your impression to management and indicate that you will not tolerate such treatment. If demeaning treatment continues, suspend the meeting and indicate that you will resume when management is prepared to treat you respectfully. Be sure to let your local president and/or UniServ director know if this happens.

Keep notes of the meeting:

- List all meeting participants and their titles along with date, time, location.
- Describe the issues discussed, the positions advocated by the various participants and the conclusions (if any) that are reached.

Discussing settlement:

- Don't make deals immediately! If a settlement is offered, take time to think it over. Call for a caucus if needed.
- Thoroughly discuss any offer with the grievant and appropriate leadership before agreeing to anything.
- Make sure that a settlement offer does not undercut local association policy or reduce the ability to favorably settle similar future grievances.

The best laid plans...

Sometimes, no matter how carefully you plan, things can go awry in a grievance meeting with management. Below are the most common problems that can occur and some tips for how to avoid them. There are numerous ways to deal with each of the problems listed. Take some time to develop some solutions of your own.

Problem: During the meeting, you did not get to say what you had planned. Management turned the meeting into an inquisition of the grievant.

Solution: When you meet to discuss a grievance with management, it's your meeting and you need to take charge of that meeting from the beginning. After the initial greetings, establish why you are there and outline the various points you are going to cover in presenting the association's position. You need to control where the meeting goes and what is discussed. If management wants to discuss other issues simply restate the purpose of the meeting and move on to YOUR next issue. Always maintain the focus on your agenda. Remember, you called the meeting and you can end the meeting if things are not moving in a productive way.

Problem: Once the meeting started, you and the grievant kept interrupting and contradicting each other.

Solution: This normally occurs because the association representative and the grievant did not spend enough time preparing for the meeting in advance. Be sure to sit down with the grievant and decide who will do the talking, who will take notes and how the two of you will communicate with each other as allies and how you will handle any conflict that arises.

Problem: After the meeting, the grievant reported to co-workers that you had teamed up with management against her. What actually happened is that during the meeting, after management started grilling her, she admitted to having violated the policy for which the penalty had been imposed. You were surprised to hear this and publicly said so.

Solution: Usually interruptions and contradictions occur because the association representative and the grievant did not spend enough time preparing for the meeting. Before any meeting starts, you and the grievant need to agree on the ground rules for the meeting—who will do the talking, who will take notes and how the two of you will interact with each other and what you will do if a conflict arises. In general, you will need to remind the grievant that you will control the conversation and that if you need the grievant to comment, or offer additional details, you will request that the grievant do so at the appropriate time. If, in spite of your advance planning, the grievant does interrupt or disagree, the best solution at that point is simply to tell management that you need to take a brief caucus. You take that private time to remind the grievant about the ground rules you have agreed upon. If the grievant is unable or unwilling to continue to abide by those rules, you may want to consider ending the meeting and rescheduling after you have worked out your differences.

Problem: You started off in control of the meeting. But shortly after you launched into your explanation of the grievant's position, you were interrupted with a question. After that, you lost your train of thought and things went downhill from there.

Solution: Developing a major theme or theory of your case, as well as a detailed outline of the major points you wish to cover is a quick and easy way to "get the conversation back on track" after you have been distracted by a question. However, to avoid constant interruptions and guard against getting sidetracked by endless questions, ask the other parties involved to hold their questions until you have finished talking so that you can give their question your full attention.

To arbitrate or not to arbitrate?

Not surprisingly, many grievances are not pursued to arbitration. Some settle successfully before arbitration and some simply aren't "winnable" at the arbitration level. Therefore, it is important for a local association to have some guidelines by which it decides to pursue a grievance and a clear process for making such a decision. If you handle enough grievances, you can bet that there will come a time when you have to inform a member that the association will not pursue his/her grievance any further. This task will be made easier if you have communicated clearly and honestly with the grievant from the start. Critical to this communication is honesty in assessing the problem, the possible outcomes and the chances of achieving the desired remedy. Below are some other things to consider when making a decision about a grievance and informing the member:

Never refuse to investigate a member's grievance.

To refuse such a request could make the association vulnerable to an unfair labor practice charge.

If after investigation, there is not a basis for supporting an alleged contract violation, the association is not required to continue pursuing the case.

Wait for a response from management.

Once management has denied a grievance, the association will then be able to evaluate whether it will continue to pursue a grievance in light of the response received. It's important to know your contract, because some contain language that allow members to file and process grievances on their own through all steps up to arbitration without intervention or support of the association.

If the probability of winning is remote, consider how you'll say "no."

Before making a decision not to pursue a grievance, consult with your local grievance committee, local president and/or UniServ director. Once the decision has been made, you should meet with the grievant and fully explain the association's rationale for the decision. Be honest; take the time necessary to explain fully; recognize that the member probably cares a great deal about this matter and may be upset.

There could be repercussions.

Keep in mind that the association is a political organization. Sometimes a decision not to pursue a grievance will generate heated member criticism. Be sure to report such responses to association leadership. If you are confronted with such criticism, respond calmly, frankly and accurately. Do not engage in any discussion of personalities, etc.

Sometimes, you don't expect to win.

In some instances, the association may decide to pursue a valid, but weak grievance for political reasons. For example, filing a large number of grievances on a certain issue may be the only way to convince management to deal with the union on the issue.

You should also keep in mind that some issues are better handled through channels other than the grievance process—especially if management has a strong case. Remember, your job is to help solve members' problems, so don't be afraid to think creatively. Though winning a grievance is great, it is certainly not the only way to help members solve problems.

Article X of the MEA Constitution

Every bargaining unit member of an MEA local association has the right to request a review by the MEA Executive Committee of an action of the local association that adversely affects the member and that the member contends is a violation of the local's duty of fair representation. The MEA Executive Committee listens to all sides and decides whether the local association has fairly represented the member by acting in a manner that is not arbitrary, capricious or discriminatory. A review of this nature is called an Article X hearing.*

*Note: If you believe a member may request an Article X review, make sure you preserve all timelines associated with the grievance.

Answers to quiz on pages 7-8:

1. Gripe, 2. Grievance, 3. Gripe, 4. Grievance, 5. Grievance,
6. Gripe, 7. Gripe, 8. Grievance, 9. Gripe, 10. Grievance.

MEA

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The mission of the MEA is to ensure that the education of our students and the working environments of our members are of the highest quality.

