

# Chapter

## *Grievance Handling*

## What is a Grievance?

Article 15, Section 1 of the Collective Bargaining Agreement defines a grievance as follows:

*“A grievance is defined as a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment. A grievance shall include, but is not limited to, the complaint of an employee or of the Union which involves the interpretation, application of, or compliance with the provisions of this Agreement or any local Memorandum of Understanding not in conflict with this Agreement.”*

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## Class Action Grievances

Under the new language of the 1998-2000 Collective Bargaining Agreement management can now designate an *appropriate employer representative* to discuss a *class action* grievance at step 1. **Article 15 Section 2 Step 1(a)** states:

*“ Any employee who feels aggrieved must discuss the grievance with the employee's immediate supervisor within fourteen (14) days of the date on which the employee or the Union first learned or may reasonably have been expected to have learned of its cause. The employee, if he or she so desires, may be accompanied and represented by the employee's steward or a Union representative. The Union also may initiate a grievance at Step 1 within 14 days of the date the Union first became aware of (or reasonably should have become aware of) the facts giving rise to the grievance. In such case the participation of an individual grievant is not required. A Step 1 Union grievance may involve a complaint affecting more than one employee in the office. When the Union files a class action grievance, Management will designate the appropriate employer representative responsible for handling such complaint. ”*

### Tips for the Steward:

- ✦ Develop a procedure, at labor management meetings, to handle Class Action Grievances. The union should insist that management identify, in writing, those representatives designated to handle those grievances.
- ✦ If they refuse to identify the appropriate representatives, the stewards should not to miss the time limits and request a Step 1 meeting with the immediate supervisor.
- ✦ He or she should notify the local president. The local president should seek advice from the National Business Agent or Regional Coordinator.
- ✦ A class action grievance involves more than one employee and must be initiated by the union. The steward should list the names of the affected employees. If the remedy is not equal or differs from employee to employee, clearly identify the remedy each employee is entitled to.

**SPECIAL NOTE:** Avoid this remedy “pay the appropriate employees, at the appropriate rate, for the appropriate amount of hours due.” Remember, to list the affected employees and identify their entitlements individually.

# Time Limits

## Grievances must NEVER be untimely!

One of the most crucial aspects of grievance handling for the shop steward is the time limits of Article 15. In particular, the time limits for filing grievances which the shop steward must be aware of are as follows:

### Article 15

#### Section 2.

#### Grievance Procedure - Steps

##### Step 1:

(a) *Any employee who feels aggrieved must discuss the grievance with the employee's immediate supervisor within fourteen (14) days of the date on which the employee or the Union first learned or may reasonably have been expected to have learned of its cause...*

(c) *The supervisor's decision should be stated during the discussion, if possible, but in no event shall it be given to the Union representative (or the grievant, if no Union representative was requested) later than five (5) days thereafter unless the parties agree to extend the five (5) day period.*

(d) *The Union shall be entitled to appeal an adverse decision to Step 2 of the grievance procedure within*

*ten (10) days after receipt of the supervisor's decision.*

After the Step 1 denial, the Union has **10 days** to appeal the case to Step 2 of the grievance/arbitration procedure. Should management fail or refuse to either meet or answer at Step 1, as stated in Article 15, Section 2, Step 1c, then the controlling language of Article 15, Section 3C applies:

#### Section 4. Grievance Procedure - General

C. *Failure by the Employer to schedule a meeting or render a decision in any of the Steps of this procedure within the time herein provided (including mutually agreed to extension periods) shall be deemed to move the grievance to the next Step of the grievance-arbitration procedure.*

#### NOTE

The language cited above from Article 15, Section 4.c does not automatically move the grievance to the next Step.

If a shop steward does not receive a decision within the time limits previously cited, the grievance **must** be appealed to the next Step.

A steward must never rely on verbal assurances from Management that "time limits are extended". **ALL** extensions of time limits **must be in writing** to protect the rights of the grievant and of the grievance.

(See Exhibit 4.1 for example)

If the Union fails to meet any of its time limit commitments within Article 15 of the Collective Bargaining Agreement, **the Union loses** its grievance.

**Article 15, Section 4B States:**

*B. The failure of the employee or the Union in Step 1, or the Union thereafter to meet the prescribed time limits of the Steps of this procedure, including arbitration, shall be considered as a waiver of the grievance. However, if the Employer fails to raise the issue of timeliness at Step 2, or at the step at which the employee or Union failed to meet the prescribed time limits, whichever is later, such objection to the processing of the grievance is waived.*

As you can see from a review of Article 15.4B and .4C, when Management fails or refuses to meet its time limit commitments, the grievance is **not** sustained but rather the Union **must** move it to the next step. When the Union fails in its time limit commitment, **the Union loses**.

Although the Union may not have received all of the necessary evi-

dence it has requested or, if the grievance investigation has not been completed, the grievance appeal **must** be forwarded to the next step within the time limit requirements as stated in Article 15.

Delay by the shop steward without a mutually agreed upon written time limit extension will result in **loss of the case**.

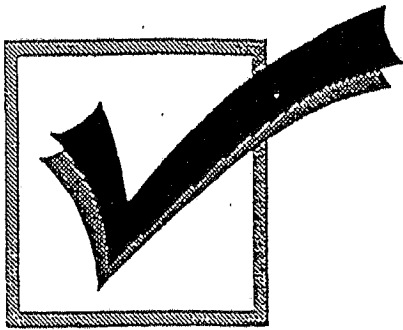


**example:** *written mutual extension of time limits*

<u>American Postal Workers Union, AFL-CIO</u>			
Local# _____			
On _____ we the undersigned mutually agree to extend the time <small>date</small> limits through _____, on Step One grievances pertaining to: <small>date</small>			
Grievant _____			
Violation _____			
Date(s) of Violation _____			
_____	_____	_____	_____
Union Representative	date	Management Representative	date

**Exhibit 4.1**

An actual time extension form may be found in Appendix A - *Forms* of this manual.



## Time Limits Checklist

1. Step 1 filed within 14 days.
2. Step 1 decision within 5 days of meeting.
3. Step 2 appeal within 10 days of Step 1 decision.
4. Step 2 meeting within 7 days of appeal.
5. Step 2 decision within 10 days of meeting.
6. Submission of corrections and/or additions within 10 days of Step 2 decision.
7. Step 3 appeal within 15 days of Step 2 decision. (*Submission of corrections and/or additions does not change time requirements for Step 3 appeal*).


### Time Limit Exercise

1. If the violation occurred on the 6th, and the grievant notifies the Union on the 9th, when is the last day a grievance can be filed at Step 1?  
(ref: Article 15, Section 2, Step 1.a)

2. If the shop steward meets with management at Step 1 on the 10th, how long does the supervisor have to render a decision?  
(ref: Article 15, Section 2, Step 1.c)

3. If the steward meets with management at Step 1 on the 10th, and a decision is rendered on the 12th, when is the last day the grievance can be appealed to Step 2?  
(ref: Article 15, Section 2, Step 1.d)

4. If the steward meets with management at Step 1 on the 10th and the supervisor fails or

refuses to render a decision by the 15th, when is the last day the grievance can be appealed to Step 2?  
(ref: Article 15, Section 2, Step 1. c-d)

5. If the grievance is appealed to Step 2 on the 12th, within how many days must management meet with the Union to discuss the grievance at Step 2?  
(ref: Article 15, Section 2, Step 2.c)

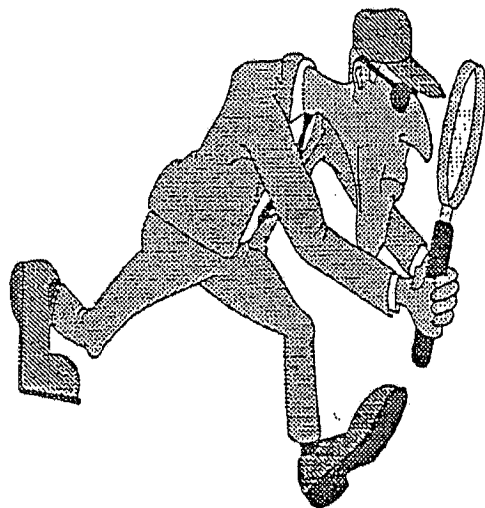
6. If the Step 2 discussion is held on the 16th, how long does management have to issue its written decision?  
(ref: Article 15, Section 2, Step 2.g)

7. If management fails to meet any of the step 2 time limits, how many days do you have to appeal the grievance to the next step?  
(ref: Article 15, Section 2, Step 2.h)

Answers: 1. 20th 2. 5 days 3. 22nd 4. 25th 5. 7 6. 10 days (or on the 26th) 7. 15 days from the last date of management's time limit, i.e., no meeting within 7 days: 15 days from day 7.

## The Shop Steward as a Detective.

**W**hen faced with investigating a grievance or whether or not a violation of the Collective Bargaining Agreement has occurred, the steward in effect must become a detective. Researching the Collective Bargaining Agreement, reviewing Step 4 interpretive decisions and arbitral reference, requesting data, physically inspecting a site and applicable documents, obtaining witness statements and actually interviewing witnesses are all elements of the investigation.



The formulation of any grievance is the result of the shop steward's/detective's thorough investigation.

## Investigation

**S**uccess for the Union in the grievance/arbitration procedure has no more important element than the investigation by the shop steward into the facts of the case. The shop steward's investigation must address and answer the six fact inquiries:

1. Who?- *grievant, witnesses, supervisor(s)...*
2. What? - *AWOL, discipline, overtime bypass...*
3. Where?- *station, tour, work location...*
4. When?- *date, time, tour...*
5. Why?- *reasons given for action taken*
6. How?- *detailed background of fact circumstances*

The avenues for answering these questions are as follows:

1. Requests for information
2. Evidence
3. Interviews



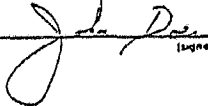
# Requests for Information

As previously stated in this Handbook, controlling Collective Bargaining Agreement language in Articles 15, 17, and 31 entitle the Union to all information necessary for grievance processing. The vehicle for obtaining this information is the "Request for Information" form.

All grievances must have, as part of the file, at least one "Request for Information" (RFI) even if the information has not been provided to the Union. The RFI becomes a valuable tool for the Union to not only obtain information, but also to argue due process violations of Articles 15, 17 and 31, should information *not* be provided.

The steward must make every effort to substantiate submission of a RFI. Some of the methods for such proof are as follows:

1. Obtain signature from management official receiving the RFI.
2. Obtain witness verification that RFI was submitted. (i.e., initials or signature)
3. Reference RFI in Step 1 background.
4. Reference RFI in Step 2 written appeal.
5. Include a copy of the RFI in the grievance file.
6. Send the RFI certified mail, return receipt.

AMERICAN POSTAL WORKERS UNION, AFL-CIO	
Grievant/Union	Nature of Allegation
Class Action APWU	Overtime violation, Article 9
1/1/95	
Date of Request	
To: John Doe	Title: Supervisor
From: Leroy Moyer	Title: Shop Steward, Tour II
Subject: REQUEST FOR INFORMATION & DOCUMENTS RELATIVE TO PROCESSING A GRIEVANCE	
We request that the following documents and/or witnesses be made available to us in order to properly identify whether or not a grievance does exist and, if so, their relevancy to the grievance:	
1. Copies of Overtime Desired Lists for 4th Quarter/1994	
2. Time Cards for Week 1/PP26 for employees W. Smith and J. Brown	
3. Staffing schedules	
4. List of employees who worked overtime during Weeks 1 & 2 of PP26/year 1994	
5. copies of annual leave log	
6. _____	
NOTE: Article 17, Section 3 requires the Employer to provide for review all documents, files, and other records necessary in processing a grievance. Article 31, Section 3 requires that the Employer make available for inspection by the Union all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this Agreement. Under 8a(5) of the National Labor Relations Act it is an Unfair Labor Practice for the Employer to fail to supply relevant information for the purpose of collective bargaining. Grievance processing is an extension of the collective bargaining process.	
<input checked="" type="checkbox"/> REQUEST APPROVED <input type="checkbox"/> REQUEST DENIED	
1/2/95 <small>(date)</small>	 <small>(signature)</small>

Requests for Information can be prepared on the APWU form developed for that purpose. An illustration of that form is included here.

A request for information may also be submitted in letter format such as the following:

*To: Installation Head  
United States Postal Service  
Anytown USA 00000*

*Under the provisions of Articles 17 and 31 of the Collective Bargaining Agreement, the following information is being requested in order to process a grievance or to determine whether a grievance exists:*

- 1. Copies of Overtime Desired Lists for 4th Quarter/1994*
- 2. Time Cards for Week 2/PP26 for employees W. Smith and J. Brown*
- 3. Staffing Schedule*
- 4. List of employees who worked overtime during Weeks 1 & 2 of PP26/year 1994*
- 5. Copies of Annual Leave log*

*Thank you for your time in this matter.*

*Paul Cirino, Shop Steward Tour II  
American Postal Workers Union*

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Requests for Information are important, required elements of any grievance investigation. There are no exceptions to their inclusion in the grievance file.

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# Evidence

There are many types of evidence the shop steward will request and rely upon in the course of a grievance investigation. Some examples are listed below.

## Documentation in written or printed form

- Collective Bargaining Agreement
- Local Memorandum of Understanding
- Handbook and manual cites
- Correspondence
- Management Instructions (MIs)
- 3971s / 3972s
- Labor-management meeting minutes
- ETC reports, time cards
- Medical certifications
- Overtime desired lists
- Hiring worksheets
- Seniority lists
- Management directives and written policies
- Grievance resolutions
- Step 4 interpretive decisions
- National level arbitrations
- Lab reports
- Postal Inspection Service Investigative Memorandum
- Fitness for Duty results
- Restricted sick leave list
- Disciplinary letters
- OPF records
- Requests for Information

Witness statements  
Newspaper clippings  
Police reports  
1723s

Any document which the Union or management uses to support their case or establish the facts is considered to be documentary evidence *and must be included in the grievance file.*

### **Record of physical inspection**

Photographs and/or videos (with USPS permission)  
Charts  
Diagrams  
Eye witness written descriptions and/or drawings  
Maps, etc.

# Interviews

Interviews are one of the most important weapons in the steward's arsenal of rights that can decide whether or not the Union will win grievances. Too many times in arbitration the Union finds new testimony and new explanations from management that justify or strengthen their position. Often, the Union advocate goes into arbitration not knowing what management's witnesses are going to say. This results in losing cases we should win.

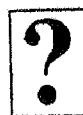
Interviews are a powerful tool which, when properly constructed and well conducted, may establish facts which are otherwise unavailable in documented form. They can also substantiate and support the Union's position.

We have the right to interview any and all employees, supervisors and witnesses who are relevant to our grievance. If we do our job and conduct thorough interviews, we greatly enhance our chances of success in the grievance procedure.



## What is an interview

An interview by a Union steward consists of a list of questions written prior to meeting a witness, employee or management official. The interview should be designed to elicit all information the witness has concerning the case the steward is investigating. At the meeting, the questions are asked and the *exact* responses are written down under the question. The steward notes the time and date the interview took place. The questions are designed to answer who, what, where, when, how and especially why. In some cases it is advantageous to take down a statement prior to asking questions where there is a dispute concerning what took place. Do not let witnesses write out their own statement unless they are friendly and articulate.



## How can an interview be used

Once an interview has been completed, the Union has two (2) important tools of evidence in arbitration.

1. The interview, if written properly, can be submitted as evidence at the arbitration hearing.
2. The Union steward becomes a strong witness to keep the facts the same to ensure that management or adverse witnesses do not change their story.

Many times, we win cases on credibility issues alone. When interviews are done at Step 1, the Union advocates handling the grievance at later steps have the information to make a sound judgment on how to pursue or resolve the grievance.

## **?** Are interviews done on the clock

Article 17, Sections 3 & 4, of the National Agreement gives the steward the right to conduct interviews on the clock. Interviews are part of grievance handling. If a postal patron needs to be interviewed, time spent in the actual interview is on the clock even if the interview must be conducted *off of Postal premises*. (see Step 4, page 27)

## **?** Should interviews be done on both discipline and contract grievances

Yes, regardless of the type of grievance, interviews are extremely useful. In discipline grievances, interviews help to establish what actually took place, resolve the fact circumstance disputes and establish whether or not due process was followed. In contract cases, interviews establish fact circumstances and management's reasoning and justification for the action taken.

The importance of interviews cannot be overstated. Although interviews will not guarantee success, they greatly enhance our chances to succeed. An interview can identify the issue(s) of the grievance, provide evidence, ensure that testimony cannot be changed and define the weaknesses or strengths of the Union's case.

*To be effective, an interview must be conducted and documented as follows:*

Steward Glaser: "Did you issue the notice of suspension to Joe Smart?"

Supervisor Jackson: "I don't have to answer that."

Steward Glaser: "From whom did you seek higher level concurrence?"

Supervisor Jackson: "I did not seek higher level concurrence."

Steward Glaser: "Did you investigate before issuing the suspension?"

Supervisor Jackson: "Yes, I read the Investigative Memorandum."

*See following page for illustration of properly documented interview*

**N**otice how the written response is the exact response given by the witness during the interview. Do not precede the response with "He said/She said". The steward should attempt to obtain a signature on this interview by the witness whenever possible.

AMERICAN POSTAL WORKERS UNION, AFL-CIO

INTERVIEW OF WITNESS IN THE COURSE OF  
GRIEVANCE INVESTIGATION/PROCESSING

Date: 1/10/95 RE: SEVEN(7) DAY SUSPENSION ISSUED TO J. BROWN

Name of Interviewer: L. GLASER, SHOP STEWARD TOUR II

Name of Individual Interviewed and Title: BILL JACKSON, SUPERVISOR - TOUR II

QUESTION: DID YOU ISSUE THE NOTICE OF SUSPENSION TO JOHN BROWN?

ANSWER: I don't have to answer that.

QUESTION: FROM WHOM DID YOU SEEK HIGHER LEVEL CONCURRENCE?

ANSWER: I did not seek higher level concurrence.

QUESTION: DID YOU INVESTIGATE BEFORE ISSUING THE SUSPENSION?

ANSWER: Yes, I read the investigative memorandum.

Bill Jackson      1/10/95      L. Glaser      1/10/95  
Witness signature      Date      Union Representative      Date

# Remedies

One of the most misunderstood areas of the grievance arbitration procedure is the formulation of proper remedies for grievances.

## General Principles

- It is important to remember to request in your remedy that all denied rights be restored and/or corrected. This is considered to make the grievant "whole." Once a remedy has been requested and this remedy has been advanced through the grievance procedure, an arbitrator usually limits the Union to what has been requested at Step 2 of the grievance procedure.
- When fashioning remedies, a general principle is that it be appropriate and based in the Collective Bargaining Agreement.
- It cannot be stressed enough that an experienced shop steward must consult with more experienced Union officers or stewards when they are in doubt about the appropriateness of a remedy.
- Often times, remedies will not be sustained because they are not CBA based, are inappropriate, punitive and/or excessive.

*Some examples of appropriate remedies can be found in Chapter 6 of this handbook.*