Shop Steward 3.6.10

INTRODUCTION

Any discussion of grievance processing must begin with and emphasize this basic element: **WE MUST RAISE OUR ISSUES AND ARGUMENTS IN SPECIFIC DETAIL NO LATER THAN IN THE WRITTEN STEP 2 APPEAL.** We must share available documentation and evidence no later than the Step 2 discussion. The last real chance to add to or correct the record is our Additions and Corrections. Never rely on being allowed to introduce something later. Article 15 of the Collective Bargaining Agreement states:

ARTICLE 15 GRIEVANCE-ARBITRATION PROCEDURE

Section 2. Grievance Procedure Steps

Step 1:
(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. Such appeal shall be made by completing a standard grievance form developed by agreement of the parties, which shall include appropriate space for at least the following:

1. **Detailed statement of facts;**
2. **Contentions of the grievant;**
3. **Particular contractual provisions involved; and**
4. **Remedy sought.**

. . .

Step 2:

(d) At the meeting the Union representative shall make a full and detailed statement of facts relied upon, contractual provisions involved, and remedy sought. The Union representative may also furnish written statements from witnesses or other individuals. The Employer representative shall also make a full and detailed statement of facts and contractual provisions relied upon. The parties' representatives shall cooperate fully in the effort to develop all necessary facts, including the exchange of copies of all relevant papers or documents in accordance with Article 31. The parties' representatives may mutually agree to jointly interview witnesses where desirable to assure full development of all facts and contentions. In addition, in cases involving discharge either party shall have the right to present no more than two witnesses. Such right shall not preclude the parties from jointly agreeing to interview additional witnesses as provided above.

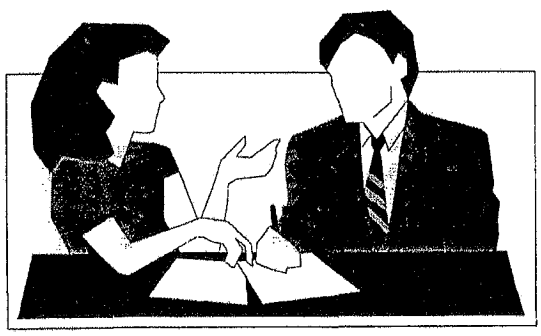
Step 2 is the "full disclosure" stage of our grievance/arbitration procedure. We have a

contractually required obligation to raise our issues and arguments in detail in our Step 2 appeal and at the Step 2 meeting. Should we fail to raise those arguments or provide documentation at Step 2, management will be expected to argue that the Union failed to meet its obligation in pursuit of the grievance. Management will argue their due process rights to address the issues and arguments at the lowest possible step--and thus the possibility of lowest possible step resolution--have been violated. Management will, in effect, turn the tables on us and pursue their own due process issues if we fail to fully raise our issues and arguments at Step 2. We must remember that in recent years, the Union has been highly successful in winning procedural arguments within the grievance/arbitration procedure and at arbitration. Due process violations in disciplinary cases--such as the Pre-Disciplinary Interview--and in contract cases--such as lack of proper grievance appeal language in letters of demand--have resulted in a solid history of successful grievance processing. As we have pursued these due process violations to successful ends, management has increasingly sought and pursued due process issues against the Union. Their education in due process is directly related to our successes. For these reasons, we can expect management to raise every due process issue which presents itself and in particular our obligation to raise our issues and arguments in our Step 2 appeals.

Without a commitment and practice to fully develop our arguments through thorough grievance investigation and processing, we will see many valuable Union issues and evidence excluded by arbitrators and deny ourselves the opportunity to fully defend our members or to prove our case.

The Importance of Interviews

Perhaps the most important tool the Union has at its disposal--and one of the currently least used in developing solid well researched cases in both discipline and contract cases--is our ability under Articles 17 and 31 of the Collective Bargaining Agreement to interview witnesses during the course of grievance investigations. All potential witnesses should be thoroughly interviewed and their responses carefully recorded so as to "lock in" testimony which may develop at the arbitration hearing. While written statements should always be collected whenever possible, they are certainly no substitute for an effective interview. The witness usually selectively recalls such evidence as she wishes to remember when writing a statement. With a well thought out interview the steward can hope to draw out the "rest of the story." It is particularly important to interview hostile bargaining unit or management witnesses before higher ups get to them to tailor or restructure their recollection of events. Rest assured, that this will almost always occur. Timely interviews can not only limit the damage,



they can actually turn the tables by calling the witness' credibility into question at the hearing. The immediate supervisor should almost always be interviewed *before* the Step 1 discussion. This establishes the record before we start to lay out our case and perhaps coach the supervisor on what might be a safer answer. There is no substitute for a good interview. But your interview will be wasted without a detailed written record.

The Collective Bargaining Agreement states:

"ARTICLE 17 REPRESENTATION

Section 3. Rights of Stewards

The steward, chief steward or other Union representative properly certified in accordance with Section 2 above may request and shall obtain access through the appropriate supervisor to review the documents, files and other records necessary for processing a grievance or determining if a grievance exists and shall have the right to interview the aggrieved employee(s), supervisors and witnesses during working hours. Such requests shall not be unreasonably denied." (Emphasis added)

"Article 31 UNION-MANAGEMENT COOPERATION

Section 3. Information

The Employer will make available for inspection by the Union all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance under this Agreement. Upon the request of the Union, the Employer will furnish such information, provided, however, that the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in obtaining information."

Using our right to interview, the questions the shop steward must ask of management are crucial if success is to be achieved through the grievance-arbitration process. Even when those answers do not help our case, they can help us prepare for management's arguments. Too often, Union advocates do not know prior to the hearing what management witnesses and managers themselves will testify to at the hearing. There is no substitute for preparation. Union interviews done at the earliest steps--prior to Steps 1 or 2--will enable the Union to better prepare for management arguments at the hearing and/or discredit the less than truthful management witness.

Once interviews are conducted, the steward (with his or her detailed notes) becomes a valuable witness for the Union and can, at an arbitration hearing, refute a manager's changed story and seriously cripple a manager's credibility.

Document! Document! Document!

It is never enough just to make the most eloquent arguments or make factual assertions. The burden is always on the Union in contractual cases, and often shifts to the Union when we raise affirmative defenses in discipline cases, to prove our case. How do we meet our burden of proof? The simple answer is: through plain hard work!

It is the steward's efforts at Steps 1 and 2 in interviewing witnesses, obtaining statements and securing documentation which prove the assertions we have made which will ultimately make our case at arbitration. Documents are a critical element of that proof. Unlike witness statements, they will not change under management pressure or become hazy with the passage of time. The tale documents tell never waivers.

We need documents to prove every element of our case. Everybody in your office knows Sue White's seniority is July 17, 1977. But the arbitrator won't. What would prove it? Your seniority list, or maybe a Form 50. As you can see there is often more than one document which can be used to prove a particular fact. Get the best one(s). If in doubt get several documents. A decision can be made later as to which one(s) to use.

What parts of your case do you need to document? Analyze your argument carefully. What are you trying to prove? What facts do you have to establish to get there? For instance, in the case of an overtime desired list violation you might need to prove: 1) that non-OTDL clerks were used for overtime (OTDL, clock rings, overtime authorization); 2) that OTDL clerks were available and not used (OTDL, clock rings, overtime authorizations); 3) that the OTDL clerks were qualified to perform the work (witness statements, training records).

Once you determine the documents you will need to prove each element of your case, submit a Request for Information requesting these documents. Always use a written Request for Information. Keep copies of your request. If the information is not forthcoming, you will have evidence of the request. Raise the issue of the denied information in the current grievance.

You should also <u>always file a separate grievance concerning the denied information</u>. Technically this should not be necessary. However, management always argues that the Union's failure to file a new grievance indicates a lack of concern or that the requested information wasn't necessary. Too many arbitrators have been fooled by this argument. Protect your case. File an Article 17 and 31 grievance on the denied information.

Share your documentation with management at Step 2. Article 15, Section 2, Step 2(d) envisions a full cooperation in the sharing of facts, contentions and documentation at Step 2. Every document which supports your case <u>must</u> be shared with the Employer at Step 2. If it isn't, don't be surprised if an arbitrator refuses to consider it. The purpose of the grievance procedure is to develop all of the facts and resolve as many cases as possible *at the lowest level*. Perry

Mason theatrics such as saving evidence to surprise a witness at the last minute of the court room drama may be good theater - but at arbitration they won't be accepted. Share all relevant documents which support your case.

Occasionally you will receive documents which hurt your case and support management's position. You are not obligated to share those documents. It's up to management to discover them and produce them to prove it's case. However, don't throw them away. Keep them in the file, clearly marked as "not shared" with management. If management fails to produce them at either Step 1 or 2 note that fact in your file. That will help your advocates prepare for any management surprises at arbitration.

Keep records of all documents shared with management at Step 1 or Step 2. Mark each document with date and time shared and with whom. Keep a list of each document shared with management. Note whether management requested a copy or only reviewed the document. Keep the same record of each document management shares with you and always request copies. It is a good idea to list all documents shared at Step 2 in your Additions and Corrections.

If management refers to a document during discussion or in their Step 2 grievance discussion, determine whether you have received a copy. If not, immediately submit a Request for Information.

Always be on alert for new documents or possibilities of documentation which might support your case. Discuss your case with other stewards and officers. Often times, based upon their experience in other grievances, they will have suggestions as to possible alternatives you can explore to document your case.

Requesting documentation can be expensive. Article 31, Section 3 makes it clear that "the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in obtaining" the documentation. Although the first 100 pages and first 2 hours research time are free, large information requests can still incur a significant cost. Are there reasonable alternatives? Would it work to request to "review" certain documents and only request copies of the specific ones you decide are necessary? What about requesting information in an alternative format, such as on a computer disk? Where there is a will, there usually is a way.

Whatever format you choose, the important thing is - for every fact at issue find supporting documentation. Share that documentation at Step 2. And then, document the fact that the information was shared. Document! Document! Document!

Finding the Violation

Once you have gathered all of your facts, reviewed and collected available documents, and interviewed potential witnesses, there is still one critical and all-important task which remains. ***Do you have a grievance?*** What Article and Section of the Agreement was violated? What provision of your Local Memorandum of Understanding? What handbook or manual? There is no question that you have a complaint. You know that because you have a member who is complaining. But do you have a grievance? Not every complaint is a grievance. In order to have a grievance we must be able to point to a particular section of the National Agreement or the Local Memorandum of Understanding, or to a provision from a specific handbook or manual which was violated.

If you can't find a specific provision which covers your situation - don't give up easily. Talk to other officers and stewards. Seek the guidance of your National Business Agents. But - if after your best efforts, it still is determined that there was no violation, then you have a difficult but important job to do. Fully explain to the grievant, why his or her complaint just isn't grievable.

If you do have a grievance but it is denied at Step 1 (imagine that happening) your Step 2 Appeal must contain reference to the specific Article(s) of the National Agreement or LMOU you are citing as having been violated. You must point out any handbook or manual citations you are relying upon. When citing your LMOU, labor/management minutes, or USPS handbooks or manuals, etc., include copies of the relevant citations in your grievance file and be prepared to share them with management. The presence of these documents will become even more critical at Step 3 or at arbitration.

Looking Ahead

In the chapters which follow we will be reviewing a number of possible issues which you may confront in the grievance procedure. For each issue we have attempted to suggest the basic arguments you can use, interview subjects and questions you might consider, and possible documentation you should obtain.

While we have attempted to be thorough in our work, the list of issues, possible arguments, interview questions, and documentation suggestions are not intended to be all inclusive. This is truly a work in progress. As you discover new issues, develop new arguments, devise new interview techniques, or determine new documentation possibilities, you too can contribute to this project. The true test of Unionism is not in individual talents but in our collective abilities. By sharing your ideas with others we can all more effectively represent our membership.