Local 525 Leadership Manual

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The Five Key Tasks for the Grievance Representative

For new officers, the first few days on the job as a union representative are critically important. You have got to demonstrate to the membership that you can get the job done. Your members must feel comfortable coming to you to resolve work-related issues.

At the same time, your supervisor and other management personnel are going to watch you and probably test you. You will need to be prepared for these trials. Here are five strategies that will help you win respect from members and firm up your position with management.

1. Establish your position. When workers go directly to management, to another officer or to a higher union officer with a grievance, without first going through their assigned representative, we call that process bypassing. Bypassing is a problem for many representatives, especially new ones.

Granted, some contracts call for the employee to speak with the immediate supervisor to solve problems informally. Whenever possible, we should encourage the member to bring along his/her representative to make sure that employee gets treated fairly. Often, when members go into meetings with their supervisors they are unaware of their rights and the stipulations of the contract.

As a union representative, you cannot assume that the membership will automatically respect your abilities. Respect must be earned by showing the members that you will apply your skills and knowledge of the contract to represent all the members to the best of your ability.

Act professionally at all meetings. Listen first, then speak. Take notes and above all leave all personal feelings aside.

Keep the lines of communication open between yourself and other union representatives.

2. Beware of management's tests. Remember that if you are a new union representative, management will often test you to see how well you represent the member. That test may be in the form of denying you reasonable time to do your job or not giving you an extension of a time limit on a first step grievance if you request it. Your supervisor may try in some way to interfere with your investigation of a grievance by denying access to records. Or the supervisor may simply say no at your grievance meeting even though your member's grievance is a clear case of injustice and a breach of the agreement.

Expect to be tested. Don't get angry or flustered. Supervisors are often trained to incite a union representative so that they will blow the grievance meeting.

Don't lose your cool. Remember that the procedure includes additional steps and make your local union aware of the problem.

3. Establish the union. When they hire in, new workers are often given expensive "orientation" from management, but may not be exposed to the union view. Not realizing the struggle that went into winning these gains, many of them may believe the wages and conditions they enjoy came from the goodness of someone's heart.

Get to those new members early. Even if they are on probation, a friendly piece of advice and support will be long remembered.

4. Represent the rank and file. Always treat the member with respect and dignity. Work with the member. It is a sign of empowerment and the strength of the union as a group. The operative word is always "we" not I. The word "they" is always reserved for the company or management, not the local union or the International. If you truly believe that the union is not simply a servicing center for the membership, then these terms should be second nature.

Always tell the truth. Sometimes you will have to say "no" and then try to convince the member that you are right. Have a reason for your decision and have some alternative strategy for the member if the situation merits it.

You have to keep favoritism out of the grievance procedure and avoid letting your personal feeling about a member cloud the way you represent him or her.

5. Build solidarity. Nobody said this job would be easy. But by being situated right in the middle of the structure amid the union, management and the rank and file, the union representative can do a lot to build unity. In everything you do, you are setting an example for the rank-and-file that they have power and that power is the union. Your actions every day build the union.

Checklist for the Union Officer

The following 25 items will serve as a checklist or a set of goals you should set for yourself in becoming a responsible union officer:

1. You are an organizer. Organize your members. Sign up your non-members. And bring the union message to other workers who are not organized.

2. Keep yourself informed on union affairs.

3. Serve as an example to your members.

4. Keep the workers informed on union policies and union activities.

5. Attend union meetings and union affairs. Encourage and bring the members from your department, shift or area.

6. Meet the new members, inform them, educate them, and help them become union members – make them dues payers.

7. Get your department to act together as a union – have them stick together.

8. Act as a leader. Do not let personal likes or dislikes prejudice your actions.

9. Give the membership the satisfaction of listening to their problems.

10. Fight discrimination, whether it is open or discreet. Discourage it whenever it appears.

11. Keep accurate and up-to-date records.

12. Do not promise, if cannot deliver.

13. Encourage political action on the part of your members. See that they are registered and vote.

14. Be an active member in the COPE (Committee on Political Education) program by signing up members, distributing literature and working every day as if it were Election Day.

15. Know how to refer to your union contract, by-laws, and local and international constitutions. If you are not sure, seek help.

16. Inform the membership about union services.

17. Fight, whenever you meet it, the anti-union element. Fight it in the union, in the workplace, and in the community.

18. Do not hesitate, stall, or let things slide. If you don't know it, admit it and get the information that is needed.

19. In dealing with management, remember that you are the elected or appointed representative of your members. Never consider yourself to be inferior to management. In your union role, you are their equal.

20. *Never argue amongst yourselves in front of management*. Always present a united front.

21. Be proud of your position. You are a union representative of your local union that has the support of tens of thousands of members bound together in the international union, with the support of millions of other union members.

22. Wear your union button proudly and encourage your coworkers to wear it.

23. Investigate every grievance as if it was your own. Keep the member informed. Make sure you make your deadlines. There is no excuse for missing a time limit.

24. Attend and encourage attendance at any labor education program that might be available to you.

25. Remember your goal is to be the best union representative you can be. Always strive for this goal. Excellence has no substitute.

Twenty Mistakes for Union Representatives

1. Always wait until a worker comes to you with a grievance.

2. Walk around the worksite with a chip on your shoulder.

3. Pretend to know all the answers to all problems.

4. Give out false information or spread rumors.

5. Fail to keep members posted on disposition of grievances.

6. Violate company rules.

7. Violate the contract.

8. Always try to talk members out of grievances.

9. Present a grievance that isn't one.

10. Forget to investigate a grievance thoroughly before handling.

11. Blow up when dealing with the supervisor or workers.

12. Use profane language to intimidate the boss.

13. Argue a grievance by taking personal issue with the supervisor and directing personal remarks.

14. Miss union meetings.

15. Bawl out a member in front of co-workers or in front of a supervisor.

16. Stall when workers call you.

17. Keep all the information to yourself.

18. Permit workers to push you around.

19. Enhance the supervisor's prestige by permitting the supervisor to use you as means of doing him/her dirty work, such as enforcing company rules or calling the workers down for minor abuse of certain privileges negotiated by the union.

20. Manage the workers.

Your Rights as a Union Representative

You are the representative of the union in the field. That role comes with rights and responsibilities. You cannot perform your responsibilities without exercising your rights. These are rights are both legal and contractual.

Your union role is a difficult one for your employer to acknowledge. Your boss sees you as an employee first. Your union role is sometimes impossible for that supervisor to accept. One day you work only for the company, the next day you are certified by the union as a representative. You are now their equal. They are not very happy about sharing any power with you.

For most of our private sector workers who are employed by private bus companies and government contractors, your rights come from the National Labor Relations Act (NLRA). The Railway Labor Act protects airline and private rail workers. Although the laws are differently worded, they both give you the right to represent TWU employees in the workplace for the purposes of collective bargaining. Most public sector laws, such as in Florida, follow the NLRA so that our public employees, working for a public body such as a transit agency or a school district, also retain these rights.

If the employer performs some kind of injustice to the member, you have a right to speak with the member about it and grieve it so the injustice can be made right. That is the basis of the grievance procedure. Your contract specifies some of the rights you have in investigating grievances. That would include whether you can speak with the grievant or conduct an investigation the grievance on company work time. Contracts that allow investigation during work time usually have some stipulation about notifying the supervisor about such an investigation so there is no question about your leaving your work station or providing coverage. If there is no such language, you can investigate during breaks, meals or other nonworking time. The issue is you cannot be barred from the premises.

If requested by the member, you have the right to be present at a disciplinary interview or an interview that the member feels is disciplinary in nature

So what are your rights at a grievance or disciplinary meeting? Simply put, *you are the member's advocate. In your union role of representing your member, you are considered equal with management.* Often referred to as "the equality rule," you can speak with force and passion, ask questions, gesture, and raise your voice. The Supreme Court labeled this "robust debate." **Our advice is to stay calm** and try to resolve the issue but never let the company run over you. Be firm and reasonable and stick with your agenda.

Sometimes the company will exaggerate your behavior to make it sound as you were threatening and irrational. If you think this will happen, bring another union representative with you as a witness.

You cannot be punished for exercising your representational role. The employer cannot retaliate against you nor can you be treated differently as an employee. You must be held to the 'same standards' as all other employees.

These rights are protected by the rule of law. If they are interfered with in any way by your employer seek help through your local union officers.

Service Contract Representatives:

Union officers who work for *service contractors or any private company* have very specific rights under the National Labor Relations Act.

Acting in *your legal capacity as a union representative* you cannot be

- punished for defending a member in a grievance meeting
- given a bad evaluation
- denied promotion
- separated from other employees
- deprived overtime or other benefits
- threatened or have rules enforced against you more strictly than other workers
- over supervised or harassed
- transferred to a different job or shift

What is a Grievance?

Contracts define a grievance in various ways. One contract may state that a grievance is a dispute between the union and management over the application and/or interpretation of the agreement. Another contract may define a grievance as any dispute or difference arising between an employee and management or between the union and management.

Look in your contract and find the definition of a grievance. Matters that can be grieved are not limited to specific contract violations. Grievances can be based on a number of grounds, including **violations of contract, law, or employer rules/policies, and disparate/unfair treatment or past practice**. To decide if the problem you are handling is a grievance, look first for a contract violation, then look at the other grounds.

How does your contract define a grievance? Here are some samples:

Article 13 Settlement of Disputes
Section 1
"A grievance is defined as a dispute (including discharge) between the Company and the Union over the application, interpretation or alleged violation of a provision of this agreement."

Article 9 – Grievance, Arbitration and Mediation
"The Grievance/Arbitration procedure shall consist of the following steps: Complaint Step – An employee who believes that he or she has been unjustly treated or that any provision of this Agreement has not been properly applied or interpreted may present his/her complaint in person or through the Union . . ."

Article 28 – Compliance and Enforcement

"For the purposes of this Agreement, a grievance is defined as a dispute between as to employee and the parties as to the interpretation or application of a provision of this Agreement."

Article 8 Grievance Procedure

"In the event of any controversy concerning the meaning or application of any provision of this Agreement, there shall be no suspension of work, but such controversy shall be treated as a grievance and shall be settled, if possible by the employee(s) and the Company in the following manner"

Five Grounds for a Grievance

1. THE CONTRACT
(including the contract, memorandum of understanding, side letters, and/or arbitration awards that have interpreted the contract.)
Contract violations are the most common grounds for a grievance and often the easiest to win, especially where the violation is clear-cut and management is not overly belligerent. It may be harder to resolve the grievance when the contract language in question is unclear or ambiguous; when two or more contract clauses may be in conflict; when the facts are muddied; or if management is being obstinate. Where the contract is silent you still may be able to grieve on other grounds.

2. THE LAW
(including federal, state, or municipal laws). Note especially wage and hour statutes, the National Labor Relations Act, Title VII, Civil Rights Act of 1964, and the Occupational Safety and Health Act.
If the law provides greater protection for the worker, it always supersedes the contract. Where the contract provides greater benefit or protection, which is most often the case, the contract *and not the law,* prevails. For example, if a state wage and hour law requires time and one-half after eight hours and forty hours and the agreement calls for time and one-half only after forty hours, the law prevails.

Filing a grievance based on an alleged violation of law does not limit pursuing legal remedies, however, a grievance is often the quickest way to get management to comply with the law. Informing management that it is violating the law can provide the union with the leverage it needs to resolve the grievance.

Additionally, it may be unnecessary and unwise to pursue a legal remedy without first giving management an opportunity to resolve the problem.

3. EMPLOYER RULES/POLICIES
Unless the contract directly regulates work rules or the procedure for making new rules, the employer has the right to make and implement rules related to the orderly and efficient operation of the business, so long as:

- The employer provides notice to the union,
- Bargains with the union over the impact on working conditions of the rules,
- The rules are reasonable on their face, and
- The rules are reasonably and fairly applied.

Management's uneven enforcement or disregard for its own rules is common grounds for these kinds of grievances.

4. Fairness/Disparate Treatment

Fairness or disparate treatment grievances cover a broad range of incidents and behavior. There does not have to be a specific contract clause covering a supervisor's assault or harassment of employees in order to grieve such treatment. Disparate treatment occurs when two people in the same or similar situation are treated differently in such a way as to harm or negatively affect one of them.

The terms "disparate treatment" and "discrimination" are often used interchangeably. The word *discrimination* leads many people to think only of unfair treatment on some illegal basis such as race, color, national origin, sex, or age. Disparate treatment is much broader and includes treating someone differently because of his or her personality, appearance, past incidents and experiences, or union activity.

Note of caution: While disparate treatment complaints are common, they are very difficult to prove. Successful resolution of a disparate treatment grievance requires much documentation and often the ability to show a pattern of objectionable behavior by a supervisor.

5. Past Practice

Past practice is a practice that meets <u>all</u> of the following criteria:

- The practice is a **reasonably uniform** way in which a **regularly occurring** situation has been handled over a **substantial period** of time
- The practice has been **openly accepted** and **not challenged** as the proper way to do things
- The practice is **not in violation of the contract**.

The term practice usually refers to local practices and working conditions, which can vary considerably between a employer's plants. They are often the customary, not necessarily the best, method of handling a given problem. A method of handling a problem cannot be considered a practice if it's only one of several ways practiced at that work place.

The practice must be **recurring** and **deal with the same type of situation**. It must have existed over a substantial period of time. The **lax enforcement of a rule doesn't constitute a valid practice** since there is no acceptance, either implicit or explicit.

Generally, the **burden of proof is on the union to show that the practice in fact does exist.**

Your Rights When Your Employer Questions You

You are called in to speak with a supervisor about a theft. What are you rights? Can you ask for a shop steward to be present? What will be his/her role?

Every union officer should be familiar with the area of labor law called "Weingarten rights." These rights can help employees avoid intimidation and prevent coerced confessions.

"Weingarten rights" were established by the U.S. Supreme Court in a 1975 case involving the J. Weingarten Company. Although the case arose under the private sector National Labor Relations Act (NLRA), its principles have been adopted by many state labor boards for application to public sector employees. TWU members under the Service Contracts Act or who work a private company are covered by these rights. Workers under the Railway Labor Act are technically not covered by Weingarten but may have negotiated these rights and they appear in their contract or in company policy. **It is always important to check with your local union**.

When Weingarten Applies

The Weingarten rules give employees the right to request union representation during investigatory interviews. An investigatory interview occurs whenever an employee is questioned in a manner which causes a reasonable fear that what is said might result in discipline or other adverse consequences.

This obviously includes questioning about theft, drugs, fights, absenteeism, lateness, or similar misconduct. Interrogations about work performance can also arouse reasonable fears. Weingarten does not apply to run-of-the mill shop floor conversations or to meetings in which supervisors give instructions on operating methods or safety practices.

Weingarten only applies when employees are questioned. If a supervisor calls a worker in to give a warning or other discipline, and does not question the employee, Weingarten does not compel the presence of a steward or union officer.

According to the Supreme Court, when an employee requests a steward or other union representative, management has **three options**:

l) It can halt questioning until the steward arrives.
2) It can call off the interview, or
3) It can tell the employee that it will call off the interview unless the employee voluntarily gives up his or her rights to a steward (**an option that employees should always refuse).**

When the Steward Arrives

Contrary to what management may say, the steward is not restricted to being a silent witness. The Supreme Court said that the steward must be allowed to assist and counsel the employee throughout the interrogation. NLRB and court decisions establish the following rules:

1) Management must inform the steward of the subject of the interrogation – for example, theft, drug use, fighting, etc.
2) The steward must be allowed to take the worker aside for a private preinterview conference. Here, the steward can give advice on how to respond to the expected questions.
3) During the questioning, the steward can interrupt to clarify a question or to object to confusing or intimidating tactics.
4) The steward can give the employee advice on how to answer questions during the interview.
5) The steward can add information at the end of the interview to support the employee's case.

The National Labor Relations Act guarantees these rights. If stewards are prevented from exercising them, *unfair labor practice charges* should be filed at the National Labor Relations Board.

Spreading the Word

Unfortunately, the Supreme Court did not require employers to tell workers about their right to union assistance, as it did in the Miranda decision covering police interrogations. The union must educate members to request representation. Some unions distribute wallet-sized cards and instruct workers to present them whenever they are questioned by management.

Here is an example of a Weingarten rights card:

"If this discussion could in any way lead to my being disciplined or terminated, or affect my personal working conditions, I respectfully request that my union steward, representative or officer be present at the meeting. Without representation, I choose not to answer any questions."

Investigation Procedures and Preparation in Discipline and Discharge Cases

Credibility Tests

Discipline and discharge cases often deal with questions of credibility. The question that faces the arbitrator is who to believe. In order to make certain your case is well prepared you should test your grievant witness vigorously to make certain exactly what happened. The grievant sometimes "sees" the situation differently than it actually happened. A grievant is emotionally involved and therefore sometimes misjudges the facts. Occasionally there are lies to cover up mistakes. To avoid embarrassment at the hearing you should take the following steps:

Go over the story thoroughly. Check every aspect of it. When you don't trust its credibility, challenge it.

Any part of the story that "stretches" the rational imagination should be doubly checked.

Try to find other credible witnesses who support the grievant's story. Different witnesses see the same event differently. Do not be surprised at this.

Use questions and techniques that you anticipate in cross-examination. In other words, play the devils advocate.

Remember, if you set up a more vigorous test of your grievant's story than the employer and it passed, there is a better chance of being believed by an arbitrator.

Check personnel (and medical) records.

Don't take the grievant's word. Test it.

Talk to the supervisor or the company witnesses beforehand. Check out their story – that might be in error also.

Records Tests

Often employer's discipline or discharge actions are based on records of employees. Make certain that records are accurate. Look them up. Find out who made the entries and if possible interview those who made the entries. Often the person who did it tells a different story or may no longer work at the company.

Compare the grievant's actions with others. Make certain he/she did not do things any different or worse than others who were not disciplined as severely or at all. In this way the company may have acted in a "discriminatory" or inconsistent manner.

Check the Contract and Rules

Often the grievant may have been wrong, but should not be disciplined because there was no violation of a rule or the agreement. You should make certain that even if there were a rule violation, it must have been a reasonable rule and was well broadcasted. While ignorance of a rule *per se* is no excuse, ignorance because of bad or improper communication may be defensible. Also if the rules are unreasonable or not related to the work, safety of others, or company image the grievant may not be held in violation.

Study the Grievance

Sometimes the reason for the disciplinary action or discharge was based on a specific act. If the employer later tries to base its action on other more broad charges, they may be prohibited because of the initial charge. Moreover, the rule of reason based on time should be considered. In other words, past charges that are "stale" may not be used against the grievant. (Be careful on this point. For example, if you want to introduce evidence to show the grievant has been a good worker for 5 years, you may open Pandora's box to allow the company the company introduce evidence which shows the bad aspects of the grievant's work history.)

Look for Motive

Where fights or insubordination or profanity are involved, check to see if the grievant was provoked or trying to defend himself/herself. Being an initiator of an action vis-à-vis defending one's self is different.

Look also to supervisory motive. If you can show that a supervisor had reason to "do in" the grievant, that should be brought out.

Interviewing Witnesses

1. Speak with witnesses as soon as possible. **Take notes!**

2. Know what your witness will say and if any written statements have been made. Review the documents.

3. Inform witness of questions you will be asking.

4. Tell witness what to expect during cross-examination.

5. Tell witness to admit, **IF ASKED**, that you have spoken with him or her. Don't have them lie or hide the fact of a conference. **IF ASKED**, "What did your union representative tell you to say at the hearing," reply, "He/she told me to tell the truth."

6. Tell witness to be brief, nontechnical, and not to argue.

7. Plan your questions according to the information your witness has offered.

8. Tell your witness **not to be evasive**. If they cannot remember or do not know – say so.

9. If the witness is sure of a fact, use words like "I remember." Do not have them use language like "I think" or "It could have . . . "

10. Don't let witnesses get shaken by cross-examination. Tell them not to get excited, lose their temper, or get careless with an answer.

Additional Guidelines for Witnesses

- Tell the truth with respect to the facts and tell it as clearly as you can.
- Listen to the questions carefully so you don't answer before you know what is asked.
- If you don't understand the question ask that it be clarified for you
- Do not lose your temper or show excessive emotion.
- Do not be sarcastic if the person questioning you "needles" you. You do best by staying calm.
- Do not let the questioner lead you into statements of facts of which you do not have full knowledge.
- Tell only the facts you know – do not be led into speculation.
- Do not volunteer information – just answer the question.
- Do not testify as to facts on a second-hand basis. Testify only what you know to be a fact.
- Do not argue with the questioner. Answer the question and then be silent.
- Do not offer your opinion.
- If you do not know the answer to a question when you are sure you understand it, say, "I don't know."
- Do not hesitate to say, "I don't remember," if that is the truth.
- Do not let anyone questioning you get you to say "yes" or "no" unless it is correct. If your answer needs further explanation, state your reply accordingly and respectfully, but firmly indicate that you do not believe the "yes" or "no" answer by itself would be a truthful answer.

If you are required to make a written statement, always keep a copy of it for yourself and for future reference.

Grievance Checklist - Insubordination

1. Was grievant actually given a **DIRECT ORDER** (or merely instructions, suggestions, or advice)?

2. Was grievant **AWARE** that he/she was given a direct order?

3. If so, was the order **CLEAR**?

4. Was grievant's alleged failure to comply **INTENTIONAL**?

5. Was grievant given adequate **FOREWARNING** of the possible consequences of his/her alleged refusal to carry out the order?

6. Was the order reasonable and necessary to the **SAFE, ORDERLY, and EFFICIENT** operation of the organization?

a. Did it violate:

- The agreement? ("contract")
- An addendum to the agreement?
- A supplementary letter of understanding? ("Side Letter")
- Policy?
- An administrative directive?
- A past practice?
- An applicable and relevant arbitration award?
- An applicable law?

b. Did the order threaten to cause undue hardship or irreparable harm?

c. Did the order threaten to endanger the health or safety of the grievant?

d. Would the order force the grievant to violate the law?

e. Was the order arbitrary? capricious? unjust? unfair? inequitable? unreasonable?

f. Did the order otherwise adversely affect the welfare of the grievant or the union?

How to Handle a Reprimand

A member gets called into the supervisor's office and is told that his job performance has not been good. Or another member is told she has been late too many times in the past month. The supervisor issues a written letter of reprimand and puts it in their personnel file. The member comes to you to complain that the there is another version to the story. The supervisor chose to ignore it.

So what can you do to protect these members?

Understand that management has made a science out issuing reprimands. By using reprimands, the employer begins to build a case against the employee, a case that could eventually lead to termination. That is why reprimands should not go unanswered.

There are a number of strategies available to the union representative. Some may already be in place and the first place you should check is your agreement. Some contracts have specific language dealing with reprimands and some employers have procedures to handle them.

Let's start with the basics. Anytime, a member is called into a manager's office and suspects that the discussion may result in discipline, they should ask for your presence at the meeting. A number of our contracts guarantee that right. The Supreme Court upheld that right for NRLA-covered workers under their so-called "Weingarten ruling." Many states guarantee that right for public sector workers. As a union, we take a principled position that all members have that right as part of due process.

Once you are in the room, you may be able to head off any action that could result in a warning or reprimand. For your own purposes, make a record of the discussion of the issue and an understanding of the outcome. If the manager drops the issue, indicate it in your notes and get an agreement from the supervisor that no adverse entry will be made in the personnel file. If any entry is made of the discussion, try to get a copy for the member and the union.

What if a disciplinary warning is noted on the record or a reprimand is actually issued?

Unfair entries in the record should be answered in some form. The union can insist that the worker's version of the story be entered on the record. Check to make sure that the entry is accurate. If the employer refuses, then the union can write up its version and send it to the employer with a copy kept on file in the union hall.

The union may choose to go a step further and grieve the reprimand, particularly if it could have more serious implications down the road. It can be grieved as discipline "without just cause." The remedy should be that the reprimand be removed for the member's personnel file and all references to it be purged from the record.

Such a grievance can be argued through all steps short of arbitration. Rarely will a reprimand go to arbitration. But that does not mean the union accepts the employer's final decision. If the employer refuses to rule in the union's favor, the union can send a letter to the employer with the following language:

"This reprimand is unfair and the union reserves the right to challenge both its content and its use in any further disciplinary proceedings."

This language serves as some protection if the employer uses this reprimand as part of a record to discipline the member for another alleged transgression. What if that alleged transgression is grieved before an arbitrator and the employer produces the challenged reprimands? If the union produces copies of the challenges, it alerts the arbitrator to the union's position that it did not accept the reprimand and there was another side to the story. That strategy can serve to weaken an employer's position about the attitude of the worker (the "bad attitude argument") and/or mitigate a penalty in a progressive disciplinary situation.

Arguing a Discipline Case

In the past, these areas were often referred to as the seven tests of just cause or arbitration standards used in disciplinary cases. Often, disciplinary cases have gone to arbitration so we can look at them for advice on how to present our cases both in the pre-disciplinary meetings and in the grievance meetings leading up to arbitration.

When arguing a discipline grievance - whether it is a reprimand, suspension, or discharge - you should develop arguments addressing these three issues.

1. Is the worker guilty of the offense and can the employer prove it?
2. Did the employer follow the proper procedure when it imposed the discipline? Did the employer violate the worker's right to procedural due process?
3. Even if the worker is guilty of the offense, is the penalty too severe?

1. Is the worker guilty? Can the employer prove it?

In discipline cases, the employer has the burden of proof. The employer must be able to show that it had *just cause* for taking the disciplinary action it did. In legal terms, this is really the heart of what we call due process.

For most worksites, the pre-disciplinary hearing fulfills much of this requirement. Here, a non-probationary employee has an opportunity to explain before discipline is imposed. Even when misconduct is obvious, there is a duty to hear the employee out. The grievance hearing should not substitute for this pre-disciplinary meeting. This does not mean that an employer is prohibited from suspending an employee pending a hearing. It does mean a hearing must be scheduled before discipline is assessed.

Don't be fooled here. An arbitrator will almost never overturn discipline if there is a due process violation and they are convinced of the employee's guilt. But he or she may reduce the penalty.

If the employer does not appear to have proof, do not attempt to prove the worker innocent. The presumption should be that the worker is innocent. It is always easier to show that the employer is wrong than to prove that the worker is right. In the grievance meeting, ask that the employer present its evidence before the union presents its case.

If you are going to rely on "no proof" as your argument, be careful about raising any of the other issues addressed below. They may contradict your main argument. You cannot say both that the worker is innocent and that the employer should show mercy.

2. Did the employer follow the proper procedure?

Even if the worker is guilty of the conduct in question, you may be able to successfully resolve the grievance if the employer has not respected the procedural rights of the worker.

- *Does the employer have a work rule that covers the conduct? Does the employee know about the work rule, or should she have known? Is the rule clearly communicated? Is the work rule reasonable? Is it related to the orderly, efficient, and safe operation of the employer's business?*

These questions all ask if the employee received fair notice of the rule and the consequence of not following it. *Just cause* means that an employer must publicize the rules and policies it expects its employees to follow.

An important exception to this statement is in **self-evident misconduct** – which is so wrong that announced rules are unnecessary. Examples of such misconduct are what we usually call major infractions – dishonesty, theft, insubordination, fighting, sleeping on duty, failure to perform duties, negligence, and dangerous acts.

Where conduct is not so self-evidently wrong, an employer must give clear notice that such conduct is not allowed. That is one reason why employers use rulebooks, bulletin boards, classes, websites, and announcements. Some of the conduct is also included in the contract.

Rules must be clear – not vague. Non-major infractions must also have some kind of sanction – "immediate discipline" is not clear enough. "Discipline up to and including termination," gives enough forewarning of the consequences of violation.

- *Has the employer failed to enforce the rule for a prolonged period of time?*

Has the employer been enforcing the rule regularly? If not, arbitrators call this "lax enforcement. This may happen when a new manager comes and decides to shake things up. The union has to prove that the employees have been ignoring the rule without penalty for a prolonged period of time. Also, the company has been aware or should have been aware of this noncompliance.

Be aware of two issues here.

1. The union is admitting that the rules has been broken before and will have to show it using specific cases. That means a union member will testify that he or she violated the rule and was not disciplined. Will that person be put at risk? That will usually not happen because just cause requires that discipline be done in a timely manner.
2. There is real risk that union members will lose the privilege of ignoring that rule now that it is in the open. But the company is now going to enforce it anyway.

- *Did the employer apply the work rule fairly and consistently or have they singled out this worker for disparate treatment?*

Just cause works against favoritism and discrimination. Employers must treat all employees in the same way. An employer commits "disparate treatment" if it imposes a harsher penalty on one employee than another who violated the same policy or rule.

The union does not need to prove the reason, only that such treatment has occurred. You must be available to produce the record of at least one other employee who violated the same or similar rule but was given a lesser penalty. The other employee's record must show that the infraction was as serious as the charged member and their work and disciplinary records were similar. You will need to request personnel files in order to prove this. These records must show that this penalty was not assessed as a "last-chance" agreement or "without prejudice."

- *Did the worker get to talk with the steward before admitting to some wrongdoing?*
- *Did the employer question the employee without giving him the right to representation during the interview?*

The Weingarten ruling under the National Labor Relations Act and most state law guarantee the member the right to request that a union officer, usually a steward, be present at a pre-disciplinary hearing. More on Weingarten can be found in this handbook – see pages 13-14.

- *Did the employer investigate before taking action? Did they start "cooking up a case" after they realized the union would object?*

- *Did the employer conduct a fair and objective investigation?*

3. Even if the worker is guilty of the offense, is the penalty too severe?
There are some areas that can be argued even if the employer assesses a penalty on the member. First look to the contract. Many contracts spell out the disciplinary procedures. Work rules are often contained as an addendum.

Discipline is supposed to be corrective, not punitive. Therefore, penalties should be applied with gradually increasing severity before discharge is invoked. This should begin with verbal reprimand and move to written reprimand, and then to suspension. We call this process progressive discipline. The exception to this rule is major misconduct such as theft, sabotage, gross negligence, willful destruction of property, assault, insubordination, drug dealing, and possession of a weapon. Most of the major infractions are spelled out in the contract or company rulebook.

Does the punishment fit the crime? Is the employer acting too harshly for a relatively minor offense? Has the employer followed the principle of progressive discipline? Is this punishment necessary to correct the worker's behavior?

Avoid asking for favors. If you ask for a favor, you might be asked for one in some future context. Would you want your meritorious grievance jeopardized because the steward owes the boss?

Mitigating circumstances

This is an area where there are facts about the grievant that suggest a harsh penalty is unnecessary or inappropriate. Mitigating circumstances might include: substantial length of service; spotless disciplinary record; exemplary job performance; sincere contrition; participation in counseling; record or responding to corrective discipline.

Extenuating circumstances

These arise when managers, supervisors or others contribute to the offense or bear part of the blame. Examples include poorly communicated orders; inadequate training; insufficient staffing; failure to enforce safety rules; provocation; harassment; work speedup; or defective machinery.

What is Arbitration?

1. What is grievance arbitration?

The final step in the grievance procedure is arbitration. It is a hearing conducted before an impartial third party chosen by mutual consent of union and management.

2. Why do unions use arbitration?

Arbitration provides a method of solving disagreements between management and unions by using the decision of an independent person. In the past, if a grievance procedure did not include an arbitration clause, the union would either have to accept the decision of management or call a strike. Unions would not accept the first alternative nor tactically could they carry out the second one. Arbitration is a substitute for endless strikes over grievances.

3. Who are the arbitrators?

They are often university professors who have studied labor-management relations and collective bargaining, lawyers, former union or management representatives. Both company and union representative must be convinced of an arbitrator's impartiality. Of course, both side want an arbitrator who will agree with their particular point of view.

4. How are arbitrators selected?

Usually the contract provides for the method of selection. The Federal Mediation and Conciliation Service may be asked to provide an odd number of names. Each side alternatively would remove a name until only one name is left. That person becomes the arbitrator. The American Arbitration Association also provides lists of names of arbitrators. Some contracts will list arbitrators and some provide for a permanent arbitration panel.

When choosing an arbitrator, go back in the union record to see if this person has been used before and if so, how he/she ruled. Call up other unions in your area, particularly those in your industry to see if they have used the arbitrators. Try to find out as much as you can about this person before eliminating or choosing him/her.

5. Who pays for arbitration?

The costs of arbitration are evenly divided between the employer and the union, unless other stated in your contract Besides charging for hearing the case, the arbitrator may spend whatever time necessary studying the case and writing the decision. The time spent varies with the difficulty of the grievance, but most take a day or less of hearings; the most complicated take several

days. Additional costs might include travel expenses for the arbitrator and room and board if he/she must stay overnight at hotel. The lost time for union representatives and union witnesses should also be added to the total. Transcripts, if used, should also be added to the total.

6. How does arbitration work?

The arbitrator listens to both the union's and management's arguments in the hearing. The company and union provide information to support their position. Witnesses may be called and questions asked by company, union, and arbitrator. The arbitrator must then make a decision based on the information he/she has been given, including the contract language, past practice, and rights the contract negotiators intended to provide.

The arbitrator's decision is final and binding in most contracts. Both sides must accept the decision and cannot appeal to any higher step in the grievance procedure. An exception to this rule is noted when one side feels strongly that the arbitrator did more than interpret facts and rights under a contract or set of working conditions (Contracts often say clearly that the arbitrator cannot change contract language or work rules). In this situation, the loser may go to court to try to overturn the arbitrator's decision, but that is very rare.

The bottom line is that both sides must live with the decision of the arbitrator.

Employee's Right to Representation

Duty of Fair Representation

Court cases have determined that a union that is elected or designated as the exclusive bargaining representative of a group of workers must represent each and all workers in that bargaining unit fairly and without discrimination. This requirement is called the union's Duty of Fair Representation (DFR).

Standard of Conduct in Grievance Handling

The DFR begins when the union becomes the representative for a group of workers, and continues throughout contract negotiations and administration of the agreement.

In grievance handling, DFR refers to the union's *conduct in handling the grievance*. If there is a claim in which the union did not represent an employee/grievant fairly, the inquiry will be into the conduct of the union when it handled the grievance, not the merits of the grievance.

The federal courts have not defined what kind of conduct fulfills a union's duty of fair representation. The federal courts have said that a union violates its duty of fair representation when its conduct is **arbitrary**, **discriminatory**, or **in bad faith**. What kind of conduct is arbitrary, discriminatory, or in bad faith? The courts determine this on a case-by-case basis.

Avoiding DFR Cases

Stewards and officers can use the following guidelines to ensure that they handle grievances in a way that minimizes the possibility of meritorious DFR lawsuits:

- Carefully investigate all grievances to determine their merit.
- Make and maintain careful records of such investigations.
- Maintain good communication with the grievant to assure of the local's concern, efforts, and good faith. Misunderstandings can prompt hostility and claims.
- Promptly process all grievances. Scrupulously observe contract time limits and confirm any continuances in writing.
- Treat all members equally. Make decisions whether to pursue grievances or arbitration solely on the merits. Avoid hostile motivation or "horse-trading."
- In borderline cases, obtain the opinion of local union officers. The decision not to arbitrate should be made at the appropriate and responsible union level.
- Have a valid reason for any action taken on a grievance.
- If the grievant does not accept the steward's determination, consult with the officers before formally withdrawing the grievance.
- You should communicate any decision to discontinue the grievance process to the grievant. Also, communicate all settlement offers to the grievant.
- If a grievance is settled, it should be backed by a written release that is signed by the grievant.
- Union representatives should be trained in their obligations.

Get the Facts: Remember the Five W's

1. **WHO** – is involved? Name(s) of the grievant(s), department, shift, job classification, seniority, etc. Are they on probation? Have they been disciplined before? Has a similar grievance been filed on this same issue? Who is the supervisor? Who are any witnesses?

2. **WHEN** – did the incident or condition occur? Give the dates and time as accurately as possible.

3. **WHERE** – did the grievance take place? Give the exact location, area.

4. **WHAT** – is the grievant's story? Management position? The reports of the witnesses? Are there records that might support your case? Collect all the facts you can, always looking for the hard facts, but accepting and weighing "less convincing evidence," and different versions.

These facts should be put down in a fact sheet as soon as possible. People forget!

5. **WHY** – is this a grievance? Has the contract been violated? What about violations of past practice? The law? Health and safety rules? Is the issue one of unjust action or application of company rules?

AND ALSO

6. **HOW** – should the grievance be settled? What is the remedy you seek? What adjustments are necessary to correct the injustice? You want to return the aggrieved workers to the same condition he/she would have been in, had the violation not occurred.

7. **WHAT ELSE** – What other information is needed? What is the work record of the individual? What does the worker say about that record? Can you find any other positive material to make this employee look good in the eyes of management? Is there a letter of commendation?

Vocabulary for Grievance Writing*

The following are some words and phrases commonly used in grievance writing:

Management violated the collective bargaining agreement including but not limited to Article___,Section___.
Performed a discriminatory action
Discipline (discharge, demote, suspend, transfer, fine, reprimand)
Failed to comply with laws and regulations
Obstructed due process
Jeopardized health or safety
Reinstate
Make whole in every way including
All rights and benefits
Article_____, governing_____
Past practice
Consideration
Letter of warning (reprimand)
Verbal criticism
Transfer from station to station
Upgrade in classification
Violation of contractual rights
Interference in the performance of duties
The rights of employees to effective representation
Matters affecting the terms and conditions of her/his employment
Disciplined without just cause
Arbitrarily
Entitled to
Incidental to his/her duties as steward

*Nicole Heare

Ten Points on Writing a Grievance

1. Limit Details to Basic Information: Provide only enough information to identify the grievance so that management understands: l) what the basic problem is, 2) what violations have occurred and, 3) how the problem should be fixed (remedy).

2. Omit Union's Arguments, Evidence and Justification for Position: This information could be used by management to prepare a case against the union. Arguments, evidence and justification for grievance should only be used in oral arguments with management. In this way, you can introduce this material when it best helps in winning grievance. If need be, jot these facts down on a separate piece of paper before you argue case with management.

Examples:

(Wrong) Instead of writing, "The grievant, Billy Brown, who has six years seniority in her job classification, was abused and discriminated against by management by laying her off when three other people in the same classification, with less seniority, were kept on."

(Right) It would be better to write, "Management unjustly laid off Billy Brown."

3. Don't Limit Contract Violations: When stating WHY there is a grievance, use the phrase "violates the contract" and the words "including but not limited to Article..." when citing specific articles or sections in the contract. *

Examples:

(Wrong) Instead of writing, "Management's action violates Article VIII, Section 4 and 5 of the contract."

(Right) It would be better to write, "Management's actions are in violation of the contract, including but not limited to Article VIII, Section 4 and 5."

*By adding the word "including but not limited to," you can always add additional violations.

4. Avoid Personal Remarks: The grievance states the union's position, not yours (or the grievant's) opinion. Avoid the use of phrases like "I think" or opinions about management officials.

5. Don't Limit the Remedy: If you limit the remedy: l) You don't allow the union room to bargain on the grievance. 2) You might limit the union to something less than full compensation for the grievant by leaving out something you may remember later. This can be accomplished by using the general phrase "made whole in every way" and the word "including but limited to" when referring to specific remedies.

Examples:

(Wrong) Instead of writing, "The Union requests that grievant, Billie Brown be recalled to her job classification with full back pay for all wages and benefits lost."

(Right) It would be better to write, "The Union requests that Billie Brown be made whole in every way including but not limited to recall to her job classification with full back pay for all wages and benefits lost."

> The general phrase "made whole in every way" means that the grievant should receive any and all losses due to management's action. This could include interest on money, wages, seniority, and job rights, whatever is due the grievant according to the contract. The word 'including but not limited to" allows you to add specific remedies later on, in writing or in oral arguments with management.
>
> But: Just because you use the general phrase "made whole in every way" does not mean that an arbitrator or management will search out all the specific benefits management denies the grievant for you. It is up to you to list (verbally or in writing) any remedies not noted in the original written grievance.
>
> Note: In grievances that do not involve money, benefits, or retraction of disciplinary warning, the phrase "made whole in every way" may not be necessary. In that case, just ask for the specific settlement desired.

6. Consult with the Grievant: Go over the written grievance. Explain the requested remedy and get the grievant's full understanding and agreement.

7. Sign the Grievance: Have the grievant sign the grievance. This gives the union the right to settle the grievance.

8. Solidarity: Explain the grievance to your members and be sure they understand and support your efforts.

9. Keep the grievant up to grievant up to date on each action. Don't wait for him or her to come to you.

10. **Arbitration:** Prepare each case on the assumption that it may go to arbitration.

Material adapted from Indiana University Union Leadership Program materials.

TWU Grievance Fact Sheet

For the Union Only

Steward: Complete this form and attach to the UNION COPY ONLY of grievance number ____

Please Print

WHO is involved in the grievance?

GRIEVANT:

Name:_____

Department:_____

Job and Class:_____

Rate:_____

SENIORITY Service from (date)___

Dept. Service from (date)_____

Job Service from (date)_____

FOREMAN OR OTHER MANAGEMENT INVOLVED:

Name:_____

Department:_____Job title:_____

WITNESSES OR OTHER PERSONS INVOLVED:

Name:_____

Department:_____Job title:_____

Name:_____

Department:_____Job title:_____

WHAT happened? Explain the grievance. Be sure to include all points mentioned in the checklist for each type of grievance.

_____

_____

_____

WHEN did the grievance occur? Include date and time grievance began, how often it occurred, and the duration. Is it within the time limits to proceed with a grievance?

_____

WHERE did the grievance occur? Include exact location: department, machine, aisle, job number, etc. Include diagram, sketch, or photo if helpful._____

_____

WHY is this a grievance? Note whether it was a violation of contract, memorandum, law, past practice, safety regulations, rulings or awards, unjust treatment, etc._____

_____

WANT Describe the full remedy (adjustments needed to completely correct the situation). In case of discharge, ask for full back pay._____

_____

Company contends:_____

_____

Company Record of Conduct (Warnings/Penalties for lateness, absenteeism, quantity or quality of work, etc.)

Verbal warnings issued:_____

Written warnings issued:_____

Penalties imposed:_____

Tests for Just Cause:

What was the relevant work rule?_____

Do we accept the rule?_____

Is the worker aware of the rule?_____

Did management fairly investigate before taking action?_____

Has management fairly and evenly enforced the rule in question? _____

Has the worker's record been taken into consideration?_____

Does management have substantiated evidence of guilt?_____

Additional Information:

Information provided by witnesses. Print name of each witness followed by a summary of what was seen and heard. Get a signed statement if needed.

_____

_____

_____

_____

_____

Documentary evidence (e.g., seniority list, wage schedule, work ticket, record of similar grievance):

_____

_____

_____

_____

Steward's or committee person's
Date:_____signature:_____

Aggrieved worker's signature:_____

CHECKLIST FOR GRIEVANCE INVESTIGATION

DISCHARGE AND PENALTIES
- ☐ Just cause
- ☐ Complete statement of events leading to discipline
- ☐ Date and times (important to document)
- ☐ Supervisor's name
- ☐ Name, address, phone #, and statement of witness (if any)
- ☐ Employee's record
- ☐ Print or diagram of area (if applicable)

NOTES ABOUT DISCHARGE OR DISCIPLINE CASES:
- ☐ Did the steward ask about grievant's personal problems?
- ☐ Did the steward ask about any previous record, good or bad, long or short?
- ☐ Did the steward probe any extenuating circumstances in this case?
- ☐ Did the steward ask about the personal character of all people involved?
- ☐ Did the steward discuss the consequences of the penalty?
- ☐ Did the steward consider whether the "punishment fits the crime"?
- ☐ Did the steward advise the grievant to seek employment while waiting?

JOB POSTING
- ☐ Grievant's classification and seniority
- ☐ Grievant's previous classification
- ☐ What grievant was temporarily promoted to
- ☐ Date of promotions (if any)
- ☐ Pay stubs, if possible
- ☐ Grievant's experience in vacancy requested
- ☐ Name and seniority of employee awarded job
- ☐ Number of posting and grievant's application
- ☐ Article violated

JOB POSTINGS (IMPROPER OR NON-POSTING)
- ☐ Classification of vacancy
- ☐ Area in which vacancy existed
- ☐ Name of employee who held vacancy
- ☐ Name of employee promoted to fill vacancy
- ☐ Article violated
- ☐ Shift at time of posting

REMOVED FROM POSTING
- ☐ Grievant's posted classification
- ☐ Date of last posting
- ☐ Grievant's qualifications
- ☐ Reasons for removal
- ☐ Classification assigned to
- ☐ Name of employees junior and not affected

TEMPORARY POSITION
- ☐ Grievant's seniority and classification
- ☐ Grievant's qualification
- ☐ Classification at which promotion was made
- ☐ Time of promotion
- ☐ Availability of grievant at time of promotion
- ☐ Name of supervisor involved
- ☐ Name of employee promoted
- ☐ Location promotion made
- ☐ Instructions to grievant (if any)
- ☐ Exact work performed by grievant
- ☐ Articles violated

IMPROPER PAY (WORK ASSIGNMENT)
- ☐ Grievant's regular posted classification
- ☐ Grievant's regular work assignment
- ☐ Grievant's assignment on day in question
- ☐ Name of employees who worked in grievant's place (if any)
- ☐ Name of employee available (junior to grievant)
- ☐ Date of grievant's last posting
- ☐ Safety issues (if any)
- ☐ Pay rate applicable to assignment
- ☐ Exact work performed by grievant
- ☐ Articles violated

DEMOTION
- ☐ Grievant's classification and seniority
- ☐ Number of employees affected
- ☐ Grievant's qualifications
- ☐ Classification demoted to
- ☐ Names of junior employees holding higher rated jobs (if any)
- ☐ Name of employee performing grievant's regular work (if any)
- ☐ Articles violated

OVERTIME
- ☐ Grievant's classification
- ☐ Shift or work group
- ☐ Date and shift overtime was scheduled
- ☐ Classification scheduled for overtime
- ☐ Name and classification of employee who worked
- ☐ Record of overtime from supervisor's records
- ☐ The work that was performed
- ☐ Articles violated

CONTRACTUAL HOLIDAY
- ☐ Same as overtime
- ☐ Seniority of grievant
- ☐ Seniority of employees who did work

VACATIONS
- ☐ Seniority of grievant
- ☐ Time requested and time allotted
- ☐ Grievant's qualification
- ☐ Name and classification of junior employees
- ☐ Number of employees in work group

SUPERVISION WORKING
- ☐ Name of personnel doing the work
- ☐ Type of work performed
- ☐ Amount of time worked
- ☐ Area where work was done
- ☐ Grievant's classification
- ☐ Availability of grievant
- ☐ Is grievant entitled to the pay

TRANSFERS
- ☐ Seniority of grievant
- ☐ Department requested
- ☐ Name of new employees
- ☐ Grievant's classifications
- ☐ Employees available to replace

A Dozen Points on Grievance Presentation

1. Prepare the case beforehand.

•Have your facts down in writing.

•Have notes organized to guide your presentation.

•Understand your notes and facts – be confident.

•Anticipate the company's argument and have answers ready.

•Make an effort to talk to the worker alone before you meet the supervisor.

•Talk the case over, if necessary, with other representatives, your committee people, or others who might help you.

2. Avoid arguments among union people in the presence of the company.

If you have a difference of opinion during a meeting, take a recess and iron the problem out in private; present a united front to the company.

3. Stick to the point, avoid getting led off on side issues by the company.

Insist on discussing the issue raised by the grievance only, nothing else.

4. Get the main point of the company's argument.

•Try to narrow the area of difference between union and company.

•Listen intently for solutions to the problem that the company may feel it can only reveal by subtle implications, hints, or indirect suggestions,

5. Disagree with dignity.

Avoid getting excited, angry or hostile. On rare occasions, after you have reasoned that there would be an advantage to the union, you may choose to raise your voice. But have a good reason to dos so. The steward is cautioned to keep him/herself under control of he/she will lose the advantage.

6. Avoid unnecessary delays. Justice delayed is justice denied.

•If the company asks for more time, try to determine whether it is an attempt to stall or it is based on a sincere desire for more facts needed to settle the case.

•Remember, the more time that passes, the "cooler" the grievance becomes and the less support you will get from the worker or workers involved.

•The longer the complaint or grievance is tied up by the company, the more difficult it will be for the union to gather and remember the facts and merits of the case.

•The more grievances that are piled up in the procedure, the more likely that the company will try to "horsetrade" settlement of a few grievances for dropping of others.

•If the grievances are made a part of contract negotiations, the company may attempt to trade off other contract demands for settlement of grievances that should have been taken care of long before.

7. Settle the grievances at the lowest possible step of the grievance machinery, but make sure they are properly settled.

•It helps to build better relationships in the department.

•The union representative will feel like the vital part of the union that he/she is.

•The union representative also wins respect from the members of his/her department.

•Don't pass the buck. If you can settle the grievance in the first step, do so.

8. The burden of proof is on the supervisor.

Let the supervisor try to justify and prove that the action he/she has taken is correct. Don't try to show him/her where he/she is wrong. Let him/her first carry the burden of proof in telling you how he/she is right.

9. Avoid bluffing

It is only a matter of time until your bluff is called; it is in the long run wiser to develop a reputation for honesty.

10. Maintain your position on a grievance until proven wrong.

Avoid hasty conclusions that you were wrong. Take time to give the matter considerable thought.

11. Be prompt...Follow the grievance through.

- Refer the grievance to the next step when not settled. Give the representative above you all the facts; also the arguments used in your discussion with the supervisor. Don't allow the grievance to lay around.

- Delayed grievances mean delayed justice. Keep a constant check on the progress of the grievance and at what step it is. Report back to the aggrieved and the department-they're concerned too.

12. Enforce the contract!

- If the union has not complained about similar violations of the contract or past practices before, why should the company give in now?

- The best contract in the world has no value if the worker and the union representative do not require the company to live up to its terms.

Listening to Others*

1. **Stop talking** — you can't listen while you are talking.

2. **Empathize with the other person**— try to put yourself in his/her place so that you can see what he/she is trying to get at.

3. **Ask questions** — when you don't understand, when you need further clarification, when you want to show you are listening. But don't ask questions that will embarrass or show the other person up.

4. **Don't give up too soon** — don't interrupt the other person; give him/her time to say what he/she has to say.

5. **Concentrate on what is said** — actively focus your attention on the words, ideas, and feelings related to the subject.

6**. Look at the other person** — face, mouth, eyes, hands will all help to communicate with you. Helps you concentrate, too. Makes the other person feel you are listening.

7. **Leave your emotions behind** (if you can) — try to push your worries, your fears, your problems, outside the meeting room. They may prevent you from listening well.

8. **Control your anger** — try not to get angry at what is being said; your anger may prevent you from understanding what is said.

9. **Get rid of distractions** — put down any papers or pencils you have in your hands; they may distract your attention.

10. **Get to the main points** — concentrate on the main ideas and not the illustrative material. Examples, stories, or statistics are important, but usually are not main points. Examine them only to see if they prove, support, define the main ideas.

11. **Share responsibility for communication** — only part of the responsibility rests with the speaker; you as the listener have an important part.

12. **React to ideas not to the person** — don't allow your reactions to the person influence your interpretation of what is said. The ideas may be good even if you don't like the person.

13. **Don't argue mentally** — it is a handicap to argue with him/her mentally as he/she is speaking. This sets up a barrier between you and the speaker.

14. **Use the difference in rate** — you can listen faster than he/she can talk, so use this rate difference to your advantage by: anticipating what he/she is going to say, think back over what he/she has said, evaluate his development. Speech rate is about 100 to 150 words per minute; thinking is 250 to 500.

15. **Listen to what is not said** — sometimes you can learn just as much by determining what the other person leaves out in his/her discussion as you can by listening to what he/she says.

16. **Listen to how something is said** — we frequently concentrate so hard on what is said that we miss the importance of the emotional reactions and attitudes related to what is said. Attitudes, and emotional reactions may be more important.

17. **Don't antagonize the speaker** — it may cause the other person to conceal their ideas, emotions, and attitudes. Try to judge and be aware of the effect you are having on the other person. Adapt to him/her.

18. **Listen for their personality** — one of the best ways of finding out information about a person is to listen to him/her talk; as he/she talks you can begin to find out what he/she like and dislikes, what his/her motivations are, what his/her value system is and what makes him/her tick.

19. **Avoid jumping to assumptions** — they can get you into trouble. Don't assume that he/she uses words the same way you do; that he/she didn't say what he/she meant, but you understand what he/she meant; that he/she is avoiding looking you in the eye because he/she is telling a lie; that he/she is distorting the truth because what he/she says doesn't agree with what you think; that he/she is unethical because he/she is trying to win you over to his point of view. Assumptions like these may turn out to be true, but more often they just get in the way of your understanding and reaching agreement or compromise.

20**. Avoid classifying the speaker** — too frequently we classify a person as one type of person and then try to fit everything he/she says into what makes sense coming from that type of person. He/she is a Republican. Therefore, our perceptions of what he/she says or means are all shaded by whether we like or dislike Republicans. People have the trait of being unpredictable and not fitting into their classifications.

21. **Avoid hasty judgments** — wait until all the facts are in (or at least most of them) before making any judgments.

22. **Recognize your own prejudices** — try to be aware of your own feelings toward the speaker, the subject, the occasion, and allow for these pre-judgments.

23. **Identify the type of reasoning** — frequently it is difficult to sort out good and faulty reasoning when you are listening. Nevertheless, it is so important a job, that a listener should bend every effort to learn to spot faulty reasoning when he/she hears it.

24. **Evaluate facts and evidence** — as you listen, try to identify not only the significance of the facts and evidence, but also their relation to argument.

*A. Conrad Posz, University of Minnesota.

The Service Contract Act

Congress passed the Service Contract Act (SCA) in 1965 to protect low-wage service workers hired by private contract supply services to the federal government. The Service Contract Act is one of three federal prevailing wage laws, governing contractors that supply services to the federal government. The other two, the Walsh-Healey and Davis-Bacon Acts protect manufacturing and construction workers, respectively. These laws are designed to ensure that the federal government pays community wage scales and benefits.

The Service Contract Act applies to nearly 700,000 workers in a variety of occupations ranging from clerical workers to seafarers. A majority of those covered by SCA are working for contractors providing military base or court room security, food services, building maintenance, telephone equipment servicing, repairs to aircraft, laundry services, and clerical and computer support for research and development contracts.

TWU currently represents workers covered by the SCA in the Washington, DC area at Fort Bragg, and the Library of Congress; Bolling and Andrews Air Force Bases and Indian Head Surface Naval Warfare Station in Maryland; Langley Air Force Base in Virginia, King's Bay Submarine Base in St. Mary's Georgia; Fort Gordon in Georgia; Kennedy Space Center at Cape Canaveral, the Cape Canaveral Air Force Station the Eastern Space and Missile Center, and Patrick Air Force Base in Florida. TWU organized its first contract group in 1957 eight years before legislation was passed to protect such workers.

Prior to 1965 and the passing of the Service Contract Act, service workers were victimized by cutthroat contractors who underbid local wage standards to win government contracts. Because these services are labor-intensive and use lowest-bidder procurement procedures, federal service contracting was transformed into a "labor broker" system. This system promoted high turnover of service contracts, massive wage-busting by the federal government and labor instability. In addition, unscrupulous contractors were profiteering from the government and supplying shoddy services.

Congress passed the Service Contract Act in 1965 to cover all service workers on service contracts of $2,500 or more The Service Contract Act instructs the Department of Labor to determine the prevailing wages and benefits for localities, which are the minimum rates that contract bidders must agree to pay their service workers.

In 1972, the Act was strengthened by adding the 4 (c) "Successorship" provision. Prior to 1972, the Secretary of Labor was free to ignore the wages and benefits being paid an incumbent contractor when setting the prevailing wage rates to be paid in a new contract. The result was that every time workers managed to win a collective bargaining agreement, the incumbent contractor usually lost the bid by being undercut by non-union firms.

The 4(c) successorship provision requires the Department of Labor to use the wage and fringe benefits of the predecessor's collective bargaining agreement when setting the prevailing wage rates for a new contract.

In 1976, the Act was further amended to include coverage of white-collar workers. Over the last few years, the Service Contract Act has come under attack from both Congress and the Department of Labor. In 1983, the DOL changed various regulations of SCA, the most important of which was implementation of the "principal purpose" test. This change was interpreted to mean that half or more of the contracts purpose had to be for services. The service parts of larger contracts for supply, construction, leasing, or other non-service items are now excluded from coverage. This led to changing or "reconforming" contracts to avoid SCA coverage.

On January 30, 2009, the President Obama issued three labor-friendly executive orders of note to government contractors and their employees.

Executive Order 13494, "Economy in Government Contracting," designates as "unallowable costs" activities to persuade employees "to exercise or not to exercise, or concerning the manner of exercising, the right to organize and bargain collectively through representatives of the employees' own choosing," specifically:

(a) preparing and distributing materials; b) hiring or consulting legal counsel or consultants; (c) holding meetings (including paying the salaries of the attendees at the meetings held for this purpose); and (d) planning or conducting activities by managers, supervisors, or union representatives during work hours.

Executive Order 13496, "Notification of Employee Rights Under Federal Labor Laws," requires contractors and subcontractors to "post a notice, of such size and in such form, containing such content as the Secretary of Labor shall prescribe," informing employees of their rights to collective bargaining, "in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract, including all places

where notices to employees are customarily posted both physically and electronically."

Finally, Executive Order 13495, "Non-displacement of Qualified Workers Under Service Contract," guarantees current workers covered by the Service Contract Act the right of first refusal to fill their positions with the replacing contractor, with certain exceptions. The order helps to ensure that were the incumbent contractor employees unionized, the replacing contractor employees will be as well.

Miami-Dade Living Wage Ordinance

Like the Service Contracts Act, the Miami-Dade Living Wage Ordinance (LWO) sets a *minimum wage* for all service contractors. The LWO mandates that a minimum wage be set for all contracts that Miami Dade County has with contractors that have a contract value over $100,000 per year and all service contractors at Miami-Dade County Aviation Department facilities. The actual hourly wage is announced annually by the county and takes effect from October 1 for a calendar year. TWU workers for Swissport USA and Servisair LLC are covered by the LWO.

Florida State Law Covering Public Sector Employees

447.301 Public employees' rights; organization and representation.

(1) Public employees shall have the right to form, join, and participate in, or to refrain from forming, joining, or participating in, any employee organization of their own choosing.
(2) Public employees shall have the right to be represented by any employee organization of their own choosing and to negotiate collectively, through a certified bargaining agent, with their public employer in the determination of the terms and conditions of their employment. Public employees shall have the right to be represented in the determination of grievances on all terms and conditions of their employment. Public employees shall have the right to refrain from exercising the right to be represented.
(3) Public employees shall have the right to engage in concerted activities not prohibited by law, for the purpose of collective bargaining or other mutual aid or protection. Public employees shall also have the right to refrain from engaging in such activities.
(4) Nothing in this part shall be construed to prevent any public employee from presenting, at any time, his or her own grievances, in person or by legal counsel, to his or her public employer and having such grievances adjusted

without the intervention of the bargaining agent, if the adjustment is not inconsistent with the terms of the collective bargaining agreement then in effect and if the bargaining agent has been given reasonable opportunity to be present at any meeting called for the resolution of such grievances.

447.401 Grievance procedures — Each public employer and bargaining agent shall negotiate a grievance procedure to be used for the settlement of disputes between employer and employee, or group of employees, involving the interpretation or application of a collective bargaining agreement. Such grievance procedure shall have as its terminal step a final and binding disposition by an impartial neutral, mutually selected by the parties; however, when the issue under appeal is an allegation of abuse, abandonment, or neglect by an employee under s. 39.201 or s. 415.1034, the grievance may not be decided until the abuse, abandonment, or neglect of a child has been judicially determined. However, an arbiter or other neutral shall not have the power to add to, subtract from, modify, or alter the terms of a collective bargaining agreement. If an employee organization is certified as the bargaining agent of a unit, the grievance procedure then in existence may be the subject of collective bargaining, and any agreement which is reached shall supersede the previously existing procedure. All public employees shall have the right to a fair and equitable grievance procedure administered without regard to membership or nonmembership in any organization, except that certified employee organizations shall not be required to process grievances for employees who are not members of the organization.

447.609 Representation in proceedings.—Any full-time employee or officer of any public employer or employee organization may represent his or her employer or any member of a bargaining unit in any proceeding authorized in this part, excluding the representation of any person or public employer in a court of law by a person who is not a licensed attorney.