

GRIEVANCE HANDLING



▶ *Investigating*

▶ *Presenting*

▶ *Resolving*

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Introduction to Handling Grievances

The BCTGM has always fought hard for strong contracts for our members. Members rely on the union through these contracts to guarantee certain working conditions as well as to protect their rights at work. As a union representative, it's your job to make sure stewards and members understand their contract and know how to enforce it.

The vehicle to enforce most contracts and protect the rights of workers in the work place is the grievance procedure. The grievance procedure is perhaps the most valuable and commonly used section of the contract and it is our responsibility to use it as effectively as possible.

However, the grievance procedure has limitations. Sometimes management lets grievances pile up and deliberately causes long delays in settling. Other times members have legitimate problems that cannot be grieved or solved by the grievance procedure because of how the contract is written.

That means we sometimes have to look at other ways to address members' problems in addition to, or instead of, filing grievances. Some of the ways we do this include: showing membership unity, filing a complaint with a government agency, involving public officials, organizing community pressure or using the media. It is up to the union to figure out the most effective way to respond but the goal is to show management that it is in their interest to take the grievance procedure seriously and make it work.

How we solve member's problems can help shape the image of the union. Support from the members increases when they play a role in union activities. Some of the tactics mentioned above as well as the grievance procedure can be an opportunity to get members involved, through investigation and meetings with management, figuring out possible resolutions and carrying out actions designed to encourage management to resolve problems quickly and fairly.

The information in this section focuses on guidelines for more effective grievance handling. It is intended to give basic information to determine if a grievance exists, how to investigate, how to handle a meeting with management and what laws may affect the process of grievance handling. The information can be adapted to meet the particular problems in your local.

Using the grievance procedure effectively is one of the skills BCTGM leaders need to represent our members. While there are no prescriptions for how to handle every problem, the manual will help you develop the confidence and techniques needed to build the membership support the union needs to be able to represent the members to the fullest.

What is a Grievance?

The dictionary definition of grievance is any “circumstance regarded as just cause for protest.” The act of “grieving” such a circumstance is the formal act of making a complaint. The person or persons on whose behalf you are filing a grievance is known as the “grievant.”

BCTGM collective bargaining agreements, or contracts, may define a grievance in several ways. One agreement 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 more broadly as “any dispute or difference arising between an employee and management or between the union and management.”

Look at your BCTGM contract to find the definition of a grievance as it applies to your workplace.

However, grievances are not limited to contract violations. Grievances can also be based on violations of state and federal law, company rules or policies, unfair or disparate treatment of workers and “past practice.”

To help you decide if an issue in your workplace is a grievance, look at each problem from different points of view:

The Contract

Contractual grievances include violations of the contract, memorandum of understanding, side letters, and previous arbitration awards that have interpreted the contract.

Grievances based on violations of the contract are the most common grounds for a grievance and often the easiest to win, especially where the violation is clear cut. A grievance may be more difficult to resolve where the contract language in question is unclear or ambiguous, two or more contract clauses may be in conflict, the facts surrounding the problem are not clear or management is being stubborn.

Even where the contract is silent, however, you still may be able to grieve a problem on one of the following grounds.

The Law

Local, state or federal laws always supersedes the contract when the contract is a violation of the law. For example, if your state’s wage and hour law requires that

employees be paid time and one-half after eight (8) hours and forty (40) hours, and your contract calls for time and one-half only after forty (40) hours, the law will prevail.

Filing a grievance based on an alleged violation of law does not prevent you from also pursuing legal remedies. However, a grievance is often the quickest way to get management to comply with the law.

Informing management of a violation of the law can also give the union the leverage it needs to resolve the grievance. Additionally, it may also be necessary to first give management an opportunity to resolve the problem before pursuing a legal remedy.

Company Rules and Policies

While employers are obligated to abide by the contract, they also have the right to make and implement rules related to the orderly and efficient operation of the business, so long as:

- they provide notice to the employees and the union,
- the rules are reasonable, “on their face” and
- the rules are reasonably and fairly applied.

Management’s uneven or unequal enforcement or disregard for its own rules are common grounds for a grievance. For example, the union may use the company’s own policy prohibiting sexual harassment to defend a worker being harassed by a supervisor.

Unfair or Disparate Treatment

Disparate treatment occurs when two people are treated differently in the same or similar situation so as to harm or negatively affect one of them.

Grievances based on unfair or disparate treatment can cover a broad range of incidents and behavior. For example, 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.

The terms “disparate treatment” and “discrimination” are often used interchangeably, although the word “discrimination” may lead you to think of unfair or illegal treatment on the basis of race, color, national origin, gender, age, etc.

Disparate treatment is much broader and includes treating someone differently because of their personality, appearance, past incidents and experiences or union activity.

While disparate treatment complaints are common, they are often very difficult to prove. Successfully resolving a disparate treatment grievance requires a

significant amount of documentation and often requires the union to show a pattern of objectionable behavior by a supervisor.

Past Practice

“Past practice” is a term you may hear often as a steward. A short definition of a past practice is any long-standing practice that:

- occurs regularly
- both union and management have accepted and/or not challenged
- does not violate the contract or any written company rule
- applies to everyone, equally

Past practices usually cover situations where the contract is silent or ambiguous. A past practice grievance usually arises when management unilaterally, and without notice to the union, changes a established procedure or routine, or disciplines a worker for following a past practice.

For example, “wash-up time” was once a common past practice. A company allowed workers to leave their work areas fifteen minutes before the end of the shift to wash-up before clocking out. When the company changes the practice without notice to the employees or union, then disciplines an employee for following the practice, the union can file a grievance based on a violation of past practice.

These guidelines will help you determine if a past practice violation occurs:

- **Uniformity.** Was the policy consistently applied over a period of time and did at least a majority of the employees have the opportunity to enjoy the practice?
- **Longevity.** The longer the period of time a policy has been in effect, the stronger the case for it being considered a past practice.
- **Acceptance.** If both the union and management know that the practice has been in effect and neither party has objected.
- **No Written Language.** There is nothing in writing either in the contract or in written company rules regarding the practice. Written language supersedes past practice.

Past practices are often difficult to establish and past practice grievances have become less common in recent years as there are fewer practices not covered by work rules or contract language.

For example, the NLRB has ruled that employer gifts such as a Christmas bonus or a Thanksgiving turkey are gratuities and cannot be considered past practices. Management's right to direct its work force and change operating procedures if it does not conflict with contract language has been upheld in numerous arbitrations. Furthermore, lax enforcement of a rule does not create an enforceable past practice. Finally, even if a past practice meets all of the criteria listed above, an arbitrator may still refuse to uphold the grievance.

Determining "Just Cause"

In nearly all BCTGM contracts, and as a matter of law, an employee can only be discharged (fired) or disciplined for what is termed "just cause." Determining whether or not the employer has, in fact, established just cause for the discharge or discipline of an employee can be a complicated matter.

Answering these questions can help you determine whether or not a discharge or discipline is based on just cause.

- Is there sufficient proof of the employer's claim or was management's action based on other evidence such as hearsay?
- Did management verify the charge before taking action or did they "shoot from the hip" first and investigate after the fact?
- Did management over-emphasize certain facts and points (perhaps taking them out of context) while playing down factors which would favor the grievant?
- Was the discipline punitive and vindictive rather than corrective and remedial?
- Was the discipline timely? Did it follow the alleged infraction within a logical and reasonable time? Did management wait until an incident occurred before clamping down?
- Was the penalty consistent with the principle of progressive discipline?
- Was the grievant adequately informed of the level of performance or compliance that would be expected of him/her?
- Was the penalty arbitrary, capricious, unjust, unfair, unreasonable, inequitable, or discriminatory?
- Did the penalty otherwise affect the welfare of the grievant, union, or the individual or collective rights of the other employees in the bargaining unit?

Steps in the Grievance Procedure

There are typically three steps in a grievance procedure. However, each BCTGM contract spells out the particular process that applies to you and your co-workers. Read the contract carefully.

Step 1

The steward tries to informally resolve the grievance with first-line supervision.

Step 2

The grievance is written up and presented formally to management by the steward or union representative.

Step 3

Some BCTGM contracts provide for an additional meeting between the Local Union and company management. Others involve a grievance panel composed of representatives of both the union and management. Still others involve arbitration by a third party chosen by both sides.

Investigating a Grievance

There are many ways to investigate and handle grievances. BCTGM leaders develop methods that work best for them in the various situations they confront. Refer to the **Grievance Investigation Checklist** on Page 26. Following are suggestions to help you prepare a grievance.

Listen to the Problem

Workers come to you with a wide variety of problems. Before you can determine the best way to handle a situation, you need to find out as much as you can about the problem. The first step is to hear the worker out – give him/her a chance to describe the problem and cool off if they are upset. This means *active listening*:

- Stop what you are doing.
- Take the person aside if possible to where you can talk without being interrupted.
- Face the person squarely. Make eye contact, but do not stare the person down. Assume a relaxed, attentive posture – even if you don't like the person.
- Start your interview with “open” questions. For example, “What seems to be the problem?” or “Tell me what happened.”
- Give the person feedback with your body and words that encourage them to speak. Show them that you are listening. For example, “Uh-huh,” “Yes, go on,” “I see,” nods of the head, lean forward slightly, etc.
- Recap the points made by the person periodically to make sure you understand. For example, “So this happened and then that happened...?”

After the worker has told his/her story and you have a general understanding of the nature of the problem, you can then begin to use specific questions to elicit more detailed information.

Investigate and Get the Facts

Here are some questions that can help you get information about a potential grievance. They are often referred to as the “Five W’s” – Who, When, Where, Why and What.

Who is involved? This includes the full name, employee number, department, job classification, pay rate, shift and seniority date of all the people involved: the worker(s) with the complaint, witnesses, and the supervisor(s) involved.

When did it occur? Be as accurate as possible about the time and date the grievance and related events took place.

Where did it occur? – The exact location where the grievance occurred, i.e., machine, aisle, department, floor, etc.

Why is it a grievance? – What contract language, work rules, laws, etc. were violated?

What are the demands for settlement? – What does the grievant want? What is needed to restore the worker to the same position she/he would have had if the injustice had not occurred? For example, if an employee was discharged the demands for settlement may be reinstatement with back pay and benefits.

Some information will be available from the person with the grievance. But up until now you have heard only their side of the story. There are other sources of information you should use in investigating the grievance:

People who can supply information:

- the grievant
- co-workers
- witnesses to events
- other union representatives and officers
- supervisors

It is usually best to get management's side before you begin to fight the case. Hearing both sides gives you a better idea of the facts and lets you know management's reasoning for their decision.

Records that can supply information:

- grievance files, arbitration decisions (available from your Local Union Business Representative)
- the contract and any supplemental agreements
- company rule books and work rules
- seniority, job classification and payroll lists
- personnel, production, absentee and medical records and files.

It is a good idea to record all the information you receive on a Fact Sheet. The advantage of using a Fact Sheet is that you can check the completeness of your information, the accuracy of your thinking on all aspects of the case, and the factual support for any action the union may take later on.

Often the difference between winning or losing a grievance case may depend on the completeness and accuracy of what has been recorded and the Union's ability to evaluate it properly.

Investigation Fact Sheet

DEPARTMENT _____ DATE _____

SHIFT _____ STEWARD _____

NAME OF EMPLOYEE (S) _____

CLASSIFICATION _____ SENIORITY DATE _____

NAME OF SUPERVISOR

WHAT HAPPENED:
EMPLOYEE STORY: WHEN _____ WHERE _____

DATE OF INTERVIEW WITH EMPLOYEE (S)

SUPERVISOR STORY: WHEN _____ WHERE _____

ALLEGED CONTRACT/ RULE VIOLATION _____

DATE OF INTERVIEW WITH SUPERVISOR _____

WITNESSES' NAMES	WHAT THEY WITNESSED
_____	_____
_____	_____
_____	_____

DOCUMENTS NEEDED (CHECK "YES" WHEN RECEIVED AND ATTACH TO THE FACT SHEET)

___ ATTENDANCE RECORD ___ WORK RECORD ___ MEDICAL RECORD

USE BACK OF THIS FORM TO RECORD ADDITIONAL INFORMATION

The Three Rules of Evidence

Before proceeding with a grievance, review the Fact Sheet and evaluate the information using the “Three Rules of Evidence:”

1. **OPINIONS ARE NOT FACTS** – All opinions must be specifically qualified. If a person says “always,” ask “how often/when?”
2. **HEARSAY EVIDENCE IS NOT FACTUAL** – Search for the original source and witnesses and get the first-hand scoop. If someone says, “Mary heard...” or “John told me that...” find out directly from Mary or John what happened.
3. **FACTS MUST BE RELEVANT** – You need to identify the facts that directly bear on each particular grievance. Review the Fact Sheet again and underline those facts that are relevant to proving this is a grievance.

Should We Grieve?

Now that you have the information necessary to decide whether or not a grievance exists, evaluate all the information carefully, make the decision and plan a course of action.

If you have fully investigated the problem and still feel the case is not strong, ask for advice from more experienced union representatives and officers. However, always give the grievant the benefit of the doubt. A good rule of thumb to follow is: if you have a *reasonable* doubt that a grievance exists, **GRIEVE!**

If after your investigation you decide there is no basis for filing a grievance, discuss the problem with the grievant. Even though you may not feel a formal grievance can be filed, there may be other solutions to the problem.

For instance, the problem may involve complaints against other members, the union or off-the-job problems. In these situations, you can refer the member elsewhere for help: to government, professional or community service agencies.

Also, inform the member of his/her right to appeal your decision through the local union. Your responsibility of fair representation is fulfilled if you fairly and completely investigate the case and make your decision to grieve (or not to) based solely on the merits of the case.

Writing the Grievance

Here are some suggestions for completing a written grievance form.

Limit statements to the basic facts. The purpose of the written grievance is to trigger the formal steps of the grievance process and notify the employer of the basic facts, alleged violation and the requested remedy. Limit the grievance to those essentials by using the five W's as a guide.

Leave out arguments, evidence and justifications. Arguing the merits of the case is reserved for face-to-face meetings with the employer. Disclosing this information in the written grievance could give the employer an edge in preparing their case against the union.

If required, refer to all contract violations. If your contract requires including reference to contract language, include all contract provisions that may be applicable to this particular grievance. You can use the phrase "violates the contract, including but not limited to Article ____..." This may allow you to later add additional violations of the agreement.

State the union's position. In clear, affirmative statements, state the union's position, with the grievant's or the steward's position, i.e., "Mary Smith was unjustly discharged." Avoid using phrases such as, "I think" or "Mary believes."

State a full, possible remedy. The purpose of the grievance procedure is to "make the grievant whole" by putting the worker in the same position he/she would have been in had the injustice not occurred. If a worker has been discharged, ask that he/she be made whole: immediate reinstatement with full back pay and all rights, privileges and benefits restored, and the entire matter expunged from his/her record. This makes it possible for the grievant to receive his/her job back, plus back pay, seniority, vacation time, fringe benefits, etc. Remember, you get only what you ask for.

Consult with the grievant. Go over the written grievance with the worker(s) on whose behalf the grievance is being filed, explain what the requested remedy is and make certain the grievant fully understands.

Have the grievant sign the grievance form. This guarantees that the grievant has seen and read the grievance and provides legal protection for the union when determining the final settlement of the grievance. The exception is that if the grievance does not concern discipline, the steward may sign a grievance on behalf of the union in order to stop a contract violation.

Presenting and Settling the Grievance

Once you have fully investigated the case and decided it should be grieved, prepare yourself and the grievant to give the best possible presentation to management. Your goal is to solve the problem at the lowest step of the grievance process. Careful preparation will make this more likely.

Building Your Case

Your presentation to the supervisor may use all the facts you have written down on the Fact Sheet or only part of them. You may want the grievant to participate in presenting his/her case or you may want them to remain silent. As a rule, the steward should do the talking.

Nevertheless, you should decide these issues beforehand and discuss with the grievant how you think the case can be presented. In order to be effective, you should:

1. **Build the Best Case** – Decide what issues, facts, arguments and remedies you think are most convincing. Write them down separately so you can refer to them as you talk with the supervisor. Know what you want to say before meeting with management.
2. **Anticipate Management** – Based on what you found out during your investigation of the grievance, put yourself in the supervisor's shoes. Anticipate what facts, arguments and remedies he/she is likely to offer.
3. **Prepare Responses** – Based on what you expect the supervisor will argue, prepare responses, counter arguments and compromises (regarding the facts and remedies) you and the grievant are willing to accept.

If you and the grievant are well prepared, you may be able to resolve the grievance at Step I.

The Oral Presentation

You are now ready to present the grievance. Here are some suggestions to keep in mind:

- **Take Control.** In any meeting with management, the objective is for you to control the tone, direction and outcome of the meeting. You do not have to be overbearing, aggressive or argumentative to do this. Try to make management present first. It is easier to poke holes in their arguments than to prove a worker innocent.
- **Set the Tone.** The “proper” tone will depend largely on the situation and the type of relationship you have with the supervisor. Usually the best approach is to be direct and positive.
- **Be Calm, Don’t Threaten.** Shouting and pounding on the desk rarely accomplishes anything. Don’t make threats that you and the supervisor know you can’t carry out. If you and the supervisor can’t come to an agreement, there are additional steps to be followed, including arbitration.
- **Avoid Personalities.** It is not who is right, it is what is right that counts. Stay focused on the issue at hand and don’t allow yourself to be sidetracked. When you must disagree with what the supervisor says, do so with dignity. Remember, you are seeking agreement, not conquest. You will have to settle other issues with the same supervisor in the future.
- **Listen.** Despite your best efforts, you may not know all the facts. You want to make sure you understand management’s real position.
- **Acknowledge Valid Points, Then Redirect the Discussion to the Union’s Position.** Example: “We understand your concern about meeting production standards, however, that does not mean you can ignore the contract.” You are asking for justice, not favors; you are expected to be as fair as you expect management to be.
- **Caucus.** Take a short recess if you need to regroup, discuss matters or settlement proposals, or when there is division or disagreement among members on your side – never disagree in front of management.
- **Don’t Trade Grievances.** Don’t give up one grievance case in order to get a favorable decision on another.
- **Management Has Rights.** Both the workers and management must live up to the terms of the agreement. Always leave the other side some graceful way out of a mistake.

Sample Grievance Report Form

DATE _____

MEMBER'S NAME _____

EMPLOYER _____

HOME PHONE _____

HOME ADDRESS _____

DATE OF HIRE _____

CLASSIFICATION OR JOB TITLE _____

DEPARTMENT _____

TYPE OF GRIEVANCE (CHECK):

- DISCHARGE DATE _____ WAGE CLAIM DATE _____
- SUSPENSION DATE _____ WORKING CONDITIONS DATE _____
- WARNING LETTER DATE _____ OTHER DATE _____

HAS GRIEVANCE BEEN DISCUSSED WITH SUPERVISOR? YES NO

DATE _____ IF NO, STATE REASON _____

HAS GRIEVANCE BEEN DISCUSSED WITH SHOP STEWARD? YES NO

DATE _____ IF, NO STATE REASON _____

STEWARD'S NAME _____

SUPERVISOR'S NAME _____

WITNESSES' NAMES (IF APPLICABLE) _____

CONTRACT ARTICLES VIOLATED

and any other relevant articles of the contract.

FACTS OF THE CASE (MEMBERS SHOULD RECORD HERE THE CIRCUMSTANCE OF THE GRIEVANCE
MAY USE BACK.)

REMEDY ASKED

and all other benefits to which the grievant is entitled.

STEWARD'S SIGNATURE

MEMBER'S SIGNATURE

Finally, and most importantly:

- ***Keep written records of all grievances.*** After the meeting with management, write a brief summary of who participated in the meeting, what happened and any settlement that was discussed or offered. Keep this in a file or envelope with the other materials pertaining to the grievance.
- ***Keep the worker(s) informed about their grievance.*** You should always have the grievant with you in any meeting with management regarding their grievance. If the grievant begins to lose his/her cool, ask for a caucus to give the member an opportunity to calm down – then proceed with the meeting. Also, if a member so requests, he/she is entitled to your presence at an investigatory interview that could lead to disciplinary action.

Settling the Grievance

Remember that in the grievance procedure, the supervisor and BCTGM steward are equals and share the responsibility for settling the grievance. Keep in mind the following:

IF the supervisor wants to trade (you win a grievance and management wins one), insist on settling each grievance on its merits. This is the only just way to settle a grievance.

IF the supervisor stalls, try to push for an immediate answer. If you can't get a decision, try to set a definite time (as early as possible) to get an answer.

IF you can't settle the grievance, determine if you are going to take the case to the next step of the grievance procedure. Be aware of any time limits that may exist and be sure to keep the grievant informed.

NEVER settle a grievance without consulting the member and ALWAYS get a grievance settlement in writing. Throughout the grievance handling process, keep the member informed.

NEVER miss a time limit that is spelled out in the grievance procedure of the contract.

The Law and Grievance Handling

Filing a grievance involves both an individual BCTGM members' rights, as well as the duty of the union to provide representation for all workers covered by the contract. While a full discussion of the legal aspects of grievance handling is beyond this manual (see **For More Information** on Page 25) BCTGM stewards need to be familiar with the following in order to fully represent their members.

“Weingarten Rights”

The U.S. Supreme Court's 1975 decision in the *Weingarten* case held that if the employer requires an employee to submit to an investigatory interview and denies the employee's request for union representation, then the employer is in violation of the National Labor Relations Act. Some important factors in Weingarten Rights are:

- Union members have the right to a union representative at an investigatory hearing if they *reasonably* believe that the investigation could lead to disciplinary action.
- The member *must request* a representative; the employer has no obligation to inform the employee of that right.
- Management does not have to call the representative. Instead, the employer can stop the meeting or just issue the discipline.
- Once a union representative is called, he/she has the right:
 - to know the subject of the investigatory hearing
 - to confer with the member prior to the hearing
 - to speak and participate in the hearing

However, the representative cannot argue the case; this is not a grievance hearing.

- An employee cannot choose which union representative they would like to represent him/her:
 - the department representative will be called, if available.
 - if not, the nearest available representative will be called.
 - if the employer is responsible for the representative not being available, then the supervisor must end the meeting until the representative is available;
 - if the union is responsible for the representative not being available, then another representative or employee can be called in, unless the supervisor chooses to postpone the meeting.

The Duty of Fair Representation

Labor law provides for a swap. The union, through certification or recognition, is established as the “exclusive” bargaining representative for all employees in the bargaining unit. In exchange, the union must fairly represent all employees in the unit, both members and non-members alike. The legal term for this is the “duty of fair representation.”

The most important area in carrying out a union’s duty of fair representation is the processing of grievances. Most “failure to represent” lawsuits brought against unions are filed by persons who have been discharged. Therefore, BCTGM Union staff, officers and stewards need to be particularly careful in handling discharge grievances. The following guidelines will assist you in processing grievances in a way that meets the union’s legal responsibility.

Consider all grievances solely on the merits. The decision whether or not to process a grievance must be based on the merits of the particular grievance. This means that you must look at the facts underlying the grievance in determining whether a grievance has occurred, and if so, whether to pursue the grievance through the grievance procedure.

You may not refuse to process a grievance because you do not like the grievant. Your determination whether there is a legitimate grievance may not be based on personal hostility (you think the employee is a pain in the neck), political opposition (the employee ran against you in the last election), or racial prejudice (you do not like people of a particular ethnic background). You must look at the merits of the particular grievance, not at the individual employee.

Investigate the grievance thoroughly. You have a responsibility to thoroughly investigate grievances. A superficial investigation may not uncover all the important facts. Interview the grievant. Locate and interview witnesses. Follow up on all leads. Particularly with discharge grievances, be sure to get the grievant’s complete story and talk to all witnesses offered by the grievant.

Do not accept without question anything which is said — check it out. Always use the “5 W’s” as a guide to your investigation.

You have a responsibility to investigate a grievance before you decide whether it has any merit.

Process the grievance promptly and do not miss time limits for filing and appealing grievances. Timeliness is extremely important in grievance processing. You have a responsibility to file and appeal grievances within the time limits established by the grievance procedure in your contract. Failure to comply with the time limits can result in having the grievance “die,” leaving the grievant with no recourse against the employer.

If additional time is needed to investigate, file the grievance so as not to miss the time limits. An investigation does not have to be completed before a grievance is filed.

Take notes and keep written records. Begin to take notes as soon as practical. The longer the delay, the greater the danger of omitting small but important facts. Notes must be accurate, understandable and as complete as possible. Your notes will become the foundation upon which decisions will be made as the grievance moves through each step in the grievance procedure.

Keep a record of all discussions with the grievant, all discussions with the employer about the grievance and of all internal union decisions whether or not to proceed with the grievance. Keep a copy of all correspondence and documents relating to the grievance.

Your written record establishes that the union investigated the grievance and made an **objective decision on the merits**.

Keep the grievant informed. Many lawsuits are filed against unions because discharged grievants (and their lawyers) believe the union is hiding something by not keeping the grievant advised of the progress of his/her grievance.

The grievant should be kept informed of the status of their grievance, where it is in the grievance process, and any management responses. Any union decision on the grievance should immediately be communicated to the grievant, preferably in writing. This includes decisions not to file a grievance, to drop, withdraw or settle a grievance, or not to go to arbitration on a grievance.

Besides being fair to the grievant, written notification starts the clock on the grievant's six month time limit for filing a duty of fair representation suit against the union (see below).

The law does not **require** that the grievant be present at meetings with the employer or at internal union discussions concerning the grievance. However, if your union permits the participation of grievants at these meetings, then it must do so for everyone (or for no one at all).

Treat all members of the bargaining unit the same. It is unlawful to refuse to process, or to give superficial treatment to, the grievance of a person who is not a member of the union. Likewise, grievants who have been political opponents of the current officers, or dissidents within the union, must be treated the same as all other bargaining unit members.

Of course, the union cannot discriminate against grievants because of their race, gender, age, or ethnic background. All employees should be given equal consideration in the handling of their grievances. You should take a similar position on similar cases.

Have a valid reason for any action taken on a grievance. The law requires a union to consider a grievance in good faith and to make a determination to process the grievance on its merits. Don't let the time limits expire before making a decision. Make a determination whether and how far to process a grievance on

the basis of the investigation of the grievance, past success or failure in arbitrating similar grievances, and the importance of the grievance to the entire membership. Document this decision in writing.

If the grievance clearly lacks merit and cannot be won at the lower steps or in arbitration, drop it. Don't let an attorney or the threat of a lawsuit influence the union's judgment on the merits of the grievance. The courts recognize a union's right – and its obligation – to keep the grievance procedure free of meritless grievances that clog up the dispute-resolution machinery. However, the grievant must be informed of the decision and the union should make a written record of the ***objective*** reasons why it declined to file or dropped the grievance. The steward should make a sincere effort to convince the grievant of these reasons.

The settlement of grievances. A union has a right to settle grievances as it sees fit. Again, there should be a written record made of the settlement itself and the reason(s) why the settlement was made. Of course, when a grievance is settled, the grievant should be promptly informed.

What should be avoided is the appearance that one grievant receive a better settlement than another because of who the grievants were. In addition, there should be no horse trading whereby one grievance is "sacrificed" in order to save others. Nor should there be even the appearance of such action.

Arbitration and the Duty of Fair Representation

If your BCTGM contract includes arbitration at Step 3 of the grievance procedure, there are a few additional considerations that BCTGM stewards need to be aware of:

- An employee does not have a legal right to insist that his/her grievances go to arbitration.
- Just as with the lower steps of the procedure, the decision whether to arbitrate a grievance must be made based on the merits of the particular grievance. This decision should take into account the facts of the grievance and the importance of the particular case, the past success or failure in arbitrating similar grievances, and the importance of the grievance to the entire membership. Cost of arbitration may be one factor considered, but should not be the sole reason for deciding against arbitration.
- The internal union procedure must be the same for all employees. For example, if a committee decides whether or not to move grievances to arbitration, then this must be the procedure in all cases.
- The grievant should be given written notice of the date, time and location of the arbitration hearing. At a minimum, the grievant should always be invited to be present at the hearing.
- If a decision is made not to take a grievance to arbitration, the decision and the reasons for the decision should be communicated to the grievant, both verbally and in writing. The goal should be that the grievant understands that he/she was treated fairly.
- The duty of fair representation includes the duty to arbitrate the grievance to the best of the union's ability. This means that whoever is handling the arbitration should meet with the grievant and any witnesses in advance of the hearing and make certain that all relevant information is available, including requesting information from the employer. The union should make the strongest case for the grievant and present the case in the most favorable light.
- It is not necessary to use a lawyer at the arbitration hearing. The use of a lawyer at the hearing does not protect the union from a possible duty of fair representation violation.
- The grievant does not have a legal right to have his/her own attorney represent him/her at the arbitration hearing. However, the union may permit an attorney to be an observer or to take an active role at the hearing.

Time Limits and Remedies in Fair Representation Lawsuits

A 1983 Supreme Court ruling limited the period of time for initiating a duty of fair representation lawsuit to six months after the date of the union's alleged violation. In cases where a union decides not to process a grievance, this is the date the union notifies the grievant of its decision. Therefore, it is in the union's best interest to promptly notify a grievant of such a decision.

Another 1983 Supreme Court case significantly increased the amount of money damages which may be assessed against a union in a fair representation lawsuit. In a case where an employer wrongfully discharges an employee and the union violates its duty of fair representation by wrongfully failing to arbitrate the grievance, the union can now be held responsible for most of the employee's back pay (previously only the employer was liable for back pay).

Access to Employer Information

Under the National Labor Relations Act (NLRA), unions have the right to request and receive information from the employer that is relevant to processing grievances.

The right to information stems from the concept that for the grievance procedure to function properly and the union to effectively represent its members, the union needs access to information that will enable it to intelligently evaluate grievances or potential grievances.

The employer, as part of its duty to bargain in good faith, is obligated to provide the requested information. Failure to do so subjects the employer to an unfair labor practice charge under Section 8(a)(5) of the NLRA.

Requirements for having access to employer information are:

- The union must request the information.
- The information requested must be relevant to an actual or suspected grievance.
- No alternative means for obtaining the information is available.
- There are cases where an employer may not be required to provide information to the union, even though the information requested may be relevant. These situations arise where other interests override the union's need for information. They include: employee confidentiality/privacy (employee test scores, medical records) and business interests (trade secrets).

- The request for information need not be in written form. However, it is always a good idea to make the request in writing in order to document the request.
- The employer must provide the requested information to the union in a “timely manner.” What is considered “timely” depends on each situation. Failure to provide information in a timely manner may be grounds for an 8(a)(5) charge.
- The employer will be required to comply with the union’s request – so long as the information is in its possession and compliance with the request does not create an undue burden on the employer. For example the cost/time to compile/prepare the information is not unreasonable.
- The information must be provided in a useful form.
- The request for information must be specific and related to the grievance. The union cannot go on a “fishing expedition.”
- The duty to provide information also applies to the union as part of its duty to bargain in good faith.

Information You Can Request From The Employer:

accident record	job descriptions
attendance record	material records
bargaining notes	payroll records
company memos	performance reviews
contracts	personnel files
correspondence	photographs
disciplinary records	reports and studies
equipment specifications	salary and bonus records
evaluations	seniority lists
inspection records	supervisors’ notes
insurance policies	time study records
interview notes	training manuals
job assignment records	videotapes

For More Information

BCTGM leaders should be aware of other written resources on their legal rights, handling grievances and the arbitration process.

1. **The BCTGM Building Membership Participation Manual.** Available from the BCTGM Department of Research and Education. Single or bulk copies can be obtained by calling (301) 933-8600.

The material in this guide focuses on building strength within the bargaining unit.

2. **The Legal Rights of Union Stewards**, by Robert M. Schwartz (1999: Work Rights Press, 180 pages). \$9.95 for single copies plus \$2/copy postage & handling, bulk copies available at a discount. Available in English or Spanish. Order from Work Rights Press, Box 391887, Cambridge, MA 02139-0008 or call 1-800-576-4552.

A very handy pocket reference that explains the concepts covered in this guide in an easy to read format. Each chapter gives specific examples, in a question and answer format of situations you might frequently encounter in handling grievances.

3. **The Grievance Guide**, by the editorial staff of the Bureau of National Affairs (BNA). Available from BNA Books, PO Box 7814, Edison, NJ 08818. \$55.00 for single copies. Call 1-800-960-1220 for prices on bulk orders.

This book, first published in 1959 and now in its tenth (2000) edition, uses actual awards handed down by impartial arbitrators as examples of common problems confronted in grievance handling. It is organized by topic, i.e., absenteeism, sexual harassment, damaging company property, AIDS, etc., allowing for quick reference to common grievance handling problems.

The guide is a particularly useful reference to be consulted at the early steps of a grievance, to determine how likely you are to prevail if the grievance goes to arbitration.

4. **How Arbitration Works**, by Frank and Edna Elkouri, Bureau of National Affairs, Fifth Edition, 1997. Available from BNA Books (see above). \$150.00 for single copy. The 1999 supplement is available at \$70.00 for single copy.

A detailed description of the arbitration process that provides the principles of law on which various types of arbitration cases are settled. This book has long been considered the standard textbook on arbitration.

5. **FMLA Handbook**, by Robert M. Schwartz (1996): Work Rights Press, 177 Pages). \$9.95 plus \$2 shipping/handling for single copies, bulk copies available at a discount. Order from Work Rights Press, 678 Massachusetts Avenue, Box 391887, Cambridge, MA 02139-0008 or call 1-800-576-4552.

A guide to the Family and Medical Leave Act for union members and stewards featuring question and answers, examples, tips, sample letters and other easy to understand materials to help workers apply the FMLA in a union setting.

6. **The Union Stewards Complete Guide**, edited by David Prosten, Union Communication Services, Inc., 1633 Connecticut Avenue, NW, Suite 300, Washington, DC 20009, \$19.95 for a single copy plus \$3.00 shipping for first copy, bulk copies available at a discount. Order from UCS Order Department, 13 Francis St., Annapolis, MD 21401 or call (410) 626-1353.

Practical and proven advice on how to deal with the most common workplace issues provided in a easy to read indexed format. Based on **Steward Update** newsletter.

7. **Steward Update Newsletter**, edited by David Prosten, Union Communication Services, Inc. (see above). Published 6 times per year; available in English or Spanish. Minimum order 20 copies at \$227/year. Order from Union Communications, Inc., 1633 Connecticut Avenue, NW, Suite 300, Washington, DC 20009 or call 1-800-321-2545.

Articles on skills and information including grievance handling, rights of stewards, dealing with difficult people, how to deal with stress, important arbitration decisions, case histories, free or low-cost union-endorsed publications, videos and other materials resources that can help stewards do their job.

Grievance Investigation Checklist

Good investigation at the early stages of a grievance can lay the foundation for your case. Poor or sloppy investigation can harm your case because facts not recorded early tend not to be recorded at all.

Investigate at the first step as if the grievance will go to arbitration. A good investigation will expedite settlement. A good investigation will help build your confidence.

This checklist will assist you in completing a good grievance investigation.

- Interview the grievant. Listen carefully to their story.
- Have grievant write his/her rebuttal to discipline (if appropriate).
- Interview grievant's co-workers.
- Interview the witnesses and management, asking the five W's. Get a written, signed statement from witnesses.
- Keep written records of all interviews.
- Request copy of personnel file (if disciplinary grievance).
- Request any other management records needed (personnel policies, payroll records, seniority list, attendance records, etc.).
- Determine if the problem affects others in the workplace.
- Determine if this is one of the five violations listed previously and the remedy desired.
- Determine if filing a grievance is the best strategy for solving the problem.
- Check previous grievance settlements for precedents.
- Check the experience of other stewards in similar cases.
- Seek advice, if needed, from other union representatives.
- Review the case with the grievant.
- Anticipate and prepare for management's arguments.
- Outline your presentation in writing.
- Inform other workers about the issue and organize support activities for the grievance.

