

**BASIC
STEWARD
TRAINING**

Understanding the Grievance Procedure

PARTICIPANTS GUIDE



**New York State
Public Employees
Federation. AFL-CIO**







Agenda



Introduction



What is a Grievance?



Contract Grievance Timetable



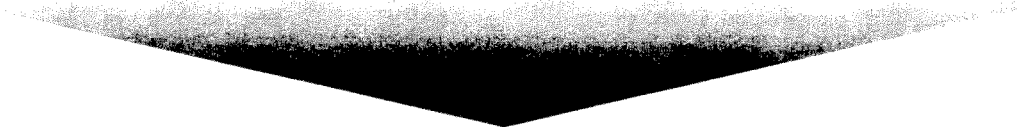
Know Your Grievance Procedure



Special Cases



Objective



To familiarize the Stewards with the basics of their grievance procedure, including steps and timeframes.



The Grievance Procedure

THE GRIEVANCE PROCEDURE

The Grievance Procedure is that part of the Collective Bargaining Agreement that establishes a formalized process by which the parties agree to resolve their disputes.

In the 2003-2007 Contract there are four (4) Articles, which establish a formalized process, which the parties have agreed to follow:

1. Article 17 – “Out-of-Title Work”
2. Article 18 – “Safety & Health”
3. Article 33 – “Disciplinary Procedure”
4. Article 34 – “Grievance and Arbitration Procedure”

It is important to be thoroughly familiar with each of these Articles, as it is necessary to follow these agreed upon procedures explicitly when processing grievances. If any questions arise regarding these procedures, the Steward should contact their Field Representative immediately.

DEFINITION OF GRIEVANCE

(a) A contract grievance is a dispute concerning the interpretation, application or claimed violation of a specific term or provision of this Agreement. Other disputes which do not involve the interpretation, application, or claimed violation of a specific term or provision of this Agreement including matters as to which other means of resolution are provided or foreclosed by this Agreement, or by statute or administrative procedures applicable to the State, shall not be considered contract grievances. A contract grievance does not include matters involving the interpretation, application or claimed violation of an agreement reached pursuant to any previously authorized departmental negotiations.

(b) A non-contract grievance is any other dispute or grievance concerning a term or condition of employment which may arise between the parties or which may arise out of an action within the scope of authority of a department or agency head and which is not covered by this Agreement shall be processed up to and including Step 3 of the grievance procedure, except those issues for which there is a review procedure established by law or by a pursuant to rules or regulations filed with the Secretary of State. (Non-Contract Grievances may be appealed only through Step 3.)

(c) Out-of-Title (Article 17)

“No employee shall be employed under any title not appropriate to the duties to be performed and, except upon assignment by proper authority during the continuance of a temporary emergency situation, no person shall be assigned to perform the duties of any



The Grievance Procedure (continued)

position unless he or she has been duly appointed, promoted, transferred or reinstated to such position in accordance with the provisions of Civil Service Law, Rules and Regulations.”

Out-of-Title Grievances (Article 17) are filed directly at Step 2 and may be appealed to Step 3. A monetary award may only be issued at Step 3. PEF offers an advanced training, “Out-of-Title Work is Bad for Everyone”, which covers the filing of Article 17 grievances.

(d) Health & Safety Grievance (Article 18.11)

Grievances alleging a violation of this Article, or alleging the existence of any safety violation, or otherwise arising from a health and safety condition or dispute shall be subject to review through the procedure established in Article 34, Section 34.1(b) of the Agreement and shall not be arbitrable.

(e) Disciplinary Grievances (Article 33) are covered by a separate training module “Discipline & Discharge” as part of the Basic Steward Training Program.

WHO MAY FILE A CONTRACT AND/OR NON-CONTRACT GRIEVANCE

Member of the PS&T Unit

Any member of the PS&T Unit on their own may initiate a Contract and/or Non-Contract grievance at Step 1 or 2 of the grievance procedure as outlined in Article 34 of the contract. However, to be appealed to the third (3rd) step of the grievance procedure the grievance must be counter-signed by the Field Representative.

Steward

As their Steward, your fellow workers will probably bring all of their problems to you. Not every employee will know the contract as well as you know it, and may not realize that the contract has been violated. Therefore, you may have to advise them that they have a right to file a grievance. Many employees will be hesitant about filing a grievance, so you will have to assure them that they have a legal and contractual right to file a grievance. Finally, some employees may not know how to go about filing a grievance.

The grievance process is actually no more, and no less, than a formal procedure to ensure that the contract is adhered to and that all PS&T employees enjoy the full benefits of the contract.

CLASS ACTION GRIEVANCES

“Class Action” grievances affecting groups or “classes” of individuals at a single facility or work location are filed at Step 1 of the grievance procedure. However, under Article 34.3 (b) of our contract PEF has the right to initiate at Step 2 a grievance involving employees at



The Grievance Procedure (continued)

more than one facility of a department or agency. PEF also has the right to initiate at Step 3 a grievance involving employees at more than one department or agency.

Under our contract Class Action grievances require detailed documentation which may not be readily available to stewards. Before attempting to file a Class Action grievance at Step 1 stewards are strongly encouraged to seek the assistance and guidance of their PEF Field Representative. Stewards must seek the assistance of their Field Representatives before filing a Class Action grievance at Steps 2 and 3.

GRIEVANCE PROCEDURE IN OUTLINE

Step 1

The employee or their PEF representative (usually the Steward) presents the grievance to the employee's facility or institution head or designee. The grievance must be in writing and must be on the official State grievance form.

The grievance must be presented within 30 calendar days of the event which led to the grievance. The facility or institution head or designee shall meet with the grievant and issue a short plan written reply within 20 working days. Many grievances can be settled at the first step; therefore, it is important to be fully prepared at this first step and, if possible, have the grievant present because:

1. when the employee is present they will know exactly what transpires and
2. will be able to make a judgment on a possible settlement. In the vast majority of cases, only the Steward will speak because you can be more objective and because you have training and experience.

Step 2

The Step 2 appeal must be in writing on the official State form and must be filed within 10 working days of receipt of the reply from Step 1, to the head of the agency or their designated representative. This appeal must be in writing and should include a copy of the Step 1 decision and a short written statement of the reasons for disagreement with the Step 1 decision. The head of the agency will meet with the employee, the Steward and/or other PEF representatives. The agency head must reply within 20 working days of the date the Step 2 was submitted.

Grievances can be amended at only one point in the grievance process. A special procedure for amending a grievance to cite a different term or provision of the contract than those cited in the Step 1 grievance must be followed. The amended grievance must be submitted in writing to the agency or department head or designee within 30 working days of receipt of the Step 2 decision with a copy of the Step 1 grievance and all decisions and appeals. It must include a short written statement noting the new term or provision of the Agreement alleged to have been violated. The agency issues a written decision concerning



The Grievance Procedure (continued)

the new term or provision of the Contract to the President of PEF no later than 20 working days following receipt of the amended grievance. (Article 34.5[n])

Step 3

The Step 3 appeal must be filed within 30 working days of the receipt of the Step 2 decision. It must be in writing, countersigned by a PEF Field Representative, on the official State form, and is submitted to the Governor's Office of Employee Relations. The Governor's Office of Employee Relations will issue a written decision within 30 working days of the date the Step 3 appeal was received.

Step 4: Arbitration

If a Step 3 decision is not issued in a timely manner, a demand for arbitration may be filed at anytime after expiration of the timeframes for the issuance of the Step 3 decision but not later than the 15 working days after receipt of the Step 3 decision, if issued.

A demand for arbitration can only be filed by PEF and must be filed with 15 working days of the Step 3 decision. In arbitration, both the employer and whatever witnesses the employer may wish to produce, and the employee, PEF and whatever witnesses needed, present their cases before an arbitrator at a hearing. The arbitrator is an impartial third party who hears the evidence from both sides, reviews it, and hands down a written decision.

The decision is final and binding. The arbitration cases will be presented by a PEF representative. However, the field representative will be dependent upon you for a history of the grievance and may ask you to provide additional information and/or to be a witness and/or suggest others who are potential witnesses.



The Grievance Procedure (continued)

CONTRACT GRIEVANCE TIMETABLE

	STEP	TIME	TO WHOM	MUST REPLY
Employee or PEF	One	30 Calendar Days	Facility Institution head or designee	20 Working Days
Employee or PEF	Two (appeal)	10 Working Days	Agency head or designee Governor's Office of Employee Relations	20 Working Days
PEF	Three (appeal) attach Step 1 and Step 2 decisions to original grievance form	30 Working Days		30 Working Days
PEF	Four	*15 Working Days	Governor's Office of Employee Relations	Arbitration

* Demand for arbitration can be filed anytime after the expiration of the timeframes for issuing a Step 3 decision but never later than 15 working days if a decision is issued.

There are two methods which can be used to meet the requirements for filing a grievance. One involves personal service to the agency management representative. Be sure to have two copies of the grievance so that you can have them date stamped keeping one copy for your files. The date of filing is the date stamped on these copies. Another method which can be used is to send it Certified Mail, Return Receipt Requested. In this case, the date of filing is the date of mailing stamped on the postal receipt. (Article 34.5 [i])

It is important that the local field office and appropriate Field Representative receive a copy at each step of the grievance procedure at the time the grievance is filed as well as copies of any decisions issued.

DUTY OF FAIR REPRESENTATION

PEF has a legal obligation to represent all PS&T employees as well as those units outside of State employment, who are represented by PEF, whether they are members or not. This obligation imposes upon us the duty to process all meritorious grievances as well as to



The Grievance Procedure (continued)

provide representation when called upon. Stewards must be aware that there is a legally enforceable obligation to “fair representation.” This means that every issue including grievances must be dealt with on its merits in a fashion that is consistent with the practices that have been used in the past. Before a Steward tells a worker they do not have a grievance, the Steward should check with others in the union to determine what course of action would meet this obligation, double check the contract and be sure that that position can be supported. This is not to say that every grievance should move up the grievance procedure when in doubt. Doing so would quickly overload the higher steps of the the grievance procedure and cause delay. It is important to PEF and to the Steward that the first decision is made with reasonable care and that they should seek the advice of their Field Representative when in doubt.

Keep in mind that even non-members have a right to file grievances and be represented by PEF even in those situations that you may feel lack merit. With respect to the grievance procedure they, like members have the right to file a grievance through Steps 1 and 2 of the prescribed procedure. After Step 2, all grievances are then required to have the signature of the President of PEF's officially designated representative who in most situations is the Field Representative. Without the appropriate signature they can not proceed. It is at this point that PEF can decide whether or not a grievance should proceed based upon its merits.

Under the Duty of Fair Representation, employees represented by PEF including those employees working outside of State employment are entitled to all the protections of there contract including all grievance procedures. It is the duty of each Steward to provide this representation to the best of their knowledge and ability. We can not discriminate. Nor can we arbitrarily and capriciously decide which grievances are processed or decide which individuals we will represent. All employees covered by a PEF contract deserve fair and adequate representation.

COMPLAINTS

Not all complaints or gripes are contract grievances. A contract grievance is a violation of a provision of the contract. If the member has a complaint which is not a violation of the contract, then the contract grievance procedure cannot be used to resolve the complaint. The fact that the complaint is not a grievance does not mean that it isn't legitimate or that it isn't important to the member, it means that we can't use the grievance procedure to correct it. The first and most important step for you to take is to be certain that the complaint is not a grievance. Unless you are absolutely certain, call the PEF office for advice. There is a



The Grievance Procedure (continued)

separate procedure for non-contractual grievances which any employee may utilize if they have a complaint that is not a contract grievance. Quite frequently the Steward and/or the individual employee can resolve non-contractual grievances without resorting to any formal procedures, by simply discussing the matter with the employee's supervisor. Don't assume that the supervisor isn't interested in a resolution or that the supervisor isn't empowered to effectuate a resolution. A member is entitled to know why their complaint is not a contractual grievance and you should take pains to carefully explain it to the member.

Sometimes workers have legitimate complaints which are not grievances because they occur in areas where management does not exercise responsibility. In other kinds of situations workers may be dissatisfied because the Steward does not handle their complaints or does not handle them to their satisfaction. If, in fact, the Steward is doing a poor job, this is a problem for the union to settle internally.

Another complaint which is not a grievance results from disputes between workers. For example, the desks of two workers are close to a window. They are constantly arguing whether it is too hot or too cold and always opening and closing the window. Management states that it is willing to adopt any policy the two combatants agree on. Obviously, the State cannot satisfy both individuals. It may be necessary for the Steward to intervene, pointing out that if the argument is not settled, one or both of the workers will probably be disciplined and it will be difficult for the union to reverse the decision.

INVESTIGATING A GRIEVANCE

As their Steward, your fellow workers will probably bring all of their problems to you. Every request should be handled with sympathy and understanding. Listen carefully to what the grievant has to say. Show that you are sincerely interested in solving the problem. Most grievances have to do with working conditions and the inequitable application of rules and regulations, not just the contract provisions.

1. Did management violate the contract, Labor/Management agreement or work rules?
2. Did management violate Civil Service statutes, a State or Federal law?
3. Did management treat a worker unfairly?

If the answer is yes to one or more of these, you can be reasonably certain you have a grievance.

When a member comes to you with a complaint, the first thing to check is the contract.



The Grievance Procedure (continued)

Rules governing the workers' relation to their job are found in the work rules or agency policy manual. Stewards should know their contract. Take it home and read it cover to cover. The same applies to work rules and civil service regulations.

Some grievances are clear violations of the agreement or work rules and are relatively easy to settle. Grievances involving a fuzzy interpretation of the agreement when the contract is silent are not so simple. In either of these situations a legitimate difference of interpretation may take place. Grievances of this type may only be settled through the grievance procedure.



The Grievance Procedure (continued)

Asking the Right Questions

Start by asking the same basic questions – known as the “5W’s” – to each person you talk to.

- **Who** was involved? Names of people involved in event
- **What** happened? Description of the event
- **Where** did it happen? Location of the event
- **When** did it happen? Date and time the event occurred
- **Why** is this a grievance? Contract sections being violated

Collecting Evidence

- Research the contract, work rules, policies, procedures, etc., to determine which of these – and what sections or rules – management has violated.
- Be sure and check the employee’s official personnel file, which contains a wealth of information – e.g. date of hire, evaluations, promotions, transfers, leave use, past disciplinary actions, letters of commendation, etc.
- Gather evidence from any and all sources and collect whatever you think may have a bearing on the case. Remember, that it is better to have something and not need it than to need something and not have it.
- Make copies of any needed documents.
- Evidence may be something other than paper. A faulty piece of safety equipment or a photograph of where the event took place could be part of your case.



The Grievance Procedure (continued)

TIPS ON PREPARING YOUR CASE

Step 1: Interview the grievant

- Pay careful attention to the Five W's and remedy.
- Obtain the names of any witnesses or other individuals who may support your case.

Step 2: Obtain needed information

- List all the people you need to talk to.
- List all the other information you need and where you can get it.

Step 3: Check precedents

- Has a similar case been grieved in the division? Talk to the Stewards council or other Stewards.
- Check the union's files.

Step 4: Check standards

- Look up arbitration standards that might apply to this case.

Step 5: Do an outline

- What do you know? Outline all the facts and all the evidence.
- Answer basic questions: what does the grievant want and need?
- What does management want or need?
- What is in your favor? What is against you?

Step 6: Make a plan

- What's your strategy for winning?
- What's your approach to the case?
- How will you convince management to settle on your terms? Is that possible or do you have a back up position?
- What is your strongest argument?

Step 7: Develop your case argument

- Outline your argument: the issue, the supporting facts and evidence, the supporting standards and precedents, the reasons why management should agree, the desired remedy.

Step 8: Prepare for the first step hearing

- What is your meeting strategy?
- How will you seize the initiative and control the meeting?
- How will you use questions?
- What do you really expect to come out of the first step?
- What will your next step be?



The Grievance Procedure (continued)

REPRESENTING A WORKER IN A GRIEVANCE HEARING

Before the hearing

Do:

- Discuss the case with the grievant before the hearing.
- Devise a strategy with the grievant.
- Discuss with the grievant the arguments you will present.
- Tell the grievant what you expect management to say.
- Decide what the grievant should say (if anything).
- Ask the grievant to stay calm, reasonable, and stick with the facts.
- Have a plan for calling a caucus, if necessary.

Don't:

- Don't go to the meeting without discussing the presentation with the grievant.
- Don't go into the meeting without a plan.
- Don't go into the meeting without an agreement between you and the grievant on how to handle problems that may arise.

In the grievance hearing

Do:

- Stick to your presentation plan.
- Stick to the facts.
- Attack management's actions.
- Keep on the offensive. Try to shift the burden of proof on management.
- Keep it brief and to the point.
- Stay calm and reasonable.
- Show a united union front.
- Call for a caucus if your united front shows some cracks.
- Get firm commitments on dates and actions. Ask for a follow up in writing.
- Deal only with the case at hand.
- Act as an equal with management.

Don't:

- Don't surprise the grievant with arguments or facts you failed to discuss.
- Don't get sidetracked.
- Don't attack management personally.
- Don't become defensive. Don't assume guilt.
- Don't over talk (that is, provide management with ammunition to use against you).
- Don't raise your voice, make threats, or behave in a petty or nasty way.



The Grievance Procedure (continued)

- Don't disagree among yourselves on the union side.
- Don't try to settle an internal disagreement in front of management.
- Don't accept vague promises.
- Don't swap settlements on cases or cut deals at the expense of other workers.
- Don't bow and scrape to management.

After the hearing

Do:

- Follow up with the specified time limits
- Get management's commitments in writing.
- Continue to keep the grievant, your field representative and division leader informed.
- Keep the members informed about the status of the grievance: they may need to take some action to support the grievant and protect the contract.
- Make sure members hear about victories. Publicize a winning grievance!

Don't:

- Don't miss time limits.
- Don't take management at its word.
- Don't see the grievance only as a problem between you, the grievant, and management. It affects the whole union.



The Grievance Procedure (continued)

PREPARATION FOR PRESENTATION TO MANAGEMENT

Questions to consider

1. Who will be hearing what you have to say?
2. Is he or she likely to want to do something about the problem? Does he or she have the authority to do something?
3. How much does the boss already know? What other information will you need to provide? Will you need to clear up any misinformation he or she may possess? How will you do it?
4. Are there any special considerations such as personality conflicts? Are there any statements or topics to avoid because they would trigger unwanted anger or cause the boss to take a hard line? How will you handle these?
5. Have you prepared the member for the meeting?
 - Agreed on your objective for the meeting?
 - Agreed who will do the talking?
 - Agreed on a way to “caucus” if you need to talk alone?

Points to remember

1. State the problem and the union’s position clearly.
2. Answer questions only if they’re relevant and only briefly.
3. Stay on track. Don’t let the meeting go down side paths.
4. Maintain control of yourself, the member, and the meeting.
5. Tell management what you expect next and when.
6. Finish your handling of the meeting after the meeting.
 - Discuss the meeting with the member to define what happened. What happens next? Was the objective accomplished?
 - Discuss the meeting with your field rep to determine what worked. What didn’t work? Why and why not? What you could do differently next time? What are the next steps?



Contract Grievance Timetable

Step	Time	To Whom	Must Reply
1			
2 (Appeal)			
3 (Appeal)			
4			

** If you feel a matter can be resolved at Step 1, but that additional time is needed, both parties (the State and PEF) can mutually agree to extend the time frames. This agreement must be in writing with time frames specified.*

